

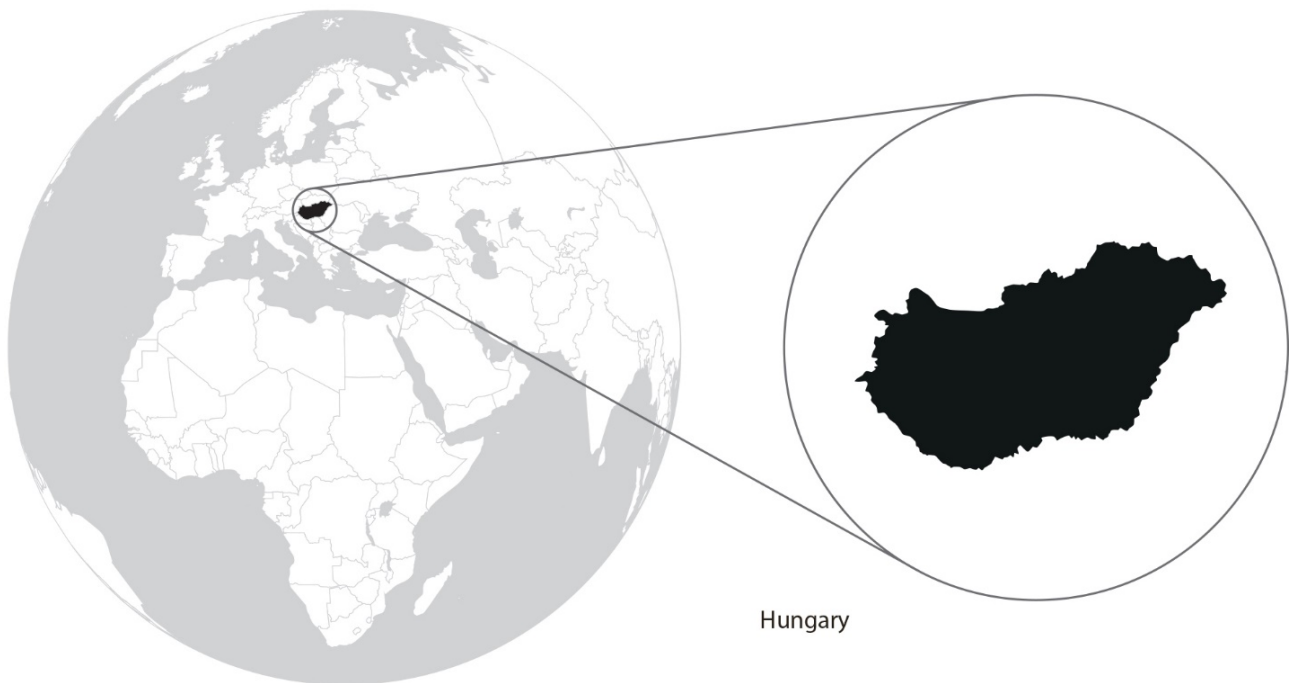


# AUTONOMY ARRANGEMENTS IN THE WORLD

## The Minority Self-Governments in Hungary

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## 1. Essential Facts and Figures

Contemporary Hungary is a relatively homogenous country from an ethnic and linguistic point of view, as the country has lost most of its national minorities with the Treaty of Trianon. In the aftermath of the First World War, in 1920, 11% of around 8 million inhabitants still belonged to minorities, but over the 20<sup>th</sup> century, as a consequence of a complex set of historical, social and political factors, major shifts occurred both in the identity structures and compositions of the minorities, bringing Hungary's minorities to an advanced stage of linguistic assimilation by the fall of the communist regime. Thus, one can state that generally, with the exception of Roma, who face various challenges in everyday life as well as social and discriminatory problems (Bernát 2009), the minorities have been well-integrated into Hungarian society in socioeconomic terms. Most of the 13 minority groups officially recognized in the present (Bulgarian, Roma, Greek, Croat, Polish, German, Armenian, Romanian, Ruthenian, Serb, Slovak, Slovene, and Ukrainian) settled in the present territory of Hungary (the central area of the former Kingdom of Hungary), even before the formation of modern nation-states and the standardization of modern languages. Once these nation-states were formed, for a great part of the 20<sup>th</sup> century these co-ethnics were not really able to attract the attention of their kin-states, especially in view of their relatively small size and their close affiliation with Hungary. On account of this close association with both the state and the Hungarian majority, as reflected in census data, scholars often view their identities as dual, being composed of both ethnic minority and Hungarian elements. This aspect distinguishes them from the more numerous and nationally conscious minority Hungarian communities in the neighboring states. The pronounced differences in history often contributed to the neglect of domestic minority issues and even to complacency in official policies. Unlike the Hungarian minorities abroad, the evolution of the domestic minorities was less affected by the border changes of the 20<sup>th</sup> century and even the more numerous and officially recognized groups (Germans, Slovaks, Romanians, and Croats, Serbs, and Slovenes – usually under the common label of "Southern Slavs" after 1945) could not form larger blocs.

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Living in dispersed settlements and mostly rural communities, the minorities lacked intellectuals and were much more exposed to assimilation and the homogenizing efforts of the emerging modern Hungarian state. Furthermore, the spoken pre-modern dialects, an underdeveloped vocabulary, limited opportunities for language use, a folkloristic culture, and a locally or regionally based ethnic consciousness or identity, meant that minority status was accompanied by lower social prestige. Forms of vertical mobility, such as migration to larger cities, attendance of college or university, marriage or employment outside the community, led to assimilation. As a result, for the older generations the dialect became "the language of remembering" (Erb–Knipf 2000). For those who could complete some form of minority education and training, learning the previously unknown modern standardized language proved to be another challenge.

Historical traumas, official state ideologies and policies, and the 20<sup>th</sup> century transformation of Hungarian society and economy were further factors contributing to the fall in numbers. Claims concerning the collective guilt of Germans were used to justify the relocation of approximately half of Hungary's ethnic German community to Germany after the Second World War (Tóth 2005a: 297-298.). Meanwhile, the Hungarian-Slovak population exchange led many nationally-conscious Slovaks to leave the country (*Ibid.*: 298), and a similar process ensued when Southern Slavs became subject to discrimination at the turn of 1950s after the expulsion of Yugoslavia from Cominform (Ilić 2014: 76). Lacking recognized status, Roma were also subject to several forms of discrimination. As a result, minority members were likely to assume that declaring their ethnic identity might become a source of conflict and disadvantage. In the economy, the system of central economic planning focused on the rapid development of heavy industry; jobs thus shifted from traditional agriculture to industries. This development required the labor force to move from villages to the urban industrial centers. Those who managed to stay in their villages faced forced collectivization, whereby their former private properties and the division of family labor were replaced by collective work (Dobos 2011: 65). Until the end of the 1960s the ruling communist ideology held that the construction of socialism would eradicate national-ethnic cleavages automatically within a few decades. The communist party-state, moreover, enabled only certain direct cultural and educational demands to be met; the foundation of independent organizations with grassroots presence was prohibited (Tóth 2005b: 185).

The overall assessment of these predominantly Hungarian-speaking minority groups, whose identities usually involve cultural ties and less often linguistic affiliations, is an exciting issue, especially in the Central and Eastern European context where the tradition of defining communities in ethno-cultural terms has been prevalent ever since the rise of nationalism and modern nation-states. While there has been an enduring discussion in Hungarian political thought ever since the 19<sup>th</sup> century on the boundaries and potential characteristics of the Hungarian nation, the presence of mostly Hungarian-speaking subgroups in certain communities (Roma, Armenians) and the vague nature of ethnic identity have often given rise to debates over the complexity of belonging and the so-called 'ethno-business'.

The comparison of the data from 2001 and 2011 indicates, at first glance, some increase in the level of minority consciousness, as the percentage of persons belonging to the 13 minorities grew from 5% to 6.5% of the population, a figure amounting to approximately 650,000 people (see Table 1).

