

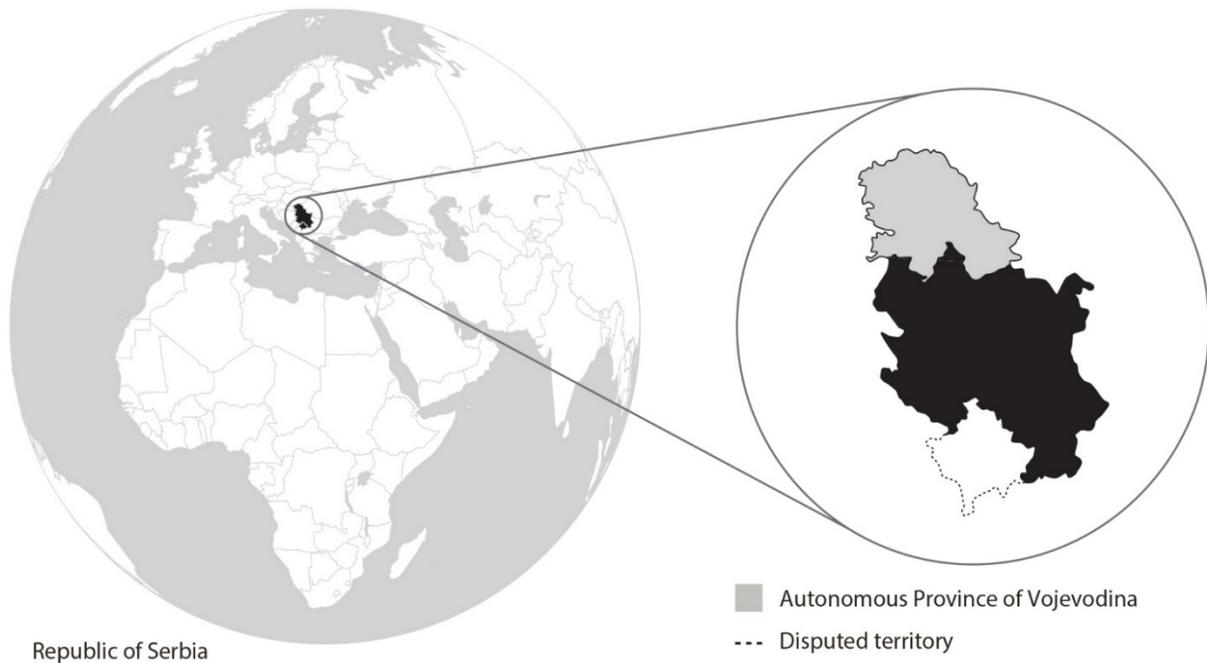


AUTONOMY ARRANGEMENTS IN THE WORLD

The national councils of national minorities in Serbia

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1. Essential Facts and Figures

Serbia is located in the center of the Balkans, being an everyday subject of world news from the beginning of the 1990s, often due to ethnicity-related issues, ranging from civil war and secession to autonomy arrangements meant to accommodate ethnocultural diversity. Although according to the 2011 census almost 20% of the total population of the state (without Kosovo) belong to a minority group (see Table 1), in Serbia there are no officially recognized or unrecognized minorities. There is neither an exact enumeration of minority groups, nor clear principles to be followed about how a minority should be recognized. While the absence of precise regulations may be regarded as problematic, the approach of Serbia to the minority question can also be interpreted as being rather liberal, which may have resulted from the intention to protect ethnic Serb refugees who have become minorities abroad, including in the former Yugoslav member states. We argue for the liberal nature of Serbia's minority rights regime because the lack of definitions and enumerations also means that the law regulating minority issues treats all ethnic groups on an equal footing, regardless of how they have been represented in the political scene, how long they have been fighting for minority rights or autonomy, or whether they have done so at all. Thus, the result was the appearance of many national minority groups, some of which, however, lack powerful political representation, planned self-organization or a strategy for how to survive. Unsurprisingly, this approach has also eventuated serious disputes.

A further consequence of this approach to the minority issue is that there are some specific groups in Serbia which are not recognized by other countries, or whose identity is contested, given that they hold ethnic characteristics very similar to those of other minority groups. Most importantly, the relationship of Vlachs and Romanians, of Bunjevci and Croats, or of Ashkali and Balkan Egyptians (who are sometimes considered to be Albanized Roma) have to be mentioned in this respect. Distinct identities are important because all of these groups established their national councils in 2010, but also because of political and financial aid from the kin-state. For instance, Romania threatened to use its veto right on Serbia's EU membership unless Serbia changed its policy towards the Vlachs, a group considered by Romania to be the descendants of Romanized people in the low-Danube basin and not recognized as a distinctive national minority. The relationship between Croats and Bunjevci acquired an interesting political dimension during the Balkan civil wars (namely whether Bunjevci were 'enemies' as Croats or if they should be treated

neutrally in debates with Croatia because of their different national/linguistic identity). It is unambiguous that aiding only one instead of two or more groups would be cheaper for the kin-state. Thus, kin-states usually try to unite their original ethnic relatives living abroad with other similar communities. On the other hand, host-states often use the recognition and categorization of its ethnic minorities in an instrumental fashion. In Serbia, the existence of the various abovementioned groups was further institutionalized by the establishment of their national councils.

Table 1. Ethnic composition of Serbia and Vojvodina (2011)¹

Ethnicity	Serbia	%	Central Serbia	%	Vojvodina	%
Serb	5,988,150	83.32	4,698,515	89.40	1,289,635	66.76
Hungarian	253,899	3.53	2,763	0.05	251,136	13.00
Roma	147,604	2.05	105,213	2.00	42,391	2.19
Bosniak	145,278	2.02	144,498	2.75	780	0.04
Croat	57,900	0.81	10,867	0.21	47,033	2.43
Slovak	52,750	0.73	2,429	0.04	50,321	2.60
Montenegrin	38,527	0.53	16,386	0.31	22,141	1.14
Vlach	35,330	0.49	35,160	0.67	170	0.01
Romanian	29,332	0.41	2,922	0.05	25,410	1.32
Macedonian	22,755	0.32	12,363	0.23	10,392	0.54
Bulgarian	18,543	0.26	17,054	0.32	1,489	0.08
Bunjevac	16,706	0.23	237	/	16,469	0.85
Ruthenian	14,246	0.20	318	/	13,928	0.72
Albanian	5,809	0.08	3,558	0.06	2,251	0.12
Ukrainian	4,903	0.07	701	0.01	4,202	0.22
German	4,064	0.06	792	0.01	3,272	0.17
Slovene	4,033	0.06	2,218	0.04	1,815	0.09
Russian	3,247	0.04	2,074	0.04	1,173	0.06
TOTAL	7,186,862		5,255,053		1,931,809	

Although in Serbia each fifth person belongs to a minority, keeping in mind the size of these groups one may also conclude that their presence cannot significantly affect state processes. Since the

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¹ For the results of the census of the population, households and dwellings in 2011 in Serbia, see http://popis2011.stat.rs/?page_id=1077 (accessed on 15 January 2016).

unilateral declaration of independence in 2008 of Serbia's former autonomous province, Kosovo, the Hungarian community is the largest minority group of Serbia. However, even this minority, which lives concentrated in the northern province of Serbia, Vojvodina, represents less than 4% of the population. Besides the Hungarians the Roma population should also be mentioned among Serbia's more influential minorities, primarily because of their size. Some Roma organizations state that more than 450,000 Roma live in Serbia, still others claim that this number exceeds even 800,000. Notwithstanding these uncertainties, official data show that their number has significantly increased by more than 30% as compared to their size recorded by the previous census in 2002 (Ombudsman of the Republic of Serbia 2014). The Bosniak minority is the third largest minority in Serbia, living concentrated in the south-western Sandžak region of Serbia, along the border with Montenegro. The next largest group is probably the Albanian minority, however, this is not reflected by the last census, because most of the inhabitants of the Preševo Valley boycotted the 2011 census. In 2002 the census recorded over 60,000 ethnic Albanians in Serbia (without Kosovo).

The first and loudest political parties demanding autonomy for the minorities were the Hungarian parties. Beside them, the Bosniaks and the Albanians have also been traditionally very active politically, putting forward very strong ethno-political claims, including (and even pointing beyond) various forms of autonomy. Notwithstanding this, the discussion that follows is based primarily on the experiences of the Hungarians with the arrangements of personal-cultural autonomy implemented in Serbia.

2. Autonomy in the Context of the State Structure

The Republic of Serbia is an interesting case because instead of a choice between the two basic types of autonomy arrangements that can be provided (i.e. territorial and non-territorial), it accepts the importance of both to some extent, even though the territorial autonomy of the country's remaining province, Vojvodina was not primarily constructed to handle ethnic issues. While analyzing the autonomy of Vojvodina in detail is beyond the scope of this paper, it still deserves a brief discussion in the context of the minority national councils, because the Province has traditionally had a more positive approach towards minority issues than the Serbian central

government, and it is reasonable to claim that minorities have been enjoying more rights in the Province than in the rest of Serbia.

