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# Local Minority Self-Governance and Hungary's Roma

The enormous socio-political transformations which have taken place in East-Central Europe since 1989 have generated significant discussion not only on the politics of economic reform, but also on the building of civil society and democratic institutions. Regarding the latter, the evolving social and political status of minority populations has served as an important benchmark in evaluating the nature of regional social and political transformation. In 1993 the Hungarian Parliament distinguished itself by passing Act LXXVII on the Rights of National and Ethnic Minorities, a move which constituted a regionally unique policy response to the needs and concerns of its minority populations, and has put the issue of minority representation and participation firmly on the Hungarian political agenda.

While minority policies formulated during the socialist era were explicitly assimilationist in an attempt to minimize distinct ethnic and national identities and incorporate minority populations into the larger "Hungarian" nation, the minorities law

was written with *cultural autonomy* for all national and ethnic minority groups as its central organizing principle. What made this law truly distinct however, was its provision for minority self-government. This aspect of the law created the legal context for minority political representation and participation at two different levels: municipal minority self-governance, and a minority government at the national level serving as a liaison between the municipal minority governments and the Hungarian Parliament. As the law currently stands, representatives from minority communities within municipalities are elected at the same time as local government officials. Once formed, minority self-governments work with the established local governments on a primarily consultative basis, acting as a liaison between the minority community and the local government, and as an advocate for their minority constituency.

However, the law also states that "within the sphere of its authority, the minority government... may establish and maintain institutions especially in fields such as local public education, local printed or electronic media... culture and general education. Within the limits of the available resources, it is (also) authorized to establish and run enterprises and other economic organizations; to announce

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competitions and to raise foundations!." Local governments are required by law to include minority representatives in all local council meetings. Minority self-governments can't cast votes in local council meetings, but the law states that they have the power to veto decisions which have a direct impact on "local public education, local mass media, cultivation of traditions, culture and the collective use of language which affect the minority population as such."

In two rounds of elections occurring in December, 1994 and November, 1995, minority communities across Hungary took advantage of this new opportunity for entry into the Hungarian political system, forming over 700 minority self-governments, representing 12 different minority populations<sup>2</sup>. October 1998 marked the end of the first term of these self-governments and the election of representatives for the second term. This historical juncture provides an important opportunity to review and evaluate what this system has meant for Hungary's minorities. This is especially the case for the Roma, which, at over 5% of the total population, is Hungary's largest as well as its most socio-economically disadvantaged minority, and historically the most firmly entrenched within the political margins of mainstream Hungarian society.

As a way of assessing the results of the Minorities Law and the self-governance system over the past four years, rural sociologists from Cornell University in the United States and Godollo University in Hungary collaborated in the development and administration of a nation-wide survey<sup>3</sup>. In March, 1998, 420 surveys were sent out to leaders of Roma self-governments which were identified by the Hungarian Office of National and Ethnic Minorities as still being in operation. Two hundred thirty two responses from Buda-

pest and 18 of Hungary's 19 counties comprised a response rate of nearly 60%. Using the survey data, this article addresses the political emergence of the self-governance system in Hungary and what it has meant for the Roma. At the end of the article, the most recent 1998 round of elections is discussed as a way of further suggesting how minority self-governance has begun to reconfigure the shape of local politics.

## Controversy Over the Minorities Law

The advent of the Minorities Law was quickly hailed as an innovative response to the needs of its minorities, and the Council of Europe called the provisions for self-government "rare" and the achievements of the law "highly progressive<sup>4</sup>." Despite its "progressive" nature however, the Minorities Law has been the focus of controversy since its inception. Hungary's Law on National and Ethnic Minorities was passed in 1993 after three years of negotiation between the Hungarian government and a coalition of minority groups called the "Minority Roundtable." The Minority Roundtable was in fact modeled after the Opposition Roundtable which negotiated the political transition with Hungary's socialist government in 1989. This was thus an important symbolic appropriation of the moral authority held by the opposition groups which managed the larger processes of political and economic transformation in 1989. Yet, the law was originally conceived as a law on *national minorities*, a move which effectively excluded the Hungary's Roma, an *ethnic minority*.