**Table 1. National and ethnic minorities in Hungary at the censuses of 1990, 2001 and 2011<sup>1</sup>**

Minority	Nationality (ethnicity)			Mother tongue			Language used among friends and/or in the family		Affinity with cultural values, traditions	Minority persons according to at least one response	
	1990	2001	2011	1990	2001	2011	2001	2011	2001	2001	2011
Bulgarian	n.a.	1,358	3,556	1,370	1,299	2,899	1,118	2,756	1,693	2,316	6,272
Roma	142,683	190,046	308,957	48,072	48,685	54,339	53,323	61,143	129,259	205,720	315,583
Greek	n.a.	2,509	3,916	1,640	1,921	1,872	1,974	2,346	6,140	6,619	4,642
Croat	13,570	15,620	23,561	17,577	14,345	13,716	14,788	16,053	19,715	25,730	26,774
Polish	n.a.	2,962	5,730	3,788	2,580	3,049	2,659	3,815	3,983	5,144	7,001
German	30,824	62,233	131,951	37,511	33,792	38,248	53,040	95,661	88,416	120,344	185,696
Armenian	n.a.	620	3,293	37	294	444	300	496	836	1,165	3,571
Romanian	10,740	7,995	26,345	8,730	8,482	13,886	8,215	17,983	9,162	14,781	35,641
Ruthenian	n.a.	1,098	3,323	674	1,113	999	1,068	1,131	1,292	2,079	3,882
Ukrainian	n.a.	5,070	5,633		4,885	3,384	4,519	3,245	4,779	7,393	7,396
Serb	2,905	3,816	7,210	2,953	3,388	3,078	4,186	5,713	5,279	7,350	10,038
Slovak	10,459	17,693	29,647	12,745	11,816	9,888	18,056	16,266	26,631	39,266	35,208
Slovene	1,930	3,040	2,385	2,627	3,187	1,723	3,119	1,745	3,442	4,832	2,820

<sup>1</sup> Source: Központi Statisztikai Hivatal (Central Statistical Office).

There are, however, reasons to be skeptical about the data. First, the data differ from the estimates of the minority organizations. Such organizations, however, may have an interest in exaggerating the size and political weight of the various minorities and they may also be ignoring the assimilation that occurred in the 20<sup>th</sup> century. Nevertheless, the fact alone that the estimated number is in some cases twice as high as the official figure reveals the relatively high level of uncertainty surrounding minority identities. Second, this relatively high proportion of the minorities recorded by the census is also a consequence of methodology, and it is difficult to make comparisons due to differing census methodologies (Morauszki and Papp 2014). Namely, in the last two censuses (of 2001 and 2011) dual and multiple affiliations could be recorded, although the applied methodologies were not completely identical. In 2001 respondents could choose three options on each of the four questions related to ethnicity, while in 2011 a single response option could be chosen on the first two questions (asking the ranking of nationalities to which the respondent belongs to), and two options could be picked on the other two questions (about mother tongue and the language usually spoken with the family and friends).<sup>2</sup> Those who responded to at least one of the relevant questions were automatically recorded as persons belonging to minorities.

More importantly, the vast majority of those expressing a minority identity also declared themselves to be Hungarian. The question inevitably arises: if only one option could have been chosen by the respondents to each census question, which affiliation would they have preferred? Furthermore, for the 2011 data the Statistical Office did not publish separately the primary and secondary affiliations, it only reported that approximately 60% of the nationality affiliations were derived from the secondary question (Bojer *et al.* 2013: 21). In this respect, when comparing the 1990 data and the estimated results of the 2011 primary affiliations, Morauszki and Papp (2014: 98) concluded that there is hardly any proof of ethnic revival or dissimilation in those two decades. Others argue that the case of minorities in Hungary cannot be explained on a simple continuum

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<sup>2</sup> In 1990 only one response could be given to both questions. In 2001 the four questions related to ethnicity were: nationality (ethnicity), native language, language used among friends and/or in family, and affinity with minority cultures and traditions. In 2011 the last question was dropped, being replaced with another question about the respondents' nationality (this question appeared after the first question referring to the respondents' nationality or ethnicity, and asked whether they belonged to any other nationality besides the one indicated at the first question). Although the Central Statistical Office claimed that the data from 2001 and 2011 were perfectly comparable, in fact, the changes in methodology render the possibilities of comparison less than perfect.

ranging from assimilation to dissimilation (Tátrai 2014: 517), their identities are better understood as dual or hybrid, with symbolic ethnicity - a term coined by Herbert J. Gans (1979: 9), referring to "a nostalgic allegiance (...), a love for and a pride in a tradition that can be felt without having to be incorporated in everyday behavior" - playing an important role. Further, some expressed doubt as to whether the question on the language used in the family and among friends is appropriate for assessing ethnic belongings (Morauzski and Papp 2014: 81). Last but not least, it is worth emphasizing that about 15% of the total population did not respond to these ethnicity-related questions in 2011. Notwithstanding these issues, the trend that emerges when comparing the data from the two latest censuses is a shift to prioritizing ethnic and cultural belongings over minority language use. For instance, only approximately 12% of the Armenians, 17% of the Roma, 21% of the Germans, 26% of the Ruthenians, and less than 30% of people expressing a Slovak identity in their responses to at least one of the relevant questions in 2011 declared the corresponding language to be their mother tongue (Tóth and Vékás 2014: 51). On the whole, with the exception of the Roma and Germans, it is questionable whether any real dissimilation occurred between the two censuses.

As an alternative source for assessing the size of the minorities, experts may turn to the number of registered minority voters at the elections of minority self-governments (MSGs) and at the parliamentary elections as an additional primary source but such estimations also remain problematic (for a more detailed discussion see the section on membership).

The socio-demographic characteristics of the minorities also reveal a rather low potential for ethnocultural reproduction – with one important exception. Concerning age composition, we find that, with the exception of the Roma, who have a higher mortality rate, the younger generations are underrepresented within most of the minorities. In terms of the highest level of education and training, the indicators are also more favorable in the case of those minorities that are more affected by recent migration, while Roma show the poorest results. As a consequence of the distorted age structure, less than 22% of persons belonging to minorities were employed in 2001. Indeed, among the Roma, the total ratio of young people, the unemployed, and the elderly population reached almost 90% (Mayer 2004: Appendix 8). Within most minorities, the employed segments worked either in the tertiary and service sector or in professional occupations, while Roma, Croat, Romanian and Slovene workers tended to be employed mostly in manufacturing and agriculture.

With the exception of the Roma, mixed marriages with members of the majority population are widespread in Hungary, and this fact illustrates parents' 'ethnic optimism' that their children's affiliation is more likely to be Hungarian.

## **2. Autonomy in the Context of the State Structure**

Hungary is a unitary state. Administratively it consists of 19 counties and the capital Budapest, which is divided into 23 districts. Since 2013 the counties have been divided into 198 ridings. There are almost 3,200 municipalities in Hungary, and persons belonging to minorities live in approximately 2,500 of them, given that all minority groups live dispersed throughout the country. In the overwhelming majority of municipalities, minority persons constitute only local minorities. This distribution precludes any possibility of territorial autonomy. In contrast to earlier periods, the urban minority communities, especially the smaller ones, have become stronger. Yet, some traditional minorities, including the Roma, Croats, Germans, Romanians, Slovaks, and Slovenes, still overwhelmingly live in rural areas.

A very important feature of the autonomy arrangements from Hungary is the fact that the system of MSGs was integrated into the system of local/municipal self-governments. A bottom-up approach was followed by the first law adopted in 1993: the MSGs were elected at the municipality level (at the same time with the local self-governments), and the national MSGs were created by the latter through indirect elections. Though this has been changed by subsequent legislative amendments (2005, 2011), the system of local MSGs remains in place, and the municipal self-governments that administer local affairs are the most important partners of MSGs. Integrating the MSGs with the municipal self-government system also partly resolved the problem of defining personal scope (though very serious issues remained unsolved, as discussed in section 10).