Vojvodina has traditionally been a multi-ethnic and multilingual society where no ethnic group is in a dominant position. Serbs as the national majority make up about two-thirds of the population of the Province, as seen in Table 1. Given this ethnic composition, one can conclude that Vojvodina's territorial autonomy has been established for historical, economic, cultural and geographic reasons and not as a device for the resolution of ethnic conflicts. While in theory the existence of an overarching Vojvodinian identity could justify the creation of territorial autonomy for a particular ethnic or regional group, such an identity does not exist, and the existing autonomy arrangement is not based on ethnic foundations.

While not a territorial autonomy created for some "titular minority", Vojvodina's multi-ethnic character differentiates the Province from the rest of Serbia. Serbia is divided into 212 municipalities, of which 167 are located in Central Serbia and 45 in Vojvodina. Of Vojvodina's 45 local municipalities, 41 can be considered multi-ethnic, meaning that more than 5% of the total local population belongs to a minority group or that all minorities together make up more than 10% of the local population. In contrast, the number of multi-ethnic municipalities in Central Serbia is only 27 out of 167 (Gojković 2006).

Vojvodina used to enjoy wide autonomy primarily during state socialism. The 1974 Constitution of the Socialist Federative Republic of Yugoslavia recognized that both autonomous provinces (Vojvodina and Kosovo) had *quasi* state status with legislative, executive and judicial powers, including a constitutional court. Thus, the Province basically became one of the federal units of Yugoslavia, obtaining competences similar to those of independent states,² being included in the decision-making processes at the federal level³ and having its own property and financial autonomy to decide how the provincial budget would be used.

Owing to these wide opportunities of the Province to participate in legislation, national minority issues were handled both politically and legally in accordance with real needs in Vojvodina. In the

² Constitution of the Socialist Federative Republic of Yugoslavia (1974), Article 2.

³ *Ibid.*, Article 268 (3), Article 271 and Article 273.

legal-political terminology characteristic of the times, national minorities were called 'nationalities' and majority peoples of the Yugoslav member states were 'nations'. But notwithstanding the terminological differentiation, national minorities and their languages enjoyed an equal footing with the Serbian language in court proceedings, state administration and civil service.⁴ Knowledge of at least one minority language was required for employment in the public sphere and the ethnic structure of the local population was taken into account in case of appointments.⁵

However, after the change of the communist regime in the beginning of the 1990s the existing and well-functioning autonomy regime was abolished. The competences previously held by provincial institutions were assigned to the central government by the Constitution of Serbia in 1990, and the provincial budget was centralized similarly to the competences of Vojvodina in the domain of ethnic policies and legislation.⁶ By simultaneously losing its delegated powers in the fields of legislation, execution and jurisdiction, Vojvodina also lost its possibility to efficiently affect the lives of national minorities living on its territory.

The period elapsed since the fall of the Milošević regime has been characterized by the quest of the provincial political elites for regaining the former competences. While the Omnibus Laws of 2002⁷ and 2009,⁸ as well as the 2009 Statute of the Province gave back some elements of the former autonomy, a Constitutional Court decision in 2013 brought another setback in this respect. The Statute of 2009 contained some rather strong provisions regarding minorities. Most importantly, it granted the equality of every ethnic group (the Serbian, Hungarian, Slovakian, Croat, Montenegrin, Romanian, Roma, Bunjevac, Ruthenian, Macedonian ethnic groups and the other, numerically smaller ethnic groups) living in the Province,⁹ but this was repealed by the Constitutional Court of Serbia in 2013.¹⁰ Although the Constitution of Serbia declares that the country is founded on the value of the protection of national minority rights,¹¹ it does not declare

⁴ *Ibid.*, Article 246.

⁵ Law on the ways of granting equality of languages and scripts of nations and nationalities in state bodies, organizations and communities (Vojvodina, 1977).

⁶ Constitution of the Republic of Serbia (1990), Article 109-112.

⁷ Law on determination of particular competences of the Autonomous Province (2002).

⁸ Law on determination of particular competences of the Autonomous Province (2009).

⁹ Statute of the Autonomous Province of Vojvodina (2009), Article 6.

¹⁰ The Court justified this by the explanation that a bylaw (meaning the Statute) cannot regulate national or any other form of equality, *a contrario* prohibition of discrimination on ethnic basis. Decision of the Constitutional Court, No. IUo-360/2009, 34.

¹¹ Constitution of the Republic of Serbia (2006), Article 1.

national and ethnic equality in such an explicit manner as the annulled statutory provision used to. Furthermore, the Constitutional Court concluded that although decentralization is one of the main principles of Serbia's constitutional order, the content of decentralization can be determined only by the Constitution, and as such, it may only involve the decentralization of public administration and not of overall state power. Such an approach would equalize the Province with ordinary administrative regions.

Even if the status of the Province of Vojvodina is legally not totally clarified, the state structure of Serbia can be best described as asymmetrically decentralized. However, the asymmetrical decentralization of Serbia is a half-baked issue: although Vojvodina enjoys some autonomy, this autonomy seems to be of an administrative nature; aside from Kosovo,¹² Serbia remains a unitary state with a unitary legal system. Only the Serbian parliament has the right to adopt laws and only the Serbian government has the opportunity to execute them (execution of laws by other bodies, including the provincial executive requires separate authorization in the respective law).¹³ Laws are uniform, and the Vojvodinian Assembly can only regulate issues falling into its fields of competence by bylaws, these acts must always be in accordance with the Constitution and with state laws.¹⁴ This means that the opportunities to regulate an issue differently in the Province than in other parts of the state are very limited, which results first of all from Serbia's unsuccessful asymmetrical division into autonomous provinces (today practically only one province).¹⁵

The Constitution grants the Province the right to take care of the protection and enforcement of human and minority rights; however, this must be in accordance with state law.¹⁶ This means that Vojvodina also lacks full autonomy in the field of national minority rights; however, if this provision is interpreted together with the Constitution's relevant parts about the right to

¹² Despite the unilateral declaration of independence of Kosovo, the 2006 Constitution of Serbia declares Kosovo as an inalienable part of Serbia. Furthermore, the Constitution differentiates between the legal standing of Kosovo and that of Vojvodina: while Vojvodina is a 'simple' autonomous province, Kosovo is an autonomous province "with special status". See Constitution of the Republic of Serbia (2006), Article 182 (2).

¹³ Law on state administration (2005), Article 4.

¹⁴ However, there are two notable exceptions: the Province has the right to regulate the method of election, structure and competences of the provincial bodies and the symbols of the Province in accordance with the Constitution, but without being bound by state laws. Constitution of the Republic Serbia (2006), Article 183.

¹⁵ It is also important to stress that provincial autonomy has a legal basis only in the domestic law, and domestic law can be modified relatively easily.

¹⁶ Constitution of the Republic Serbia (2006), Article 183 (3).

preservation of peculiarity, it can be seen that the Province has competences to grant some additional rights for minorities living on its territory.¹⁷

Despite the curtailing of Vojvodina's autonomy, one can conclude that the general level of minority rights has traditionally been and remains higher in Vojvodina than in the rest of Serbia. Even the new Vojvodinian basic law (the Statute of 2014) allows the official use in provincial bodies of five minority languages alongside Serbian (Hungarian, Slovak, Croatian, Romanian and Ruthenian),¹⁸ and it simultaneously stresses that multilingualism, multiculturalism and freedom of religion are values of particular interest for the Province.¹⁹

However, ethnic issues are also present in other parts of Serbia (outside the territory of the Autonomous Province), where some of the mechanisms for national minority protection employed in Vojvodina could not be applied at all. As a matter of fact, one of the motivations behind the creation of a form of non-territorial autonomy was the need to regulate the position of the national minorities living scattered across the whole state territory (not just in Vojvodina).

National minority councils are intended to work as ethnic mini-parliaments, but their exact legal character is still subject to debate: they are not public state bodies, they are not part of the provincial or local administration, and they have to respect some procedural acts but are not obliged to follow certain other state regulations, e. g. the ones concerning the status of public officials. It would be the simplest to state that national councils are *sui generis* bodies under public law and their role and position in the state structure is subject to change depending on the situation.

3. Establishment and Implementation of Autonomy

Previously, Serbia had been part of a wider entity, Yugoslavia, together with other member states that became independent countries during the civil wars of the 1990s in the Balkans. The final phases of the dissolution of Yugoslavia occurred in 2006, when Montenegro stepped out of the

¹⁷ *Ibid.*, Article 79 (2).

