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Minority Politics and Minorities Rights*Balázs Dobos***The National and Ethnic Minorities'  
Autonomy in Hungary**

This time we do not intend to study<sup>1</sup> the political and legal events and their relations in a detailed manner during the course of preparing the Minority Law, but we focus on presenting and analyzing on issues (personal effect, organisational structure, minority council rights, financing), which are determinative regarding a latter minority autonomy. Creating the dispositions of the law was a fairly lasting process, which included conflicts and compromises deriving from clashing several regulation concepts and practical solution proposals. Major characteristic of the law preparation that the most important stakeholders of the issue (the Government, the Ministry of Internal Affairs, Ministry of Justice, Ministry of Finance and Ethnic Academy and Ethnic Secretariat, later National and Ethnic Minority Office, Minority Organisations, the Round-Table of National and Ethnic Minorities in Hungary - which was created in the beginning of 1991 - and other experts) intended to put forward their particular interests, conceptional or practical ideas, which had a visible impact on the accepted norm text. According to the frequently referred Bíró, Gáspár during the process of creation basically two concepts were competing: the "liberal" and the "autonomist". The Ethnic Academy and Secretariat later Minority Office and minority organisations emphasised collective rights and were in favour of an effective cultural autonomy established on public law, while those in favour of the liberal concept, were dominantly represented by the Ministry of Justice, and viewed the guarantee of maintenance of minorities in the minority friendly work of the legal system and guaranteeing the individual rights, and organisation-based self-administration.<sup>2</sup> It is important to declare that although minority self-administrations based on public law were recorded as organisational forms, it did not mean that the autonomist concept became victorious in all aspects in the creation of the norm text.

The concept and self-government statute model, made by the Ethnic Secretariat and the Council of Ministers during the Németh-government era, was a progressive and determinative creation of the autonomist concept. The 1989 November and 1990 February versions' definition of the to-be law's per-

See among others Bodáné Pálok, Judit: A magyar kisebbségi törvény megszületésének körülményei. *Acta Humana. Emberi jogi közlemények*. 1993, vol. 12-13. pp. 26-45. Györi Szabó, Robert: *Kisebbségpolitika: rendszerváltás Magyarországon a Nemzeti és Etnikai Kisebbségi Kollégium és Titkárság történetének tükrében (1989-1990)*. Budapest, Osiris, 1998. pp. 99-151.

<sup>2</sup> Bíró, Gáspár: *Az identitásválasztás szabadsága*. Budapest, Osiris – Századvég, 1995. p. 36.

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sonal effect was in accordance with the principal of free choice of identity, and was conceived, that listing the minority languages and dialects, which are to be protected, would be suitable and not the definition of the national, ethnic and linguistic minorities. The results of this were individual based "social and cultural" minority self-governments, the members of which would have been registered by the self-government's organisations. The local and national self-governments' elected bodies, which bore administrative power, would have been entitled to create regulations in certain cultural, economic issues and concerning certain minority rights. Only the Constitutional Court would have been entitled to abolish the decisions of this self-government, and the consent of the Parliament's qualified majority would have been needed to discharge it. As a result of the minority demands, a preference based procedure was formed to assure representation in the local self-government by getting mandate.<sup>3</sup> The financial resources of the autonomy would have been the government budget, the applications of the Foundation for the National and Ethnic Minorities in Hungary<sup>4</sup>, which was established in spring 1990, and the budget of the Secretariat.<sup>5</sup>

Though the concept of the Secretariat did not settle numerous questions in a satisfying way, the liberty of choosing identity and the idea of cultural autonomy, expressed by self-governments and based on the principal of individual, remained lasting in the legislation activity of the political community. This is certified by the fact that the program of the coalition government - which was lead by József Antal and was inaugurated in the beginning of August 1990 - also included the aims of achieving cultural autonomy in the form of self-govern-

<sup>3</sup> Though it did not represent the secretariat's proposal the 1990 LXIV Law of electing local self-governmental representatives and mayors provided opportunity to represent local minority interest by regulating the minority candidates and lists preference in getting local mandate. As a minority candidate one could get mandate if the candidate received at least two-thirds of the votes that the majority candidate received who got mandate. In case of the minority list a similar procedure was established in the two-vote system. The threshold of receiving preferred mandate was decreased to the half of the valid votes by the Minority Law which altered the rule. This system which made misuses possible was abolished by the modification of the Minority Law and the related rules in 2005 but the system which was introduced instead was declared contradictory with the constitution by the Constitutional Court. Though there is a strong demand on behalf of the minorities to establish a preference based settlement of gaining self-government mandate on preference basis no accepted legal norm is in effect has been created yet.