## **3. Establishment and Implementation of Autonomy**

In line with the 'ethnic revival' of the 1960s, certain national and ethnic claims gained ground in many post-Stalinist East Central European countries. The main reasons for them had to do with the emerging tensions between communist countries, the generational replacement of the political elite, and, in Hungary, the internal pressure on party leaders to take steps towards improving the situation of the Hungarian communities in the neighboring countries, which tended to be targets



of homogenizing measures (Bárdi 2011). The growing significance of the Hungarian communities abroad also had implications for the domestic minorities. Meanwhile, the failure of the previous assimilatory policy also became evident, as the minorities still existed. The new policy line of the Hungarian Socialist Workers' Party thus laid emphasis on the positive role that could be played by the minorities with their dual affiliation to both Hungary and the kin-states. Their constructive role in bilateral relations (expressed in the Engelsian term of the minorities' 'bridge-role') was highlighted, and as another element the new policy stressed the need for mutual efforts to preserve and develop minority features (officially referred to as 'Leninist nationality policy'). Failing to provide political possibilities to express minority needs, the paternalist and belated shift, which lasted until the end of the 1980s, was not able to improve significantly the situation in Hungary. This was demonstrated clearly by the census data, which showed a steady decrease in the minority population (Vékás 2005). Meanwhile, expectations of the mutual support of minorities were not realized either, as both Czechoslovakia and Romania, the two crucial countries, rejected such a policy (Vago 1989: 129-130). The reforms did not cover other smaller and more dispersed ethnic groups, and so the Bulgarians, Greeks and Poles were only allowed to found and maintain associations in a controlled way. The regime did introduce serious measures aimed at improving the education, employment, and living conditions of the largest group, the Roma. However, it remained reluctant to recognize the distinct features of the various major ethnocultural and linguistic Roma subgroups until the late 1970s,<sup>3</sup> and it was only after the political changes in the late 1980s that Roma received equal recognition in terms of their minority rights.

Since the fall of communism Hungary has made sustained efforts to establish and develop a model of non-territorial autonomy for its relatively small minorities (Smith and Hiden 2012: 113). Even so, despite the country's relatively homogeneous ethnic composition, a recurring topic of debate has been government policy towards the domestic minority groups, as well as the relationship and the degree of consistency between domestic minority policy and the kin-state activities targeting ethnic Hungarians abroad. On this issue a rather contradictory picture emerges from the literature. On one hand, the constitutional amendments of 1989-1990 and the introduction – in 1993 – of the

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<sup>3</sup> In Hungary, the Roma community consists of at least three major ethnocultural and linguistic subgroups. The overwhelming majority is Hungarian-speaking, while smaller groups speak either a variant of Romani or Beash, an ancient Romanian dialect. According to the latest census results from 2011, approximately 315,000 people – around 3% of the total population – declared themselves as Roma, but their estimated number is at least twice as high.

system of elected minority self-governments (MSGs) clearly placed Hungary among the leading European countries in the field of minority protection (Pan and Pfeil 2002) and led Hungary's politicians and other domestic actors to emphasize, in a rhetorical and symbolic fashion, the exemplary and inspirational nature of the Hungarian model. On the other hand, a growing number of scholars have contended that Hungary's domestic minority policy has been motivated principally by a desire to improve the situation of the Hungarian minorities abroad by setting an example and putting pressure on the neighboring countries.

Preparations for the adoption of a law on the rights of minorities were begun already in 1988, during the decline of the communist regime. The party apparatus initially involved in the process was gradually replaced by governmental bodies even before the first democratic elections in 1990. Having been granted the right to freely associate, the minorities found they had an opportunity to (re)organize themselves in democratic ways: the Roma, in particular, established the highest number of associations, and even those communities that had been denied recognition in the previous era created their own organizations. In order to overcome the legitimacy deficit caused by the growing number of organizations, the most relevant ones formed a Minority Roundtable in 1991. This umbrella organization soon became an accepted partner of the government.

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

Indeed, representatives of the Hungarian minorities abroad contributed to the preparations for the 1993 minority law. Inevitably, they urged the enactment of a law that would serve as a point of

reference and a blueprint (Dobos 2011: 133). Viewed from another perspective, the reason behind the Hungarian model was not only to serve as a reference by quickly adopting and further developing Western standards (Galbreath–McEvoy 2012: 278) but also to prevent international organizations and neighbors from criticizing Hungary in the field of minority protection.<sup>4</sup> Similarly, the intention – made plain by the Hungarian parliament after the first democratic elections in 1990<sup>5</sup> – to join the Euro-Atlantic community, to further develop existing international standards of minority protection, and to attempt to conclude bilateral and regional agreements on minority rights – needed to be supported by a progressive domestic system. In addition, certain international actors, among them several leaders of the reunified Germany, used the Hungarian model as a reference point in their efforts to improve international norms. They gave their support to Hungary's minority legislation, emphasizing its importance (Dobos 2011: 131).

However, in our view, foreign considerations were not the primary motivation. The choice is not between assuming the primacy of kin-state politics and completely ignoring the issue. Other factors must also be considered. In a country where the minorities are relatively small, live dispersed around the country, feel themselves closely attached to the State and to mainstream Hungarian society, and – with the exception of the Roma, the country's largest minority group – are well integrated in socio-economic terms, it should come as no surprise that official policies seek to create good standards of minority protection, thereby empowering minorities and satisfying their needs and interests.

One factor contributing to the adoption of the minority legislation seems to have been to compensate the previously discriminated Roma by making their legal status equal to that of the other recognized minorities. The great number of minority civil organizations, their rivalry and the legitimacy deficit, also contributed to the decision to create a system of elected MSGs. Moreover, there is evidence indicating that governmental actors expected the elections to bring the replacement of minority elites, and in this respect the elections could have been a tool for minority representatives to gain legitimacy (Dobos 2011: 142-144). The number of minority organizations

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<sup>4</sup> As a result, EU conditionality played an important role in other areas such as in improving the antidiscrimination legislation in Hungary and had a correcting effect on the 2001 Status Law which granted rights to Hungarians living in the neighbouring countries (Sasse 2005, Vizi 2009).

<sup>5</sup> Parliamentary resolution 46 of 24 May 1990 on the situation of Hungarian national minorities in the neighbouring countries.

and ethnic parties may be viewed as indicative of their mobilization. However, despite the high number of registered ethnic parties since 1989,<sup>6</sup> their electoral failures reflect accurately the fact that in Hungary the ethnic components of personal identities generally have little impact on political interests and voting preferences. In light of such other factors as the electoral system, weak identities and the number and geographical spread of minority persons, it was obvious that their representation in the major decision-making bodies could be accomplished only in a preferential manner.

The drafting of both the 1993 Minority Rights Act and its 2005 amendment were lengthy and complex processes, involving various different actors with diverse interests. This resulted in sensitive political and legal compromises, which moved beyond merely symbolic elements. While the claim to be setting standards was certainly present in the rhetoric, most of the provisions were actually formulated before the parliamentary deliberative stage in negotiations held by relevant ministries, governmental agencies and the minority organizations. Through the creation of new institutions, rights, duties, procedures, and funding possibilities, the legislation left much room for debates and compromises. At the same time, the capacities and competences of local municipalities, as well as the country's overall economic and financial situation could not be ignored, especially as Hungary was still in transition to a capitalist market economy. Consequently, the major concerns were a lack of willingness to delegate appropriate powers to the minority bodies and inadequate financial resources. We therefore consider the aim of setting standards as only one of several goals, many of which were suppressed at intervals or for a longer period of time in certain cases.

Regarding the elaboration process of the 1993 law, the literature often emphasizes the differences that arose between the so-called 'national liberal' and 'autonomist' approaches to minority rights. The former would have been satisfied by granting individual rights, and aimed to regulate only what was considered as absolutely necessary. The main advocate of this approach, the Ministry of

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<sup>6</sup> The number of ethnopolitical parties that were registered by Hungarian courts between 1989 and 2015 exceeds 30, although the legal framework does not recognize them as a separate type within the broader category of political parties. This is why, interestingly, the participation of these minority parties at the MSG elections is prohibited by law. With one exception, the Nationality Forum which was formed by Croat, German and Slovak minority leaders in 1998, all of these parties were created by Roma. Only eight parties were able to run at least one candidate in at least one of the past parliamentary elections, but none of them succeeded in winning a seat.

Justice, argued that in a democracy the right of association provided the essential basis to articulate social interests and values. In the Ministry's view, the MSGs should not become more than voluntary associations with weak competences. By contrast, the latter concept, supported in particular by the Minority Roundtable, sought to extend the scope of regulation as far as possible, embracing collective rights, cultural autonomy and financial guarantees, and establishing elected bodies based on constitutional law. Although the autonomist discourse dominated the rhetoric and the elected form ultimately prevailed, the overall outcome bore the marks of both approaches.