This exclusion produced strong and sustained criticism that the concern of the government was primarily oriented towards demonstrating progressive *de jure* legal policies to the West in order to facili-

tate the acquisition of international aid and ease Hungary's political and economic integration into Western Europe. Other critics argued that the law was a way of leveraging neighboring countries into passing similar legislation benefiting populations of ethnic Hungarians living outside Hungary's borders, particularly in Romania, Slovakia and the former Yugoslavia. Advocates of both arguments pointed to the initial exclusion of Roma from the law's drafting, arguing that this was clear evidence that the intent of the law had little or nothing to do with improving the social and political status of Hungary's largest minority and the group which would have the most to potentially benefit from a law of this type. Vocal protest from assorted Roma groups led the government by 1993 to rewrite the law and include ethnic as well as national minorities, with the guarantee that individual and collective legal rights would remain identical for both minority group classifications. However, evidence has continued to accumulate that the law has been inconsistently enforced, particularly with regard to the Roma.<sup>9</sup>

### Results of the Spring, 1998 Roma self-government survey

**A**lthough well aware of the financial, legal and material constraints imposed upon Roma self-governments, we were nonetheless interested in gauging the accomplishments of Roma self-governments despite these constraints. Previous literature on Roma local minority self-governance has documented the challenges faced by Roma leaders who have little or no formal political experience and are caught in an ongoing struggle for scarce resources and political legitimacy.<sup>10</sup> This

has seemed to characterize the experience of many Roma leaders, yet the 1998 survey data also strongly suggest that by the end of their first term many Roma minority self-governments were able to secure sufficient resources to initiate a variety of programs benefiting the minority community, and in some instances, the majority population as well.

Table 1 presents a selection of survey responses concerning local development and social support activities initiated by Roma self-governments. It compares close-ended question responses (in which the answer is either "yes" or "no") with responses generated from an open-ended question asking "What do you consider the most important accomplishments of your self-government?" Positive responses were high in all close-ended items, while the areas of activity cited as "most important" in the open-ended responses were agricultural support, the initiation of educational programs and job training. In responses to the open-ended question, Roma leaders described arranging the usage of public land for local Roma, and supplying inputs such as seeds and fertilizer, often organized in collaboration with the local government. Many Roma leaders had identified external funding sources and had successfully applied for grant funding. "We won a pig application from a Gypsy foundation in 1997," one leader wrote. "The amount of the application was 1.5 million forints.<sup>11</sup> We purchased 84 pigs. We have to repay 30% of this money, but we could support 52 families from this."

Other self-governments had received grants and funding to cover textbook costs for primary and secondary school students<sup>12</sup>, subsidize after-school academic support programs for Roma youth and organize adult education programs to help participants earn primary school, or "8th class," diplomas. Some minority self-gov-

# Roma Self-Government Reported Accomplishments

Since 1994 has the Roma minority self-government been involved in or helped to start...	YES	Also mentioned as "most important" in the open ended responses
...social welfare programs directed towards the Roma community?	78.8% (N=182)	21.4% (N=46)
...cultural programs or events which promoted the local Roma culture	61.1% (N=140)	18.1% (N=40)
...educational or job training programs directed towards the Roma community?	60.7% (N=139)	30.2% (N=65)
...agricultural support programs directed towards the Roma community?	58.4% (N=135)	32% (N=69)
...local media programs (TV or newspaper) which were directed towards the Roma community?	45.5% (N=105)	9% (N=19)
...economic enterprises or business which directly benefited the Roma community?	42.4% (N=97)	12.7% (N=27)

ernments were able to purchase computers for the use of primary and secondary school students as well as for adult computer training. Other minority self-governments were able to take a leading role in the construction of social housing for impoverished Roma families. One leader wrote, "Together with the local government we have built a school gym, medical clinic and housing for those who work for the local government." Another wrote, "Recently there have been family homes built for 13 families. I am the president of the housing committee and we have been involved in the construction of social homes... and educating people for skilled labor positions."

An important and perhaps overlooked factor in previous evaluations of Roma minority self-government institutional capac-

ity is simply the newness of these institutions and the period of time required for both Roma leaders and local government representatives to develop cooperative working relationships. It may well be that previous evaluations were conducted too early to adequately assess the impact Roma minority self-governments would be able to assume in local communities or the extent to which minority political leaders and municipal officials would be able to develop cooperative working relations. Open-ended responses tend to suggest that the development of institutional capacity has in fact been a gradual process. "We have three years behind us and we have accumulated a lot of experience," wrote one Roma president. Another wrote, "We are considered as equals by both the municipal government and the local coun-

cil. We have a four year advantage over those minority governments which haven't been established yet."

