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## CULTURAL AUTONOMY FOR MINORITIES IN THE BALTIC STATES, UKRAINE, AND THE RUSSIAN FEDERATION: A DEAD LETTER

### Abstract:

*One of the direct results of the collapse of the former USSR was the emergence of centrifugal ethnic minority nationalisms, which posed a threat to the stability of the then newly-established (or restored in the case of the Baltic democracies) states. In this context, one of the mechanisms introduced by the leading elites in several countries (e.g. Latvia, Ukraine, Estonia, the Russian Federation) in order to address the minority diversity issue, ensure stability, and gain international support (in the case of the Baltic states) was a cultural autonomy scheme, which has its origins in the ideas of the late 19<sup>th</sup> century Austro-Marxist school of thought. This model was successfully implemented once in the past, in inter-war Estonia. However, its modern application, even in cases when it does not just remain on paper (such as in Latvia and Ukraine), seems to serve other motives (e.g. a restitutional framework in Estonia, control of the non-titular minority elites in Russia) rather than the satisfaction of minority cultural needs, thus making cultural autonomy a dead letter.*

**Keywords:** cultural autonomy, Estonia, Latvia, minority rights, Russian Federation, Ukraine

### INTRODUCTION: THE CULTURAL AUTONOMY IDEA

Following the demise of communism, a minority cultural autonomy scheme made its entrance into the national legal orders of several countries of post-communist central and southeastern Europe (e.g. Hungary, Slovenia, Croatia, Serbia) as well as of the former USSR (Latvia, Ukraine, Estonia, the Russian Federation), as a possible device for managing their ethnocultural diversity, satisfying some minority cultural needs, and neutralizing ethnic threats of destabilization.<sup>1</sup> In this context, two things must

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<sup>1</sup> D. J. Smith, *Non-Territorial Autonomy and Political Community in Contemporary Central and Eastern Europe*, 12 *Journal on Ethnopolitics and Minority Issues in Europe* 27 (2013), pp. 27-28, 31-32.

be made clear from the outset. Firstly, positive international law does not recognize a right to autonomy for minorities.<sup>2</sup> For example, the Council's of Europe Framework Convention for the Protection of National Minorities (FCNM), which constitutes the only legally binding multilateral instrument focused on minorities,<sup>3</sup> does not provide for the right of persons belonging to minorities to autonomy, whether territorial or non-territorial/cultural.<sup>4</sup> Still, its Advisory Committee (ACFC) examines the cultural autonomy provisions in those State-Parties which have introduced such regimes in their national legal orders on their own initiative. It offers insightful comments on them, using as a point of reference the national legislation and, where appropriate, norms of general international human and minority rights law (on the issues of citizenship, minority participation in the decision making process, etc.). Since all the examined countries are parties to the Convention and make references in their reports to their cultural autonomy provisions, the ACFC's opinions on them yield a valuable insight into their actual state of (non)implementation. Secondly, while a uniform interpretation and application of the notion of cultural autonomy is lacking, two main approaches to the theoretical understanding of the concept exist, which do not contradict each other and even partly overlap. The first one conceives cultural autonomy as a general principle, according to which an ethnic group enjoys (or should enjoy) a certain degree of freedom in handling its cultural affairs (through various forms of multiculturalism), while the second interprets it as a specific form of a self-governing ethnicity-based organization, where ethnic groups are organized "as vertically integrated corporations based on individual membership with elected governing bodies which bear certain public functions and authorities" and may be entitled to public resources.<sup>5</sup> The latter model, more elaborate and comprehensive, traces its origins to the late 19<sup>th</sup> century ideas of the eminent Austro-Marxist thinkers Karl Renner and Otto Bauer, who wanted to preserve both the unity of the multinational working class of the Habsburg Monarchy – which was being divided along ethnic lines – and the territorial integrity of the Empire, which was threatened by rival secessionist nationalisms. It was aimed at satisfying, on a non-territorial basis, the cultural aspirations of the different co-inhabiting nationalities by separating them from the state and from each other.<sup>6</sup> According to their proposal, each

<sup>2</sup> See Y. Dinstein, *Autonomy Regimes and International Law*, 56 Villanova Law Review 437 (2011), pp. 438-442; M. Weller, *Towards a General Comment on Self-Determination and Autonomy*, UN Doc. E/CN/Sub.2/AC.5/2005/WP.5, 25 May 2005, p. 16; M. N. Shaw, *Peoples, Territorialism and Boundaries*, 3 European Journal of International Law 478 (1997), pp. 488-489.

<sup>3</sup> A. Vacca, *A Comparative Approach Between the Council of Europe Treaties and the European Union Framework in the Legal Protection of Minority Languages*, 53 Revista de Llengua i Dret 111 (2010), p. 115.

<sup>4</sup> G. Frunda (Rapporteur), *An Additional Protocol to the European Convention on Human Rights on National Minorities*, Committee on Legal Affairs and Human Rights, AS/Jur(2011)46, 8 November 2011, para. 58.

<sup>5</sup> A. Osipov, *Non-Territorial Autonomy and International Law*, 13 International Community Law Review 393 (2011), p. 396.

<sup>6</sup> W. Kymlicka, *Renner and the Accommodation of Sub-State Nationalisms*, in: E. Nimni (ed.), *National-Cultural Autonomy and its Contemporary Critics*, Routledge [Taylor & Francis e-Library], London and New York: 2005, p. 117.

nationality could enjoy its distinct cultural identity in a de-nationalised territorial state, leaving the central government, structured according to power-sharing mechanisms, free to focus on more “nationally neutral” issues (economics, foreign policy etc.) of general concern to all citizens.<sup>7</sup> This plan would be materialized through the following steps. Firstly, each adult individual, regardless of his/her place of residence in the territory of the state, would have to declare his/her ethnic affiliation (the personality principle)<sup>8</sup> through opting exclusively for one nationality in special national registers.<sup>9</sup> The registers would then serve as a basis for the election of national councils, which would function as self-governing public law corporations with an entrenched legal personality and endowed with the authority to levy taxes on their members and take binding decisions over the cultural issues within their jurisdiction (educational matters, use of minority languages, preservation of cultural institutions etc.).<sup>10</sup> By thus allowing the nationalities to determine their cultural destiny, the suggestion was that the competition between the different ethnocultural groups would be ameliorated and the potential conflict between their interests and those of the State would be removed.<sup>11</sup> These ideas, however, were never wholly implemented in the Habsburg Empire,<sup>12</sup> since its collapse put an end to all such schemes. Interestingly though, they found their way into inter-war Estonia, which proved to be, for unique historical reasons, a fertile soil for them to flourish and be successfully put into practice through the 1925 Cultural Autonomy Law. Also surprisingly, they were revived in the post-Soviet era, forming the basis on one hand for relevant discussions among Russian intellectuals and politicians,<sup>13</sup> which led to the adoption of the 1996 Russian Federation’s Law on National and Cultural Autonomy, and on the other for the enactment of the 1993 Estonian Law on Cultural Autonomy, which as written is closely reminiscent of the 1925 law and thus embodies certain elements of the Austro-Marxists’ proposal.

<sup>7</sup> J.-M. Arraiza, *The Management of Linguistic Diversity Through Territorial and Non-Territorial Autonomy*, 8 *Europäische Journal für Minderheitenfragen* 7 (2015), p. 14.

<sup>8</sup> S. C. Roach, *Minority Rights and the Dialectics of the Nation: Otto Bauer’s Theory of the Nation and Its Contributions to Multicultural Theory and Globalization*, 6 *Human Rights Review* 91 (2004), p. 99.

<sup>9</sup> S. Barbieri, *Millet System and National-Cultural Autonomy: A Distance Dialogue*, Centre for Advanced Study (CAS) Working Paper Series 6, Sofia: 2014, p. 22.

<sup>10</sup> W. A. Kemp, *The Politics of Culture: The Limits of National Cultural Autonomy*, in: E. Nimni (ed.), *National-Cultural Autonomy and its Contemporary Critics*, Routledge [Taylor & Francis e-Library], London and New York: 2005, pp. 177-178.

<sup>11</sup> M. Wong, *Reclaiming Identity: Rethinking Non-Territorial Autonomy*, 12 *Journal on Ethnopolitics and Minority Issues in Europe* 56 (2013), p. 59.

<sup>12</sup> Only a few very limited forms of cultural autonomy arrangements took place, in Moravia, Bukovina and Galicia, see B. Kuzmany, *Habsburg Austria: Experiments in Non-Territorial Autonomy*, 15 *Ethnopolitics* 43 (2015), pp. 43-65.

<sup>13</sup> A. Osipov, *Official and Academic Discourse on Ethnicity and Nationalism in Post-Soviet Russia*, in: K. Cordell (ed.), *Ethnicity and Democratization in the New Europe*, Routledge [Taylor and Francis e-Library], London and New York: 2006, p. 175; B. Bowring, *Minorities’ Protection in Russia: Is There a ‘Communist Legacy?’*, in: K. Cordell, T. Aggarin, A. Osipov (eds.), *Institutional Legacies of Communism: Changes and Continuities in Minority Protection*, Routledge, London and New York: 2013, p. 54.

The present analysis is based on an examination of the relevant constitutional and ordinary national law provisions on cultural autonomy, respective state practices, and the subsequent opinions of the ACFC on them. Its aim is to show that the cultural autonomy regimes, where they really function to some degree and are not simply proclaimed on paper (as in the cases of Latvia and Ukraine), are not only weaker than the original Austro-Marxist model which supposedly inspired them, but also hardly work in practice because the main motive behind their introduction seems to be the pursuit of more or less hidden political interests rather than the satisfaction of minority cultural needs. This is not to say that the original cultural autonomy scheme is free of deficiencies, but nevertheless it could still offer some better protection to minorities if it were properly implemented, and it will be shown that this is what the ACFC implies in its opinions.

To this end a description of the successful inter-war Estonian model is first given in order to provide a clear picture of how a viable settlement could be structured. Next the flaws and inadequacies of today's regimes are explored. Finally, a better implementation policy is suggested through granting to the minority cultural councils/autonomies a clear public legal status and clear competencies, as well as decisive authority in their field and sustainable financial backing.

## 1. AN INTER-WAR MODEL CASE: THE ESTONIAN CULTURAL AUTONOMY LAW OF 5 FEBRUARY 1925

In the inter-war period, a “remarkable step”<sup>14</sup> on non-territorial cultural autonomy took place in Estonia where, according to the 1934 census, the population amounted to 1,126,413 inhabitants, of whom 992,520 were ethnic Estonians, thus constituting the dominant majority (88.1%), and the remaining part consisted mainly of five ethnic groups: Russians numbering 92,656 individuals (8.2%); Germans 16,346 (1.5%); Swedes 7,641 (0.7%); Latvians 5,435 (0.5%) and Jews 4,434 (0.4%).<sup>15</sup> In this ethnic panorama a unique in the world at the time combination of different yet interconnected factors created fertile soil for the ideas of Renner and Bauer to flourish. Firstly, the Estonians' political maturity, grew out of their own negative historical experiences of oppression during their subjection to Russian and German rule, as well as their knowledge of what it was like to be a small nation, which made them more tolerant towards ethnic differences; the small proportion of minorities within Estonia's entire population, which eased perceptions of them as a threat to national security; the removal of political (and to a certain degree economic) powers from the autonomy bodies, which made cultural autonomy sufficiently harmless from the standpoint of the majority; the persistence of the German minority in advancing the issue of cultural autonomy, coupled

<sup>14</sup> M. Mazower, *Minorities and the League of Nations in Interwar Europe*, 126 *Daedalus* 47 (1997), p. 54.