#### **4. Legal Basis of Autonomy**

Hungary did not adopt a new constitution during the transition process; instead, the Constitution of 1949 was subjected to very significant amendments, in order to make it appropriate for the context of liberal democracy and market economy.<sup>7</sup> Like most other constitutions in the region, both this amended constitution and the most recent Fundamental Law illustrate how difficult it is to define the political community and reconcile the different concepts of the nation. The ethnocultural understanding of the nation (covering those who identify themselves in ethnic terms and speak the language as a native language) became very influential in public discourse in Hungary after the Treaty of Trianon, and this approach regained its influence after the fall of the communist regime. Still, in the period that lasted from the regime change until the adoption of Hungary's new Fundamental Law in 2011, the civic-neutral concept defined the common entity in terms of citizenship, the civic-neutral term 'people' being combined with the national-ethnic approach (Deets 2005).

Namely, the amended 1949 Constitution declared that the supreme power was vested in the people, that the national and ethnic minorities were constituent parts of the state, and that the state's paramount duty was to protect them.<sup>8</sup> Interestingly, the Constitution referred only indirectly to the presence of the overwhelming Hungarian majority, especially in the 'responsibility clause' for the

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<sup>7</sup> Act 20 of 1949 (Constitution of Hungary), as amended by Act 31 of 1989.

<sup>8</sup> Articles 2 (2) and 68 (1) (2) of the 1949 Constitution, as amended in 1989.

fate of Hungarians living abroad.<sup>9</sup> It is also of paramount importance that a constitutional provision introduced in 1989 declared that national and ethnic minorities had the right to establish MSGs.<sup>10</sup>

The conditions of exercising this right (and minority rights in general) were set out in detail in Act 77 of 1993 on the Rights of National and Ethnic Minorities.<sup>11</sup> This act later suffered a number of modifications, the most important of these was the adoption of Act 114 of 2005 on the election of the representatives of minority self-governments and the amendment of certain Acts concerning national and ethnic minorities, which implemented crucial institutional changes (discussed in greater detail in sections 5 and 10).

After the 2010 parliamentary elections, the new right-wing government, with its unprecedented two-thirds parliamentary majority, and as part of its efforts to consolidate the state, redefined the basis of the political community and solidified and codified traditional values and norms by passing a new Constitution (Fundamental Law)<sup>12</sup> on 18 April 2011 which replaced the 1949 Constitution.

Obviously, the situation of the minorities could not remain unaffected either, and the recent legislative developments have reignited the debate around defining the political community as well as around the nature and objectives of minority policy in Hungary. The new constitutional provisions, coupled with a new law on minorities, have greatly changed the institutional arrangements of MSGs. Besides returning to the term 'nationalities', which was in use before 1990, the Fundamental Law also significantly alters the concept of nation, as it seems to prefer the ethnocultural conception. By contrast to the previous Constitution, the Preamble of the new Fundamental Law, the so-called "National Avowal", although still recognizing "the nationalities living with us" as state constituents, is written in the name of "we the members of the Hungarian nation". It follows, therefore, and this is the opinion of the Venice Commission,<sup>13</sup> that ethnic

<sup>9</sup> *Ibid.*, Article 6 (3).

<sup>10</sup> *Ibid.*, Article 68 (4)

<sup>11</sup> The 2005 consolidated text of the 1993 Minority Rights Act (as of November 25, 2005) is available online at: <http://www.kisebbsegombudsman.hu/data/files/128317683.pdf> (accessed on 15 January 2016).

<sup>12</sup> The Fundamental Law of Hungary, April 25, 2011. Available online at: <http://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> (accessed on 15 January 2016).

<sup>13</sup> The Venice Commission also criticized the rapidity of the process of the elaboration and adoption of the new Fundamental Law. It also drew attention to the significant lack of transparency and public debate. See: opinion on the new Constitution of Hungary, CDL-AD(2011)016, Venice Commission, Strasbourg, June 20, 2011. Available online

Hungarians share the power with the nationalities who are not considered to have been part of the people behind the Fundamental Law's adoption. In fact, however, several national MSGs expressed their opinions during the elaboration of the Fundamental Law. The more pronounced responsibility for the Hungarian minorities, as well as the much disputed provision that, contrary to the previous Constitution, the Fundamental Law declares Hungarian as the official language deserving protection,<sup>14</sup> also indicate an intention to strengthen the ethnic elements. Another argument often invoked to demonstrate the shift from a predominantly civic definition of the nation to an ethno-cultural conception is the fact that the new Fundamental Law grants the possibility of dual citizenship and voting rights to ethnic Hungarians abroad.

The Fundamental Law, however, also kept certain provisions from the previous Constitution, including the right of minorities to use their native languages and names, to promote their cultures, to be educated in their mother tongue, and to create local and national self-governments. Even so, it does not declare their general protection and collective participation in public life. Moreover, it terminated the independent position of the Minority Rights Ombudsperson.<sup>15</sup> Instead it aims to fill a significant gap in the institutional framework when it states that minorities shall contribute to parliament's work.<sup>16</sup> With respect to preventing electoral abuses, it declares that those Hungarian citizens who belong to any nationality shall have the right to freely express and preserve their identities.

In accordance with the new constitutional provisions, the Hungarian parliament adopted Act 179 of 2011 on the Rights of Nationalities (hereinafter 2011 Minority Rights Act)<sup>17</sup> which replaced the 1993 legislation. In contrast to its predecessors, the preparation of the 2011 Minority Rights Act

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at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)016-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)016-e) (accessed on 15 January 2016). See also Pap (2011).

<sup>14</sup> Article (H) and Article XXIX (1) of the 2011 Fundamental Law.

<sup>15</sup> While between 1995 and 2011 there was a specialized ombudsperson in charge of national and ethnic minority protection, the Fundamental Law has established a unified ombudsperson system in which the minority commissioner serves as a deputy of the general commissioner for fundamental rights, but without the authority to take measures independently.

<sup>16</sup> Article 2 (2) of the 2011 Fundamental Law.

<sup>17</sup> Available online in English at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2012\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2012)014-e) (accessed on 15 January 2016).

took less than one and half years, providing thus less opportunity for consultations and for expressing opinions.<sup>18</sup>

Both the design and some specific parts of the new legislation affecting minorities in Hungary were criticized by international and domestic actors. The Venice Commission commenced investigations in 2011-2012, while the Commissioner for Fundamental Rights requested the Hungarian Constitutional Court to examine some points of the new law that he deemed unconstitutional. The Court found that the 2011 Minority Rights Act did not raise constitutional concerns.<sup>19</sup>

In what concerns the legal entrenchment of autonomy in Hungary, it should be emphasized that both the 1993 and 2011 Acts had a special place in the in the legal hierarchy. The Minority Rights Act of 1993 was a so-called two-thirds law (*kétharmados törvény*), meaning that the support of two thirds of all the MPs was required for passing or amending the law. Under the auspices of the Fundamental Law of 2011, the Nationalities Act is an organic law (*sarkalatos törvény*), meaning that its adoption and amendment requires the support of two-thirds of MPs present.

## 5. Autonomous Institutions

Given the occurrence of major changes in the relevant legislation, the institutions of autonomy in Hungary are best analyzed as broken down to three phases, in accordance with the timing of the legal reforms. However, for the sake of greater clarity, the main elements of the institutional framework are summarized in Table 2.

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<sup>18</sup> After the debates of the September draft law, it was submitted to the parliament on November 19 and adopted a month later, with the Fundamental Law entering into force on January 1, 2012.

<sup>19</sup> Decision 41/2012 of 6 December 2012. Available online (in Hungarian) at: <http://public.mkab.hu/dev/dontesek.nsf/0/2EA8A1E5D6372FAFC1257ADA00524C26?OpenDocument> (accessed on 15 January 2016).