¹⁸ Statute of the Autonomous Province of Vojvodina (2014), Article 24.

¹⁹ *Ibid.*, Article 7.

loose federation with Serbia established in 2003, a unique interstate community envisaged for a limited time of existence,²⁰ and in 2008, when Kosovo unilaterally declared its independence.

All these political events also had effects on social, legal and economic processes, but from the perspective of minorities the most important novelty was that citizens of the former Yugoslav member states (Slovenia, Croatia, Macedonia, Bosnia and Herzegovina, Montenegro) with residence in Serbia became members of the new Slovene, Croat, Macedonian, Bosniak and Montenegrin national minorities. We do not aim to discuss the psychological aspects of the dissolution, suffice to say that since then Serbia has been facing a new phenomenon, namely that the number of its national minorities has increased significantly. As already mentioned, although there are also numerous other traditional and autochthonous ethnic groups living in the country (e.g. Hungarians, Slovaks, Romanians Germans, etc.), the approach of Serbia to its minorities is of a general character, regardless of how long the minorities had been present in the state.

The need to regulate the position of numerous national minorities living scattered across the entire state territory (not just in Vojvodina) through a form of non-territorial autonomy was very much emphasized after the end of the wars that plagued the country in the 1990s. However, not all autonomy demands of the minorities were met with sympathy by the Serbian political parties.

Since the early 1990s, various Hungarian political parties have elaborated a number of autonomy plans. The more elaborate of these plans envisaged three pillars of self-government: territorial autonomy for Vojvodina, non-territorial autonomy for Hungarians living scattered in Serbia and territorial autonomy for the Hungarians concentrated in Northern Bačka. The last pillar, however, did not fit into the national policy of Serbia towards minorities, especially in a time when Albanians were claiming independence for Kosovo more and more aggressively. Thus, the creation of territorial autonomy for any of the minorities could not make it to the political agenda.²¹ Furthermore, whenever a minority party identified itself with the provincial autonomy debates, even the territorial autonomy of Vojvodina acquired an inefaceable ethnic dimension. For these

²⁰ That is, either of the two member states had the opportunity to step out from this construction after three years of its constitution.

²¹ The autonomy of the Sandžak region (the south-western part of Central Serbia) is also of central importance in the programs and rhetoric of some of the political and religious leaders of the Bosniak minority in Serbia. However, no legal steps have been taken at all for the establishment of a territorial autonomy in this region yet.

reasons, of the three abovementioned pillars cultural autonomy proved to be the most acceptable for the Serbian majority.

Although the Alliance of Vojvodina Hungarians (AVH)²² set up a provisional national council in 1999, this completely lacked any legal basis,²³ as the first piece of legislation that allowed for the establishment of such bodies has only been adopted by the Yugoslav Federal Parliament in 2002.

The Law on the protection of rights and freedoms of national minorities has been initiated by the (then) Ministry for National Minorities and Ethnic Groups. The idea was to include the basic principles of minority protection into one framework law, and further on the member states of the Yugoslav federation (Serbia and Montenegro) would regulate these issues in detail.

Due to its mainly declarative character, the law could only contribute to the protection of national minority rights only in a limited manner, as because Serbia and Montenegro have not adopted the legal acts required to be *lex specialis* to this federal law till the disintegration of the State Union. Notwithstanding this, the provisions of this law rely without doubt on European standards, the influence of the Framework Convention for the Protection of the National Minorities is clear. The law defined the notion of national minorities in Serbia and regulated basic rights concerning the protection of the peculiarities of national minorities. Most importantly from our perspective, this federal law on national minority protection (which later became Serbian state law) has introduced the institution of national minority councils into the Serbian legal order. The law recognized the councils as a form of autonomy, as a collective right, and rendered possible to enforce this right in practice through the election of the national minority councils.

In 2002 Hungarians were the first to elect their national council through an electoral assembly (in indirect elections); later they were followed by the Ruthenians, Romanians, Croats, Slovaks, Bunjevci, Bulgarians, Ukrainians, Roma, Bosnians, Germans, Egyptians, Greeks, Macedonians and Vlachs. The national councils of the minorities established under the 2002 law were subject

²² The name of the party in Hungarian is *Vajdasági Magyar Szövetség*, and in Serbian *Savez vojvodanskih Madara*.

²³ In 1999, a provisional Hungarian National Council (HNC) was formed by the representatives of the Hungarian political and non-governmental sphere. This institution lacked any legal basis; however, its real aim – to symbolize the determination of the Hungarians to confirm their political self-organization – was fulfilled. According to former president of the HNC, László Józsa, though lacking any legal background, this body was able to deal with some subsidiary tasks, e.g. with mapping the problematic fields and areas, the results of which were later of high relevance for the activity of the national council elected indirectly in 2002 (Józsa, 2002).

to deep criticism: their legitimacy was questioned because of the indirect election procedure; they had no clear and detailed competences; the 2002 law did not permit their re-election after the date of completion of their four-year-long mandate, stating that a new law shall prescribe the conditions of elections.²⁴ Notwithstanding their significance in the development of Serbia's minority protection regime, the national minority councils functioning under the 2002 law were not fully recognized by either the state or the respective minorities as legitimate bodies of minority representation. A few years after the adoption of the federal law on minority protection, the new Constitution of Serbia (2006) also recognized the collective right of minorities for self-governance in the domains of culture, education, public information and official use of their language, a right that they can practice through the national minority councils. However, the legal acts that would provide and specify the circumstances of autonomous decision making in these fields had been lacking until 2008.

After the parliamentary elections of 2008 the Hungarian Coalition²⁵ became part of the governing majority in the Serbian parliament and got the opportunity to delegate its representatives into the expert group of the newly constituted Ministry of Human and Minority Rights, tasked with the elaboration of an act on national minority councils. The Hungarian parties attempted to push through as much as possible from their joint autonomy conception²⁶ elaborated in 2008, which also served as their election manifesto. Although the draft proposal enjoyed broad support not only among the political parties of the minorities (not only the Hungarian ones) but also among the minority population, almost every concerned ministry considered the competences envisaged for the national minority councils by the proposal to be too wide. Eventually, as a result of political bargains struck behind the scenes, the Serbian Parliament adopted the law on national minority councils in August 2009, and under the new law the first elections to the national minority councils were organized on June 6, 2010.²⁷

²⁴ See Law on the protection of rights and freedoms of national minorities (2002), Article 19 (13) and 24 (1).

²⁵ The coalition consisted of three Hungarian minority political parties: the Alliance of Vojvodina Hungarians, the Hungarian Democratic Party of Vojvodina (*Vajdasági Magyar Demokrata Párt - Demokratska stranka vojvodanskih Mađara*) and the Democratic Community of Vojvodina Hungarians (*Vajdasági Magyarok Demokrata Közössége - Demokratska zajednica vojvođanskih Mađara*).

²⁶ For the autonomy conception of the Hungarian Coalition in Vojvodina (in Hungarian), see <http://www.corvinuslibrary.com/autonom/bacska.pdf> (accessed on 15 January 2016).

²⁷ For further details see Korhecz (2010).

4. Legal Basis of Autonomy

In 2002 the federal law on the protection of rights and freedoms of national minorities did provide legal basis for the constitution of national councils,²⁸ but without precise determination of the scope of their competences and financing. Even elections were regulated by a ministerial by-law.²⁹ This law defined national minorities in the following way: "National minority is any group of citizens of [now the Republic of Serbia] numerically sufficiently representative and, although representing a minority in the territory of [Serbia], belonging to a group of residents having a long-term and firm bond with the territory of [Serbia] and possessing characteristics such as language, culture, national or ethnic affiliation, origin or confession, differentiating them from the majority of the population and whose members are distinguished by care to collectively nurture their common identity, including their culture, tradition, language or religion."³⁰ Due to the rather loose criteria contained in this definition (as discussed in the first section), almost everyone could establish a national council, regardless of ethnic affiliation. One can see that neither the Constitution nor the law on national councils contains limits in this regard. With the adoption of the Constitution of Serbia in 2006, the right to elect national councils has become a fundamental minority right (as the Constitution puts it: a collective right).³¹ However, the Law on national councils of national minorities was adopted only in 2009 after long-lasting political debates concerning its content, both in the Serbian parliament and in the public sphere. This law has an extraordinary importance in the development of the national minority protection regime in Serbia, for several reasons. First, it has clarified to a great extent the competences of the national minority councils in the fields of education, public information, culture and official use of minority language, including their competences in institution management. Second, the law has created the possibility of direct elections by providing for the creation of special electoral rolls, Third, for the first time national minority councils have become beneficiaries of public finances in accordance with a formula which grants a more or less secure and constant basis for the distribution of

²⁸ Law on the protection of rights and freedoms of national minorities (2002), Article 19.

