

I. A. The Status of Indigenous and Minority People

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The Legal Status of Minorities in Hungary

Abstract. The Article gives a general overview of the Hungarian constitutional and legal framework for the participation of national minorities in the decision-making. The relatively low number of people belonging to national minorities in Hungary as well as the scattered patterns of their settlement and some aspects of the Hungarian legal traditions underlie the choice of the so called personal autonomy approach. The minorities can establish *via* a special electing mechanism local and national self-governments enjoying consultative and truly public law type rule-making and administrative competences. Having given the proper interpretation of the relevant article of the Constitution, the Constitutional Court also contributed to the birth of the Act on the Rights of Minorities. The basic reason behind the creation of a very complicated, multilevel institutional complex is that in this way, educational and cultural needs of minorities of different scale can be represented in a relatively coherent manner. This does not exclude at all the possibility of bringing modifications to the legal text in the light of a decade's experience.

Keywords: Hungary, minority, self-government, participation in decision making

Hungary's position *viz.* the linguistic minorities is based in the consideration that instead of classic nation-state concept,¹ the subsidiarity principle²

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¹ In the last years of our century, the institution of the nation-state, its advantages and disadvantages are subject to numerous scientific studies and colloquies. This is not by chance, because at the end our century we see things differently than before when it seemed so evident for thinkers and politicians to import western examples in order to get nearer to modernity. However certain phenomena perceived without doubt in the XIXth century as the deposit of evolution, have been questioned since then. It has become clear that the nation-state has had drawbacks and even victims and it costs a lot today to mitigate damages and to promote small languages and cultures. The nation-state has a particular but apparently inherent temptation to uniformity and to cultural and linguistic hegemony. That's why a good number of countries make efforts to reshape the internal administrative structure according to the principles of decentralization and subsidiarity. Hungary is one of these countries.

² We know well, that subsidiarity has a double meaning. It has become evident since the Maastricht Treaty that there are certain inherent limits of sovereignty-transfer to

should be applied. In this way, minorities can decide in the matters important for their identity.

In addition to provisions linking international and national law,³ or providing safeguards expressed in the European terminology of human rights⁴ or in particular providing discrimination⁵ the Constitution enshrines the fundamental principles of effective participation by minorities in public life:

§ 68 (1) The national and linguistic minorities in the Republic of Hungary shall share in the people's power, being constituent elements of the state.

(2) The Republic of Hungary shall accord protection to the national and linguistic minorities, ensuring their collective participation in public life, the cultivation of their culture, the use of their mother tongue, education in their mother tongue and the right to use names in their own language.

(3) The laws of the Republic of Hungary shall guarantee the representation of the national and ethnic minorities living in the national territory.

(4) National and ethnic minorities may set up local and national self-governing bodies.

(5) *The enactment of the law on national and ethnic minorities shall require a two thirds majority of votes of members of parliament present.*

the supranational level, i.e. when the efficacy of the activity is threatened e.g. when the organization which has acquired the given competencies is unable to use them or when the bureaucratic way keeps down the required activity. But subsidiarity means also a constitutional and administrative doctrine in expansion which is ready to grant a greater place to local self-government if advantages of fiscality or efficacy justify it. Without doubt, the state has survived this slimming diet and citizens have realized that as a result of the decentralization, a lot of things have become cheaper and simpler.

³ Article 7: "The legal system of the Republic of Hungary shall accept the generally recognised rules of international law and shall ensure harmony between obligations under international law and the municipal law."

⁴ Article 8 (1): "The Republic of Hungary shall recognise fundamental human rights as inviolable and inalienable and it shall be a prime duty of the state to respect and protect those rights.

(2) In the Republic of Hungary, the rules relating to fundamental rights and duties shall be determined by law, which nevertheless cannot restrict the substance of any fundamental right."

[Note: Human rights are set out in Chapter XII—articles 54-70/K.]

⁵ Article 70/A (1): "The Republic of Hungary shall guarantee for everyone in its territory all human and civil rights without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The Constitution laid particular stress on the institution of the ombudsman for minorities.⁶ Quite plainly, the Constitution can regulate no more than the truly fundamental principles and the specific conditions are established by separate legislation, notably on the rights of minorities. This law⁷ passed in 1993 associates the concept of individual rights with a collective approach, expressed generally as the manifestation of the concept of the “personal autonomy”.