**Table 2. Major elements of the Hungarian system of non-territorial autonomy.**<sup>20</sup>

	<b>MSG elections in 1994, 1995, 1998 and 2002</b>	<b>MSG elections in 2006 and 2010</b>	<b>MSG elections in 2014</b>
<b>Personal scope</b>	Freedom to choose identity	Freedom to choose identity, registration	Freedom to express identity, registration
	Minority definition and expandable lists of recognized minorities and their native languages	Minority definition and expandable lists of recognized minorities and their native languages.	Minority definition and expandable lists of recognized minorities and their native languages
	Elections: every Hungarian voter, and <i>de facto</i> non-citizens	Elections: minority Hungarian citizens, at least 30 registered voters. Additional requirements for candidates.	Elections: registered minority Hungarian citizens and non-citizens (the latter only until 2019), at least 25 persons (30 from 2024) according to census data. Additional requirements for candidates.
<b>Local level</b>	Three types of MSGs (one directly elected, two transformed) Directly elected: majority system, Block Vote	Only one type of MSG (directly elected) Directly elected: majority system, Block Vote	Two types of MSGs (one directly elected, one transformed) Directly elected: majority system, Block Vote
<b>Territorial level</b>	Only in Budapest Indirect election, majority system, Block Vote	Every county and Budapest Indirect election, list PR, D'Hondt method	Every county and Budapest Direct election, list PR, D'Hondt method
<b>National level</b>	Indirect election, majority system, Block Vote	Indirect election, list PR, D'Hondt method	Direct election, list PR, D'Hondt method

### 5.1. The period 1994-2006

The 1993 law distinguished three types of MSGs at the local level, including the districts of the capital city. The most prevalent type was the directly elected one. Due to the minorities' rejection of registration, there were difficulties encountered in implementing their right to establish MSGs, and as a result, between 1994 and 2004 every Hungarian citizen had the right to vote for, and be elected to, MSGs. The voting took place in the same polling stations used in local municipality elections and on the same day. The two other, indirectly established forms were less frequent.

The first indirect method for the constitution of MSGs was to transform a municipal self-government. If the majority of the representatives in the local self-government of a municipality were elected as minority candidates, then they could simultaneously transform the municipality

<sup>20</sup> An earlier version of the table was published in Dobos (2013: 171).

into an MSG, while also having to keep carrying out the full range of local tasks.<sup>21</sup> This prioritized form of MSG was intended especially for those settlements that had mostly minority inhabitants. It was often portrayed as a form of territorial autonomy, but in practice it could often be turned against local minority interests. Such situations could arise especially when the persons elected to the municipal self-government as minority candidates who initiated the transformation of the local self-government into an MSG were probably non-members of the minority, while local minority activists wanted to establish a directly elected MSG instead of the transformed one. The other alternative way for the indirect constitution of local MSGs could be applied if more than 30% of the members of the local self-government were elected as candidates belonging to a particular minority: these members of the local self-government could indirectly establish a MSG with at least 3 members.<sup>22</sup> The danger of turning both kinds of indirectly elected MSGs against the interests of the local minorities through non-members of the groups engaged in ethno-business was further augmented by the existence of a special measure in the Law on the election of local self-governments and mayors, which was intended to facilitate minority representation at the local level. This special rule allowed for the election of a minority candidate (or a minority ticket) with a number of votes equal to two thirds of the number of votes required in the case of non-minority competitors.<sup>23</sup>

Turning now to the higher-level minority bodies (those in Budapest and at the national level), these were elected in an indirect manner, by a system of electors. Most of the electors were members of local MSGs or members of municipal self-governments elected as minority candidates; if in a municipality no candidate of a particular minority has been elected and no MSG of the respective minority has been established, the elector for the national MSG was designated by direct election.<sup>24</sup> In 1995 only eleven of the thirteen recognized minorities were able to create their own national MSGs, the first Ruthenian and Ukrainian national bodies were established only after their 1999 elections. At each level a majoritarian electoral system was employed: candidates with the highest number of votes won seats (block vote). Consequently, however, certain sub-groups within divided communities remained underrepresented or excluded, especially at the national level.

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<sup>21</sup> Act 77 of 1993, Article 22 (1).

<sup>22</sup> *Ibid.*, Article 22 (2)

<sup>23</sup> Act 64 of 1990 on the election of the members of local self-governments and mayors, Articles 48-50.

<sup>24</sup> *Ibid.*, Article 31 (2).

## 5.2. The period 2006-2014

The 2005 amendments simplified the system by reducing the number of types of local MSGs, leaving only the directly elected type. Furthermore, the mechanism of gaining preferential mandates in local governments was also cancelled. While this was motivated by the above-discussed danger of creating illegitimate transformed MSGs, the abolishment of the preferential seat-allocation rule also meant the elimination of a form of access to local decision-making that was especially important to Roma. Taking into account the needs of larger minorities, the 2005 law created the county-territorial level of MSGs, which had previously existed only in Budapest (see Table 4 below). For the election of the county and the national level MSGs (through indirect elections held through electoral assemblies, where the elected members of the local MSGs could vote), a list proportional electoral system type has been introduced in order to ensure the representation of diverse interest groups and to ensure that national MSGs would serve as the "parliaments" of minorities by fostering discussions and mutual understanding.<sup>25</sup>

## 5.3. Since 2014

In spite of the fact that this option was generally opposed by the minorities, the 2011 Act on the Rights of Nationalities reintroduced the system of transformed MSGs (except for the districts of Budapest), which was eliminated in 2006. However, the conditions for transforming a municipality were made more difficult: besides the requirement that a majority of the elected representatives should have won their seats as minority candidates, it is also required that simultaneously a majority of the voters from the respective municipality be registered on the special electoral roll of the respective minority. This regulation might serve as an incentive for certain groups, because the results of the latest local elections indicate an absence of localities fulfilling both criteria, even though Roma organizations in particular ran candidates and in some municipalities registered minority voters constituted local majorities. Similarly, the new law reintroduces the possibility of

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<sup>25</sup> Earlier those Roma and Romanian organizations that were excluded from the national MSGs demanded the elimination of autonomy. When measuring the proportionality of the electoral outcome, the difference between the percentage of votes and the percentage of seats won by minority organizations (the Loosemore-Hanby index) revealed a high level of disproportionality. However, this disproportionality decreased after 2006.

securing preferential minority mandates in municipalities, a measure that had previously been repealed due to abuses.

Furthermore, the electoral system has been amended to the extent that while previously only the local level had been elected directly by registered minority voters, at the 2014 elections territorial and national MSGs were established in the same way. One could vote for the territorial level if at least 10 local elections have been called in a certain county or Budapest. In contrast, there is no such precondition at the national level. Under the new rules, voters who live in localities where there were fewer than 25 minority persons according to the census, and thus local elections could not be held, could also participate in the election of the territorial and national MSGs. The law still does not lay down any threshold of voter turnout; for instance, at the local level, victory may be achieved even through a single vote. The electoral system at both the territorial and national levels is proportional. Until 2014 the number of MSGs increased from cycle to cycle (see Table 3), which could be due to a somewhat growing consciousness as reflected by census data, but also to a less favorable phenomenon: ethno-business.

**Table 3. The evolution of the number of local MSGs between 1994 and 2014<sup>26</sup>**

Minority	Number of local MSGs					
	1994-1995	1998	2002	2006	2010	2014
Bulgarian	4	15	31	38	41	33
Roma	477	768	999	1118	1248	1197
Greek	6	19	31	34	37	35
Croat	57	75	108	115	127	112
Polish	7	33	51	47	49	41
German	162	272	341	378	424	406
Armenian	16	25	31	31	39	32
Romanian	11	33	44	46	71	61
Ruthenian	1	10	32	52	75	43
Serb	19	35	44	40	48	45
Slovak	51	76	115	116	122	112
Slovene	6	10	13	11	11	10
Ukrainian	0	5	13	19	23	16

<sup>26</sup> Source (in Hungarian): [www.valasztas.hu](http://www.valasztas.hu) (accessed on 16 January 2016).

**Table 4. The evolution of the number of territorial MSGs between 2007 and 2014<sup>27</sup>**

Minority	Number of territorial MSGs		
	2007	2011	2014
Bulgarian	2	2	1
Roma	20	20	20
Greek	1	1	1
Croat	7	7	7
Polish	2	2	1
German	11	11	13
Armenian	1	1	1
Romanian	3	3	5
Ruthenian	2	3	2
Serb	2	2	2
Slovak	6	6	6
Slovene	0	0	0
Ukrainian	0	0	1

## 6. Autonomous Powers

The system of MSGs was created with the aim of guaranteeing the cultural autonomy of minorities and allowing them to make decisions especially on the foundation, taking over and maintenance of cultural and educational institutions and media at both local and national level. MSGs, among others, obtained the right to determine their protected monuments and memorial sites, the dates of their local and national holidays. They were entitled to adopt their own organizational and operational regulations. MSGs at local level could veto proposals if they concerned cultural, educational or language issues related to the specific minority. They also had veto on the question of the appointment of the leaders of minority institutions. At national level, the national MSGs, as partners for both the parliament and government, could give their opinions on draft laws and regulations affecting minority communities. They had also the right to monitor minority education, as well as to participate in the development of the core curricula used in minority education (except for higher education).