²⁹ Regulation on the activity of electoral assemblies during the elections of national councils of national minorities, (2002).

³⁰ Law on the protection of rights and freedoms of national minorities (2002), Article 2.

³¹ Constitution of the Republic of Serbia (2006), Article 75 (2-3).

resources among national minority councils, taking into account their size, activity and institutional development (see in greater detail in section 7).

5. Autonomous Institutions

In Serbia, the national councils of the minorities are established at the national level, each minority may establish a single council. The law does not restrict the creation of local branches (for example for consultation with members of the respective national minority in a particular locality) but these branches or their location does not have any legal relevance. The number of members of a national minority council depends on the size of the respective national minority; it varies between 15 (if there are less than 10,000 members of the minority or if no data is available about size) and 35 (for minorities with more than 100,000 members).³² The precise number of members of each minority national council is reported in Table 2.

Table 2. The number of members of national minority councils (2014)³³

The national minority council	Number of members
National Council of the Albanian National Minority	15
National Council of the Ashkali National Minority	15
National Council of the Bosniak National Minority	35
National Council of the Bulgarian National Minority	19
National Council of the Bunjevac National Minority	19
National Council of the Croat National Minority	29
National Council of the Czech National Minority	15
National Council of the Egyptian National Minority	15
National Council of the German National Minority	15
National Council of the Greek National Minority	15
National Council of the Hungarian National Minority	35
National Council of the Macedonian National Minority	23
National Council of the Montenegrin National Minority	23
National Council of the Roma National Minority	35
National Council of the Romanian National Minority	23
National Council of the Ruthenian National Minority	19
National Council of the Slovak National Minority	29
National Council of the Slovene National Minority	15
National Council of the Ukrainian National Minority	15
National Council of the Vlach National Minority	23

³² Law on national councils of national minorities (2009), Article 9.

³³ For the results of the 2014 national minority council elections, see http://www.rik.parlament.gov.rs/cirilica/propisi_frames.htm (accessed on 15 January 2016).

Although national councils regulate their internal structure autonomously, some legal provisions must be taken into account: every national council has four permanent committees (in the four major fields of competences: education, public information, culture, and official use of language and script) that help the work of the council on a consultative basis. Members of these committees may but do not need to be members of the national council at the same time. This allows for the involvement of persons who were not elected but appointed by the national council because of their professional merit, and as such the opinions of the committees may provide a professional foundation for the national council's decisions.

The councils also have an executive body whose members are elected from the members of the national council itself, which means that members of the executive body have a dual function: one as contributors to the decision-making process and the other as carrying out the decisions. The executive body can also function as a decision maker on the basis of transferred competences, but in these cases its decisions have to be approved in the next session of the national council. The rejection of a decision of the executive body by the national council means a loss of support of the "governing majority" and a new executive has to be elected.³⁴ Because this provision is the result of a recent amendment of the law on national minority councils, applicable only since the elections of October 2014, there is insufficient experience about how the cooperation between the two bodies should look like.

In 2010, 19 national minority councils³⁵ were elected in accordance with the right granted by the Serbian Constitution. 16 of these were elected by direct vote, and three indirectly, by an assembly of electors (the Croats, the Macedonians and the Slovenes did not fulfil the conditions for direct elections.). Because the Federation of Jewish Communities has been granted the character of a national council without being subject to the regulations on elections,³⁶ all together 20 national councils were formed in Serbia. For the elections of national minority councils of October 2014, 17 national minorities have fulfilled the conditions for electing their respective national minority

³⁴ Law on national councils of national minorities (2009), Article 7.

³⁵ These 19 national minority councils were as follows: the national council of the Albanians, the Ashkali, the Bosniaks, the Bunjevci, the Bulgarians, the Croats, the Czechs, the Egyptians, the Germans, the Greeks, the Hungarians, the Macedonians, the Romanians, the Ruthenians, the Roma, the Slovaks, the Slovenes, the Ukrainians and the Vlachs.

³⁶ Law on national councils of national minorities (2009), Article 134.

councils directly, while four (Polish, Montenegrins, Macedonians and Croats) should have been elected indirectly;³⁷ however, in the end the Polish minority failed to elect its national council. Together with the Federation of Jewish Communities there are 21 national councils today in Serbia.

Members of the national councils are elected in democratic, free and secret elections or in indirect elections through electoral assembly. As discussed earlier, indirect elections have been criticized since as early as 2002 when some members of national minority groups raised questions of legitimacy. In 2002 one could become the member of the assembly of electors if one was an MP, an elected deputy in the provincial or municipal assemblies or if nominated by a national minority NGO or a group of minimum 100 citizens who were members of a minority group.³⁸ At that time there was no official registration of citizens belonging to a national minority, it was sufficient to hand over a simple written statement of group membership. The new law adopted in 2009 tried to correct this problematic solution and foresaw indirect elections only as a secondary option, because the legitimacy bodies constituted through direct elections is usually less contested (yet of course, even with direct election political struggles are not excluded). According to the 2009 law, "direct elections for National Councils shall be held if until the day of calling of the elections more than 40 per cent of the total population of the national minority according to the most recent census is entered into the special electoral register of the national minority", otherwise the indirect method of elections must be followed.³⁹ For the direct elections a proportional representation electoral system is used, which means that citizens vote for lists and not for individuals.⁴⁰

³⁷ Tanjug, "Raspisani izbori za nacionalne savete manjina", 26 August 2014. Available online at: http://www.rtv.rs/sr_lat/zivot/drustvo/raspisani-izbori-za-nacionalne-savete-manjina_513752.html (accessed on 15 January 2016).

³⁸ Law on the protection of rights and freedoms of national minorities (2002), Article 24 (repealed by the adoption of the law on national minority councils in 2009).

³⁹ Law on national councils of national minorities (2009), Article 29 (2).

⁴⁰ In accordance with the amendment of the Law on national minority councils, indirect elections can be organized if (1) there are no preconditions for direct election, or (2) new elections are declared within 60 days from the dissolution of the respective national council. Law on national councils of national minorities (2009), Article 29 (4).

6. Autonomous Powers⁴¹

The 2002 law set out the competences of the national councils in the four key domains (culture, education, public information and minority language usage) only very vaguely.⁴² However, this did not mean that there was no room at all for exercising these. For instance, the Hungarian National Council transferred a number of competences from the Autonomous Province of Vojvodina in accordance with the bylaws of the latter. During its first cycle, the Hungarian National Council has determined the symbols of the Hungarian national minority and the traditional Hungarian names of municipalities that were to become official in the Province, and it partially took over the founding and managing rights of two Hungarian newspapers (*Magyar Szó*, *Hét Nap*), a publishing house (*Fórum*) and the Institute for Hungarian Culture in Vojvodina, thus becoming their co-founder together with the Autonomous Province.

The most important way in which national councils can influence the life of members of national minorities is the management of institutions in the domains of education, culture and media. The law basically creates the opportunity to establish a network of educational, cultural and media institutions in the vernacular in the case of each national minority; however, this aim can be interpreted in a rather flexible way by different national councils, depending on the prevalence of minority language usage in everyday life and on the demands of national minority members for high quality and widespread educational, cultural and public information regimes. The law on national councils defines the limits of national councils' opportunities to take part in institution management in such a way that every national minority - notwithstanding their size, traditions and history - can carry out, to some extent, an active cultural and educational life.

The 2009 law has created the possibility to declare educational and cultural institutions as institutions of possible national interest for the respective minority,⁴³ and (before the ruling of the Constitutional Court in January 2014) stronger communities could even negotiate the partial or total transfer of founding rights from the founder (State, Province or local municipality) to the

⁴¹ The competences of minority national councils are regulated by Articles 10-22 of the Law on national councils of national minorities (2009).

⁴² There were only two articles dedicated to the national councils in the Law on the protection of rights and freedoms of national minorities (2002): Articles 18 and 19.

⁴³ Law on national councils of national minorities (2009), Article 15 (3), Article 18 (1).

national council.⁴⁴ Both options granted the councils the right to propose members of school boards or to formulate opinions about the members of the managing board of a cultural or media institutions. Before the Constitutional Court's ruling on the law, the national minority councils even held the right of final consent concerning the election of the director of a school or the editor of a media outlet.⁴⁵

The concrete competences of the councils depend on the status of the specific institution in light of the legal provisions; that is, national councils can exercise their competences depending on whether an institution is of possible national interest or whether - in the case of schools - education is conducted in the respective minority language and in what proportion.