In addition to initiating specific local-level development projects, many Roma leaders cited the transformative effect of minority self-government activity on local social and political structure. One repre-

sentative from northern Hungary wrote, "Nowadays not only the Gypsies go to us asking for help, but many members of the majority community and they help our work as well. Even though we have some difficulties we are able to keep going and we exist." "We organized a community house," responded another leader, de-

### The Roma Self-Government/Local Council Relationship

	Strongly Disagree				Strongly Agree
	1	2	3	4	5
The concerns expressed by the Roma minority self-government have made the local council more sympathetic to the needs of the Roma minority. (N=226)	17,3%	18,1%	30,0%	17,3%	17,3%
Relations between the Roma minority self-government and the local council are generally friendly and cooperative. (N=232)	12,5%	13,4%	32,15	21,4%	20,55
The Roma minority self-government can depend on the local council for advice, technical assistance and information to help make the minority self-government a stronger, more effective organization. (N=228)	17,5%	9,6%	21,9%	21,5%	29,4%
The Roma minority self-government can depend on the local council for financial and material support to help make the minority self-government a stronger, more effective organization. (N=229)	22,3%	15,7%	19,2%	16,25	26,6%
The local council is generally interested in the opinions of the Roma minority self-government. (N=227)	23,3%	15,0%	25,6%	18,9%	17,2%
The Roma minority self-government has an important role in local politics and decision-making. (N=228)	26,3%	14,9%	26,8%	14,9%	17,1%

scribing an inter-minority self-government collaboration. "It is unique in Tolna County. The Gypsy minority governments (in this village and the neighboring village) created this institution for both the Gypsies and the majority society." If these figures are an accurate accounting of the role of Roma minority self-government, then it is apparent that many of these organizations are taking significant steps to act as an important resource to their communities. While the survey data cannot directly assess the impact of these individual programs on minority communities, the fact that they were reported with such prevalence is in itself significant as previous literature has not indicated the presence of this degree of minority self-government activity and institutional capacity.

The survey findings also underscore the importance of the relationship to the local council. Although many minority self-government leaders report positive relations, responses overall are mixed, particularly in the areas of political influence and decision-making. The data in Table 2 help to illustrate the variability of this relationship. Most Roma leaders were able to report a friendly and cooperative relationship to the local council and indicated that they could trust local officials for advice and technical assistance. One president from northern Hungary wrote, "The big government takes our opinions into account when making decisions. The relationship and communication is pretty good and the local government provides help both legally and economically." Another from southern Hungary wrote, "I am the president of the minority self-government. I am a member of the local council, a member of the financial committee and the president of Lungo Drom<sup>9</sup>. I have a good relationship with the local council and the mayor. They ask my opinions in all the Gypsy-related matters and

my opinion is carefully considered." Nearly 40 percent of respondents identified at least one council member as Roma, however the presence of a Roma representative on the local council made no statistically significant difference in the quality of the reported relationship to the local council.

### Minority self-governance: challenges and limitations

However, even if most respondents were able to report a positive overall relationship to the local council, many felt that their political autonomy was also clearly limited. The ambiguous nature of the Minorities Law has meant that in many cases it is the local government which has played a major role in determining the minority self-government/local council relationship, and if the local government chooses not to cooperate with or support the minority self-government, Roma leaders find themselves with little political leverage. Legal ambiguities concerning decision-making, fiscal authority and minority self-government/local council cooperation, often resulted in frustration, cynicism and political powerlessness. One president from a village in northeastern Hungary wrote, "We are only puppets and (the local government) makes us move however they want. There is no harmony in the law." Another president from a village in central Hungary wrote, "The minority self-governments are relegated only to pretend political activity. This is just a showcase politics handled as if by play-acting." Another wrote simply, "The local government does not pay attention to the Gypsy government...we could create public works contracts but we don't have enough financial means to even pay our basic bills and taxes. In this respect it's not even worth being

a representative and from June 30 the minority self-government will cease."