In practice, however, financial considerations and the fears of municipalities concerning the possibility of autonomy creating 'dual administration' resulted in a separation of form and function. The basic structure of the MSGs followed the model of the non-territorial autonomies, to which

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<sup>27</sup> *Ibid.*

their responsibilities and tasks did not correspond. MSGs soon questioned the lack of adequate powers and rights, the dependence on municipalities, and the uncertain regulations (Csefkó *et al.* 1999).

In this respect the 2005 law made progress in further regulating various issues concerning functions, tasks, competences, and the financial and infrastructural background. Generally, MSGs had weak powers, most of which would not have required an elected form of autonomy. At the local level the most powerful right was a veto, which, after 2005, covered any municipal decrees affecting the minorities in the fields of local media, the promotion of traditions and culture, and the collective use of language. The appointment of the heads of minority institutions and local decisions concerning the education of persons belonging to minorities also required the MSGs' approval. The national level MSGs similarly had the power of veto in decisions on the preservation and conservation of minority settlements, minority architectural monuments and governmental decrees on the implementation of the Act on Public Education.

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

Even before the outbreak of the global financial crisis, which had a particularly detrimental effect on Hungary, one of the most vulnerable countries in the region, complex and controversial issues surrounding the socio-economic integration of the Roma were brought to the fore. The situation of the Roma raised the question, among others, whether and to what extent the major goals of the legal and institutional framework had met their basic needs and expectations, as Roma MSGs mostly have to deal with social problems, even though they are not supposed to do so according to the minority law (Kállai 2005a: 308; Kovats 1999: 150-151; Molnár and Schafft 2003; Waters and Guglielmo 1996). Given the multiple and often conflicting narratives and criteria that have typically prevailed in the literature with regard to the Roma (whether they should be considered a national or ethnic minority, a social group - what is often called an 'ethnoclass' or 'underclass', or a transnational nation), serious doubts have been raised as to whether and how Roma MSGs might

be involved in policy-making aiming for a better socio-economic integration of the Roma population, especially taking into account their relatively weak competences and high dependence on central and local funding. Some argue that Roma MSGs are a rather 'tokenist' form of representation, which not only maintain and reinforce divisions between Roma and non-Roma groups, but also reproduce the dependence of the Roma communities and repress civic activities.

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

## **7. Financial Arrangements**

MSGs at all levels are entitled to normative state support, the precise amounts being determined by the annual acts on the central budget. The sums allocated to the MSGs from the central budget each year since 1995 are reported in Table 5.

Domestic and foreign organizations, foundations, and private individuals may contribute to the financial support of the minorities in Hungary too. Their financial management is supervised by the State Audit Office, while administrative and legal supervision is the task of the metropolitan and county government offices. As far as external (kin-state) support of the MSGs is concerned, however, data is scarce; nevertheless, where data is available about the relative weight of the various financial sources, it indicates that MSGs receive the overwhelming part of their budget from the central government, while other states usually do not support MSGs directly but their institutions (schools, theatres etc.).

**Table 5. Support from the central budget to local, territorial and national MSGs, and to the institutions of national MSGs, 1995-2015 (million USD).<sup>28</sup>**

Year	Support for national MSGs <sup>29</sup>	Support for the institutions of national MSGs (from 2006)	Support for local and territorial MSGs	Total
1995	1.54		1.19	2.73
1996	1.69		1.23	2.92
1997	1.64		1.61	3.25
1998	1.86		1.63	3.49
1999	2.13		3.08	5.21
2000	1.93		2.84	4.78
2001	2.20		2.95	5.15
2002	2.71		3.49	6.20
2003	3.88		5.63	9.51
2004	4.29		6.45	10.74
2005	4.58		6.54	11.12
2006	4.33	1.80	5.53	11.67
2007	4.97	2.07	7.28	14.32
2008	5.32	2.40	9.07	16.79
2009	4.71	2.20	7.71	14.62
2010	4.58	2.14	7.30	14.02
2011	6.07	2.30	7.56	15.94
2012	5.49	2.22	6.74	14.46
2013	5.53	2.62	6.79	14.94
2014	5.32	2.63	6.54	14.48
2015	5.76	3.40	8.58	17.74

Initially, each MSG was entitled to the same amount of normative support, irrespective of the local size of the community or the needs arising, although in many cases there were greater needs in less developed rural regions (Eiler and Kovács 2002). In general, opportunities for minority-related activities largely depended on cooperation between municipalities and minority self-governments, and on local capacities. In 2008, as part of the ongoing struggle against ethno-business, the amount was split into two portions: each MSG continued to receive the same annual amount, while the allocation of the remaining 25% was based on the performance of their key functions.<sup>30</sup> The decisions on the submitted applications were regularly made by a special state committee, in which delegates of the national MSGs also took part in an advisory capacity. The committee could keep

<sup>28</sup> Source: laws on the annual central budget and the biannual government reports on the situation of national and ethnic minorities living in Hungary (1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013). Source of yearly average USD/HUF exchange rates: <http://www.ksh.hu/docs/hun/xftp/idoszaki/monsz/monsz9507.pdf> (accessed on 15 January 2016). For 2015 the average exchange rate of the first three months has been used.

<sup>29</sup> Since 2011 support for national MSGs and minority media.

<sup>30</sup> Governmental decree 375/2007 of 23 December 2007.



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

The system of allocating central financial support to MSGs has also been modified recently. First, there has been a change in the ratios: one third of the total amount is granted for core functions – especially for representing the community and managing the autonomy at the local level, as set out in the minority law – based on the latest 2011 census data; the remaining amount is granted on the basis of the activity history of each applicant.<sup>31</sup> Further, minority organizations are eligible to apply annually to a fund supporting their cultural and linguistic activities.

## **8. Intergovernmental Relations**

As stated above, at the local level the most important partners of MSGs are the local municipalities. However, some aspects of their relations, and especially language rights, are conditional upon census results. Local municipalities are obliged to provide the personal and material conditions necessary for the operation of local MSGs, which should be set out in an agreement between the two bodies. In their statutes local self-governments shall determine the relevant tasks in the field of minority protection, the relationship with the local MSGs, and they shall also lay down the detailed procedures concerning how the MSGs can exercise their rights of initiative, proposal, opinion-giving and consent. On the initiative of the MSG the municipality shall establish within its own structures a committee on minority issues, and MSG members can attend its meetings. At different levels, with the competent state or municipality agencies MSGs have the right to initiate proceedings, request information, or make proposals.

For legal compliance, to investigate whether the decisions of MSGs are in conformity with the rule of law, the metropolitan and county government offices shall supervise their functioning at various levels. The parliament shall dissolve an MSG if its operation is unconstitutional. The parliament annually adopts the law on the central budget that provides subsidies for MSGs and their institutions. The parliament decides whether a new minority other than those listed in the 2011 minority law should benefit from the provisions of the law (the request for recognition as an ethnic group native to Hungary may be submitted by at least 1000 individuals who declare belonging to

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<sup>31</sup> Governmental decree 428/2012 of 29 December 2012.

the group). In this procedure of recognition the President of the Hungarian Academy of Sciences shall give an opinion. Every second year, the central government should review the situation of minorities living in Hungary and elaborate and submit a report to the parliament. Pursuant to the minority law, the government shall also promote and assist the enforcement of minority rights and interests.

A particularly important institution for the enforcement of minority rights used to be the minority ombudsperson. This institution was originally created with the aim to remedy to some extent the lack of preferential parliamentary representation; however, the first ombudsperson was elected by the parliament only in mid-1995. The minority ombudsperson was basically responsible for investigating any kind of abuse of minority rights and for initiating general and individual measures in order to remedy these. The work of the minority ombudsperson covered at least three broad areas. First, by gathering experience, providing advice and expressing opinions the institution could contribute to the processes of political decision-making. Second, through continuous monitoring and remedy it could provide assistance to the better implementation of minority rights. Last but not least, its most effective instrument was to provide information to the public, thereby shaping attitudes among the general public and putting pressure on the local or national authorities concerned. However, since the adoption of the new Fundamental Law the ombudsperson for the rights of minorities has only been serving as a deputy for the commissioner for fundamental rights, with limited competences.