There are plenty of parameters that need to be taken into account to realize the legally granted collective right to self-government in the form of national minority councils. The competences discussed above are without doubt the most important for ethnic self-governance, but are not the only ones. National councils have a series of other competences – mostly of consultative or recommending nature – referring to the promotion of language rights, the preservation of moveable and immovable cultural heritage, the general protection of national minority rights and the representation of minority interests etc. For instance, in the domain of education, national councils have the right, *inter alia*, to propose the curricula for history, music, art and mother tongue courses (which cover the contents expressing specific features of a national minority), to formulate opinions with regard to the curriculum for Serbian as the second language, to recommend to the minister of education measures and educational programs referring to the affirmation of inter-ethnic tolerance and multiculturalism, or to formulate opinions in the procedure of approval by the ministry of education of classes in the language of a national minority having less than 15 students.

⁴⁴ *Ibid.*, Article 24. "On the initiative of the National Council, the Government of the Republic of Serbia, Assembly of the Autonomous Province or local self-government units can fully or partially, delegate the right of establishment relating to:

- 1) Educational institutions where classes are held exclusively in a national minority language;
- 2) Cultural institutions whose main activity includes the preservation and development of national minority culture;
- 3) Institutions which broadcast public information exclusively in a national minority language.

The bodies specified in the previous paragraphs conclude with the National Council an agreement on delegation of the right of establishment, fully or partially. This agreement sets forth the mutual rights and obligations pertaining to the bodies and to the National Council, the rights of management which are to be delegated, as well as the annual amount of resources allocated from the budget of the Republic, autonomous province or local self-government unit for the purpose of financing the institution's operations."

Note that the entire Article 24 of the law has been declared unconstitutional by the Constitutional Court.

⁴⁵ Decision of the Constitutional Court, No. IUz-882/2010, 52.

In the domain of culture, the councils may, for instance, formulate opinions in the procedure of opening or closing libraries which also hold collections of books in the language of a national minority or to formulate proposals about how to distribute the resources allocated through public tenders from the budget of the Republic, the Autonomous Province or the local self-governments to the institutions, manifestations and associations of a national minority in the field of culture.

Councils can propose, formulate opinions or give consent in the process of institution management by adopting legal acts that must be in accordance with state laws and – in the case of councils operating in Vojvodina – with provincial by-laws. In this perspective national minority councils lack any legislative power and their participation in execution is also limited as they must respect state and (if applicable) provincial decisions. However, national councils remain a very important forum for minority decision-making because there is no other body where national minority interests would be professionally and adequately represented.

In 2010-2011 no less than eight initiatives have challenged the constitutionality of the law on national minority councils before the Serbian Constitutional Court, but most of these were refused, especially those that have questioned the constitutionality of the competences of national minority councils in field of culture and official use of languages. The Constitutional Court also confirmed the right of national minority councils to be (and remain) co-founders of cultural institutions and publishing houses. Because the procedure of review of constitutionality was pending almost simultaneously with the procedure of amending the law in the national parliament, the court did not deal with the review of those provisions that were subject to amendment, e.g. issues related to elections and financing. Anyway, the court has declared unconstitutional and set aside those provisions of the Law on national minority councils that have made possible among others the following: to establish institutions, foundations or NGO-s in fields that are significant for preservation of national minority identity (others than culture, education, public information and official use of language), to exercise competences delegated by provincial or local decisions,⁴⁶ to take over founding rights of publishing houses from the state, the province or local municipalities

⁴⁶ The justification for this was that such transfers can only be done by laws, and neither the Province nor the local self-governments may issue laws (Korhecz 2014: 55).

in the future,⁴⁷ to submit suggestions, initiatives and opinions to the National Parliament and the Government, or to cooperate with state bodies of the respective kin-state.

Those provisions that were set aside by the decisions of the Constitutional Court have not been supplemented yet by new legal provisions, and there is no generally accepted answer to the question whether the annulment of any competence of the national minority councils breaches the constitutional doctrine of preservation of vested rights or not.⁴⁸ It should also be noted that some of the competences have not been practiced at all before their annulment (e.g. managing rights in field of media). The reason for this was either the passivity of the state or local municipality (the founders of the institutions of significance for the respective national minority), or contradictions between provisions of the law on national minority councils and other sectorial laws.⁴⁹

7. Financial Arrangements

The national minority councils are financed from multiple sources: from the state budget, from the provincial budget (if they have official seat in the territory of the Autonomous Province of Vojvodina), from budgets of local municipalities and from both foreign and domestic donations. Local municipalities are obliged to finance the national councils of those minorities, whose language is in official use in the respective local municipality or whose proportion exceeds 10% of the overall local population. The Autonomous Province and the local municipalities are free to determine both the amount distributed among the national minority councils and the share of each national minority council of the whole amount. Conversely, concerning the financing from the state budget, the law on national minority councils prescribes a scheme for the distribution of the resources among the minorities.⁵⁰ These percentages are constant, notwithstanding the yearly distributable amount, which depends on the law on the state budget for the respective year.

According to this scheme, 30% of the total sum coming to the national minority councils from the state budget is distributed equally among each council registered in Serbia, while the rest (70%) is

⁴⁷ In accordance with the Constitutional Court decision, but also with the constitutional principle of vested rights, those founding rights that have been taken over by the respective national councils remain at them, but they cannot become founders or co-founders of media houses in the future.

⁴⁸ For further details, see Korhecz (2014).

⁴⁹ For a discussion and examples, see Korhecz (2014: 60-61).

⁵⁰ Law on national councils of national minorities (2009), Article 114-115.

distributed proportionally to the size of the national minorities and the total number institutions of each particular minority in field of culture, education, public information and official use of language. It means that half of this 70% is distributed proportionally among the national minority councils in accordance with their size, and the other half is divided into four equal parts for the four fields of the councils' competences. A precise system of scoring, set out in a special governmental decree on financing issues, makes possible to assess not only the number of the institutions of each minority in the fields of culture and mass media, but also their activity and level of development; also, the scoring takes into account the number of classes providing education in the mother tongue of each national minority in both elementary and secondary schools, as well as the number of local municipalities that have introduced the language of the respective national minority into official use.⁵¹ In virtue of the scores obtained, each national minority council participates in the distribution of the total sum in accordance with its real position. In 2015, more than 2,000,000 Euro were proposed for the financing of national minority councils from the state budget: more than 500,000 Euro of this go to the Hungarian National Council, and more than 200,000 Euro each to the Bosniak and the Roma National Council.⁵²

Neither the law on national minority councils, nor the abovementioned governmental decree regulates the allowed proportion of financing from various actors: state, province, municipalities, but also kin-states. There are no standards for how the national minority councils should apply for additional funds from their kin-state (if they exist). It would be hard to establish one uniform model of kin-states' aid for national minority councils, even though legal regulations are the same for every elected council: namely, they can get financial help from abroad almost *ad infinitum*.⁵³ Furthermore, these data are often not public. Nevertheless, we will attempt to illustrate the weight of the various types of funds in the case of the Hungarian National Council.

Besides the abovementioned 500,000 Euro, the Hungarian National Council is due to receive in 2015 additional 213,000 Euro from the Province and 53,000 from the local municipalities. This

⁵¹ Governmental decree on the process of distribution of resources from the budget of the Republic of Serbia for financing the activity of the national councils of national minorities (2010).

⁵² Tanjug, "Budžet za Nacionalne savete 245 miliona dinara", 3 February 2015. Available online at: http://www.rtv.rs/sr_lat/politika/budzet-za-nacionalne-savete-245-miliona-dinara_564454.html (accessed on 15 January 2016)

⁵³ Besides kin-states, international organizations and EU bodies have welcomed the constitution of national councils in Serbia as the implementation of a constitutional category into practice.

means that all together, the various levels of government in Serbia will support the Council with almost 770,000 Euro. Note, however, that the budget of the Council also expects financial aid from "foreign states" (which obviously refers to the kin-state) equal to 994,000 Euro.⁵⁴ This means that the weight of the aid from the kin-state is significantly higher than that of the resources provided by the various institutions from the host-state. Furthermore, in previous years the amount of aid received from Hungary was even higher, making up for approximately Euro 1.92 million in 2014, 2.11 million in 2013 and 1.51 million in 2012. While the precise weight of the aid from the kin-state is a bit tricky to estimate, due to the fact that each year the largest part of the budget is made up from transfers from the previous year, for the 2010-2014 period one could estimate the weight of the aid from the kin-state to somewhere between one half and two thirds of the total financial resources of the Hungarian National Council.⁵⁵ Naturally, the proportion of the various types of resources may differ quite significantly across the various national councils; the data for the Hungarian National Council was only reported for illustrative purposes. The national minority councils can use the resources provided from the state budget to cover the costs of their everyday activity (including salaries, traveling costs of the employees and the elected members of the national minority council, office materials and rental costs), but also to finance or co-finance programs and projects in the four fields of their competences.⁵⁶

8. Intergovernmental Relations

It would be difficult to determine the exact position of national minority councils in the system of power-sharing among the state, the Province and local municipalities; however, this does not change the fact that the decisions of national councils must be respected by all levels of power, otherwise state, provincial and municipal decisions will be annulled.⁵⁷ The decisions adopted by the minority self-governments are part of the general administrative procedure in Serbia. As

⁵⁴ See the budget of the HNC for 2015, available at http://www.mnt.org.rs/sites/default/files/attachments/mnt_koltsegvetes_2015.pdf (accessed on 15 January 2016).