In fact the solution prescribed by Hungarian law only partially corresponds to this idea of “personal autonomy”: institutions securing it are indeed provided for in the letter of the law, alongside and as it were above the normal institutions of local self-government, the individual rights of persons belonging to minorities and the collective rights pertaining to these minorities. It is the essential ingredient in a coherent complex of instruments. Logically, self-government, present at various levels of society, tends to be linked with collective rights. At the same time, as it will be explained below, it embodies the applied principle of *subsidiarity*. Even so, in theory, self-government is also conceivable in the framework of the organisation of public administration and not necessarily in the human rights framework. Nor indeed is it alien to human rights — the Hungarian law find landmarks in European practice, like the ombudsmen and Lapp assemblies of the Scandinavian countries or certain Slovenian institutions. At the same time, Hungarian law is consistent with the undertakings made in international law: the *European Charter for Regional or Minority Languages*, the *Framework-convention for the Protection of National Minorities in Europe* and bilateral treaties—which are furthermore based on the individual as well as the collective approach to the protection of minorities, and establish bilateral supervision machinery⁷ are the frame of reference, supplementing the other stipulations of international law.

⁶ Article 32/B (2): “The parliamentary ombudsman for the rights of national and ethnic minorities shall have the duty to examine or have examined any irregularities brought to his attention in connection with the rights of national and ethnic minorities and to initiate general or individual measures to remedy them.”

[Note: He is elected by the parliament. cf. article 19 (3) of the Constitution.]

⁷ Hungary-Ukraine: Treaty on good-neighbourly relations and foundation of co-operation (6. 12. 1991), Declaration on principles of co-operation in the protection of the rights of national minorities (31. 5. 1991) and Protocol thereto (31. 5. 1991). Hungary-Slovenia: Treaty on good neighbourly relations (1. 12. 1992) and Convention on the special rights of the Slovenian minority living in Hungary and of the Hungarian minority living in Slovenia (6. 11. 1992); Hungary-Croatia: Convention on the rights of the Croatian minority living in Hungary and of the Hungarian minority living in Croatia (5. 4. 1995); Hungary-Slovakia: Treaty on the good neighbourly relations and the co-operation (19. 3.

Self-government in terms of “personal autonomy” thus find its technical justification in the geographical and numerical patterns of minorities in Hungary.⁸ Its legal justification is inferred from the aforementioned stipulations of the Constitution and to some extent from the law on local authorities;⁹ its political justification stems from the will of the minorities concerned—which conducted the negotiations as a united front: the government had as its associate and talking-partner and *ad hoc* representative body made up of delegations of the interest¹⁰—and the meeting of minds between the government and the parliament. (This is also expressed the virtual unanimity with which the law was passed.) The long drafting procedure, in which the commencement and the first draft date back to 1989–1990¹¹ also testifies to the fact that the minorities regarded the proposals founded on traditional freedom of association¹² as inadequate.

1995); Hungary–Rumania: Treaty on understanding, good neighbourly relations and co-operation (16. 9. 1996)

⁸ Hungary and her minorities:

a) results of the census of 1980, 1990 according to the reply to the question about “nationality”: Germans: 11,310 (1980); 30,824 (1990); Slovaks: 9,101 (1980); 10,459 (1990); Croatsians, Slovenians or Serbians: 18,431 (1980); Croatsians: 13,570 (1990); Serbians 2,905 (1990); Slovenians or other: 1,930 (1990); Rumanians: 8,874 (1980); 10,740 (1990); Gipsies (Roma): 142,683 (1990).

b) results of the census of 1980, 1990 according to the reply to the question about “mother tongue”: Germans: 31,231 (1980); 37,511 (1990); Slovaks: 16,054 (1980); 12,745 (1990); Croatsians, Slovenians or Serbians: 27,052 (1980); Croatsians: 17,757 (1990); Serbians: 2,593 (1990); Slovenians or other: 2,627 (1990); Rumanians: 10,141 (1980); 8,730 (1990); Gipsies (Roma): 48,072 (1990).

c) governmental approximation following certain empirical researches in 506 localities, according to the Hooz-method: Germans: min. 95,000; Slovaks: min. 50,000; Croatsians, Slovenians et Serbians: min. 38,000; Rumanians: min. 10,000; Gipsies: 400–600,000 (global estimation, without empirical researches).

d) estimations of organizations of minorities: Croatsians: 80–90,000; Serbians: 5,000; Slovenians: 5,000; Rumanians: 25,000; Germans: 200–220,000; Slovaks: 110,000; Poles: 10,000; Bulgarians: 3,000; Greeks: 2,500–3,000; Armenians: 1,500; Ukrainians: 451; Ruthenians (Ruthéno-ukrainiens): 1,000; Gipsies (Roma): 600–800,000 ou 1,000,000.

⁹ Law n° LXV (1990) on local authorities and law n° LXIV on the election of local representatives for local authorities and of mayors.