The realization of the right to parliamentary representation, which was a specific provision in the 1993 minority law, was the main political and legal demand of the minorities in Hungary after 1990. Despite many drafts and various domestic and international critiques, the aim was not realized for more than two decades. According to the new law on parliamentary elections,<sup>32</sup> in the Hungarian mixed electoral system, those voters who are registered in minority electoral rolls have the right to vote for the candidates in the single-member districts and for the minority lists drawn up by the national MSGs. Thereby, the new preferential minority representation in parliament follows a corporatist logic, as only national MSGs are entitled to field lists (one list each), while other types of minority organizations, such as associations and ethnic parties are not. For the

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<sup>32</sup> Act 203 of 2011 on the election of the members of the Parliament of Hungary.

minority lists the 5% threshold is not applied, and they are entitled to one seat if they receive at least 25% of an electoral quota necessary for the election of one MP in the proportional component of the system. This means that voters who wish to vote for minority candidates have to renounce voting for the political parties in the proportional component of the system, and that the number of seats obtained by the minority candidates reduces the number of MPs to be elected on party lists. This preferential system could only favor the larger minority communities: the Roma and perhaps the Germans, Croats and Slovaks. But even the most successful ethnic parties had not received more than 10-12,000 of votes at the previous elections in Hungary, showing that even these minorities had to work hard to attract their potential voters. Under these circumstances it hardly came as a surprise that at the first parliamentary elections when the system was applied (in April 2014) no minority candidate was elected (for the number of registered minority voters at the parliamentary elections, see Table 6). Nevertheless, according to the law, minority lists that fail to win a preferential seat are still entitled to a parliamentary spokesperson, who, however, does not have voting rights. Minority MPs and spokespersons can found permanent parliamentary committees, pursuant to the new law on the parliament.<sup>33</sup>

## 9. Inter-group Relations within the Autonomous Entity (not applicable)

### 10. Membership, "quasi-citizenship" and special rights

Defining the personal scope of the law and thus creating legitimate bodies was one of the most difficult tasks in view of the uncertain nature of ethnic identities, the huge differences between census data and estimates, and the claims by various ethnic groups. The minorities initially refused any kind of registration of persons with minority backgrounds, due to the memory of negative historical experiences (such as the relocation and expulsion of the Germans and the Hungarian-Slovak population exchange after World War II, or the discrimination against the Southern Slav communities and the Roma). This, however, made it almost impossible to assess the approximate number of persons to whom the law was to apply, while the principle of a person's freedom to choose his or her identity had already been agreed upon during the preparatory phase of Act 77 of 1993. In the end, the compromise involved a legal definition of the term 'national and ethnic

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<sup>33</sup> Act 36 of 2012 on the Parliament of Hungary.

minority<sup>34</sup> and an enumeration of 13 recognized minorities and their native languages, with the possibility of subsequently expanding this list. Also, the fact that MSGs were integrated into the municipality system partly resolved the problem of defining personal scope, in the sense that electing the self-government at the local level transferred the issue to the level of the municipalities.

The contestation of group boundaries also played a significant role at the minority elections, since the different subgroups often accused each other of participating in ethno-business. Within certain communities a recent phenomenon has reignited the debate: the arrival to Hungary of a significant number of persons who belong to the specific minority but were born abroad and are non-Hungarian citizens or possess dual citizenship (Tóth and Vékás 2009). This explains why the minorities have long sought to extend the application of minority law to foreign citizens established in Hungary. Such persons usually have favorable socioeconomic positions, good educational qualifications, better native language skills, close ties to the kin-states, and stronger ethnic identities. Even so, their attempts to contribute to minority public life and to the work of MSGs have caused tensions in certain cases. Given the significant changes that occurred in the relevant legislation, the rules concerning membership in the institutions of autonomy are once again best analyzed as broken down to three phases.

### 10.1. The period 1994-2006

In the first period there were no special minority electoral rolls in Hungary, thus every Hungarian citizen had the right to vote for, and be elected to, MSGs. This basically meant that minority rights applied to all Hungarian citizens.<sup>35</sup> As a result, the number of votes cast was significantly beyond even the estimated number of the persons belonging to the minorities. As majority "sympathy voters" were little familiar with the internal affairs of the minorities, these 'sympathy-votes' coming from the ethnic majority usually advantaged those candidates whose last names started with the

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<sup>34</sup> Act 77 of 1993, Article 1 (2): "For the purposes of the present Act a national or ethnic minority (...) is an ethnic group which has been living on the territory of the Republic of Hungary for at least one century, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and at the expression and the protection of the interests of their historical communities."

<sup>35</sup> Non-citizens established in Hungary had the right to vote in the local elections, therefore *de facto* they could also vote for the MSGs.

first letters of the alphabet, a phenomenon which introduced serious distortions in minority public life (Szabó 2005: 225). It was even more serious and posed a threat for the entire model that some of the persons elected were presumably or obviously non-members of the specific community. Since most local minority representatives, registered as electors, elected indirectly the MSGs in the capital city and at the national level, those could also be affected by abuses (as well as the preferential mandates for minority candidates in local governments). The ethno-business factor gained importance in intra-community conflicts<sup>36</sup> and debates between local governments and MSGs.

## 10.2. The period 2006-2014

In order to reduce the incidence of abuses, pursuant to the 2005 amending law, the right to vote was limited to members of the recognized minorities. Minority voters now had to declare their affiliation by previously registering to minority electoral rolls administered by the head of the local electoral office, who, however, had no competence to assess affiliation with the minority. However, given the still significant reservations of the minorities towards the registers, as a compromise these special electoral rolls had to be destroyed after each election.

Elections could be held if the number of registered voters of a given minority in a settlement reached 30 by the established deadline. The new law also imposed further requirements on minority candidates. First, only those minority associations had the right to field candidates that were registered as associations (not including organizations registered pursuant to the Act on the Operation and Financial Functioning of Political Parties), whose objective set forth in their statutes has been – for at least three years before the year of the elections – to represent the given national or ethnic minority.<sup>37</sup> Candidates were furthermore required to make statements on their knowledge of language, culture and traditions, and had to declare that they were not previously members of an MSG of any other minority.

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<sup>36</sup> For instance, for allegations of ethno-business Romanian institutions, local MSGs, associations, and parents objected to the plan of the National Self-Government of Romanians in Hungary to take over the most relevant minority educational centre in early 2008.

<sup>37</sup> Act 114 of 2005 on the election of the representatives of minority self-governments and the amendment of certain Acts concerning national and ethnic minorities, Article 26 (2).

Notwithstanding these amendments, the results of both the 2006 and 2010 elections and some local scandals raised further doubts about whether the changes had achieved their goal. As a consequence, the 2011 law once again redesigned the system of MSGs, including the conditions of membership and voting rights.

### 10.3. Since 2014

The new nationalities law extended its personal scope to non-Hungarian citizens belonging to minorities, including EU citizens, refugees, and immigrants residing in Hungary. This was indeed an old minority demand. As a result of the changes, in 2014, these groups also had the right to vote for, and be elected to, MSGs. However, this state of affairs will only last for one term, as the law will later cover only Hungarian citizens – on the ground that a distinction in the long run shall be made between 'traditional' and migrant communities.

During the formulation process, the Minority Ombudsperson criticized the draft on the grounds that it still lacks safeguards to prevent electoral abuses. Indeed, the affiliation of candidates to minority rolls is still not reviewed on the basis of certain criteria like their language skills or attachment to minority cultures and traditions, the only criterion remains self-identification. However, unlike under the previous regulations, minority registers have become permanently updated and are now used for the preferential parliamentary elections too. Minority rolls therefore are not destroyed after the elections and in addition, minority organizations have access to them.

Continuing the struggle against ethno-business, some additional changes have been introduced to prevent abuses, of which the most relevant is that from 2014, at the local level, an election may be called only when the number of minority individuals of a given community reaches 25 (30 from 2024<sup>38</sup>), according not to the former rolls but to the aggregated results of the latest census (of 2011). Critical voices raised by minority organizations and the Ombudsperson argue that, besides the different nature of the procedures, the census cannot offer an overall view of the minority situation and records children and others who do not have voting rights. On the one hand, there were definitely hundreds of settlements in which minority elections were held by the adequate number of registered voters even though the number of minority inhabitants had been under 25 at

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<sup>38</sup> See Act 179 of 2011, Article 242 in this regard.

the census of 2001 (including cases where nobody belonged to the minority according to the census).<sup>39</sup> On the other hand, the opposite is true for other cases where there were at least 25 minority persons according to the census, yet they did not organize themselves and created no MSG. According to the new law, the census results will also play an important role in relation to language rights and the financial support granted to local MSGs. Both these factors are conditional upon the census figures, according to the new provisions.