In the open-ended responses, forty-one percent of respondents complained generally about the minority self-government's lack of political influence, its lack of voting privileges and the ambiguity of the Minorities Law in delineating minority self-government sphere of authority. Despite the fact that local governments are legally obligated to extend open invitations to minority representatives during all local council meetings, 12 respondents reported being barred completely from "closed sessions" or similarly prevented from giving input or voicing opinions. While the law states that local council decisions on issues concerning education, media, cultivation of local traditions, culture and language affecting the minority population can only be passed by the local council in agreement with the local minority self-government<sup>10</sup>, many respondents reported that they had been allowed no such right by the local council and that only being allowed to voice opinions with no obligations on the part of the local council seriously undermined their political influence, eroding precious legitimacy in the eyes of their constituency. One respondent from northern Hungary wrote, "Whatever decision is made by the minority self-government, the mayor and the council may cancel it at any time and they are not penalized. The minority self-government are totally enslaved to the local government's wishes." Another from central Hungary wrote that "the emotional character of our mayor determines the success or failure of our minority government. At the same time, it determines the behavior of all local government employees. Regardless of what the local government officials do or don't do, they will receive the same salary." Yet another in southwest Hungary wrote, "the minority self-government is

dependent upon the local governments and (because of this) our rights are restricted. Nobody is defending the minority self-government. Nobody is listening." Nearly 60 percent of the respondents had reported on at least one occasion challenging or attempting to veto an administrative decision made by the local council. Of those that did challenge local council decisions, only 40 percent reported that this had any effect on the decisions which the local council subsequently made.

## The 1998 elections

On October 18, 1998, elections were held across Hungary for both municipal governments and local minority self-governments. The results were striking in several respects. First of all, the elections produced a dramatic increase in the number of minority self-governments. The number of Roma self-governments jumped to 721, an increase of over 50% from the total number of self-governments formed during the 94-95 elections. Moreover, similar increases occurred for all minority groups. Groups which previously had the least numbers of self-governments showed the largest percentage increases, such as the Bulgarian minority with an increase of 250%, the Polish minority with an increase of 342%, and the Ruthene minority with an increase of 700%. No minority group showed a decrease in self-government formation, and the total number of self-governments jumped from 817 from the '94-'95 elections to 1,251 in 1998, an overall increase of 53%. This means that between one quarter and one third of local governments currently work with at least one minority self-government.

These results would suggest that the self-government system is becoming increasingly institutionalized as a way for



# Local Minority Self-Government Increases, 1994-1998\*

Minority Group	Total Estimated Population	Total # of Self- Governments Formed, 94-95	Total # of Self- Governments Formed, 1998	Percent Increase
Roma	500,000+	477	721	51%
German	210,000	162	236	46
Slovak	105,000	51	62	22%
Croat	85,000	57	60	5%
Romanian	25,000	11	30	172%
Polish	10,000	7	31	342%
Armenian	6,750	16	24	50%
Serb	5,000	19	3	79%
Slovenia	5,000	6	9	50%
Greek	4,250	6	1	183%
Bulgarian	3,250	4	14	250%
Ukrainian	2,000	0	5	—
Ruthene	1,00	1	8	700%
TOTAL:	962,250 (+/- 125,000)	817	1,251	53%

Total 1996 population of Hungary: 10,212,000

\* 1994-95 Figures from Report No. 1/3670 of the Government of the Republic of Hungary to the National Assembly on the situation of the national and ethnic minorities living in the Republic of Hungary. 1998 election figures from the Hungarian elections website: [www.valasztas.hu](http://www.valasztas.hu).

minority communities to consolidate their political role and influence within municipalities. While adequate data are not yet available to systematically analyze the movement of minority self-government representatives into local government seats, anecdotal evidence suggests minority representatives in some locales have used the 4 years of local-level political experience and exposure as a stepping stone for entree into the local government. As one Roma self-government representative from Borsod County in northeastern Hungary remarked last spring, "We are essentially trying to convert the minority government into the local council. I have a

personal role in this because I hope to be the mayor. With better control over the local government and with the minority self-government we can make better choices about what is best for the people in our village." The election results show that he is indeed now the mayor as well as a minority self-government representative within his village. While the instances of Roma candidates successfully running for mayoral positions are rare, there is evidence that many minority representatives have in fact gained seats within municipal councils. With increased integration into the local political structure, it will be important to continue to gauge the effects on

minority-majority negotiation and coalition-building over local issues and decision-making.