<sup>15</sup> K. Katus, A. Puur, L. Sakkeus, *Development of National Minorities – Estonian Republic up to 1944*, 1(51/46) *Trames – A Journal of the Humanities and Social Sciences* 221 (1997), pp. 223-224.

with the strong and systematic support of some influential Estonian politicians; the external pressures from the League of Nations and Germany; the government's need to ensure minorities' backing in the event of a communist social insurrection; and finally the improved relations between the ethnic Estonians and the German minority.<sup>16</sup> All these factors provided sufficient impetus for the introduction in the first stage of Article 21 in the 1920 Constitution [re-stated in Art. 20 of the 1937 Constitution], guaranteeing to members of national minorities the right to create autonomous institutions for furtherance of their own cultural interests, and the adoption in the second phase of the Law on Cultural Autonomy for National Minorities of 5 February 1925 (the Law).<sup>17</sup>

The Law enabled Estonian citizens of Russian, German, and Swedish ethnic origin, as well as citizens who belonged to other nationalities numbering at least 3000 persons (such as the Jewish community) to establish public law cultural corporations.<sup>18</sup> Its general framework was grounded on two basic premises of the Austro-Marxists' school of thought – that every citizen could freely determine his/her own ethnic identity and voluntarily register or not (the personality principle) in special minority lists in order to vote for a minority cultural council;<sup>19</sup> and that the correlative rights were conferred to those self-identified minority members irrespective of their place of residence (the non-territoriality principle).<sup>20</sup>

The first step in the establishment of a cultural self-government was the submission of a corresponding application by the minority representatives or associations to the Estonian Government. Attached to the application was a list of Estonian citizens belonging to the concerned minority, which was created according to the demographic data made available to the applying association. Any citizen over 18 years old had the right to request the enrollment of his/her name to the list, as well as for its deletion from it (the right of self-proclamation). If the number of the enlisted individuals was at least one half of the persons belonging to the applying nationality, according to the most recent census held, then elections could take place, which were considered valid if at least one half of the enlisted persons participated in them.<sup>21</sup> The Cultural Council established in such a fashion could then decide, by a two-thirds vote, to create a Cultural Self-Government.<sup>22</sup>

<sup>16</sup> For an excellent presentation of all these factors, see K. Alenius, *The Birth of Cultural Autonomy in Estonia: How, Why and for Whom?*, 38 *Journal of Baltic Studies* 445 (2007), pp. 446, 458.

<sup>17</sup> K. Aun, *The Cultural Autonomy of National Minorities in Estonia*, 1 *Yearbook of the Estonian Learned Society in America* 26 (1951-1953), pp. 29-30.

<sup>18</sup> S. A. Woods, *Ethnicity and Nationalism in Contemporary Estonia*, in: C. Williams, T. D. Sfikas (eds.), *Ethnicity and Nationalism in Russia, the CIS and the Baltic States*, Ashgate, Aldershot: 1999, p. 269.

<sup>19</sup> A. Kasekamp, *A History of the Baltic States*, Palgrave Macmillan: 2010, p. 118.

<sup>20</sup> C. K. Zoltani, F. Koszorus, *Group Rights Defuse Tensions*, 20 *The Fletcher Forum of World Affairs* (1996), p. 137.

<sup>21</sup> D. J. Smith, *The Revival of Cultural Autonomy in Certain Countries of Eastern Europe: Were Lessons Drawn from the Interwar Period?*, in: Venice Commission (ed.), *The Participation of Minorities in Public Life* (Science and Technique of Democracy No. 45, Council of Europe Publishing: 2011), pp. 90-91.

<sup>22</sup> D. J. Smith, *Retracing Estonia's Russians: Mikhail Kurchinskii and Interwar Autonomy*, 27 *Nationalities Papers* 455 (1999), pp. 456-457.

The Cultural Council, which sat in the capital and was composed of between 20 and 60 members, was the highest legislative body and was endowed with, *inter alia*, the power to issue by-laws and, within the sphere of the Cultural Self-Government's competences, to adopt a budget, impose taxes upon its members, elect the members of the Cultural Self-Government and supervise its activities. The Cultural Self-Government was the executive organ, consisting of at least three members empowered with a three-year mandate to represent the minority in dealings with the Estonian Government, with third parties, and in the courts.<sup>23</sup> The Law stated that the Cultural Self-Government was also responsible for:

(a) [the] organization, administration, and supervision of public and private schools in the mother tongue of the corresponding national minority; and (b) [f]urtherance of all other cultural aims of the corresponding national minority and administration of institutions and undertakings created for and serving the mentioned purposes.<sup>24</sup>

In this context the Cultural Self-Government set up and operated public and private educational institutions (up to the level of university), organized and administered other cultural institutions, such as theatres, libraries, museums *etc.*,<sup>25</sup> managed its properties, employed its personnel, passed by-laws, and imposed taxes upon its members. At the provincial level, the Cultural Self-Government was assisted in its work by cultural committees, which supervised and organized the cultural life of the minorities.<sup>26</sup>

Finally, regarding the most crucial issue of all, the funding of the Cultural Self-Government, it was provided that it would consist of (a) school costs paid by the state; (b) school costs paid by the local government (municipalities and cities); (c) state and local government support for implementing other cultural tasks; (d) fees collected from members of the minority, as specified by the cultural council, but confirmed by the Government of the Republic as proposed by the Ministries of Finance and Education; (e) gifts, collections, sales income and the like.<sup>27</sup>

Regarding the Law's beneficiaries, it should be noted that since it was based on the non-territorial principle its provisions were particularly important for groups with a dispersed settlement, such as the Germans, the Latvians, and the Jews, while groups with a compact settlement, such as the Russians and the Swedes, could satisfy their cultural needs through the elected district councils, as the Estonian legislation gave the

<sup>23</sup> A. Eide, in co-operation with V. Greni, M. Lundberg, *Cultural Autonomy: Concept, Content, History and Role in the World Order*, in: M. Suksi (ed.), *Autonomy: Applications and Implications*, Kluwer Law International, The Hague / London / Boston: 1998, p. 254.

<sup>24</sup> H. C. E. Zacharias, *State and Community in Estonia*, XI *Servant of India* (1928), p. 329.

<sup>25</sup> T. Parming, *The Jewish Community and Inter-Ethnic Relations in Estonia, 1918-1940*, 10 *Journal of Baltic Studies* 241 (1979), p. 246.

<sup>26</sup> M. Housden, *Cultural Autonomy in Estonia: One of History's "Curiosities?"*, in: D. J. Smith (ed.), *The Baltic States and Their Region – New Europe or Old?*, Rodopi, Amsterdam / New York: 2005, p. 233.

<sup>27</sup> Á. Németh, Á. Léphaft, *Ethnic Structure and Minority Rights in the Interwar and Post-Soviet Estonia and Latvia*, p. 2, available at: [http://kv.sapientia.ro/data/miremir\\_pres/nemeth\\_lephaft.pdf](http://kv.sapientia.ro/data/miremir_pres/nemeth_lephaft.pdf), (accessed 30 May 2017).

opportunity to national minorities which constituted a majority at the community level to manage their educational and other social issues through local government administrations.<sup>28</sup> Thus, of the three most significant minorities at the time in Estonia, the Russians and the Swedes, who were explicitly (along with the Germans) mentioned as the potential beneficiaries of the Law, did not seek to set up cultural councils, “mainly because they were geographically concentrated and could therefore use local self-government institutions”<sup>29</sup> to protect and promote their cultural rights. The Germans (1925) and the Jews (1926), who were both, with the exception of the urban centres of Tallinn and Tartu, widely scattered over the country and intermingled with the ethnic Estonian majority and thus were not able to use the local (territorial) self-government institutions, took advantage of the Law and established cultural councils.<sup>30</sup>

Despite the fact that the cultural autonomy bodies did not enjoy actual political decision-making powers and their financial resources were relatively weak,<sup>31</sup> they seemed to function quite satisfactorily.<sup>32</sup> For example, it is argued that the German Cultural Self-Government operated very efficiently, uniting the minority under one public law organization with a scope of competence equal to that of the organs of a local government.<sup>33</sup> This success caused other minorities in Europe which aspired to the status of cultural autonomy to look with interest at the Estonian Law.<sup>34</sup> It was indeed proposed as a model in connection with the aim of constitutional restoration in Poland.<sup>35</sup> The Estonian Law was cited in the world literature “as an example and a model of the most far-reaching and liberal solution [limited though to small and scattered minorities] of the nationality problem”<sup>36</sup> and “as the most successful application of the Habsburgian

<sup>28</sup> Under the Estonian Constitution of 1920 in areas where minority members constituted more than 50% of the population, the relevant minority language could serve as a second administrative language. Furthermore, according to the Law on Education, in districts where thirty or more minority pupils existed, the local authorities had to provide teaching in the relevant minority language. See D. J. Smith, *Non-Territorial Cultural Autonomy as a Baltic Contribution to Europe Between the Wars*, in: D. J. Smith (ed.), *The Baltic States and Their Region – New Europe or Old?*, Rodopi, Amsterdam / New York: 2005, pp. 212, 224.

<sup>29</sup> A. Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, Yale University Press, New York: 1984, pp. 183-184.

<sup>30</sup> J. Coakley, *National Minorities and the Government of Divided Societies: A Comparative Analysis of Some European Evidence*, 18 *European Journal of Political Research* 437 (1990), p. 445.

<sup>31</sup> Alenius, *supra* note 16, p. 445.

<sup>32</sup> See D. J. Smith, *Estonia: A Model for Inter-War Europe?*, 15 *Ethnopolitics* 89 (2016), pp. 89-104.

<sup>33</sup> P. Lossowski, *National Minorities in the Baltic States 1919-1940*, 25 *Acta Poloniae Historica* 87 (1972), p. 96.

<sup>34</sup> V. Ciobanu, *The Relations Between Transylvanian Saxons and Baltic Germans During the 1920s*, 1 *Revista Română pentru Studii Baltice și Nordice* 87 (2009), p. 93.

<sup>35</sup> N. Messerschmidt, *Minority Policy and Sociology in German and Polish Democracy in the Interwar Period*, 39 *Rocznik Lubuski* 53 (2013), p. 60.