<sup>4</sup> See 1068/1990. (IV. 12.) decision of the Council of Ministers concerning the establishment of foundations with minority policy intentions.

<sup>5</sup> Bíró, Gáspár: A nemzeti és etnikai kisebbségi törvény tervezetének alapelvei. Council of Ministers Secretariat of National and Ethnic Minorities, 1989. Same author: A nemzeti és etnikai kisebbségi törvénykönyv tervezete (1989). Same author: A nemzeti, etnikai és nyelvi kisebbségi törvénytervezet alapelvei (Budapest, 1st February 1990.) Library of Teleki László Institute.

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ments.<sup>6</sup> The initiation was taken over by the Ministry of Justice (IM) after the formation the government's new specialised institution: the Office of National and Ethnic Minority (NEKH) – but the concept of IM included contradictory ideas with those of the Secretariat. According to the concept which was very restrictive on minority rights, the Parliament would have decided on the basis of "census data" which minorities "qualify" as national and ethnic minorities. The IM would guarantee mainly those rights to the local and national self-governments, which were settled and recorded later in the Minority Law. These were entitled to possess proposal making, initiative and opinion forming rights and they had the right to consent in issues, which concern the preservation and maintenance of historical settlements and architectural memorials. The previously mentioned foundation would have meant the exclusive channel of financial support.<sup>7</sup>

As opposed to the later accepted concept of the IM as government proposal, the concept, prepared by Mihály Samu for the NEKH in May 1991, can be considered to be approaching to the autonomist attitude. According to the IM's idea the definition of the personal effect would have been included in Parliament decision – but the Parliament would not have decided about national and ethnic minorities on the basis of census data, but on the grounds of the far more subjective idea of "self-expressions so far". As well as the organisational grounds in another version, it was considered to be possible that by keeping records of membership minority self-governments with administrative basis can be created. The local minority self-governments would have been declared such civilian organisations in their charter and they would form a national council by the means of delegation. All local organisations would have been represented at the national level but the number of votes would have been in proportion with the number of the local members. The concept did not exceed the IM concept's ideas concerning the definition of the minority self-governments' duties and competences. Relevant changes can be seen concerning the settlement of the guarantees of enforcing rights (turning to minority ombudsman) on the one hand, and more detailed regulation of the financial support and management on the other. The minority self-governments would have been subsidised by central and self-government budgets and minority foundations, and they would manage their own assets and properties, and they could have maintained own educational, cultural and social institutions.<sup>8</sup>

<sup>6</sup> LXIII Law § 5 1990 concerning the modification of the Constitution of the Hungarian Republic

<sup>7</sup> Law proposal concerning the rights of national and ethnic minorities (22nd December 1990 Ministry of Justice), Library of Teleki László Institute

<sup>8</sup> The concept of Minority Law (15th May 1991 Budapest Office of National and Ethnic Minority) Library of Teleki László Institute

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The 1991 concept of the Minority Roundtable meant a real autonomist idea. The text proposal made an attempt for the first time to define the idea of minority when describing the sphere of individuals, who are under the effect of law. But it did not include a list because of enforcing the liberty of choosing identity in a consequent way. The personal effect of the law would not only include Hungarian citizens, but those foreign citizens too, who had already been living in the country for five years as part of their way of life and possessed residential permit. When dealing with the issue of creating local minority governments it returned to the election concept which had been included in the Secretariat's notion, which provided legitimate administrative bodies. It was an old demand of the minorities to create minority self-governments before the following local council elections in 1994. Therefore it made this initiation possible according to this little bit hazy notion; those who were "concerned" would have been entitled to vote. The election would have been organised together with the local self-government elections and the voters would receive the minority voting sheet on their manifest request. The same procedure would serve as means to create minority self-governments for several settlements, while the national body would be formed by the local organisations' and national minority organisations' delegates. The local organisations would have been real power centres which work parallel with the settlements councils with effective rights to express opinion, consent and participation, completed with the guarantees of enforcing rights and creating financial grounds. The national minority self-government, with legislative rights, would have made decisions concerning cultural, educational and economic issues. Each of the minorities would have been entitled to build and maintain their own institutional structure with using state resources. Cultural autonomy included full education from nursery school to university, cultural and scientific institution, nationwide press and news agency, radio and TV program in minority language, central and regional network of libraries and archive, museum exhibition possessing the right of collecting throughout the country and a legal assistance and legal protection service.<sup>9</sup>

The minority representatives could enforce the majority of their concepts in the compromise text version which was finalised by the end of August 1991 in the negotiations between the NEKH and the Roundtable. Besides defining Hungarian citizens and minority it included those non-Hungarian citizens – in a bit restrictive manner –, whose communities had been living in Hungary continuously at least for thirty years. Initiation of the local minority self-government became considerably better wrought which meant that in the elections all elec-