¹⁰ This body was working under the title of “round table of minorities”.

¹¹ It was elaborated by the Secretariat for Minorities, directed by the deputy minister Csaba Tabajdi. The basic approach was elaborated by Mr. Gáspár Bíró.

¹² Such a proposal was drafted by the Ministry of Justice as an eventual alternative to the home rule principle, proposed by the Secretariat for Minorities (see footnote n° 10).

Under the terms of the law, a national or ethnic minority is a community (*Volksgruppe*) in a numerical minority by comparison with the other inhabitants of the state, which has resided in the territory of the Republic of Hungary for at least a century, and whose members—who are Hungarian citizens—differ from other population components in language, culture and tradition. According to this definition, evidently inspired by Mr Capotorti, the following communities are assumed to be traditionally settled in Hungary: Germans, Armenians, Bulgarians, Croates, Greeks, Poles, Romanians, Ruthenians, Serbs, Slovaks, Slovenes, Gypsies. Minorities as communities are entitled to establish their own forms of social organisation and autonomy at local and national level. The Parliament has elected an ombudsman to supervise and further the effective exercise of the rights of national or ethnic minorities.

Minorities as communities are entitled to establish their own forms of social organization and autonomy at local and national level. The Parliament has elected an ombudsman to supervise and further the effective exercise of the rights of national or ethnic minorities. The ombudsman's missions was important: mainly certain members of the Roma community asked for his fact finding and good offices in conflict-settlement.

The law recognises the creation and operation of minorities' self-government in the sense of cultural autonomy, as the most important requirement for minorities to assert their rights. It thus enables minorities in the municipalities, the towns and the districts of the capital to establish their own municipal councils or to bring into being, whether directly or indirectly, self-government bodies with a local or a national remit.¹³ Where the minority is unable to form a local minority council, its interest are represented by a local ombudsman (speaker).

Why was such an intricate and highly complex arrangement chosen? The four "manifestations" of the autonomy, namely municipal self-government,

¹³ A municipal council may declare itself a minority council if 50%+1 of its representatives have been elected as candidates in respect of a national or ethnic minority. Where at least 30% of the members of a local assembly have been elected as candidates in respect of the same minority, these may form a local minority council consisting of at least 3 members. (If the population is below 1300, this body is constituted by 3 delegates. There are 5 in a municipality with a population of over 1300. In towns, there are 7 and 9 in towns which are county capitals and in districts of the national capital.) It is also possible to elect local self-government bodies directly by special local initiative. Elections of this kind were held on 11 December 1994 in conjunction with the municipal elections and were also held additionally at the end of 1995 by the decision of the government.

local self-government, the institution of the local ombudsman and the national self-government, differ in purpose.

Municipal self-government (“municipal minority council” in the law) is in fact an other title of a local self-government in the European sense of the word. This can be practised in municipalities, where most of the electorate belongs to a minority. The geographical distribution of minorities is however such that some would be incapable of forming a local self-government body since generally speaking this would presuppose that the bulk of the local electorate belongs to a national minority present only in some municipalities even in the case of the more numerous minorities. *Local minority self-government* (“local minority council” in the law), however, caters for situations where the linguistic minority constitutes a minority even in the locality; apparently this type of institution could become far more widespread. The law contains generally identical competences, regulated in the same paragraphs for both hypotheses.¹⁴

¹⁴ § 26: (1) Municipal minority councils and local minority councils may, in matters affecting the situation of minorities, refer to the head of appropriate administration in order to: a) request information; b) submit proposals; c) request the application of certain measures; d) object to any practice or decision relating to the operation of institutions and violating minority rights, with a view to the modification or withdrawal of the decision in question.

(2) The head of the administration, in the cases defined in (1) above, must make a substantive reply to the appeal within 30 days.

(3) If the head of the administration appealed to does not have competence or authority with respect to the subjects of the appeal, he shall refer the appeal within 3 days to a competent body.

§ 27: Within their own sphere of competence and within the limits of the provisions made by the municipal council, the local minority council shall determine: a) its organisational and operational structure and its rules of procedure; b) its budget and final accounts and the use of resources allocated by the local council; c) the use of separate resources allocated to it from the resources of the municipal council in accordance with the provisions of the present law; d) the name, emblems and honours of minority council and the regulations on their conferment; e) the local holidays of the minorities it represents; f) in accordance with the regulations pertaining thereto, the list of its protected monuments, commemorative sites and the local rules for their protection.

(2) On the initiative of the minority council, the representative body forming the municipal council shall determine the resources and assets which it is required to provide for the use of the minority council, itemising the movable and immovable assets and the financial resources, so that the minority council may discharge the functions defined by law.