<sup>36</sup> Lossowski, *supra* note 33, p. 96; As Eide et al. also note, the Estonian Law “was hailed in the international literature as a particularly elaborate and constructive example of cultural autonomy”, *supra* note 23, p. 253; Alenius characterized it as “an exceptionally friendly gesture toward national minorities when compared with other countries in the period between the world wars”, *supra* note 16, p. 445; Katus et al. note that Estonia became the first government to receive, for its minority policy, a certificate from

concept of cultural autonomy.”<sup>37</sup> Renner himself called it “the most perfect attempt at instituting a constitutional self-government for nationalities in a multinational state.”<sup>38</sup> However, the Soviet invasion and occupation of Estonia in 1940 signaled the end of its existence.<sup>39</sup> After that, and during the Cold War period, minority rights were considered more or less a “taboo” topic,<sup>40</sup> not to be touched upon. It took several decades then before cultural autonomy schemes, alone or in combination with some form of territorial arrangement, reappeared in the legislation of several ex-communist states of the former USSR, with promising expectations but disappointing results.

## 2. MODERN ATTEMPTS AT CULTURAL AUTONOMY

### 2.1. Latvia

Latvia was the first state at the end of the Cold War to incorporate – even before the restitution of its sovereignty – the notion of cultural autonomy in its national legislation.<sup>41</sup> Specifically, the Law On the Unrestricted Development and Right to Cultural Autonomy of Latvia’s Nationalities and Ethnic Groups of 19 March 1991 proclaimed that it was “adopted to guarantee to all nationalities and ethnic groups in the Republic of Latvia the rights to cultural autonomy and self-administration of their culture.”<sup>42</sup> This statement corresponded partly to the need on the part of Latvia to present a highly sensitive democratic and multicultural profile to the international community in order to gain its recognition and acceptance, and partly to the need to address the rich multi-ethnic composition of the country’s population. According to the recent statistical data of 2012 the population of Latvia is estimated to consist of 2,217,053 inhabitants, of whom 1,319,552 (59.5%) are ethnic Latvians, 603,125 (27.2%) Russians, 77,423 (3.5%) Belo-

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the World Organization of Jews noting the honorary record of Estonia in the Golden Book of the Jewish National Fund, *supra* note 15, p. 240.

<sup>37</sup> J. Hackmann, *Werner Hasselblatt on Cultural Autonomy: A Forgotten Manuscript*, in: M. Housden, D. J. Smith (eds.), *Forgotten Pages in Baltic History – Diversity and Inclusion*, Rodopi, Amsterdam / New York: 2011, p. 147.

<sup>38</sup> As quoted in A. Lijphart, *Consociation and Federation: Conceptual and Empirical Links*, 12 Canadian Journal of Political Science 499 (1979), p. 508.

<sup>39</sup> A. Verschik, *On the Lexicon of Estonian Yiddish*, 85 Studia Orientalia 55 (1999), p. 56.

<sup>40</sup> H.-J. Heintze, *The Significance of the Thematic Recommendations of the OSCE High Commissioner on National Minorities*, in: IFSH (ed.), *OSCE Yearbook 2012*, Nomos Verlag, Baden-Baden: 2013, p. 249.

<sup>41</sup> Latvia was historically familiar with the notion of cultural autonomy, as it had adopted a [more limited than the Estonian one] non-territorial cultural autonomy arrangement on minority education during the interwar period, more precisely from the date of its independence in 1918 until the coup of 1934, when minority rights were curtailed, *see* M. Germane, *The Fifth Element - Expanding the Quadratic Nexus?*, 24 *Ethnopolitics* 1 (2013), p. 6.

<sup>42</sup> Second Report submitted by Latvia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/II(2012)002, Strasbourg, 3 September 2012, para. 68. The law is available in English at: <http://www.humanrights.lv/doc/latlik/ethnic.htm> (accessed 30 May 2017).



russians, 54,041 (2.4%) Ukrainians, 50,498 (2.3%) Poles, 28,946 (1.3%) Lithuanians, 9,418 (0.4%) Jews and 8,482 (0.4%) Roma.<sup>43</sup> The country's ethnological map also includes even smaller ethnic groups, such as the Germans (3,042) and Estonians (2,007), each constituting 0.1% of the total population according to the 2011 census.<sup>44</sup>

The Law guarantees, *inter alia*, to permanent residents – and not just to citizens<sup>45</sup> as it is the case in the Ukraine, Estonia and the Russian Federation – the rights to establish their own national societies, associations and organizations (Article 5),<sup>46</sup> to observe their own national traditions, and to use their traditional symbols and commemorate their national holidays (Article 8). Furthermore, government institutions should promote the creation of material conditions for the development of the education, language and culture of the nationalities and ethnic groups within the country's territory (Article 10),<sup>47</sup> while national societies, associations and organizations have the right to use government mass media resources and distribute national periodicals and literature (Article 13).<sup>48</sup> With respect to the right to ethnic self-identification, the Law states in its second article that each 16 year-old citizen or person who has neither Latvian nor another state's citizenship and who is a permanent resident of the country has the right to establish or to restore ethnicity records in personal documents, according to his or her national consciousness and ethnic origin, and according to the procedure set out in the Law. At the same time however, the Law has been criticized for being merely a general declaration which lacks clarity and provides no mechanisms for its implementation.<sup>49</sup> In this context the ACFC has pointed out, in its opinion of 9 October 2008, that “according to most of its interlocutors, the 1991 law is outdated and has proved ineffective.”<sup>50</sup> This observation justifies the position of scholars that the 1991 Law “is inadequate for present demands and therefore it is necessary to adopt a new law and regulations on its implementation.”<sup>51</sup>

<sup>43</sup> A. Dimitrovs, *Equality Law in Latvia: Current Trends and Challenges*, 9 *The Equal Rights Review* 11 (2012), p. 15.

<sup>44</sup> See Statistical Office of Estonia, Central Statistical Bureau of Latvia and Statistics Lithuania, *2011 Population and Housing Censuses in Estonia, Latvia and Lithuania*, 2015, p. 24, available at: [http://www.csb.gov.lv/sites/default/files/2011\\_population\\_and\\_housing\\_censuses\\_in\\_estonia\\_latvia\\_and\\_lithuania.pdf](http://www.csb.gov.lv/sites/default/files/2011_population_and_housing_censuses_in_estonia_latvia_and_lithuania.pdf) (accessed 30 May 2017).

<sup>45</sup> H.-J. Uibopuu, *The Baltic States and its Minorities*, XL *Annuaire Europeen / European Yearbook* (1992), p. 50.

<sup>46</sup> Report submitted by Latvia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR (2006)001, Strasbourg, 11 October 2006, para. 23.

<sup>47</sup> B. Cilevičs, *Language Legislation in the Baltic States*, in: M. Koenig, P. de Guchteneire (eds.), *Democracy and Human Rights in Multicultural Societies*, UNESCO & Ashgate Publishing Limited: 2007, p. 170.

<sup>48</sup> Third Periodic Report of States Parties due in 1997: Addendum; Latvia, UN Doc. CERD/C/309/Add.1, 25 March 1999, para. 76.

<sup>49</sup> A. Osipov, *Non-Territorial Autonomy During and After Communism: In the Wrong or Right Place?*, 12 *Journal on Ethnopolitics and Minority Issues in Europe* 7 (2013), p. 12.

<sup>50</sup> ACFC, *Opinion on Latvia*, adopted on 9 October 2008, ACFC/OP/I (2008)002, Strasbourg, 30 March 2011, para. 55.

<sup>51</sup> A. Jansons, *Ethnopolitics in Latvia: Ethnopolitical Activities of State Institutions and Non-governmental Organizations and Their Influence on the Social Integration Process*, *Ethnicity Studies* 124 (2003), p. 127, available at: [http://ces.lt/en/wp-content/uploads/2012/03/EtSt\\_Jansons\\_2003.pdf](http://ces.lt/en/wp-content/uploads/2012/03/EtSt_Jansons_2003.pdf) (accessed 30 May 2017).

## 2.2. Ukraine

Following Latvia, on 25 June 1992 the Ukraine adopted its Law on National Minorities (Law No. 2494-2),<sup>52</sup> which also refers explicitly in Article 6 to the notion of cultural autonomy in part for similar reasons as the Latvian Law, i.e. to present its democratic credentials and at the same time address the country's cultural diversity, as Ukraine too is a multiethnic state. Specifically, according to the 2001 census the population of Ukraine amounted to 48.2 million inhabitants, of whom the main ethnic groups are: Ukrainians 37,541,700 (77.8%), Russians 8,334,100 (17.3%), Belarusians 275,800 (0.6%), Moldovans 258,600 (0.5%), Crimean Tatars 248,200 (0.5%), Bulgarians 204,600 (0.4%), Hungarians 156,600 (0.3%), Romanians 151,000 (0.3%), Poles 144,100 (0.3%) and Jews 103,600 (0.2%).<sup>53</sup> In this polyethnic context, Article 6 stipulates that “[t]he state guarantees to all national minorities [who according to Article 3 must be citizens of the state] the rights to national-cultural autonomy.”<sup>54</sup> This includes the rights

to communicate and study in one's native language or to study one's native language in state and communal educational institutions or within national cultural associations, to develop national and cultural traditions, to use national symbols, to celebrate national holidays, to confess one's own religion, to enjoy the needs in scientific, artistic and other works, mass-media, to create national cultural and educational institutions, and to carry out any other activities that do not contradict the legislation.<sup>55</sup>

As some scholars have pointed out, although the provisions on “national-cultural autonomy” were encouraging, the law did not contain a definition of such national cultural autonomy,<sup>56</sup> nor the procedures and conditions to secure its existence.<sup>57</sup> The ACFC on its part initially commented on the law's norms in its first opinion of 1 March 2002, stating that it is formulated in an extremely general fashion and that “the content and reach of this concept [of cultural autonomy] would merit being defined and developed in more detail.”<sup>58</sup> The Committee came back, in its second opinion of 30 May 2008,

<sup>52</sup> The text is available in English at: [http://www.minelres.lv/NationalLegislation/Ukraine/Ukraine\\_Minorities\\_English.htm](http://www.minelres.lv/NationalLegislation/Ukraine/Ukraine_Minorities_English.htm) (accessed 30 May 2017).

<sup>53</sup> M. Toth, *Hungarian National Minority of Ukraine: Legal and Practical Aspects of Realization of Minority Rights*, 1 Acta Universitatis Sapientiae Legal Studies 143 (2012), p. 144.

<sup>54</sup> Report submitted by Ukraine pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, received on 2 November 1999, ACFC/SR (1999)014, 2 November 1999, p. 13.

<sup>55</sup> Second Report submitted by Ukraine pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/II (2006)003, Strasbourg, 8 June 2006, p. 11.

<sup>56</sup> B. Bowring, *Language Policy in Ukraine. International Standards and Obligations, and Ukrainian Law and Legislation*, in: J. Besters-Dilger (ed.), *Language Policy and the Language Situation in Ukraine – Analysis and Recommendations*, Peter Lang, Frankfurt: 2009, p. 85.

<sup>57</sup> M. Antonovych, *The Rights of National Minorities in Ukraine: An Introduction*, in P. Cumber, S. Wheatley (eds.), *Minority Rights in the 'New Europe'*, Martinus Nijhoff Publishers, The Hague: 1999, p. 253.