<sup>9</sup> Law concept concerning the rights of national and ethnic minorities (6th June 1991 Minority Roundtable) Library of Teleki László Institute

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tors could have voted and the mandate of the body would have expired by the next local council elections. Following this the local minority self-governments would have been elected together with the settlements' in accordance with a separate law. Minority self-government for several administration units was called regional, but the election and the legal status of it were equal to the level of the local ones. Creation of the national minority self-government became also significantly better wrought: formation of it could be initiated by minority self-government or in the lack of those by suitable number of members. The civilian and self-governmental formations could have delegated members into the assembly of the national organisation, in proportion of the votes received by the minority self-government or with organisation membership. Minority self-government system would have been effective, self-reliant structure as a whole, with rights to express opinion consent, delegate, found and maintain institutions as well as possessing decision-making rights for cultural autonomy. The concept included the procedures of assurance of financial resources and legal remedy.<sup>10</sup>

This 1991 autumn version was not accepted as a whole, "as a result of the changes to the text later the Minority Law became – borrowing terminology from international law – a soft law which means that it included mostly general requirements and wishes instead of actually enforceable rights".<sup>11</sup> Owing to administration negotiations and the enforcement of different interests of ministries, the Minority Law concept changed in its basis further later on. Its personal effect included only Hungarian citizens; the definition of minority was completed with the requirement of residence for a hundred years (three generations) and with the open taxation which was necessary for the financing and with the listing of national and ethnic minorities. As a reply to the demand of the Jewish minority an agreement was created for the procedure of enlargement of the list, the precondition that a thousand elector can initiate that. The Ministry of Internal Affairs (BM) succeeded in integrating the minority self-government system as a whole into the settlements' self-government system so it eliminated the parallel local power centres by this. According to this if in the elections of self-government representatives and mayors more than half of the representatives were elected as minority candidates then they could form minority self-government of the settlement, in case one third was elected this way, they could form a minority self-government group (later called as indirect minority self-government). The contemporary opposition parties

<sup>10</sup> Law concept concerning the rights of national and ethnic minorities (30th August 1991 Minority Roundtable) Library of Teleki László Institute

<sup>11</sup> Kaitenbach, Jenő's lecture In: Kincső, Tamás –Tóth, Ágnes – Vékás, János (ed): Tíz éves a kisebbségi törvény. Professional conference, Museum of Ethnography, Budapest, 7-9th October 2003, Budapest, Office of National and Ethnic Minorities p. 20, 2004.

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were concerned by the settlements' minority self-government form to which the government stuck, "because this can represent the regional administrative autonomy".<sup>12</sup> The original concept of the BM would have blanked the minority self-government elections of settlement parts (later direct), but it was included in the law concept, which was handed over to the Parliament. The demand of minority organisations to be able to form minority self-governments before the 1994 self-government elections was not fulfilled. They also could not take part in the creation of the national self-government by delegation which the representatives of the parties changed and voted for an indirect election through electors. Licences, duties and competences of the minority self-governments were softened as compared to the previous ones their opportunities for making decisions, expressing opinions and consent, delegate and to establish and maintain institutions narrowed. As for cultural autonomy conditional, non-obliging and non-enforceable rules or ones which referred to other laws and rules came into force.

### Major Issues of Minority Autonomy in Hungary

After nearly five years of preparatory works, the Parliament accepted the LXXVII Law 1993 concerning national and ethnic minorities' rights with a majority of 96.5% which was meant to represent the individual based cultural autonomy in minority self-governments by its concept. By choosing the model the decision-makers tried to adapt to the special Hungarian national-ethnic circumstances, mainly the relatively low number of minority populations who live sporadically throughout the country in sporadic settlements. The main focus of the system was to slow down, stop or if it is possible to reverse the process of advanced assimilation the losing of minority languages and ties. In this respect the balance seems to be more positive since in the latest census the number of those who claimed that they belong to a non-Hungarian nationality or ethnic group, increased – except for the Romanians – though mother tongue indicators showed lower measures.<sup>13</sup> The self-

<sup>12</sup> See Józsa, Fábán (Hungarian Democrats Forum). Minute of meeting of the Parliament's Human Rights Minority and Religious Affairs' Committee in the main storey hall of the Parliament on 4th February Thursday 1993 p. 41. It is interesting that later such modification proposals also arrived to alter the law concept which neglected the Hungarian minority characters, and according to which those minorities whose number exceed at least four hundred thousand in one region and form a majority can demand the right for national self-government or in case of two hundred thousand people living in one block can demand the right of regional autonomy in administration. See No: 9379 and 10650 modification proposals.