Table 6 provides data about the number of minority voters registered to the special electoral rolls at all the elections of the MSGs when registration was compulsory, as well as before the 2014 parliamentary elections. One can see that as a result of the changes introduced 2014 the number of registered persons dropped in the case of each minority, and in some cases the difference from the figures from the previous elections is really significant. The even lower numbers with regard to the parliamentary elections can be partly explained by the fact that these elections preceded the local and MSG elections by six months; however, one also has to keep in mind that at the parliamentary elections one had to renounce voting for mainstream parties in case he or she wished to support a minority list, while there is no similar requirement in the case of the MSG elections. It could be also seen that especially within smaller communities there was little interest in continuing the registration process beyond a certain number, probably because it was clear from the beginning that the chances to overcome even the preferential threshold were very low.

In addition, the data presented in Table 6 show a significant decline in the number of registered minority voters as compared to the figures from 2010, while there has been only a moderate decrease in the number of elected MSGs (see Tables 3 and 4). While further research is obviously needed in this respect, these figures, coupled with the experiences of the election of minority spokespersons into parliament in 2014, seem to indicate that by further restricting the conditions of electoral participation in terms of the struggle against ethno-business, recent legislation has slipped to the other extreme, apparently discouraging voters from participating in the public affairs of minorities. Furthermore, elections could not be held in more than more than 560 municipalities because although at the census there were at least 25 persons belonging to a particular nationality,

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<sup>39</sup> Comparing the results of 2001 census and the 2010 list of settlements where elections were held with at least 30 registered minority voters, one can see that in 34% of the cases there were not 30 persons belonging to the same community.

minority organizations failed to field the required number of candidates. This latter fact raises serious doubts about whether and how census results should be taken into account at the minority elections.

**Table 6. The number of registered minority voters at the 2006, 2010 and 2014 MSG elections and at the 2014 parliamentary elections.**<sup>40</sup>

Minority	MSG elections			Parliamentary elections
	2006	2010	2014	2014
Bulgarian	2,110	2,088	654	104
Roma	106,333	133,492	57,824	14,271
Greek	2,451	2,267	675	140
Croat	11,090	11,571	7,231	1,623
Polish	3,061	3,052	1,148	133
German	45,983	46,629	30,526	15,209
Armenian	2,361	2,357	615	184
Romanian	4,404	5,277	2,350	647
Ruthenian	2,729	4,228	1,213	611
Serb	2,143	2,432	840	349
Slovak	15,049	12,282	8,248	1,317
Slovene	991	1,025	519	199
Ukrainian	1,084	1,338	671	502

**11. General Assessment and Outlook**

With regard to the Hungarian model, a considerable number of scholars, by focusing especially on implementation, the shortcomings of the MSG system and the rhetoric of politicians, have accepted the argument that the granting of substantial minority rights and non-territorial autonomy was motivated principally by a desire to improve the situation of the Hungarian minorities abroad. Although it could be demonstrated that the issue of the 1993 minority law was not put on the agenda due to the pressure of internal minorities, other research has shown that behind the rhetoric the desire to set standards was of limited significance, and in the past two decades such expectations were barely realized, as the neighboring countries – with the exception of the former Yugoslav states – have tended to reject the creation of any type of autonomy arrangements. Given the less inclusive nature of nation-building efforts in the post-communist states and their rejection of minority claims, it seems very doubtful whether Hungary's hopes of improving the situation of

<sup>40</sup> Source: [www.valasztas.hu](http://www.valasztas.hu) (accessed on 15 January 2016).



the Hungarian communities abroad by creating and maintaining a progressive domestic system of minority protection were realistic.

Consequently, we believe that other concerns, especially of instrumental and material nature, proved to be much more influential during both the formulation and further development of the Hungarian autonomy model. Although the arguments above may partially explain the top-down nature of policy-making, they ignore other factors, including such key issues as the legitimacy deficit of minority organizations, the political integration of the Roma and the considerable differences in the strength of ethnic identification across certain minority groups. Consequently, they are less capable of explaining how and why the instrumental policies failed to create more space for the minorities in the Hungarian-dominated nation-state. Furthermore, they offer few insights on the failure to accommodate additional minority demands, allocate more resources, and solve the major institutional deficiencies, including parliamentary representation, which has been constantly a subject of international criticism until 2011 and which has not been solved in a comforting manner with the new electoral legislation either. While the goal of standard-setting has obviously failed, the domestic minority objectives could not be fully achieved either, and in certain instances the participation of members of minorities was constrained in the decision-making processes affecting their lives. Furthermore, the MSG elections could not fully meet some of the general requirements of elections either (Katz 1997). First, as electoral success did not require a certain number of valid votes, voter participation was not encouraged (Dobos 2013). Second, the choice was rather limited, since the number of candidates was significantly greater than the number of representatives only in the case of the divided minorities. In addition to ethno-business, all these issues contributed to a deficit in legitimacy. It has also been shown that MSGs were not created to address the complex problems of the socio-economic integration of the Roma, but to help minorities preserve and develop their identities.

Following the legislative changes of 2010-2011, the domestic minorities are invariably recognized as an organic part of the political community in Hungary and a form of preferential parliamentary representation has finally been provided to them. Even so, the increasing role of ethnicity in politics and the shift to an ethnic approach inevitably affect the political opportunities of the minorities. For this reason, some minority experts and politicians regard the recent changes as a step backward in minority protection. Meanwhile, the government and other domestic actors still

insist on the standard-setting nature of Hungary's minority policy framework. The return to the term 'nationalities' in the new legislation was officially justified as an effort to go beyond the dichotomy of majority versus minorities and to highlight the contribution of the minority communities with their distinct ethnocultural features to the culture of both the Hungarian state and nation. Still, one may ask whether the shift towards a definition of the nation with more pronounced ethnocultural elements facilitates the strengthening of the Hungarian components of minority identities or of "symbolic ethnicity"? Or, alternatively, whether the ethnicization of public discourse and the further extension of cultural autonomy and transnational migration processes will eventually lead to a preference for the ethnic elements, to more conscious, "dissimilated" communities and to increasing awareness for the necessity of changes and a better implementation of minority rights?

Since many assess the socio-demographic processes as a gradual and irreversible assimilation process of the minorities, a view supported by the relevant census data on the decline of minority language use, the key question, in other words, is whether the creation of the Hungarian model was too late to slow down and possibly reverse these tendencies. While one of the most important objectives of the 1993 law was exactly to encourage people to declare and preserve their identities and distinct minority features by creating the separate institutional structures of MSGs and allocating resources to these, as a consequence of the struggle against electoral abuses the recent legislation seems to have precisely the opposite effect, by discouraging registration and participation in minority public life. Research has also revealed further problematic issues related to the socio-demographic characteristics of MSGs members, even if there are considerable differences across the minorities in what concerns the social status and educational level of their members. While in the case of most minorities MSG members were mostly well-educated, employed or self-employed intellectuals, the proportion of unskilled and often unemployed representatives was high among the Roma (Csefkó *et al.* 1999: 76-77), while women tended to be considerably underrepresented among them, even if a gradual progress could be observed in what concerns education and employment indicators (Bindorffer 2011; Kállai 2005b). Also, the social prestige of minority activists, whose work was unpaid, was lower than that of people involved in other forms of public and local activities, and this could explain, for instance, the overrepresentation of women and pensioners from the educational and cultural sectors in the

German MSGs. This posed the question of succession, and the future involvement of younger generations (Váradí 2002: 184). Beyond all these issues, the aspect that is probably most visible to the public at large, and which is primarily responsible for shaping public opinion on the system of MSGs is the phenomenon of ethno-business, even if the occurrence of such practices is somewhat exaggerated in the discourses about minorities (see, for instance, Századvég Politikai Iskola 2012). Still, the support given by the parliamentary parties to the system of MSGs is favorable to the maintenance of the Hungarian model. However, fostering public participation and encouraging people to declare their identities, preserve their culture and use minority languages only represent one side of the task; in a more or less homogenous nation-state like Hungary, policies should also address public attitudes and behaviors, in order to raise the awareness of the population about social diversity and the importance of minorities.

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