⁵⁵ Based on the budgets of the Hungarian National Council, available formerly on the website of the institution. See also Székely (2014: 193).

⁵⁶ Law on national councils of national minorities (2009), Article 113.

⁵⁷ Immediately after the constitution of the Hungarian National Council in 2010 the Senta/Zenta municipality unlawfully appointed its candidates to the school boards and to the managing board of a cultural center instead of candidates proposed by the HNC. The HNC initiated lawsuits before the Administrative Court of Serbia against 16 schools and one cultural center in Senta/Zenta and won in each case (National Council of Hungarian National Minority 2014: 162).

mentioned previously, in the present the national councils of the minorities remain the only bodies where national minority interests would be professionally and adequately represented. At the time of the first elections to the national councils in 2010, there was a separate Ministry for Human and Minority Rights; however, it was demoted to the level of a department after the 2012 elections. Today, in the Serbian government there is only an office dealing mostly with payments for national councils from the state budget. This means that although there exist other institutions that deal with enforcement of human rights (e.g. the ombudsman), none of these can - and do - act exclusively for the enforcement of minority rights. Although to a certain extent national minorities are represented at all levels of state authority (state, Province, municipalities), this presence cannot substitute (only supplement) the project- or program-based activity of the national councils.

Due to the traditionally higher standards of the minority protection regime in Vojvodina than in the rest of Serbia (discussed in section 2), it makes an important difference whether the seat of a minority national council is located in the territory of the Autonomous Province of Vojvodina or not. In many cases the seat determines whether the council will cooperate mostly with provincial bodies in educational, cultural or public information issues rather than with the state. Furthermore, those national councils that have their seat in the territory of the Province can rely on more financial resources,⁵⁸ and in many issues they cooperate with the provincial bodies which are usually more flexible and open for discussion, resulting in better and faster results. This legislative solution bridges the dilemma that derives from the partition of roles between the Province and the national councils in the field of national minority protection in Vojvodina and strengthens the belief of persons belonging to autochthonous ethnic groups in the effective enforcement of their rights. Of the 20 national minority councils (including the Federation of Jewish Communities) established in 2010, 13 have their seat in Vojvodina, and the 21th council established in 2014 (Montenegrins) also has its seat in Vojvodina. Today, 15 national councils' official address is registered in the territory of the Autonomous Province (Ashkali, Bunjevac, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovakian, Ukrainian, Croat, Czech, Macedonian and Montenegrin).⁵⁹

⁵⁸ It should be mentioned that some national minority councils are dissatisfied with the fact that those national minority councils whose seat is registered in the territory of Vojvodina get additional sums from the provincial budget too.

⁵⁹ For the mailing address of the national councils, see <http://www.ljudskaprava.gov.rs/index.php/ynacionalni-saveti-vesti/44-adresar-nacionalnih-saveta-manjina> (accessed on 15 January 2016).

However, although dealing with the Province renders the decision-making process more effective, in most fields of provincial competence the final decision still depends on the will of the center (as discussed in the section on state structure). The insufficiently specified legal borders of asymmetric decentralization of Serbia result in a very complex and usually jerky structure of power-sharing among different levels that affects - usually negatively - the enforcement of minority rights by the national councils. In Vojvodina, there was a specific Council of national communities which acted as a consultative body in the Provincial Assembly. Its membership and competences had been regulated in detail in the Statute of Vojvodina before the annulment of this respective provision by the Constitutional Court.⁶⁰ Half of the members of the Council were members of the provincial assembly belonging to the majority ethnic group, and the other half were deputies of the minorities, with the requirement to observe within the latter group the proportions of all minorities. Furthermore, in the case of the minorities that were not represented in the provincial assembly, the Council had to ask for the opinion of the national council of the respective minority.⁶¹ The Council was a consultative body: it was compulsory for the Assembly of Vojvodina to obtain its opinion, whenever "resolving issues [...] in direct or indirect relation to the exercise of rights of the national communities constituting a numerical minority in the total population of the AP of Vojvodina, particularly in the area of culture, education, media and official use of languages and scripts."⁶² In the new provincial Statute of 2014 the Council has been renamed Working Committee for National Equality, but the bylaw regulating its competences has not been adopted yet. A similar consultative body also existed at the level of the republic.

In 2009 the Council of the Republic of Serbia of national minorities was established. This was replaced in 2013 by the Government of the Republic of Serbia by the Council of national minorities, with the role to discuss issues of significance concerning the enforcement of national minority rights in the country, to propose measures for development and to formulate opinions on draft laws dealing directly or indirectly with national minority rights. Besides the presidents of

⁶⁰ According to the Constitutional Court decision, it is out of the competence of the Autonomous Province to create its own bodies and organizations.

⁶¹ Statute of the Autonomous Province of Vojvodina (2009), Article 40.

⁶² *Ibid.*

national minority councils, the ministers in the field of culture, public information, education, justice and regional development are members of the council.⁶³

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

10. Membership, "Quasi-citizenship" and Special Rights

As already discussed, before the adoption of the 2009 law, there was no official registration of citizens belonging to a national minority, it was sufficient to hand over a simple written statement of group membership in order to participate in the (indirect) elections. A significant part of the criticism directed against the national councils functioning under the 2002 law was based precisely on the insufficient regulation of the issue of membership. Since the adoption of the 2009 law only citizens that register on special electoral rolls may participate in the elections. Registration to these special electoral rolls of persons belonging to national minorities is voluntary. Everybody who has general voting rights in accordance with the law may, but does not have to register.⁶⁴ Everybody who has active voting rights can stand as a candidate too, unless he or she works as a judge, public prosecutor or judge of the Constitutional Court.⁶⁵ Groups of minimum three citizens registered in the special electoral roll of the respective minority, registered national minority political parties and NGOs active in the field of national minority rights protection have the right to field a number of candidates equal to the number of potential members of the respective national minority councils.⁶⁶ Although this system has clearly improved the legitimacy of the national councils as compared to the situation before 2009, some serious problems remain. Most importantly, there is no control mechanism for establishing whether somebody really belongs to a group or not. This fact increases the opportunities for ethno-business⁶⁷ because there is no limit for re-registration during several electoral cycles in different councils. Also, as a result even ethnic Serbs (members of the national majority) can declare themselves as members of a national minority. Another important issue is that the law allows for candidatures not only by minority political parties but also by NGOs, and this has encouraged mainstream parties to constitute their own independent

⁶³ Decision on the constitution of the Council of national minorities (2013).

⁶⁴ Law on national councils of national minorities (2009), Article 47.

⁶⁵ *Ibid.*, Article 33.

⁶⁶ *Ibid.*, Article 71.

⁶⁷ According to Cârstocea (2011: 16), "[...] «ethno-business» will refer to any practice that seeks to take unfair advantage of the existing legal framework for the protection of national minorities in order to obtain material, financial or political gain."

minority divisions in the form of NGOs. As a result, besides multiple political organizations of minority groups, majority political parties provided additional voting options for minority voters. However, this has fueled fears among the leaders of minority political parties that the councils could be hijacked by the mainstream parties, as a situation in which an NGO list supported by a mainstream party would obtain a majority in a council was regarded by them as incompatible with the concept of autonomy. Sometimes the support of mainstream parties is not public, so it would be difficult to estimate what proportion of the national councils ended up controlled by lists endorsed by the mainstream parties at each of the elections.

However, one case certainly stands out in what concerns the attitude of the Serbian government and mainstream parties towards the national councils that ended up controlled by organizations perceived as hostile. The 2010 elections for the Bosniak National Council had been won by the list of the Bosniak Cultural Community (*Bošnjačka Kulturna Zajednica*), headed by Muamer Zukorlić, the religious leader of the Islamic community in Serbia. As a reaction, the minister for human and minority rights, Svetozar Čiplić conditioned the constitution of the Bosniak National Council upon the presence of at least two thirds of its elected members (Kókai 2010), thereby creating the possibility for the members elected on the other two lists (more friendly to the government) to boycott the formation of the council for months. Such a condition could not be justified by any provision of the law on national councils. But the rules concerning the right to vote and stand as a candidate have also been criticized from the opposite direction. Opponents of the law have criticized the limits put on exercising one's passive voting right, invoking discrimination on the basis of ethnicity. According to these opinions, the freedom of political organization is restricted if those who were not registered and/or not supported by a group consisting of members belonging to national minorities or by a group established for national minority goals were not allowed to run in the elections. In Serbia a significant percent of the population is of mixed national identity, and this issue has also remained unsolved in the existing regulations concerning the special electoral registers.