<sup>13</sup> Kozma, István: A magyarországi mikrokisebbségekről. In: Kovács, Nóra – Szarka, László (ed.): *Tér és terep. Tanulmányok az etnicitás és az identitás kérdésköréből II.* Budapest, Akadémiai Kiadó, 2003. p. 345. Szarka, László: A 2001. évi magyarországi népszámlálás nemzetiségi adatairól. In: Kovács – Szarka: *op. cit.* p. 414

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government system, the created rules, regulations and the changed minority policy attitude can – also – have a determining role in strengthening national identities. Number of the elected minority self-governments has been increasing: in the elections in 1994 and in the spare-turn in 1995 altogether 817, in 1998 in 2002 1842 were formed at the local level.<sup>14</sup> Besides the significant increase of the number of minority self-governments numerous problems in application of the law and in actual working processes emerged, which required legal and political solutions. As a consequence to these preparations of the general modification of the Minority Law started in 1997 – at that time the work was focus on improving the legal regulations further. Experiences of the 1999 and 2002-2003 national minority self-governmental election in the capital and at the local level drew attention on the stakeholders that the sphere of suffrage was also to be corrected.<sup>15</sup> The János Hargitai led ad hoc committee that was the competent body in the Parliament's human rights, minority and religious affairs committee, stood in the centre of duties in the 1998-2002 government's administration. Preparation of the law modification could accelerate only after the 2003 national and capital minority self-government elections due to which a year later in March 2004 a law concept was forwarded to the Parliament. But this time there was not only the wish to eliminate abuse and to improve laws, which concern minorities, but a constitutional cogency too, because of joining the European Union. It was not recorded precisely from the 1st of May 2004 who can exercise active and passive suffrage.<sup>16</sup> The Parliament's phase of the law concept resulted in major changes in the norm txt like it happened in case of the former Minority Law, and it was fairly delay because the accepted and introduced regulation could be finalised by autumn 2005.<sup>17</sup> In the letter we overview the major issues of cultural autonomy in the light of Minority Law and its modifications.

<sup>14</sup> Mayer, Éva (ed.): *Kisebbségek Magyarországon 2004-2005*. Budapest, Nemzeti és Etnikai Kisebbségi Hivatal, 2005. vol. 14. p. 179. compare to Demeter Zayzon, Mária (ed.): *Kisebbségek Magyarországon 1999*. Budapest, Nemzeti és Etnikai Kisebbségi Hivatal, 2000. pp. 44-45. Mayer, Éva (ed.): *Kisebbségek Magyarországon 2002-2003*. Budapest, Nemzeti és Etnikai Kisebbségi Hivatal, 2004. pp. 32-33.

<sup>15</sup> Mayer, Éva. *Országgyűlés előtt a Kisebbségi Törvény és a nemzetiségi választások módosítása*. Interjú Heizer Anlallal, a Nemzeti és Etnikai Kisebbségi Hivatal elnökevel. *Barátság*, 15. April 2004. p. 4202. At the beginning of 1998 the government was prepared for the proper modifications of the Minority Law. See MEH issue concerning the law creation concept of the government in the 1st half of 1998. *Magyar Közlöny*, vol. 1998/8. 11. February 1998.

<sup>16</sup> See LXI Law of 2002 concerning the modification of §. 7 of the XX Law of 1949 about the Constitutional the Hungarian Republic

<sup>17</sup> CXIV Law of 2005 concerning the election of the minority self-government representatives and modification of certain laws concerning national and ethnic minorities.

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### 1. Personal Effect

During the course of preparing the Minority Law defining the sphere and individuals who are concerned, description of the minority population proved to be the most difficult for the stakeholders of the issue – as we could see it previously. In spite of minority efforts only Hungarian citizens were subjected to the law, and this has not changed either. Although the 2004 concept would have extended the personal effect on the citizens of other European Union countries and to individual who were recognised as refugees, immigrants or residents but the political compromise of the Parliament parties reconsidered and overwrote all this in spring 2005 and legislator returned to the sphere of Hungarian citizens. But several researches and census data flashed light on the facts; that migration processes are significant among the members of minorities, and the rate of people who had been born abroad, and the number of non-Hungarian citizens exceeds the national average.<sup>18</sup> This way the law does not adapt to the changed social reality and to the expectably strengthening effect of the migration processes, which are fostered by joining the EU.