### What does the future hold?

Particularly for East-Central Europe, where there are large concentrations of national and ethnic minority populations throughout the region, the issue of minority rights and political representation will continue to demand attention and, more importantly, progressive policy formation. For this reason Hungary's minority self-governance system is important to examine closely. Nicolae Gheorghe<sup>11</sup>, Roma scholar and activist, has written that East-Central Europe's Roma population is currently undergoing a process of ethnogenesis in which its status is shifting from one of fundamental political and economic marginalization, to that of an acknowledged ethnic minority with specific legal rights. This process is occurring as ethnic communities simultaneously assert new political voices, and national governments come to realize that minority communities

cannot be ruled out of the political process. Gheorghe argues that this process can play itself out within two political contexts: a "democratic political context" in which a pluralistic state effectively promotes a sense of shared identity for all citizens, or an "ethnic political context" in which identity and rights are framed primarily for those who identify with one another in terms of a common culture and ancestry. While there are enough Roma leaders reporting positive experiences to produce a cautious hopefulness, there are still many more who have complained bitterly about the lack of human and economic resources, uncooperative and sometimes hostile local governments, and helplessness in the face of severe and worsening socio-economic conditions. The minority self-governance system is an important step towards local democratization, political participation, minority self-determination and even local development. It is not and cannot be, however, the primary solution to problems affecting Hungary's minorities, and particularly the Roma. <sup>12</sup>

### NOTES

1 ■ Act LXXVII, Section 27.

2 ■ Other minority populations electing self-governments included Bulgarian, Greek, Croat, Polish, German, Armenian, Romanian, Ruthenian, Serb, Slovak, and Slovenian.

3 ■ This survey was part of a border program of research concerning the determinants of Roma minority self government institutional capacity with a particular focus on how social and institutional structures mediate the involvement of these organizations in local development initiatives.

4 ■ See Réti, György. 1995. "Hungary and the Problem of National Minorities." *The Hungarian Quarterly*, Vol. 36, No. 139 (Autumn).

5 ■ See e.g. Waters, Timothy William and Rachel Guglielmo. 1996. "Two Souls to Struggle With: The Failing Implementation of Hungary's New Minorities Law and Discrimination Against the Gypsies." Pp. 177-197 in *State and Nation Build-*

*ing in East Central Europe*, edited by J.S. Micgiel. The Institute on East Central Europe and the Harriman Institute, Columbia University.

6 ■ Human Rights Watch/Helsinki. 1996. *Rights Denied: The Roma of Hungary*. Human Rights Watch.

7 ■ 1.5 million HUF at the 1997 exchange rate is approximately \$8,800.

8 ■ These are costs ordinarily assumed by parents, yet which often exceed what many can afford.

9 ■ Lungo Drom is a national-level Roma NGO.

10 ■ 1993 Law on National and Ethnic Minorities, section 29, part 4.

11 ■ See Gheorghe, Nicolae. 1991. "Roma-Gypsy Ethnicity in Eastern Europe." *Social Research*, Vol. 58, No. 4 (Winter).

12 ■ The total number of responses to the open-ended question asking Roma leaders to cite their self-government's most important accomplishment was 215 (out of a possible 232).

idea of the "ius commune" but in a new, modified sense. In respect to the idea of the nature of law as being "common", we talk about something more than the manifestation of the universal idea of law in national legislatures in several ways (in the sense of the slogan: "ius unum—lex multiplex"): the aspiration directed to the realization of the universal idea of law seems to come to fruition. In a not too far future, in the framework of a process of unification and harmonization of law unfolding on an international scale, it can result in the cessation of many differences that we see today.

Even in the present, altered situation, the international exchange of ideas and experiences that has been made possible by other congresses of comparative law (organized by the International Academy of Comparative Law for many decades) can make a useful contribution to the realization of the unified world law. The unification of law has been the declared purpose of the international comparative law movement since the first International Congress of Comparative Law held in 1900. Our experiences support the claim that the exchange of ideas taking place in the framework of the congresses of comparative law has already contributed to the formation of the common future of the community of lawyers and the whole mankind. Thus, it is not an accident that the interest in these and similar programmes is ever growing, just like the number of meetings organized in the name of comparative law and the experts taking part in them.