<sup>58</sup> ACFC, *Opinion on Ukraine*, ACFC/C/INF/OP/I (2002)010, Strasbourg, 1 March 2002, para. 32.

and noted that “there has been no progress concerning the further development of the notion of cultural autonomy for national minorities (...) [t]herefore a more coherent and ambitious framework to support minority cultural initiatives remains to be developed.”<sup>59</sup> Thus Osipov’s assertion that references to ‘cultural autonomy’ in Latvia and Ukraine “bear no direct meaning in practice”<sup>60</sup> seems quite justified.

### 2.3. Estonia

The next country to adopt legislation on minority cultural autonomy was Estonia. Being in a state of euphoria about the restitution of sovereignty in this reborn Baltic country, respect for minority rights was seen as an inseparable part of the whole transition process to democracy. In this context, Article 50 of the new 1992 Constitution granted to national minorities “the right, in the interests of national culture, to establish self-governing agencies under the conditions and pursuant to the procedure provided by the National Minority Cultural Autonomy Act.”<sup>61</sup> In order to realize this constitutional guarantee, the National Minorities Cultural Autonomy Act was enacted on 26 October 1993.<sup>62</sup> Since the Act was written in a way to make it closely reminiscent of the highly-appraised 1925 Law,<sup>63</sup> its adoption was met with positive comments, if not enthusiasm, by several scholars and European officials, as a promising device for dealing with minority issues in Central and Eastern Europe.

Article 2.1 of the 1993 Act defines the notion of cultural autonomy as “the right of persons belonging to a national minority to establish cultural autonomy bodies in order to perform culture-related rights granted to them by the Constitution.”<sup>64</sup> More generally, the Estonian government has also described cultural autonomy as “an additional opportunity for cultural self-determination.”<sup>65</sup> According to Article 1, the national minorities entitled to the aforementioned right are:

*citizens* [emphasis added] of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis

<sup>59</sup> ACFC, *Second Opinion on Ukraine*, adopted on 30 May 2008, ACFC/OP/II (2008)004, Strasbourg, 30 March 2011, paras. 19, 88, 91.

<sup>60</sup> Osipov, *supra* note 49, p. 14.

<sup>61</sup> Initial Reports submitted by States Parties under Articles 16 and 17 of the Covenant-Addendum: Estonia, UN Doc. E/1990/5/Add. 51, 2 October 2001, para. 755; Fifth Periodic Reports of States Parties due in 2000: Addendum: Estonia, UN Doc. CERD/C/373/Add.2, 30 May 2002, para. 379.

<sup>62</sup> Almost all the articles of the Law are reproduced in the first Report of Estonia to the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights (ICCPR), *see* Consideration of Reports submitted by States Parties under Article 40 of the Covenant-Initial Reports of States Parties due in 1993: Addendum: Estonia, UN Doc. CCPR/C/81/Add.5, 7 October 1994, paras. 237-239.

<sup>63</sup> Fourth Periodic Report of States Parties due in 1998: Addendum: Estonia, UN Doc. CERD/C/329/Add.2, 5 July 1999, para. 66.

<sup>64</sup> M. Suksi, *Non-Territorial Autonomy: The Meaning of (Non-)Territoriality*, in: T. H. Malloy, F. Palermo (eds.), *Minority Accommodation Through Territorial and Non-Territorial Autonomy*, Oxford University Press, Oxford: 2015, p. 93.

<sup>65</sup> Fourth Report submitted by Estonia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/IV(2014)008, Strasbourg, 2 May 2014, p. 10.

of their ethnic, cultural, religious or linguistic characteristics; and are motivated by a concern to preserve together their cultural traditions, their religion or their language which constitute the basis of their common identity.<sup>66</sup>

The second paragraph of the same Article indeed names – similarly as in the 1925 Law – as beneficiaries of the right the “historical” minorities, i.e. the Germans, Russians, Swedes and Jews<sup>67</sup> (who were not explicitly mentioned in the 1925 Law), as well as any other national minority numbering over 3,000 persons.<sup>68</sup>

In order for cultural autonomy to be established, the first procedural precondition is the preparation of a minority nationality list – as was also required in the 1925 Law – by the minority cultural associations (Article 7) based on individual applications (Article 8.3) containing an expression of individual self-proclamation (right to self-identification). These nationality lists form the basis for the polling lists (Article 15) of minority members eligible to vote in direct and uniform elections by secret voting (Article 12) for the election of a Cultural Council, which is the directing body of the cultural autonomy (Article 11.1). Elections are considered valid if over half of the minority members entered in the polling lists participated therein (Article 19). Following such elections, the elected Council determines, by majority vote, *inter alia* the procedure for the formation and authority of the town/local cultural councils, which in turn can establish, according to Article 11.2, the formation, rights and obligations of the cultural self-administration bodies and the rules of procedure of the directing organs of the cultural autonomy bodies (Article 22).<sup>69</sup>

With respect to the main objectives of such cultural autonomy bodies, Article 5 provides that these include, *inter alia*, the organization of studies in the mother tongue and supervision of the use of assets prescribed for that purpose, the right to set up foundations and grant awards for the promotion of minority culture and education, and organize cultural events and establish institutions of cultural administration.<sup>70</sup> The latter, as Article 24 clarifies, include educational institutions where studies are conducted in the

<sup>66</sup> R. Sannik, *Estonia: Integration of Stateless Individuals and Third-Country Residents*, in: V. Novotný (ed.), *Opening the Door? Immigration and Integration in the European Union* (3<sup>rd</sup> ed.), Centre for European Studies, Brussels: 2012, p. 120.

<sup>67</sup> Report of the Special Rapporteur on Contemporary Reforms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diène, Addendum: Estonia, UN Doc. A/HRC/7/19/Add.2, 17 March 2008, para. 34.

<sup>68</sup> A. Aidarov, W. Drechsler, *Estonian Russification of Non-Russian Ethnic Minorities in Estonia? A Policy Analysis*, 17(67/62) *Trames – A Journal of the Humanities and Social Sciences* 103 (2013), p. 113; Tenth and Eleven Reports Periodic Reports of States Parties due in 2012: Estonia, UN Doc. CERD/C/EST/10-11, 23 May 2013, para. 254.

<sup>69</sup> See D. J. Smith, *National - Cultural Autonomy in Contemporary Estonia*, in: L. Salat, S. Constantin, A. Osipov, I. G. Székely (eds.), *Autonomy Arrangements Around the World: A Collection of Well and Lesser Known Cases*, Cluj-Napoca: 2014, p. 309.

<sup>70</sup> A. Semjonov, *A Combined Approach to Autonomy: Estonian Experience*, in: Z. A. Skurbaty (ed.) *Beyond a One-Dimensional State: An Emerging Right to Autonomy?*, Martinus Nijhoff Publishers, Leiden / Boston: 2005, p. 422.

national (minority) language, enterprises and publishing houses of national (minority) culture, and social welfare institutions. One cannot but notice that while the Act refers to educational institutions, it does not cover such issues as organization, administration and supervision of public and private schools in the mother tongue in detail, as the 1925 Law did.<sup>71</sup>

Finally, considering the crucial issue of funding resources, Article 27 states that these will come from a) allocations from the state budget according to the law; b) the local self-government budgets; c) cultural self-administration contributions; d) membership support and donations; and e) support from foreign organizations.<sup>72</sup> In all cases supervision over the assets is exercised by state bodies (Art. 27, para. 2), which means that the State retains the ultimate control over the cultural autonomy bodies' allocation of assets.

So far, minorities have taken very little advantage of the opportunities offered by the law. Only two cultural autonomy bodies have been established by two very small minorities, the Ingrian Finns (2004) and the Swedes (2007).<sup>73</sup> To some extent this can be explained by the fact that the "Rules for the Election of the Cultural Council of a National Minority" were adopted in May 2003, i.e. ten years after the Act's enactment(!).<sup>74</sup> Another serious flaw related to the non-implementation of the Law is its restrictive definition of the term "national minority", which excludes non-citizens,<sup>75</sup> the majority of whom are ethnic Russians. With respect to the Russian minority, which constitutes the bulk of the country's minority population, one should note that its stance towards the Act is by no means uniform.<sup>76</sup> Indeed some of its leaders, as well as several Russian intellectuals, have voiced strong objections to using the Law because cultural autonomy is not built on the territorial principle, thus it is not viewed as relevant to the needs of the territorially-compact Russian-speaking population of the northeast. Also, they reject the "dual taxation" inherent in the cultural autonomy arrangement, and they argue that as taxpayers Russians should have automatic access to state-funded education in the Russian language.<sup>77</sup> On the other hand there also exists

<sup>71</sup> V. Poleshchuk, *Russian National Cultural Autonomy in Estonia*, in: T. H. Malloy, A. Osipov, B. Vizi (eds.), *Managing Diversity Through Non-Territorial Autonomy – Assessing Advantages, Deficiencies and Risks*, Oxford University Press, Oxford: 2015, p. 240.

<sup>72</sup> UN Doc. CCPR/C/81.Add.5, *supra* note 62, p. 40, para. 239 (k).

<sup>73</sup> Eighth and Ninth Periodic Reports due in 2008: Estonia, CERD/C/EST/8-9, 3 November 2009, para. 321.

<sup>74</sup> B. Dobos, *The Role of Elections in Minority Contexts: The Hungarian Case*, in: E. Nimmi, A. Osipov, D. J. Smith (eds.), *The Challenge of Non-Territorial Autonomy: Theory and Practice*, Peter Lang, Berlin: 2013, p. 166.

<sup>75</sup> European Commission for Democracy Through Law (Venice Commission), *Report on Non-Citizens and Minority Rights*, Study No 294/2004, CDL-AD(2007)001, 18 January 2007, para. 43.

<sup>76</sup> J. Šalciūtė, *The Impact of EU Conditionality on the Civil Rights of National Minorities in the Baltic States*, Master Thesis in International and European Relations, Linköping University, 2014, p. 34, available at: <https://www.iei.liu.se/stat/utbildning-grundniva/uppsatser/april-2014-master/1.555605/Masterthesis.J.Salciute.2014-1.pdf> (accessed 30 May 2017).