Minority representatives rejected all forms of registration which were necessary to establish individual based autonomy, because of negative historical experience therefore the personal effect of the law together with other solutions (the definition of minorities<sup>19</sup> and listing minorities<sup>20</sup> and minority languages<sup>21</sup>) was not estimable concerning the volume. Further more part of the constitution, according to which minorities possess the write to create local and national self-government, could not be enforced – since there was no other solution the legislator had

18 The rate of members of foreign origin (who were born abroad) was 55% in case of the rusyn population, as for the Romanian and the Ukrainian it was almost 50% 42% was the rate among Polish and Bulgarian, 38% among the Serbs, 31% among the Armenian and 19.5% among the Greek minority in 2001. The number of members with foreign origin is represented at a far smaller rate though in a number that exceeds one thousand among the creation the Germans and the Slovakian. See Tóth, Ágnes – Vékás, János: Mit hoz a jövő? Kisebbségkutatás, vol. 2004/ 4. p. 543 Further more the rate of non-Hungarian citizens among those who declared to be of minority ethnic or by mother tongue exceeds 20% in case of the thirteen recognised minority. See Mayer: Kisebbségek Magyarországon 2004-2005, op. cit. p. 177.

19 “§ 1 (2) According to this law national and ethnic minority (...) is means all groups of people who have lived on the territory of the Hungarian Republic for at least a century and which is in minority by number among the population of Hungary, and the members of which are Hungarian citizens and distinct from the rest of the population by using its own language and culture, traditions and provides evidence of such coherence which focuses on expressing and protecting the interests of their communities which were formed in the course of history.”

20 “§ 61 (1) According to this law the following groups qualify as resident nationalities in Hungary: Bulgarian, Gipsy, Greek, Croatian, Polish, German, Armenian, Romanian, Rusyn, Serbian, Slovakian, Slovenian and Ukrainian.”

21 “§ 42 According to this law the following languages qualify as ones that are used by minorities: Bulgarian, Gipsy (Romany and Beá), Greek, Croatian, Polish, German, Armenian, Romanian, Rusyn, Serbian, Slovakian, Slovenian and Ukrainian.”

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to give priority to the liberty of choosing identity and the general suffrage between 1994 and 2004.<sup>22</sup> Decision makers thought that restricting both the active and the passive suffrage would hinder the abuse of the law in elections – the ethno-business – which had appeared and generated major political and professional discussions. Entering into the register concerns only the exercise of suffrage – committees, which would have been elected by the national self-government, would have been entitled to compile and handle in order to be calm the minorities.

The national self-government was obviously interested in being re-elected, therefore this solution projected the danger of marginalising whole wings of the excessively divided minority interest groups. Compromise of the parties return to the concept, which appeared in autumn 1991 during the course of law harmonisation, according to which the name-list of the minority electors would be handled by the local scrivener, in this case the head of the local election office (which mostly meant the scrivener) – but without being entitled to judge or make decisions concerning minority ties.

The most pivotal part in the issue of personal effect is the definition of minority and the required presence or residence for a century within that. Selection of the period seems to be incidental in the light of taxation of the resident ethnic groups.<sup>23</sup> Further questions are brought up by the list of languages and language use, which cannot include those Hungarian citizens, who are Hungarian by mother tongue, unfamiliar with the minority language but consider themselves belonging to the minority by their ethnic identity and cultural traditions. The category of Gipsy language is also problematic since no reference is made to the Hungarian mother tongue of the vast majority of the Gypsies.<sup>24</sup> The 2005 modification of the Minority Law did not change either the definition or the list of languages and minorities.

22 § 2 of the LXI Law of 1994 modification of the XX. Law of 1949 concerning the Constitution of the Hungarian Republic

23 Several groups (Italian, Wendish and Bunjevci) intended to achieve the extension of the sphere of national and ethnic minority, the thirteen items of which were recorded in May 1992 during the preparation of the law, unsuccessfully. In spring 2001 following the entrance of the law into force the certified Macedonian initiation (1/2001. (07. 05.) OVB decision) could not reach the parliamentary decision phase while the outstandingly arguable Hun minority attempt was rejected by the Parliament in the end of April 2005. Several, by outcome yet uncertain initiations have been made to achieve official status of ethnic minority – which were certified by the National Election Committee (OVB) – since autumn 2005: on behalf of the Jewish (38/2005. (20. 10.) OVB decision), the Russian (84/2006. (09. 03.) OVB decision) and the Bunjevtsy who had been viewed as Croatian (221/2006. (18. 04.) OVB decision). Jewish minority initiation generated a major public discussion concerning the forms of Jewish identity which are dominant and present in Hungary. In order to strengthen professionalism of the declaration of new minorities the 2005 modification of the Minority Law prescribed to gather the opinion of the President of the Hungarian Academy of Sciences.

24 Majtényi, Balázs: A magyarországi kisebbségi önkormányzati rendszer elvei és működése. *Fundamentum*, vol. 2001/ 3. p. 35-36.