The *local ombudsman*¹⁵ (speaker) is a special institution which operates when, despite the rules advocating positive discrimination, it has not been possible to elect even a local minority council.

(3) Within its sphere of competence, the minority council may found and operate as far as its resources permit institutions in the following areas in particular: a) local public education; b) local press and electronic media; c) maintenance of traditions; d) culture.

(4) Within the framework and limits assigned to it, the minority council may: a) found and operate enterprises or other economic concerns; b) organise competitions; c) establish scholarships.

(5) If a decision by the municipal council is required in order to enable the minority council to exercise its rights, the representative body shall place on the agenda of its next meeting the minority council's request for the necessary decision. Where the decision is in the remit of another self-government body, the latter shall take a decision within 30 days following the submission of the request.

§ 28: The mayor's office, appointed by the municipal council, is required to render assistance in the proceedings of the local minority councils in accordance with its rules of procedure.

§ 29: (1) For the purpose of enacting local by-laws on local public education, local media, maintenance of traditions and local culture and use of the language associated with the minority population's status as a minority, the representative body of the municipal council shall obtain the consent of the local minority council representing the minority population.

(2) The consent of the local minority council is required for the appointment of heads of minority educational institutions and for decisions concerning the training of members of minorities. In the absence of a minority council, an opinion shall be given by the ombudsman for the minority or, in his absence, by the local association of the minority.

(3) Whichever authority holds the right of approval and the right of inspection shall notify its decision within 30 days after receiving the request or being apprised of its content. Thereafter, these rights shall be forfeited.

§ 30: (1) Municipal and local minority councils may maintain relations with any other minority organisation or association and conclude co-operation agreements with them.

(2) Minority organisations, institutions and associations may enter state competitions conducted in the fields of culture, education and science on equal terms with minority self-government bodies.

§ 46: (1) Municipal councils and local minority self-government bodies shall assist in assessing needs in respect of minority education and its organisation. (...)

§ 47: Local minority self-government bodies may not take over from another body the control of educational establishments unless the standard of education hitherto achieved can be maintained. The extent of state support to these establishments cannot be reduced after the transfer of responsibility.

¹⁵ § 40: (...) the local minority ombudsman is authorised: a) inasmuch as he is not a member of the local council's representative body, to be present in an advisory

*National self-government*¹⁶ (the “national minority council” in the law) is an elected body whose electors are persons working in the lower self-

capacity at its meetings and those of all its committees, including closed sessions, dealing with questions concerning a minority; b) to propose to the mayor and to the committee chairman during council or committee meetings that a debate be held on any issue affecting the situation of minorities which comes within the remit of the council or committee; c) to initiate a review by the representative body of any decision by its committee concerning the situation of minorities; d) during meetings of the representative body or of its committee, to request information from the mayor, the clerk or the committee chairman on local government business of concern to minorities; e) to request from the mayor or the clerk such information and administrative co-operation as is necessary for the discharge of his duties; f) to request action by the mayor, the clerk or any official holding the appropriate responsibilities in matters affecting the minority as such; g) to propose that the representative body, in matters affecting a minority, turn to a state authority (...)

(2) Pursuant to the initiatives provided for in sub-section 1, paragraph (b), the mayor or the committee chairman shall submit the ombudsman’s proposal to the next session of the representative body or the committee, which shall decide whether to place the issue on the agenda and what preparatory steps will be taken for its discussion.

(3) If the ombudsman requests information from the mayor, the clerk or the committee, a substantive reply must be furnished either during the session or in writing within 15 days thereafter.

(4) On the ombudsman’s request, his statement shall be included in the minutes of the session or—if submitted in writing—appended thereto.

(5) Discussion of the issue which affects the situation of minorities and has been placed on the agenda following an initiative as provided in sub-section 1, paragraph (b) and in accordance with the provisions of sub-section 2, cannot be postponed or removed from the agenda except at the ombudsman’s request.

(6) Before issuing any decree determining the rights and obligations of a minority, or before taking measures which generally influence the situation of minorities, the municipal council shall consult the ombudsman.