<sup>77</sup> D. J. Smith, *Minority Rights, Multiculturalism and EU Enlargement: The Case of Estonia*, 1 Journal on Ethnopolitics and Minority Issues in Europe 1 (2003), pp. 32-33.

a faction of the Russian minority which has taken a more positive stance by applying in 2006 for the establishment of a cultural autonomy body. However, as the Estonia government itself has stated in its third Report to the ACFC:

[t]he Ministry of Culture denied [on 26 February 2009] the application on the recommendation of the major Russian cultural organizations in Estonia and of the commission established to process the applications, for the reason that this particular organization did not represent the Russian community and did not have the support of the other Russian societies.<sup>78</sup>

Subsequent applications made by other ethnic Russian associations in 2009 and 2011 met the same fate.<sup>79</sup>

As a natural consequence of the aforementioned situation, the initial euphoria in the 1990s caused by the adoption of the Act began to gradually subside, while at the same time several elements of the Act came under heavy attack. Firstly, it was observed that the citizenship criterion contained in the Act's definition of the notion of "national minority" – in combination with the stipulation of Article 6 providing that while foreigners residing in Estonia may participate in the activities of minorities' cultural and educational institutions, they cannot vote or be elected or appointed to leadership positions in the institutions of cultural self-government<sup>80</sup> – excludes non-citizens, which constituted a considerable part of the ethnic Russian population in the 1990s (and still constitutes a significant part), thus excluding them from the leading positions of the cultural autonomy bodies.<sup>81</sup> Secondly, it was pointed out that the numerical threshold of 3,000 registered persons means in practice that only the Ukrainians, Belorussians, Finns and Tatars, besides the minorities stated in the Law, have a chance to qualify for this right if they can register 3,000 Estonian citizens from amongst their ranks.<sup>82</sup> Thirdly, emphasis has been put on the fact that the cultural councils are not granted a clear legal status, and certainly not that of a public administration body, and are thus unable to carry out their functions as stated by the law.<sup>83</sup> It should be noted that even the Es-

<sup>78</sup> Third Report submitted by Estonia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2010)006, Strasbourg, 13 April 2010, p. 8.

<sup>79</sup> See M. Lagerspetz, *Cultural Autonomy of National Minorities in Estonia: The Erosion of a Promise*, 45 *Journal of Baltic Studies* 457 (2014), pp. 467-468.

<sup>80</sup> K. Shoraka, *Human Rights and Minority Rights in the European Union*, Routledge, London and New York: 2010, p. 176.

<sup>81</sup> A. Verstichel, *Elaborating a Catalogue of Best Practices of Effective Participation of National Minorities: Review of the Opinions of the Advisory Committee Regarding Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities*, 2 *European Yearbook of Minority Issues* 156 (2002/2003), p. 181.

<sup>82</sup> P. Järve, *Re-Independent Estonia*, in S. Smooha, P. Järve (eds.) *The Fate of Ethnic Democracy in Post-Communist Europe*, Local Government and Public Service Reform Initiative – Open Society Institute: 2005, p. 72.

<sup>83</sup> Lagerspetz, *supra* note 79, pp. 458, 470; Osipov, *supra* note 49, p. 11, who observes that the cultural councils are not deemed legal persons and as such they cannot establish other institutions, hold property, and have no guarantees of public funding.

tonian government itself has confessed that “the current Act does not clearly stipulate that cultural autonomy bodies constitute a legal person”, acknowledging that “[t]his is a significant obstacle for the already established cultural councils of national minorities (Ingrian-Finnish, Swedish) in implementing the objectives of the Act.”<sup>84</sup> Fourthly, the Law gives no actual guarantees of financial support from the government.<sup>85</sup> In contrast to the interwar period, where complete funding of elementary education in the minority language was guaranteed through stable state subsidies, current funding is dependent on *ad hoc* decisions of the state administration following explicit requests.<sup>86</sup> This deficiency has led scholars like Semjonov to claim that “the law by no means affords any opportunity for *self-government* since the cultural councils have only the right to ‘request’ financial help from official and public foundations and organizations.”<sup>87</sup> Furthermore, it has also been pointed out that the procedures for setting up a cultural autonomy body are so complex and expensive that it is preferable to establish an NGO specializing in cultural matters, since according to the relevant legislation NGOs are easier to establish, have a clear role, and enjoy the same rights as cultural self-governments regarding funding from the competent governmental authorities.<sup>88</sup> Finally, considering the specific denial of the Estonian authorities to accept the establishment of cultural autonomy bodies by the Russian minorities, it has been commented that this power of discretion illustrates that the Act is tailored in such way “to give the state the opportunity to strategically bestow representative authority on selected minority organizations in order to deny greater autonomy to the minority as a whole”.<sup>89</sup>

All these criticisms have also been reflected in the opinions of the ACFC, which commented, in its first opinion of 14 September 2001, that the law had – nearly ten years after its adoption – no substantial impact on the practical situation in Estonia, since no cultural autonomy bodies had been established at that time based on the specific law. The Committee particularly emphasised the fact that the law excluded non-citizens from the leading positions of the cultural autonomy bodies,<sup>90</sup> despite the fact that a significant proportion of the minority population did not have Esto-

<sup>84</sup> ACFC/SR/III(2010)006, *supra* note 78, pp. 7-8.

<sup>85</sup> M. Lagerspetz, S. Joons, *Migrants, Minorities, Belonging and Citizenship – Globalization and Participation Dilemmas in EU and Small States: The Case of Estonia*, Glocalmig Series, vol. 4, Bergen: 2004, p. 14, available at: [http://eurospheres.org/files/2010/01/Vol4\\_Estonia\\_Final.pdf](http://eurospheres.org/files/2010/01/Vol4_Estonia_Final.pdf) (accessed 30 May 2017).

<sup>86</sup> K. Kössler, K. Zabielska, *Cultural Autonomy in Estonia Before and After the Soviet Interregnum*, in T. Benedikter (ed.), *Solving Ethnic Conflict Through Self-Government: A Short Guide to Autonomy in Europe and South Asia*, EURAC, Bozen / Bolzano: 2009, p. 59.

<sup>87</sup> A. Semjonov, *Estonia: Nation-Building and Integration – Political and Legal Aspects*, in P. Kolsto (ed.), *National Integration and Violent Conflict in Post-Soviet Societies – The Cases of Estonia and Moldova*, Rowman and Littlefield Publishers: 2002, p. 132.

<sup>88</sup> M. Lind, *Is the Russo-phone Minority a Structural Security Threat to the Estonian State?*, 9 Baltic Defense Review 34 (2003), pp. 40-41.

<sup>89</sup> K. Kuutma, E.-H. Seljamaa, E.-H. Västriik, *Minority Identities and the Construction of Rights in Post-Soviet Settings*, 51 Folklore 49 (2012), p. 55.

<sup>90</sup> See also Report by A. Eide, European Commission for Democracy Through Law, CDL(2006)055, Strasbourg, 20 June 2006, para. 12.

nian citizenship, and it also left out some of the numerically smallest minorities from its scope of application, thus concluding that the law was not suited to the situation of minorities in existence at that time and should be revised or replaced, with a view toward strengthening the applicable norms and adapting them to the minority reality then existing in Estonia.<sup>91</sup> In the same context, the Committee on the Elimination of Racial Discrimination (CERD) initially found that the narrow definition contained in the 1993 Law may restrict the scope of the state integration programme and turn integration policy into assimilation policy.<sup>92</sup> The same Committee insisted that the exclusion of stateless persons with long-term residence in Estonia from the scope of the Law might lead to the alienation of that group from the Estonian State and society. Thus, it recommended that the definition of “minority” under the Law on Cultural Autonomy of National Minorities Act of 1993 be amended to include non-citizens, in particular stateless persons with long-term residence in Estonia.<sup>93</sup> The Government partly accepted the substance of the ACFC’s observations by admitting that the procedure for forming cultural autonomy bodies and the principles governing their activities were insufficiently implemented, and that for some ethnic groups, like the Ukrainians and the Belarussians, it would be difficult to reach the threshold of 3,000 persons in order to form a cultural council.<sup>94</sup> In reply to the CERD’s observation that the definition in the 1993 Act may restrict the scope of the integration programme, the government noted that its principles are applicable with regard to everyone who identifies with a national minority, regardless of the size of the minority or other conditions, “including the citizenship of persons belonging to a national minority.”<sup>95</sup> The government further admitted to the ACFC that

[r]egardless of the efforts of the authorities to encourage national minorities to re-establish or set up their cultural self-governments, the implementation of the new cultural autonomy act under the changed historical and political circumstances has been problematic.<sup>96</sup>

Four years later, when only one cultural autonomy body – that of the Ingrian Finns – had been established and no amendments to the Act had been enacted, the ACFC

<sup>91</sup> ACFC, *Opinion on Estonia*, adopted on 14 September 2001, ACFC/INF/OP/I(2002)005, paras. 29, 68.

<sup>92</sup> Report of the Committee on the Elimination of Racial Discrimination, Sixtieth session (4-22 March 2002) – Sixty-first session (5-23 August 2002), Supplement No. 18, UN Doc. A/57/18, para. 355.

<sup>93</sup> Concluding Observations of the Committee on the Elimination of Racial Discrimination: Estonia, UN Doc. CERD/C/EST/CO/7, 19 October 2006, para. 9.

<sup>94</sup> Comments of the Government of Estonia on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Estonia, GVT/COM/INF/OP/I(2002)005, 20 February 2002, para. 29.

<sup>95</sup> Seventh Periodic Reports of States Reports due in 2002: Estonia-Addendum, UN Doc. CERD/C/465/Add.1, 1 April 2005, para. 43.

<sup>96</sup> Second Report submitted by Estonia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/II(2004)009, Strasbourg, 16 July 2004, p. 5.



declared once again, in its opinion of 24 February 2005, that the law had various shortcomings – such as its limited scope of application – and was generally considered to be ineffective and impractical, again recommending that it be amended.<sup>97</sup> Finally, in its latest (so far) opinion of 1 April 2011, when the Act remained unchanged and only two numerically small minorities (the Ingrian Finns and Swedes) had established cultural autonomy bodies, the Committee, after noting for a third time that the Act has been considered impractical and ineffective for years and that both governmental and non-governmental interlocutors agreed that it no longer conformed to the actual realities and the demographic situation of the country, again encouraged the authorities to consider reviewing their minority policy and enacting legislation in broader terms, rather than focusing their attention on amending the National Minority Cultural Autonomy Act.<sup>98</sup> Using an analogous prism, the Committee on Economic, Social and Cultural Rights (CESCR) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) initially recommended (2002) to the Estonian Government that it revise the Law in order to provide “for the expedient and full recognition of the rights of minority groups”,<sup>99</sup> while in its latest observations (2011) it recommended – after noting the “absence of a legislative framework recognizing the identities and the cultural rights of minorities in spite of the activities undertaken for their promotion” – the adoption of a comprehensive law to ensure the protection and promotion of the economic, social, and cultural rights of all minorities.<sup>100</sup>

It has been argued that all these shortcomings and inconsistencies represent a sharp contrast to 1925 Law,<sup>101</sup> especially since the only two cultural autonomy bodies established so far “do not have any official status comparable to local governments, as they had in the 1920s and the 1930s.”<sup>102</sup> In assessing such a comparison, however, one should keep in mind that the historical context was strikingly different in the inter-war period. In particular, until the time it was occupied by the Soviet Union Estonia was a relatively homogeneous country. The population figures, however, changed dramatically during the Soviet regime, owing mainly to mass immigration of non-ethnic Estonians to the area as a result of combined policies of industrialization and Sovietisation.<sup>103</sup> The 2011 census clearly exemplifies the new demographic reality: the country’s population amounts to 1,294,455 inhabitants, of whom the main ethnic groups are Estonians

<sup>97</sup> ACFC, *Second Opinion on Estonia*, adopted on 24 February 2005, ACFC/INF/OP/II(2005)001, paras. 8, 26, 68-69, 187.