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### 2. Formation of minority self-governments

The basic law, which declared minorities to be state forming factors, and the aim, which was described in the preamble of the Minority Law: cultural autonomy based on the principal of individuals resulted in the minority self-government system at the institutional-administrational level. § 68 (4) of the Constitution mentions two: local and national levels of the minority self-governments system. Three types were named concerning the local level in the Minority Law: minority settlemental, indirectly and directly formed local minority self-governments. The first two are forms which belong to the self-government of settlements, but while minority settlemental self-government proved to be regular in settlements, which are inhabited either by absolute or relative majority of minorities, the indirect structure remained mostly unapplied. Although the original 2004 law concept included and preserved the type which made local autonomy possible, the 2005 modification abolished both forms. The third and most widespread type could be formed by the initiation of electors with number of members that is in direct proportion of the population size (instead of depending on the local minority rates, which are hard to ascertain) of the settlement, with validity threshold level, which also depended on the settlements size generally, with the participation of all electors at the election of the self-government of the settlement. Electors, who were unfamiliar with the minority candidates and concepts and voted in vast numbers on the basis of sympathy, made a significant impact on the internal relations of minorities, which were augmented by the distortion effect of alphabetical preference. On the minority self-government election sheet the candidates were listed in alphabetical order, which was advantageous for the ones whose name were listed in the front.<sup>25</sup> The Minority Law restricted the electors' range of choice by declaring that indirectly formed local minority self-government can be formed only in case there had not been an indirect type formed from the representatives of the settlement's self-government. Though it included a detailed regulation of forming, no references were made to ways of termination of direct minority self-governments.<sup>26</sup> Appearing in the second self-government period, the ethno-business was a major and well-known problem, the phenomenon of abuse of the law to which the decision makers rejected with restricting suffrage with creating minority electors' list, but the majority of the

<sup>25</sup> Rátka, Árpád: A kisebbségi önkormányzatok legitimitációjának. Regio, vol. 2000/ 3. pp. 118-121.

<sup>26</sup> In case of disband, dismiss of the minority representatives' body or the reduction of the number of members below a minimum an 1999 modification (LXV. Law of 1999) created an opportunity to organise by-elections.

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minority communities did not agree with that.<sup>27</sup> Proposals of those who rejected the electoral name-list would have sharpened the opportunity to be elected, so the passive exercise of suffrage, which was executed by the 2005 modification which prescribed the obligation of statement for the candidates. Major constitutional concerns are raised by the fact that in the next elections candidates can be nominated exclusively by organisations and no independent candidates can take part. Furthermore it is still doubtful that the introduced registration of electors will succeed in stopping to pressure-forward of those who presumably do not belong to minorities.

Originally the Minority Law did not dispose an intermediate level of minority self-government though minorities made considerable efforts to achieve that. Though the law attested representing interests at the county level to the national self-government, but it could not be executed because of lacking a proper legal background. Links could be established only on organisations which included local minority self-governments. Besides representing minority interests at a regional level another argument was that minority self-governments could not really have influence on (mostly secondary) educational and cultural institutions which were maintained by the county. The lack of an intermediate level was remedied only in the capital were there was a major demand on behalf of the minorities which were organised at a Budapest not a district level, to have impact on decisions at the capital level. According to a 1994 modification, minority bodies were formed in the capital the same way as they were in the country by the intermediation of electors.<sup>28</sup> Establishing the institution of regional (county and capital level) minority self-government fulfilled an old demand of minorities and they will be elected indirectly by electoral votes in a proportional-listing system in March 2007.

Election of national minority self-governments has not been problem-free either in the past. The body was also formed indirectly, by electors: Assembly of the electors was competent to make decisions if at least three-quarters plus four-teen elected electors took part. Settling such high standards of presence as a prerequisite of decision-making competence prevented the forming of national self-government of the Romanian minority in 1999, which was the first minority to be involved in ethno-business in mass sizes. Therefore the cited law (LXV Law

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<sup>27</sup> Eiler, Ferenc. Törekvések a kisebbségi önkormányzati választások reformjára 1998-2004. In: Kovács, Nóra – Osvál, Anna – Szarka, László (ed.): Tér és Ierep. Tanulmányok az etnicitás és az identitás kérdésköréből III. Budapest, Akadémiai Kiadó, 2004. pp. 219-220.

<sup>28</sup> § 47 of LXIV Law of 1990 which is modified by the LXII. Law of 1994 concerning the election of local self-government representatives and mayors and see Bárony, János: A kisebbségi önkormányzatok létrehozásának lehetőségei Budapeszen. In: Egyed, Albert – Tokaji Nagy, Erzsébet (ed.): Kisebbségek és önkormányzat. Budapest, Minoritás Alapítvány, 1994. p. 113.