¹⁶ § 37: The national minority councils, under the arrangements and within the limits established by law, shall decide independently on: a) seat, organisation and operation; b) budget, final account and property inventory; c) elements constituting its entire property; d) names and emblems; e) national holidays of the minorities which they represent; f) honours and conditions and rules for their conferment; g) principles and procedures for use of radio and television frequencies at their disposal; i) release press statements; j) foundation of institutions, their organisation and rules of procedure, upkeep and operation; k) foundation and operation of theatres; l) foundation and upkeep of museum or public collections constituted by collectors throughout the country; m) constitution of libraries for minorities; n) establishment and operation of an arts or science institute or a publishing company; o) maintenance of secondary and higher education establishments under national authority; p) provision and operation of a legal aid service; (...) r) discharge of other duties assigned to them by law.

government bodies. Certain minorities may be unable to avail themselves of other forms of self-government than this national-level one, far from a sound local basis. In this case, the election is vested in the hand of special caucus, composed of electoral representatives designated for this purpose by the scattered communities.

The powers vested in the different forms of self-government are fairly similar and essentially concern the fulfilment of minorities' educational, cultural and traditional needs. This is where the two classic expressions of autonomy are apparent: either true self-government or a co-decisional competence, implying a *de facto* veto right. In other areas, the right to consult the local or state governmental administration and the right to present them with initiatives (right of petition) are secured. The quality of the right of initiative is enhanced by the obligation of reply which is imposed on the body addressed.

Despite the complexity of the provisions, there is no duplication at local level because the three modalities described above are alternative institutions whose actuation essentially depends on two factors: firstly the specifics of the geographical distribution of linguistic minorities and secondly their political activism.

It was therefore expedient for the law to offer an array of instruments presenting a certain logical coherence and applying to the various minorities concerned while taking account of wide numerical differences. Subsidiarity, i.e. the devolution of powers, chiefly concerning matters of identity, education, schooling, culture and including the relevant budget, (alimanted essentially

§ 38: (1) The national council a) expresses its opinion on draft laws affecting the minorities it represents as such, including decrees by the general assemblies of counties and the capital; b) may request information from administrative bodies on matters concerning groups of minorities they represent, submit proposals to them, and call for measures to be taken in matters within their competence; c) co-operates with the relevant state bodies in the professional supervision of primary, secondary and higher education for the minorities it represents. (...)

(3) For the purposes of legislation on the maintenance of historical settlements, the consent of the national minority council—and the local minority self-government bodies in the case of legislation concerning them—is mandatory.

If there is no local minority council, it is the spokesperson, or failing that, the local minority association, which gives its consent.

(4) With the exception of higher education, the national council has the right of approval as regards preparation of the general syllabus for the education of minorities.

§ 39: Within its sphere of activity, the national council may organise competitions or establish scholarships.

from the Fund for National or Ethnic Minorities but the Parliament¹⁷ also contribute to special programs) at every level where self-government operates. Electoral legitimacy bolsters the responsibility of the representatives of minorities and at the same time, confers the of choosing between the various forms of organisation upon those directly concerned. In this way, it is also hoped to guard against government patronage (clientelism).

The combined municipal and minority elections in 1994 and the minority elections in 1995 yielded the following results:

The minorities and the self-government bodies						
	Local minority		Minority		Local minority	
	self-gov't		village		self-gov't	
			(renamed as municipal			
	Directly	Indirectly	minority self-gov't)			
	elected	elected	Election		Election	
	11Dec 1994	11Dec 1994	11Dec 1994		19Nov 1995	Total
Bulgarian	2				2	4
Roma	415		1		61	477
Greek	2				4	6
Croat	35	1	15		6	57
Polish	2				5	7
German	98	7	19		38	162
Armenian	9				7	16
Romanian	9		1		1	11
Ruthenian	1					1
Serb	19					19
Slovak	28	4	6		13	51
Slovene	2		3		1	6
Total	622	12	45		138	817

¹⁷ The Parliament authorized the Committee for Human and Minority Rights and Religious Affairs to pass the decision about the budgetary contribution to special programs.

What are the experiences of the seven year existence of this instrumental complex? The appreciation is globally positive. The following problems emerged during the practice: the very complicated way of the elections was criticized, but the greatest problem is the modesty of budget and the difficulty how to secure properly the control of the State Audit Office concerning the use of the state-subsidies. There is another (but for the time being only theoretical) problem: how to treat the eventual bad financial exercise in order to avoid "bankruptcy". The harmonization of the co-decisional competences should also be improved. It is interesting to see the two different main profiles of the activities: the self-governments of the gipsy (Rom) community want to deal much more or essentially with social problems, establishment of special schools of special curricula, axed on the effective social rehabilitation, equality of chances etc. The government prepared a medium-term plan aiming to improve the Romas' position in the labour market with educational programs as well as with certain initiatives to help them to establish small agricultural and industrial enterprises. At the same time, the classic linguistic minorities (Germans, Slovaks, Croatians, Romanians, Serbes etc.) are concentrating on linguistic educational and cultural matters, institutions etc.