<sup>98</sup> ACFC, *Third Opinion on Estonia*, adopted on 1 April 2011, ACFC/OP/III(2011)004, paras. 12, 26, 63-65.

<sup>99</sup> Concluding Observations of the Committee on Economic, Social and Cultural Rights, UN Doc. E/C.12/1/Add.85, 19 December 2002, para. 57.

<sup>100</sup> Concluding Observations of the Committee of Economic, Social and Cultural Rights, UN Doc. E/C.12/EST/CO/2, 16 December 2011, para. 30.

<sup>101</sup> For a different view, see Kössler & Zabielska, *supra* note 86, pp. 58-59.

<sup>102</sup> Lagerspetz, *supra* note 79, p. 468.

<sup>103</sup> D. Smith, *The Restorationist Principle in Post Communist Estonia*, in: C. Williams, T. D. Sfikas (eds.), *Ethnicity and Nationalism in Russia, the CIS and the Baltic States*, Ashgate, Aldershot: 1999, pp. 291-292.

902,547 (69.7%); Russians 326,235 (25.2%); Ukrainians 22,573 (1.8%); Belorussians 12,579 (1%); Finns 7,589 (0.6%); Tatars 1,993 (0.2%); Jews 1,973 (0.2%); Latvians 1,764 (0.1%); Lithuanians 1,727 (0.1%); Poles 1,664 (0.1%); Germans 1,544 (0.1%); and Armenians 1,428 (0.1%).<sup>104</sup> As one can observe, Estonia has to integrate some 39% of its residents, while during the inter-war period the analogous percentage constituted no more than 12%.<sup>105</sup> Furthermore, the composition of minorities has changed. In place of the Germans, most of whom have emigrated or been expelled, and the Jews, most of whom were exterminated by the Nazis, the main minorities are the Russians, Ukrainians, and Belorussians.<sup>106</sup> The bulk of this “new” minority population thus belongs to the Russian ethnic group, which is perceived by (some of) the authorities as a “national enemy”.<sup>107</sup> Apart from the vast differences in the historical context and the security and political concerns offered as justification for the non-implementation of the Act, Aidarov and Dreschler have suggested that from the beginning there may not have existed a sincere intention to implement the obligations emanating from a literal interpretation of the Act, as it had rather a “performative” character aimed at serving other purposes than those explicitly stated, namely to advance the country’s human rights profile in order to gain international support and recognition and to signal its legal continuity with the “Golden Age” of the pre-World War II Republic, an era of economic prosperity, democratic ethnic pluralism, and national independence.<sup>108</sup> Lagerspetz, on the other hand, argues that indeed goodwill existed on the part of the basic actors under the Act, but it was limited to the satisfaction of the cultural needs of the small minorities – and not of the large Russian one – notwithstanding the fact that the Act did not operate effectively even for them, as neither the Ingrian Finns’ nor the Swedes’ cultural autonomy bodies have a clearly defined status which would enable them to carry out their functions.<sup>109</sup>

In sum, the initial high expectations have vanished and the implementation of the Act (if not the Act itself) has been seen by several scholars as a failure.<sup>110</sup> This conclusion can also be tacitly deduced from the views of the ACFC, which in its latest above-mentioned opinion avoided calling for, as it did in its previous opinions, the amendment of the 1993

<sup>104</sup> See 2011 Population and Housing Censuses in Estonia, Latvia and Lithuania, *supra* note 44, p. 24.

<sup>105</sup> R. R. Kionka, *Estonia’s Minority Policy: Origins and Development*, Estonian Ministry of Foreign Affairs Yearbook 31 (2007), p. 39.

<sup>106</sup> V. Bogdanor, *Forms of Autonomy and the Protection of Minorities*, 126 *Daedalus* 65(1997), p. 83.

<sup>107</sup> See O. Mertelmann, *How the Russians Turned into the Image of the “National Enemy” of the Estonians*, 19 *Pro Ethnologia* 43 (2005), pp. 43-58.

<sup>108</sup> See A. Aidarov, W. Dreschler, *The Law and Economics of the Estonian Law on Cultural Autonomy for National Minorities and of Russian National Cultural Autonomy in Estonia*, 12 *Halduskultuur Administrative Culture* 43 (2011), pp. 43-61.

<sup>109</sup> Lagerspetz, *supra* note 79, pp. 458, 470.

<sup>110</sup> M. Andeva, *Non-Territorial Autonomy: European Challenges and Practices for Ethnic Conflict Resolution*, 44 *Political Thought* 81 (2013), p. 85, who refers to Smith’s conclusion that cultural autonomy in Estonia “does not function in any meaningful sense”; Lagerspetz, *supra* note 79, pp. 457-458; Semjonov, *supra* note 70, p. 424.

Act (thus admitting that it would make no difference), but instead emphasized that the Estonian government should reconsider its overall minority policy and legislation.<sup>111</sup>

## 2.4. The Russian Federation

As Bowring commented, with a slight sense of amusing irony, the adoption of the Federal Law on National and Cultural Autonomy (FZ No.74)<sup>112</sup> by the Russian Federation on 17 June 1996 can be viewed as the “Austro-Marxism’s last laugh”, given the historically negative stance of the Bolsheviks towards the concept of national cultural autonomy.<sup>113</sup> This stance changed partially with the gradual collapse of the Soviet regime and the parallel emergence of numerous public associations formed along ethnic lines, which created anxiety among the authorities that the disparate groups “had to be standardized and placed under control.”<sup>114</sup> In this context, leading Russian scholars considered the national cultural autonomy scheme to be “the most plausible alternative to the Soviet territorial model”<sup>115</sup> as a mechanism for addressing the centrifugal tendencies of the 1990s<sup>116</sup> and managing the over 170 “nationalities” in the tapestry of the Russian Federation’s rich ethnic diversity.<sup>117</sup>

Thus the 1996 Law, which has been amended several times since its enactment, defines in its first article the notion of a national cultural autonomy (NCA) as

a form of national and cultural self-determination constituting a public association of *citizens* [emphasis added] of the Russian Federation, identifying themselves with certain ethnic communities, based on their voluntarily chosen identity for the purpose of independently resolving the issues of their identity preservation and their linguistic, educational and national cultural development.<sup>118</sup>

Although this definition was later changed so as to exclude ethnic Russians from forming NCAs, its main textual content has remained intact, giving the impression

<sup>111</sup> ACFC/OP/III(2011)004, *supra* note 98, para. 65.

<sup>112</sup> The original form of the Law is available in English at: <http://www.regione.taa.it/biblioteca/minoranze/russia3.pdf> (accessed 30 May 2017).

<sup>113</sup> B. Bowring, *Austro-Marxism’s Last Laugh? The Struggle for Recognition of National-Cultural Autonomy for Rossians and Russians*, 54 *Europe-Asia Studies* 229 (2002), pp. 238-239.

<sup>114</sup> E. Fillipova, V. Filippov, *National-Cultural Autonomy in Post Soviet Russia Over Two Decades: Concept and Institution*, 1 *Ethnicity* 50 (2015), p. 51.

<sup>115</sup> See Bowring, *supra* note 113, p. 240.

<sup>116</sup> V. Zavenovich Akopyan, V. Pavlovic Ermakov, L. Ivanovna Milyaeva, *The “Local” Form of the National and Territorial Autonomy and the Possibility of the Application of its Experience*, 22 *World Applied Sciences Journal* 1080 (2013), p. 1080.

<sup>117</sup> As the Russian government stated in its first report to the ACFC, the Russian Federation “is one of the largest multinational states in the world, inhabited by more than 170 peoples, the total population being about 140 million.” On the whole minorities constitute approximately 20% of the total population, varying numerically from several million (the Tatars and the Ukrainians *e.g.*) to some thousands (the Khanti and the Mansi *e.g.*). See Report Submitted by the Russian Federation Pursuant to Article 25 Paragraph 1 of the Framework Convention for the Protection of National Minorities, 8 March 2000, ACFC/SR(1999)015, p. 4.

<sup>118</sup> Second Report submitted by the Russian Federation pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities (received on 26 April 2005), ACFC/SR/II(2005)003, p. 8.

that the law treats the institution of NCA as “something we could probably define as a ‘social institute’ on ethnic belonging”,<sup>119</sup> “a kind of voluntary society”,<sup>120</sup> rather than a public law legal entity endowed with public powers to take binding decisions on cultural affairs.<sup>121</sup> According to Article 2, NCAs are based on the principles of freedom of voluntary self-identification, self-organization and self-government, diversity of forms of internal organization, a combination of public initiative and state support, and respect for cultural pluralism.<sup>122</sup> Furthermore, Article 4 proclaims that NCAs have, among other rights, the rights of preservation of their national identity, development of their native languages, preservation and enrichment of their historical and cultural heritage, promotion of respect for their national traditions and customs, revival and development of folk arts and trades, as well as the establishment of mass media, dissemination of information in their own languages, setting up of educational and scientific institutions and cultural organizations, participation in the meetings and actions of international NGOs, and the establishment of contacts with citizens of foreign NGOs.<sup>123</sup> Moreover, the Law recognizes, *inter alia*, the right of citizens who consider themselves to belong to minorities to receive basic education in their native tongue and also to choose their language of instruction (Article 10).<sup>124</sup>

Article 5 of the Law foresees three levels of NCAs – local (at the level of a city, district, village etc.); regional (at the level of the so-called “subject of federation”); and federal.<sup>125</sup> It should be noted, however, that the Law lacks any provision for the establishment of a minority electoral register, not to mention for election procedures, as the original Austro-Marxist model stipulated. Instead, the selection of delegates who set up the local NCAs through general assemblies (conferences) is not based on voting but on (self)appointment by the national non-governmental minority associations (Article 6).<sup>126</sup>

<sup>119</sup> C. Codagnone, V. Filippov, *Equity, Exit and National Identity in a Multinational Federation: The ‘Multicultural Constitutional Patriotism’ Project in Russia*, 26 *Journal of Ethnic and Migration Studies* 263 (2000), p. 279.

<sup>120</sup> B. Povarnitsyn, *Perm Oblast: Autonomies to Choose From*, 9 *Demokratizatsiya* 243(2001), p. 253.

<sup>121</sup> As Berg-Nordlie observes, the NCAs are not official organs and do not bear formal powers, M. Berg-Nordlie, *Striving to Unite. The Russian Sami and the Nordic Sami Parliament Model*, 2 *Arctic Review on Law and Politics* 52 (2011), p. 62.

<sup>122</sup> European Roma Rights Centre, *In Search of Happy Gypsies - Persecution of Pariah Minorities in Russia*, Country Reports Series No 14, Budapest, 2005, p. 206, available at: <http://www.errc.org/cms/upload/media/01/9A/m0000019A.pdf> (accessed 30 May 2017).

<sup>123</sup> Comments of the Government of the Russian Federation on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation, GVT/COM/III(2012)004, Strasbourg, 25 July 2012, p. 5.