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of 1999) decreased the threshold level to the half of the representatives and provided opportunity to keep the assembly repeatedly.<sup>29</sup> The first attempt to elect the National Gypsy Self-government at the beginning of 2003 highlighted the particular inadequacy that the moment to ensure the ability to make decision is not yet settled so in which moment of the assembly do the members have to be present in sufficient number. The small-list election system, which was based on majority and not proportional rates and which was applied at the local level too, also proved to be a problematic component during the course of creating the national minority self-government, because it provided opportunity for rival civilian organisations of a divided minority to marginalise or displace one-another. To replace this latter one the 2005 modification introduced a combination of the proportional and listing system, which will hopefully facilitate the institutional discussion and representation of the different concepts within the minorities.

### 3. Competence and Duties of Minority Self-governments

The licences, duties and competence of the different levels of self-governments which the elected minority representatives can apply for the given communities good as trustees of autonomy, is a factor that should not be neglected especially from the aspect of creating the aimed minority cultural autonomy. Formally the Minority Law and the related regulations concern the self-governments but it is doubtful whether real self-governing comes to force in fact during the actual working in respect of regulating content issues. The general rules concerning local self-governments of LXV Law of 1990 is worth invoking according to which the self-governments proceed independently concerning local public issues which belong to their duties and competence. According to the laws, rules and regulations they can regulate independently and in certain unique cases govern the local general concerns: their decisions can only be overwritten in case of breaking law or rule by law-court or Constitutional Court. It's essential that the self-government can take upon voluntarily the solution, treatment of all general concerns which are not assigned to the competence of other organisation by any law or regulation; in this case the self-government can act in any possible way which does not break any legal norm. These characteristics of self-governments are not valid or are valid but to a limited extent in case of minority self-governments: several features of the created regulation follows the pattern of the self-government model, but as regards the content we cannot consider these to be real self-governments because of their

<sup>29</sup> Concerning the events. Demeter: op. cit. pp. 144-145. Petrusán, György – Martyn, Emília – Kozma, Mihály: A magyarországi románok. Budapest, Úlmutató, 1999. pp. 115-116. Riba, István: Minority self-governments in Hungary. The Hungarian Quarterly, vol. 155. (autumn 1999) pp. 83-84.

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system of duties and instruments.<sup>30</sup> Minority organisations' original ideas of strong legal autonomy regarding the legal status, duties and competences of minority self-governments undoubtedly became the victims of the struggles of interests and compromises of the law preparation. This situation was intended to be changed by the 2005 modification. Minority self-governments did not have obligatory duties to be fulfilled at a minimum level until that time, they could not take upon new duties and competences except for the case by the means of conveyance. Majority of the licences and competences of the local and national minority self-governments was weak and for considerable proportion of them the form of self-government was needless. The strongest licences of the local minority self-governments are mostly negative rights: acquiring the declared consent of the minority self-government within thirty days was a prerequisite to introduce a self-government decision which regards the education of those as well who belong to the minority, or to appoint leaders of minority institutions, to introduce regulations of the self-government of the settlement which concern local education, media, preservation of traditions and culture, collective language use (from 2005: press, preservation of traditions, culture, language use), and to regulations of the settlements' self-governments regarding the issues of preservation and maintenance of architectural memorials of "historical settlements". Within this thirty-day-long period the minority self-government has got a right to veto these decisions. Minority self-government cannot exercise its right to consent according to the law in case the given self-government decision was not made in ordinance form. Furthermore the exact content of the right to consent was also unclarified for a while. Vast majority of the minority self-governments' rights were described in its relation to the settlements' self-government so their opportunities and ability to enforce interests, as well as the future fate of the minority cultural autonomy strongly depended on the attitude, willingness to cooperate and opportunities, of the settlement's self-government. The ordinance according to which a local self-government can establish maintain or convey institutions especially in the spheres of local education, written and electric media, preservation of traditions and common culture independently within its own competence – by using the proper resources - aimed the creation of cultural autonomy, but it took years to refine the detailed regulation. The national self-government can also create institutions and can prescribe their organisational and functional structures and rules. These rights concern the establishment and maintenance of mostly educational, cultural institutions (theatre, museum exhibitions, and public collections with nation-wide sphere of collecting, library, artistic, scientific institute,

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<sup>30</sup> Pálné Kovács, Ilona: A kisebbségi önkormányzatok jogállása. In: Cselkó, Ferenc – Pálné Kovács, Ilona (ed.): Kisebbségi önkormányzatok Magyarországon. Budapest. Osiris – MTA Kisebbségkutató Műhely – MTA Regionális Kutatások Központja. 1999. p. 41. Walter, Tibor: Nemzet kisebbségi önkormányzatok Baranya megyében. Magyar Közigazgatás, vol. 2001/12. p. 744.