Although according to the official opinion of state authorities there were only minor irregularities during the elections in 2010, a number of issues have been raised concerning the legitimacy of the elections. First of all, there was no adequate state control of the registration process of potential voters. Although registration was verified by state bodies, the registration of minority members

was carried out by the activists of the minority political parties and organizations. Of course, a reasonable explanation may exist for this (e.g. the state was not interested in investing too much capacity in the task of setting up the minority electoral rolls); however, in a number of cases some minority organizations justified their unsatisfactory electoral results by this shortcoming of the process. Additionally, there remain several insufficiently specified aspects in the law. Thus, public opinion (and even the legal interpretation of several public bodies) remains divided concerning the question whether registration is allowed between two electoral cycles or just immediately before the elections, and whether registration as such can serve as a condition for the enforcement of some other minority rights. The real legal character of minority electoral registers is not defined either. On one hand the registers should be treated on an equal footing with the general electoral register because of their similar function, but on the other hand registration is voluntary in the case of the minority electoral rolls, while compulsory in case of the general register.

By May 2014 over 450,000 individuals had registered for a special minority electoral roll, 20,000 more than before the first elections to the councils in 2010.⁶⁸ However, as the figures from Table 3 show, this increase was not distributed equally among the minorities. On the contrary, in the case of some minorities (e.g. Hungarians, Slovaks, Vlachs, Ruthenians) membership in the special roll decreased. As a matter of fact, a really significant increase in the number of registered persons could only be witnessed in the case of the Greeks (~169%), the Ashkali (~52%), the Albanians (~31%) and the Egyptians (~20%), while in the case of the Germans, the Bulgarians and the Roma the increase exceeded 10%.

What is more problematic, however, is the number of persons who participated in the elections. While in 2010 overall turnout was 54.48%, in 2014 this dropped to 37.64%. Even if such a figure might be assessed as fair if one takes into account the competences of the national councils (by comparing the turnout to parliamentary elections, for instance⁶⁹), the sharp decrease might signal the disillusionment of the minority population, after the initial optimism from the first elections. Actually, turnout increased only among the Czechs and the Bulgarians, while among several minorities dropping to less than two thirds of the 2010 value (Egyptians, Slovaks, Bosniaks). The

⁶⁸ Južne Vesti, “Poziv manjinama da se upišu u birački spisak”, 8 August 2014. Available online at: <http://www.juznevesti.com/Drushtvo/Poziv-manjinama-da-se-upisu-u-biracki-spisak.sr.html> (accessed on 15 January 2016).

⁶⁹ Turnout at the last two parliamentary elections has been rather low in Serbia: 53.09% in 2014 and 57.77% in 2012.

most dramatic drop in turnout could be witnessed among the Roma: instead of the 30,800 persons voting in 2010, in 2014 only 17,500 voters turned out in the elections.

Table 3. Registered voters in special minority electoral rolls and the voter turnout in the 2014 national minority council elections⁷⁰

Minority	Census 2011		2010 elections				2014 elections			
	#	%	Registered	%	Voted	Turnout (%)	Registered	%	Voted	Turnout (%)
Hungarian	253,899	3.53	138,665	54.61	76,894	55.45	137,111	54.00	55,673	40.60
Roma	147,604	2.05	56,076	37.99	30,802	54.93	61,755	41.84	17,523	28.38
Bosniak	145,278	2.02	96,656	66.53	54,516	56.40	99,259	68.32	35,638	35.90
Croat	57,900	0.81	Indirect elections							
Slovak	52,750	0.73	32,657	61.91	15,286	46.81	31,196	59.14	9,682	31.04
Montenegrin	38,527	0.53	No council elected				Indirect elections			
Vlach	35,330	0.49	28,081	79.48	13,091	46.62	27,763	78.58	8,902	32.06
Romanian	29,332	0.41	17,417	59.38	9,480	54.43	17,858	60.88	7,432	41.62
Macedonian	22,755	0.32	Indirect elections							
Bulgarian	18,543	0.26	13,382	72.17	8,835	66.02	14,908	80.40	9,870	66.21
Bunjevac	16,706	0.23	8,271	49.51	3,434	41.52	8,634	51.68	3,246	37.60
Ruthenian	14,246	0.2	8,562	60.10	4,801	56.07	8,270	58.05	3,317	40.11
Albanian	5,809 ^a	0.08	26,927	463.54	15,159	56.30	35,395	609.31	14,108	39.86
Ukrainian	4,903	0.07	2,729	55.66	1,657	60.72	2,818	57.48	1,251	44.39
German	4,064	0.06	2,203	54.21	1,404	63.73	2,491	61.29	1,191	47.81
Slovene	4,033	0.06	Indirect elections				1,741	43.17	713	40.95
Russian	3,247	0.04	No council elected							
Ashkali	n.a.	n.a.	1,148		446	38.85	1,746		582	33.33
Czech	n.a.	n.a.	1,135		528	46.52	1,271		649	51.06
Egyptians ^b	n.a.	n.a.	1,549		695	44.87	1,865		494	26.49
Greek	n.a.	n.a.	876		675	77.05	2,363		1,528	64.66
	854,926		436,334		237,703	54.48	456,444		171,799	37.64

^a incomplete coverage because the Albanians of the Preševo Valley boycotted the 2011 census. In 2002 the census recorded 61 647 Albanians in Serbia (without Kosovo)

^b the 2002 census recorded 814 Egyptians

The information in Table 3 also draws our attention to a further problematic aspect of Serbia's minority protection system beyond the issues related to the minority councils. What is interesting is that in spite of the requirement that the elected national councils should represent any

⁷⁰ Source: Statistical Office of the Republic of Serbia; Electoral Commission of the Republic of Serbia.

numerically sufficiently representative group which has a long-term and firm bond with the territory, there is a lack of statistical data about some of the groups, and there are no differentiating factors corresponding to other national minorities. For example, there are no data about the size of the Ashkali, Egyptian, Greek or Jewish groups, yet they all did establish national councils. Conversely, the number of Montenegrins, Yugoslavs, Russians, Goranci, Turks and Muslims is known, but of these groups only the Montenegrins established a national council in 2014 (but not in 2010). The explanations for this can be very different. While Yugoslavs do not consider themselves as members of national minorities, Goranci live in Kosovo, which unilaterally declared its independence in 2008 before the elections of the national councils held in June 2010. Muslims are mostly represented within the Bosniak national council, even though there were (and there are) political and legal problems about the constitution of their national councils. Still, there is no apparent explanation for the failure of the Russians to establish a national council. Furthermore, some relatively large minorities like the Croats, Montenegrins or Macedonians did not succeed to elect their council directly, because of failing to enroll sufficient persons to the special register, while the Slovenes succeeded to meet the enrollment requirements in 2014 after failing in 2010. This phenomenon is, however, less surprising than it might seem at first sight. What all these minorities have in common is their post-Yugoslav character, so it is plausible that among their members fewer individuals really consider themselves as being minorities than in the case of other autochthonous groups.

11. General Assessment and Outlook

Currently it would be hard to foresee whether the cultural autonomy provided through the system of minority national councils can successfully preserve the historical, economic and social characteristics of the targeted populations which in a certain period of history justified their establishment. During their four years of functioning under the new legal framework in force since 2009, the national councils of national minorities have tried to adjust the opportunities provided by the legal framework to real minority demands. However, the level of realization of cultural autonomy through national councils can only be auspiciously researched if the difficulties deriving from the asymmetrically decentralized, yet legally not totally clarified state structure of Serbia are also taken into consideration.

In spite of the fact that the 2010 progress state report of the European Commission about Serbia has highlighted the successful decentralization process, including both Vojvodina's widespread competences and the establishment of the national councils of national minorities representing a form of cultural autonomy (European Commission 2010), it is necessary to mention that the 2013 report found no traceable progress in this field (European Commission 2013). Also, in the last three years the Constitutional Court of Serbia has annulled numerous competences of both Vojvodina and the national minority councils in its rulings on the Provincial Statute, the Law on the competences of Vojvodina and the Law on national minority councils.⁷¹

It seems that Serbia lacks a strategic approach with regard to all arrangements that have to do with the accommodation of diversity and power-sharing, and this shortcoming results in many inconsistencies in communication and cooperation among the different levels of powers (including cooperation with national councils). In a relatively newly formed nation-state with a political background such as Serbia's, every attempt to decentralize state power or to favor national minorities faces strong opposition. Several provisions of the law on national minority councils were declared unconstitutional in the period of 2012-2014 (a similar review also declared unconstitutional several provisions of the law on the competences of the Province of Vojvodina). The changed political opportunities and the amendment of a number of laws affect the future survival not only of cultural autonomy, but also that of the territorial autonomy of Vojvodina, and there are still many problems deriving from the less than perfect decentralization process in Serbia. Although most of these questions seem to be handled quite carefully by the state, the practical realization of both provincial autonomy and national minority autonomy is a slow process.