<sup>124</sup> D. Badmatsyrenova, A. Elivanova, *Language Policy in Russia: The Case Study of the Yakut Language*, in: L. Heininen, K. Laine (eds.), *The Borderless North*, The Thule Institute, University of Oulu Northern Research Forum, Akureyri: 2008, p. 216.

<sup>125</sup> I.S. Fatov, *Public Associations of Russia Within the Framework of International Relations*, 4 *International Academic Magazine of the Russian Academy of Natural Sciences* (2013), p. 88.

<sup>126</sup> F. Prina, *The Role of International Mechanisms in Promoting the Cultural Rights of National Minorities in a Changing Russian Federation (2000-2011)*, Thesis submitted to School of Slavonic and East European

The delegates of the local NCAs can then establish, through conferences, a regional NCA and so on (Article 6).

This pyramidal arrangement from the local to the federal corresponds roughly to the fact that the Russian Federation is a highly asymmetrical federal polity, characterized by a complex hierarchical structure which, according to Article 65 of its Constitution, comprised at the time of the Law's enactment 89 constituent entities (subjects): 2 federal cities, 49 oblasts, 21 republics, 9 krais, an autonomous region, and 10 autonomous okrugs.<sup>127</sup> Also, this system, in combination with the 2004 Russian Constitutional Court's rule that only one local or regional autonomy *per* minority could be established in a municipality or a region, reflected the central government's perception that each minority as a group would speak with one voice, an assumption based on the supposed minorities' homogeneity, distilling "core" messages and carrying them from the local sections up to the highest political institutions.<sup>128</sup> This function would be done through the Consultative Council on the Affairs of National-Cultural Autonomy Bodies (NCAs) in the Government of the Russian Federation, created according to Article 7 of the Law and consisting of the representatives from each federal NCA.<sup>129</sup> Additionally, the same article provides for the formation of consultative councils or other advisory bodies on the affairs of NCAs within the organs of executive power of the subjects of the Russian Federation.<sup>130</sup>

Finally, with respect to fiscal resources the original form of the 1996 Law stipulated in Article 16 that the financing of the activities related to the implementation of the rights of the national-cultural autonomy bodies would be provided at the expense of a) the NCAs, their establishments and organizations; b) private persons; and c) the federal budget, the budgets of the subjects of the Russian Federation, and local budgets. However, as regards as the last provision, the 2009 amendment to Article 16 stipulates that

the federal executive bodies *may* [emphasis added] provide financial support to federal national and cultural autonomy bodies (NCAs) at the expense of the federal budget; executive bodies of the subjects of the Russian Federation *may* [emphasis added] provide such support to regional and local NCAs at the expense of regional budgets; and local self-governing bodies *may* [emphasis added] provide financial support to local NCAs at the expense of local budgets.<sup>131</sup>

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Studies, University College London, 2012, p. 269, available at: <http://discovery.ucl.ac.uk/1357425/1/PhD.FPrina.2012.Final%20after%20corrections.pdf> (accessed 30 May 2017).

<sup>127</sup> T. F. Kryaklina, *National Culture Associations as Subjects of Crosscultural Communications in Altai Krai of the Russian Federation*, 200 *Procedia – Social and Behavioral Sciences* 273 (2015), p. 276.

<sup>128</sup> F. Prina, *Power, Politics and Participation: The Russian Federation's National Minorities and Their Participatory Rights*, 30 *Netherlands Quarterly of Human Rights* 65 (2012), p. 84.

<sup>129</sup> Fourteenth Periodic Reports of States Parties due in 1994: Addendum-Russian Federation, UN Doc. CERD/C/299/Add.15, 28 July 1997, para. 33.

<sup>130</sup> S. Barbieri, *National Cultural Autonomy in the Russian Federation: The Case of the Tomsk Oblast*, in: L. Salat, S. Constantin, A. Osipov, I. G. Székely (eds.), *Autonomy Arrangements Around the World: A Collection of Well Known and Lesser Known Cases*, Cluj-Napoca: 2014, p. 329.

<sup>131</sup> Third Report submitted by the Russian Federation pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities (received on 9 April 2010), ACFC/SR/III(2010)005, Strasbourg, 9 April 2010, pp. 104-105.

The Law was presented by the government as a masterpiece of the Russian system of diversity management,<sup>132</sup> and was at first enthusiastically accepted as a device for national rebirth by the elites of several national minorities, who saw in it an opportunity for gaining financial support from the state<sup>133</sup> (though this expectation has never been realized, at least to the desired level), as well as for attaining a “higher” status and greater access to state powers.<sup>134</sup> This “popularity” is still reflected in the growing number of NCAs, which according to the latest available official data granted by the Russian government to the ACFC at the end of 2008 included 18 federal NCAs (established by the Armenians, Assyrians, Azeris, Belarusians, Chuvash, Germans, Jews, Karachais, Kazakhs, Koreans, Kurds, Lezghins, Lithuanians, Poles, Roma, Serbs, Tatars and Ukrainians), 208 regional and 501 local NCAs.<sup>135</sup> As Bowring notes, the most active nationalities in setting up NCAs are the Tatars, the Jews and the Germans, who seem to assess this model as their best hope for organization and representation,<sup>136</sup> further commenting that if the number of NCAs was a reliable guide, then the Law could be considered a success.<sup>137</sup> The Law was also initially hailed by the ACFC as a development that could contribute to improvement in the protection of minority cultures.<sup>138</sup> In a similar context, Torode has argued that the Law marked a historic departure in the treatment of ethnic minorities and had made a positive contribution in certain aspects by: a) consolidating the identity of specific groups, such as the Roma and the Jews, according to their own representatives’ statements; b) recognizing for the first time certain ethnic groups as beneficiaries of the promotion of their cultural rights, regulating at the same time their interaction with the state bodies; c) incorporating, at least to some degree, ethnic minorities into the central and regional government decision – making apparatuses; and d) performing an essential role in post-Soviet Russia of opening up the debate on the national question.<sup>139</sup>

Several elements, however, from the beginning attracted criticism by the ACFC and several scholars. Firstly, the Committee noted that Article 1 of the Law restricts the notion of national-cultural autonomy to citizens of the Russian Federation only, pointing out that the personal scope of application should be brought in line with an inclusive ap-

<sup>132</sup> O. Protsyk, B. Harzl, *Introduction*, in: O. Protsyk, B. Harzl (eds.), *Managing Ethnic Diversity in Russia*, Routledge, New York: 2013, p. 6.

<sup>133</sup> See e.g. R. Woronowycz, *Russia’s Ukrainians Hold Second Congress*, LXV The Ukrainian Weekly (1997), p. 1.

<sup>134</sup> N. Torode, *National Cultural Autonomy in the Russian Federation: Implementation and Impact*, 15 International Journal on Minority and Group Rights 179 (2008), pp. 182, 187, 193.

<sup>135</sup> A. Osipov, *National Cultural Autonomy in Russia: A Case of Symbolic Law*, 35 Review of Central and East European Law 27 (2010), pp. 42-43.

<sup>136</sup> B. Bowring, *Burial and Resurrection: Karl Renner’s Controversial Influence on the ‘National Question’ in Russia*, in: E. Nimni (ed.), *National-Cultural Autonomy and its Contemporary Critics*, Routledge [Taylor and Francis e-Library], London and New York: 2005, pp. 171, 173.

<sup>137</sup> *Ibidem*, p. 171.

<sup>138</sup> ACFC, *Opinion on the Russian Federation*, ACFC/INF/OP(2003)005, Strasbourg 13 September 2002, para. 43.

<sup>139</sup> Torode, *supra* note 134, pp. 188, 192-193. See also European Roma Rights Centre, *supra* note 122, pp. 223-224.

proach so as to ensure that non-citizens belonging to the minorities concerned could also benefit from the Law.<sup>140</sup> Secondly, the Committee observed that the Law, together with its 2002 amendments, has been generally understood to exclude political activities from the scope of the NCAs, commenting that since the activities aimed at the protection of minorities may also have a political dimension this exclusion should not be interpreted in a manner that hinders the legitimate activities of the NCAs.<sup>141</sup> Thirdly, with respect to the consultative structures the Advisory Committee noted originally that the creation of the consultative councils at not only the federal but also at the level of the subjects of the federation, as envisaged in Article 7 of the Law on National-Cultural Autonomy, is an important element in the implementation of the principles of the law.<sup>142</sup> However, in considering the established advisory councils for national minorities at the level of the subjects of the Federation, the Committee has repeatedly noted that they appear to rarely have opportunities to influence decision-making<sup>143</sup> and are expected to implement rather than contribute to the preparation of minority-relevant legislation.<sup>144</sup> Consequently, it opined that there is a need to improve the consultation opportunities of NCAs in the decision-making processes.<sup>145</sup> The Government not only did nothing to improve the situation but, as the Committee critically observed in its third opinion, in the 2009 amendment to the Law failed to reinstate the obligation to consult NCAs on issues of direct concern to them.<sup>146</sup> Lastly, regarding the funding of the NCAs the Committee noted that according to the 2009 amendments to the Law, the municipal, regional and federal authorities *may* fund the NCAs, but they are not *obliged* to do so.<sup>147</sup> Overall, the Committee concluded that the Law does not create clear obligations on the part of the State with regard to the preservation of the cultural identity of minority persons and does not clearly mark the competencies that the creation of a NCA grants,<sup>148</sup> and urged the authorities to provide more clarity on the legal status and competencies of NCAs and establish criteria and procedures for the allocation of funding.<sup>149</sup> The Russian government, on its part, has very diplomatically admitted that in practice the wide opportunities provided by the Law “are not fully utilized in many instances”, but has attributed this deficiency merely “to inadequate institutionalization of persons belonging to national minorities,”<sup>150</sup> deny-

<sup>140</sup> ACFC/INF/OP(2003)005, *supra* note 138, para. 22; Bowring, *supra* note 136, p. 172.

<sup>141</sup> ACFC, *Second Opinion on the Russian Federation*, adopted on 11 May 2006, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, para. 68.

<sup>142</sup> ACFC/INF/OP(2003)005, *supra* note 138, para. 44.

<sup>143</sup> ACFC/OP/II(2006)004, *supra* note 141, para. 23.

<sup>144</sup> *Ibidem*, para. 90.

<sup>145</sup> *Ibidem*, para. 172.

<sup>146</sup> ACFC, *Third Opinion on the Russian Federation*, adopted on 24 November 2011, ACFC/OP/III(2011)010, Strasbourg, 25 July 2012, para. 72.

<sup>147</sup> *Ibidem*.

<sup>148</sup> *Ibidem*.

<sup>149</sup> *Ibidem*.

<sup>150</sup> Comments of the Government of the Russian Federation on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities

ing in this way its own responsibilities for the inherent shortcomings and the inadequate implementation of the Law.