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and publisher, secondary and tertiary educational institutions with nation-wide sphere of competence). Besides its licence to participate and express opinion – correspondingly to the local minority self-governments - the strongest licence of the national minority self-government was to exercise the right to consent which it could apply when measures were created (later in the case of the execution measure of the Education Law too) concerning the curriculum of primary or secondary education, as well as the preservation or maintenance of the architectural memorials of the given minority's historical settlements – however the meaning of the term “historical settlement” was not clarified and there was no list of these either.

The significantly different status of the largest minority: the Gipsies in which they differ from the other national and ethnic minorities, requires further notice. According to the national average the excessively unbeneficial social and economic indicators bring up the question to what extent do the dominant needs and requirements of the Gipsies - who suffer disadvantageous discrimination and face major barriers when attempting to enforce their most essential human rights in many cases and are in the most disadvantageous position – harmonise with the aim of cultural autonomy which is described in the Minority Law. It remains unanswered, that how much are the efforts of a minority, which is dominantly interested in social and economic integration improve their standards of living and social standards to a significant extent, and in the elimination of marginalisation, can be served by the provided individual and collective minority rights and the created minority self-government system. Surveys highlighted that most Gipsy self-governments are under the necessity of dealing with social issues owing to the unfavourable social and economic status of the population, and of improving living standards as well as easing social problems, so it became a relevant political pursuit to establish autonomy in decision making regarding social issues which is outside the scope the Minority Law and the related regulation.<sup>31</sup>

Legal prerequisites of minority cultural autonomy have been provided to a certain extent – besides the above described decrease of the Minority Law – in Hungary since the regime change, which means that with the abolishment the educational monopoly organisation of private educational forms has been liberalised as well as to establish cultural or scientific institutions or to publish press products. Insignificant number of minority civil organisations and minority self-governments could establish and operate institutions which are essential for

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<sup>31</sup> See Kalla, Ernő: Helyi cigány kisebbségi önkormányzatok Magyarországon. Budapest, Gondolat - MTA Etnikai-nemzeti Kisebbségkutató Intézet, 2005. p. 124-125. Molnár, Emilia – Schaffit, Kai A.: A helyi roma/cigány kisebbségi önkormányzatok tevékenysége és cöljai Magyarországon 2000-2001-ben. Szociológiai Szemle, vol. 2003/1. p. 95-96.

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cultural autonomy (i.e.: Croatian Institute in Pécs, Croatian Theatre, Research Institute of Slovaks in Hungary in Békéscsaba). As regards to the educational institutions the situation changed in 2002 and 2003 when the Education Law's – and in latter case the Minority Law's – modifications intended to improve the conditions and rules of establishment maintenance and conveyance of institutions mostly in favour of the national minority self-governments including the issues of financing and the status of employees too.<sup>32</sup> Conditions of establishment maintenance and conveyance of minority cultural institutions was included in the 2005 modification of the Minority Law – besides the more precise settling of the duties and operation of minority self-governments. It is not a point to neglect that as a consequence to these legal changes the infrastructural and financial background of the minority self-governments' operation also improved. It is also to be noted, that besides other financial resources, the 2003 budget also supported the conveyance and maintenance of minority institutions.

### Summary

During the course of regime change in Hungary in order to preserve and improve minority identities and partially to remedy failures and mistakes of the past, it was necessary to establish a minority autonomy which could serve as a model both for the international participants and the neighbouring countries. But – as the 2005 modification's preamble puts it in a very self-criticising way – establishment the form of minority self-government was more important those days, than the actual operation and settlement of duties and competences, which are necessary to achieve autonomy. Although the latest modification of the Minority Law brings up numerous further question – basically regarding the sphere of elections -, and more time is needed to show its effects and assess the collected experience, but together with other legal changes undoubtedly it was an important leap towards the establishment effective cultural autonomy.

<sup>32</sup> Experiences show that law modifications did actually improve the conditions of institution conveyance. The National Self-government of Germans in Hungary conveyed the maintenance the Koch Valéria Nursery School, Primary and Secondary Grammar School in Pécs as well as the German National Secondary Grammar School in Pilisvörösvár in summer 2004. It was also in 2004 when the National Slovakian Self-government could enter into a conveyance agreement concerning the Slovakian Primary and Nursery School as well as the Student Home in Szarvas. The National Croatian representation of interests has already been operating the Hercegszántó Primary School. See Úton a kulturális autonómia felé. Intézmények – országos önkormányzatok lenntartásában. Barátság, 15th November 2004, pp. 4386-4388.