The requirements of the EU integration process will probably require Serbia to clarify its basic approach also to the exercising of collective minority rights through national councils. State reports about Serbia show that even though the legal background is quite well elaborated, it is not followed by effective practical implementation. If political and public recognition, financial, technical and

⁷¹ Decision of the Constitutional Court of the Republic of Serbia, No. IUo-360/2009, Official Gazette of the RS, No. 61 of 11 June 2014, Decision of the Constitutional Court of the Republic of Serbia, No. IUz-353/2009, Official Gazette of the RS, No. 67 of 13 July 2012, Decision of the Constitutional Court of the Republic of Serbia, No. IUz-882/2010, Official Gazette of the RS, No. 20 of 21 February 2014.

human conditions are lacking, then even a total harmonization of Serbian legal acts with EU demands will not be sufficient to preserve and develop the existing autonomy arrangements.

When assessing the activity of the national councils, one also has to take into account the differences deriving from the different time of their establishment. There is clearly a gap in development between national minorities that created their national councils after 2002 and those that only established them in 2010 (after the adoption of the law on national councils). These gaps are still visible today, especially in what concerns the results and influence of the national councils on political actions in the field of ethnic issues. Also, one has to differentiate those national minorities which have political representation at all levels of governance, which are numerically more significant and live concentrated in a certain territory from those national minorities which cannot rely on aid from their kin-state (or do not have a kin-state), have weaker technical and financial capacities, live scattered, etc. Because of the liberal approach to national minorities in Serbia there are councils which put forward well-articulated demands and have elaborated highly complex programs and strategies, as well as councils without any concrete perspectives. There are ethnic groups displaying a strong intention and sufficient professionalism to build cultural autonomy from the very basis, and there are groups that have obtained the right to elect their national councils despite not even asking for it.

Because of different claims and demands derived from national councils concerning the exercising of the same competences granted by law, there are no (or very few) common issues in the field of cultural autonomy that would be equally salient across the councils of different minorities. Although the state treats every national minority and their councils equally, there are huge differences among them. Laws usually grant minority rights depending on the percentage of a national minority in the local population. This percentage is the basis for adequate representation in the public sphere (public administration, the judiciary or the police) and for having a national minority language in official use in local bodies.⁷² However, for the successful exercising of a number of minority rights, fulfilling the threshold for ethnic affiliation on paper is not sufficient if the concerned persons do not speak the language of the national minority. Granting education in a national minority language will be in vain if there are no pupils who can communicate in that

⁷² The threshold for official use of a minority language in a municipality in Serbia is 15%. Law on the official use of languages and scripts (1991), Article 11.

language; financing cultural institutions and media houses with services in minority languages will be in vain if there is no audience. Because of the very heterogeneous structure of national minority populations in Serbia there is almost no way to build a uniform diversity management regime adequate for every ethnic group. It results that some minorities cannot even spend the money they get from the state budget for the functioning of their institutions, while on the other side there are large ethnic groups with developed educational systems including nursery, elementary and high schools, and sometimes even higher education, hundreds of cultural institutions and nationwide mass media in the national minority language, which would need more resources for their projects.

Bibliography

CÂRSTOCEA Andreea, "Ethno-business – the Manipulation of Minority Rights in Romania and Hungary", in BHAMBRY Tul'si *et al.* (eds.), *Perpetual Motion? Transformation and Transition in Central and Eastern Europe & Russia*, School of Slavonic and East European Studies, UCL, London, 2011, 16-28.

European Commission, *Progress Report for Serbia*. No. SEC(2010) 1330. Brussels, 2010.

Available online at:

http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf

(accessed on 15 January 2016).

European Commission, *Progress Report for Serbia*. No. SWD(2013) 412 final, Brussels, 2013.

Available online at:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf

(accessed on 15 January 2016).

GOJKOVIĆ Nevena, *Sistem zaštite manjina u Republici Srbiji (The system of minority protection in the Republic of Serbia)*, 2006. Available online at:

http://www.kas.de/upload/auslandshomepages/serbien/Gojkovic_pred.pdf (accessed on 15 January 2016):

JÓZSA László, "Hozzászólás (Remarks)" in HÓDI Sándor (ed.), *Magyar Nemzeti Tanács. Vélemények, elvárások, jogszabályok (The Hungarian National Council. Opinions, Expectations,*

Legal Framework), Széchenyi István Stratégiakutató és Fejlesztési Intézet, Tóthfalu, 2002.
Available online at: <http://ski.vmmi.org/stratfuzetek/2strjozsa.pdf> (accessed on 15 January 2016).

KÓAKI Péter, "Realization of the Minority Autonomy in Serbia", *Délkelet Európa – South-East Europe International Relations Quarterly* 1 (3), 2010.

KORHECZ Tamás, "Magyar autonómia Szerbiában – a programcéltól a hatályos törvényig (Hungarian Autonomy in Serbia – From Programmatic Goals to the Law in Force)", *Pro Minoritate* 20 (1), 2010, 67–73.

KORHECZ Tamás, A nemzeti kisebbségek autonómiájának korlátai a Szerbiai Alkotmánybíróság olvasatában. A nemzeti tanácsokról szóló törvény alkotmányossága (Restrictions of the Rights of National Minorities to Self Governance as Ruled by the Serbian Constitutional Court. The Constitutionality of the Law on National Councils), *Létünk* 44 (special issue), 2014, 50–64.

National Council of the Hungarian National Minority, *Four years of the Hungarian National Council. June 30, 2010 – June 30, 2014*, Grafoprodukt, Subotica, 2014.

Ombudsman of the Republic of Serbia, "Извештај о спровођењу Стратегије за унапређење положаја Рома са препорукама (Report on the Implementation of the Strategy for the Improvement of the Situation of Roma with Recommendations)", 2014. Available online at: <http://www.pravamanjina.rs/attachments/IZVESTAJ%20ZG%20O%20SPROVODJENJU%20STRATEGIJE.pdf> (accessed on 15 January 2016).

SZÉKELY István Gergő, *Dynamics of Party Politics, Electoral Competition and Cooperation within the Hungarian Minorities of Romania, Serbia and Slovakia*, PhD Thesis, Central European University, Budapest, 2014.

Legal documents

Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 1/1990.

Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia No. 98/2006.

Constitution of the Socialist Federative Republic of Yugoslavia, Official Gazette of SFRY, No. 7/1974.

Decision of the Constitutional Court of the Republic of Serbia, No. IUo-360/2009, Official Gazette of the Republic of Serbia, No. 61 of 11 June 2014.

Decision of the Constitutional Court of the Republic of Serbia, No. IUz-353/2009, Official Gazette of the Republic of Serbia, No. 67 of 13 July 2012.

Decision of the Constitutional Court of the Republic of Serbia, No. IUz-882/2010, Official Gazette of the Republic of Serbia, No. 20 of 21 February 2014.

Decision on the constitution of the Council of national minorities, Official Gazette of the Republic of Serbia, No. 46/2013 and 98/2013.

Governmental decree on the process of distribution of resources from the budget of the Republic of Serbia for financing the activity of the national councils of national minorities, Official Gazette of the Republic of Serbia, No. 95/2010 and 33/2013.

Law on determination of particular competences of the Autonomous Province, Official Gazette of the Republic of Serbia, No. 6/2002, modified by laws No. 101/2007 and 51/2009.

Law on determination of the competences of the Autonomous Province of Vojvodina, Official Gazette of the Republic of Serbia, No. 99/2009, modified by No. 67/2012.

Law on national councils of national minorities, Official Gazette of the Republic of Serbia, No. 72/2009, modified by No. 20/2014 and 55/2014.

Law on state administration, Official Gazette of the Republic of Serbia, No. 79/2005, modified by No. 101/2007.

Law on the official use of languages and scripts, Official Gazette of the Republic of Serbia, No. 45/1991, modified by No. 53/1993, 67/1993, 48/1994, 101/2005 and 30/2010.

Law on the protection of rights and freedoms of national minorities. Official Gazette of FRY, No. 11/2002, modified by No. 1/2003, 72/2009 and 97/2013.

Law on the ways of granting equality of languages and scripts of nations and nationalities in state bodies, organizations and communities, Official Gazette of the APV, No. 29/1977.

Regulation on the activity of electoral assemblies during the elections of national councils of national minorities, Official Gazette of FRY, No. 41/2002.

Statute of the Autonomous Province of Vojvodina, Official Gazette of APV No. 17/2009.

Statute of the Autonomous Province of Vojvodina, Official Gazette of APV, No. 20/2014.