Several authors have also been very critical toward the Law, for a variety of reasons. Some point out that the absence of procedures for the election of representatives in the NCAs results in the lack of a broad representative base for minorities, guaranteeing only a tenuous link of accountability between the NCA leaders and the “ordinary” minority members.<sup>151</sup> Others focus on the issue of the status of NCAs, which has been reduced, especially after the 2004 amendment, “to the level of rank-and-file social organizations.”<sup>152</sup> In this context some observe that there exist so many legal constraints to the establishment of an NCA that it is far easier, in order to serve the minorities’ cultural needs, to set up a conventional association (e.g. NGO) specializing in the cultural area than a NCA.<sup>153</sup> This fact, in combination with the decentralization of governmental financial backing, which led to poor funding,<sup>154</sup> has deprived the NCAs from any actual powers to develop educational or linguistic policies, making them hardly different from regular NGOs.<sup>155</sup> Indeed, Osipov has further claimed that the NCAs are even a deteriorated version of non-profit NGOs, since the former, in addition to all of their previously mentioned deficiencies, have fewer rights than the latter.<sup>156</sup> He comes to the conclusion, as Semjonov did with respect to the cultural autonomy bodies in Estonia, that they are “ultimately useless, as ordinary NGOs can achieve all the goals and objectives that were intended for NCAs.”<sup>157</sup> Viewed in this light, the only difference in practice between ordinary NGOs and the NCAs is that the latter constitute a type of NGO that enjoys a higher symbolic status.<sup>158</sup> All these drawbacks led Bowring to argue that the Russian

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by the Russian Federation (received on 11 October 2006), GVT/COM/II(2006)006, Strasbourg, 2 May 2007, p. 4.

<sup>151</sup> Prina, *supra* note 128, pp. 84, 87.

<sup>152</sup> B. Bowring, *The Tatars of the Russian Federation and National-Cultural Autonomy: A Contradiction in Terms?*, 6 *Ethnopolitics* 417 (2007), p. 428; Torode, *supra* note 134, pp. 183-184, 192; Filippova and Filippov, *supra* note 114, p. 55.

<sup>153</sup> A. Heinemann-Gruder, *Federal Discourses, Minority Rights, and Conflict Transformation*, in: C. Ross, A. Campbell (eds.), *Federalism and Local Politics in Russia*, Routledge, London: 2009, p. 66.

<sup>154</sup> See B. de Villiers, *Section 235 of the Constitution: Too Soon or Too Late for Cultural Self-Determination in South Africa?*, 30(3) *South African Journal of Human Rights* 458(2014), pp. 481-482; Torode, *supra* note 134, pp. 188-189; Prina, *supra* note 128, p. 90; Osipov, *supra* note 135, p. 49; Filippova and Filippov, *supra* note 114, p. 56; European Roma Rights Centre, *supra* note 122, p. 218.

<sup>155</sup> F. Prina, *Protecting the Rights of Minorities and Indigenous Peoples in the Russian Federation: Challenges and Ways Forward*, Minority Rights Group Europe and Youth Human Rights Movement, Report 2014, p. 14.

<sup>156</sup> A. Osipov, *The “People’s Congresses” in Russia: Failure or Success? Authenticity and Efficiency of Minority Representation*, ECMI Working Paper, 2011, pp. 3-4, available at: [http://www.academia.edu/11670761/The\\_Peoples\\_Congresses\\_in\\_Russia\\_Failure\\_or\\_Success\\_Authenticity\\_and\\_Efficiency\\_of\\_Minority\\_Representation\\_ECMI\\_Working\\_paper\\_No.48\\_August\\_2011](http://www.academia.edu/11670761/The_Peoples_Congresses_in_Russia_Failure_or_Success_Authenticity_and_Efficiency_of_Minority_Representation_ECMI_Working_paper_No.48_August_2011) (accessed 30 May 2017).

<sup>157</sup> Osipov, *supra* note 135, p. 53; Filippova & Filippov, *supra* note 114, p. 55.

<sup>158</sup> M. Berg-Nordlie, *Two Centuries of Russian Sami Policy: Arrangements for Autonomy and Participation Seen in Light of Imperial, Soviet and Federal Indigenous Minority Policy 1822-2014*, 32 *Acta Boeralia* 40 (2015), pp. 50-51.



model is “highly imperfect” and, compared to Renner’s idea, “half-hearted” as NCAs are not given taxing powers, or control over education, much less local administration.<sup>159</sup> All in all, as with the Estonian paradigm most scholars evaluate the functioning of NCAs in Russia as a failed project that has brought no real benefits to minorities,<sup>160</sup> justifying Bowring’s concluding observation that “we are witnessing the end of a fascinating but doomed experiment.”<sup>161</sup> Yet, the increasing number of NCAs indicates that there maybe other reasons, not necessarily linked to cultural preservation, that lead the minorities – or to be more precise a segment of them – to accept this institution. These may include calculations over potential material benefits, personal prestige, political ambitions, access to public office, state support for demonstrating loyalty, etc.<sup>162</sup>

## CONCLUDING REMARKS

The examination of the existing cultural autonomy arrangements that have been enacted in some states of the former USSR after its demise clearly shows that they do not function properly. Contrary to the Austro-Marxists’ proposals and to the successful precedent of the inter-war Estonian example, the present minority cultural councils/autonomies in Estonia and Russia have no clearcut legal status, competencies, law-making capabilities, no decisive authority in their field (cultural affairs), and they do not enjoy real financial autonomy. This situation leads to the suggestion that concerns other than the protection of the cultural rights of minorities constituted hidden motives for the introduction of the cultural autonomy schemes in these countries. For example, it has been pointed that in the case of Estonia the need to connect symbolically with the 1920’s “Golden Age” of democracy (the restitutional framework), which was seen as a commendable past in the early 1990s (“back to the pre-Communist good practices”),<sup>163</sup> coupled with a strategic move to promote a democratic and multicultural external image in order to gain international recognition, formed the primary reasons for the enactment of its 1993 Law.<sup>164</sup> In the case of Russia it is suggested that the introduction of the cultural autonomy scheme is designed mainly as an attempt to enhance the loyalty of those nationalities that lack territorial recognition<sup>165</sup> through a “loose agreement” on “consulting” with their elites rather than the nationalities themselves.<sup>166</sup> In this regard

<sup>159</sup> Bowring, *supra* note 136, p. 173; Filippova & Filippov, *supra* note 114, p. 52.

<sup>160</sup> K. Zamyatin, *Russian Political Regime Change and Strategies of Diversity Management: From a Multinational Federation Towards a Nation State*, 15 *Journal of Ethnopolitics and Minority Issues in Europe* 19(2016), p. 33; Prina, *supra* note 126, pp. 258-259; Filippova & Filippov, *supra* note 114, pp. 56, 59.

<sup>161</sup> Bowring, *supra* note 152, p. 431.

<sup>162</sup> Prina, *supra* note 128, p. 87; Filippova & Filippov, *supra* note 114, p. 57.

<sup>163</sup> Osipov, *supra* note 49, p. 19.

<sup>164</sup> Smith, *supra* note 1, p. 39.

<sup>165</sup> *Ibidem.*, p. 45.

<sup>166</sup> J. Coakley, *Introduction: Dispersed Minorities and Non-Territorial Autonomy*, 15 *Ethnopolitics* 1 (2016), p. 15.

the granting of cultural autonomy is a top-down process, in which the state authorities are mostly interested in pursuing their own strategic political agenda rather than ensuring the enjoyment of the minorities' cultural rights. In striking contrast, it has been argued that in inter-war Estonia the demand for cultural autonomy came from the minorities themselves (mainly the urbanized, highly educated and relatively cohesive German minority), and that the granting of autonomy was not an outcome of opportunist bargaining nor mainly the result of a careful balancing of political interests, but rather was based on principle.<sup>167</sup>

However, notwithstanding the fact that the cultural autonomy provisions/laws/regimes in the examined countries are considerably weaker than the original Austro-Marxist proposal and are practically toothless, one cannot overlook the fact that they constitute a "symbolic recognition" of the minority cultural identities, guaranteeing some (albeit few) cultural "goods".<sup>168</sup> This seems to please some of them, at least in the case of Russia (e.g. Tatars, Germans), as the increasing numbers (hundreds) of NCAs indicate. It would be reasonable then to suggest that a better functioning of these arrangements, in a spirit of goodwill on the part of governments,<sup>169</sup> would enhance the enjoyment of minority cultural rights and contribute to stability, thus fulfilling the two main objectives of the model. In this respect useful guidance has been given by the ACFC. Specifically, notwithstanding the fact that the FCNM does not provide minorities with a right to cultural autonomy, the Committee has taken the opportunity to comment on the cultural autonomy arrangements which the examined states have established on their own initiative, and has offered some useful observations, mostly regarding the need for a more inclusive definition of the notion of "minorities" so as to include non-citizens, as well as for the enhanced participation of minorities in the decision-making processes. The ACFC, by finding in all cases that the cultural autonomy scheme is not working properly, has recommended that

[w]here State Parties provide for such cultural autonomy arrangements, the corresponding constitutional and legislative provisions should clearly specify the nature and scope of the autonomy system and the competencies of the autonomous bodies. In addition, their legal status, the relations between them and other relevant institutions as well as the funding of the envisaged autonomy system should be clarified in the respective legislation.<sup>170</sup>

If one takes into account the facts that – on one hand none of the examined countries has ratified the Optional Protocol to the ICESCR, which would give their minority citizens the right to file a petition before the CESCR regarding potential violations of Article 15.1(a) of the ICESCR on the right to take part in cultural life (which re-

<sup>167</sup> Zacharias, *supra* note 24, p. 329.

<sup>168</sup> J. Coakley, *Conclusion: Patterns of Non-Territorial Autonomy*, 15 *Ethnopolitics* 166 (2016), p. 182.

<sup>169</sup> K. Porter, *The Realization of National Minority Rights*, 3 *Macquarie Law Journal* 51 (2003), p. 66.

<sup>170</sup> ACFC, *Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, adopted on 27 February 2008, ACFC/31DOC(2008)001, Strasbourg 5 May 2008, para. 136.

cently has been interpreted by the CESCR to provide advanced protection to minority cultural rights);<sup>171</sup> and that on the other hand the path of individual communications to the HRC for alleged violations of Article 27 of the ICCPR on the right of minority persons to enjoy their culture has so far been of more practical use to indigenous peoples than to minorities;<sup>172</sup> then one can conclude that the ACFC's observations might serve as useful guidelines for governments and minorities to pursue a mutually acceptable compromise. However, until such time as the ACFC's recommendations become a reality it is highly improbable that the cultural autonomy arrangements, in their present forms in the examined countries, will meaningfully contribute to the effective enjoyment of cultural life by most members of minorities.

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<sup>171</sup> See A. Yupsanis, *The Meaning of 'Culture' in Article 15 (1) (a) of the ICESCR - Positive Aspects of CESCR's General Comment No. 21 for the Safeguarding of Minority Cultures*, 55 *German Yearbook of International Law* 345 (2012), pp. 345-383.

<sup>172</sup> See A. Yupsanis, *Article 27 of the ICCPR Revisited – The Right to Culture as a Normative Source for Minority/Indigenous Participatory Claims in the Case Law of the Human Rights Committee*, 26 *Hague Yearbook of International Law* 359 (2013), p. 405.