Since the very establishment of the International Academy of Comparative Law Hungarian jurisprudence has represented itself and has played an active role in its activities. In this respect, it is not only the example of Professor Elemér Balogh, one of the founders of the International Academy and its first General Secretary that can be a guideline for us, latter successors, but those more recent experiences related to Hungarian contributions to the International Congresses of Comparative Law in the past decades. Hungarian participation has been continuous since 1958, and, since the 6th Congress held in Uppsala in 1962, it is manifested in the publication of Hungarian national reports in independent volumes.

Carrying on this tradition, the Hungarian national reports addressed to the 16th International Congress of International Law are compiled in a special issue of the periodical titled *Acta Juridica* in order to make them accessible to a wider public. These national reports indicate our unchanged commitment to the idea and practice of comparative law but, hopefully, also the freshness of thinking and the ability of renewal that is to characterize our response to the challenges of the tendencies of globalization in our world.

I. A. *The Status of Indigenous and Minority People*  
PÉTER KOVÁCS\*

## The Legal Status of Minorities in Hungary

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

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

Hungary's position *viz.* the linguistic minorities is based in the consideration that instead of classic nation-state concept,<sup>1</sup> the subsidiarity principle<sup>2</sup>

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

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

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

In addition to provisions linking international and national law,<sup>3</sup> or providing safeguards expressed in the European terminology of human rights<sup>4</sup> or in particular providing discrimination<sup>5</sup> the Constitution enshrines the fundamental principles of effective participation by minorities in public life:

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

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

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

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

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

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

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

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

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

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

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

The Constitution laid particular stress on the institution of the ombudsman for minorities.<sup>6</sup> Quite plainly, the Constitution can regulate no more than the truly fundamental principles and the specific conditions are established by separate legislation, notably on the rights of minorities. This law<sup>7</sup> passed in 1993 associates the concept of individual rights with a collective approach, expressed generally as the manifestation of the concept of the "personal autonomy".

In fact the solution prescribed by Hungarian law only partially corresponds to this idea of "personal autonomy": institutions securing it are indeed provided for in the letter of the law, alongside and as it were above the normal institutions of local self-government, the individual rights of persons belonging to minorities and the collective rights pertaining to these minorities. It is the essential ingredient in a coherent complex of instruments. Logically, self-government, present at various levels of society, tends to be linked with collective rights. At the same time, as it will be explained below, it embodies the applied principle of *subsidiarity*. Even so, in theory, self-government is also conceivable in the framework of the organisation of public administration and not necessarily in the human rights framework. Nor indeed is it alien to human rights — the Hungarian law find landmarks in European practice, like the ombudsmen and Lapp assemblies of the Scandinavian countries or certain Slovenian institutions. At the same time, Hungarian law is consistent with the undertakings made in international law: the *European Charter for Regional or Minority Languages*, the *Framework-convention for the Protection of National Minorities in Europe* and bilateral treaties—which are furthermore based on the individual as well as the collective approach to the protection of minorities, and establish bilateral supervision machinery<sup>7</sup> are the frame of reference, supplementing the other stipulations of international law.

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

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

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

Self-government in terms of "personal autonomy" thus find its technical justification in the geographical and numerical patterns of minorities in Hungary.<sup>8</sup> Its legal justification is inferred from the aforementioned stipulations of the Constitution and to some extent from the law on local authorities;<sup>9</sup> its political justification stems from the will of the minorities concerned—which conducted the negotiations as a united front: the government had as its associate and talking-partner and *ad hoc* representative body made up of delegations of the interest<sup>10</sup>—and the meeting of minds between the government and the parliament. (This is also expressed the virtual unanimity with which the law was passed.) The long drafting procedure, in which the commencement and the first draft date back to 1989–1990<sup>11</sup> also testifies to the fact that the minorities regarded the proposals founded on traditional freedom of association<sup>12</sup> as inadequate.

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

<sup>8</sup> Hungary and her minorities:

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

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

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

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

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

<sup>10</sup> This body was working under the title of "round table of minorities".

<sup>11</sup> It was elaborated by the Secretariat for Minorities, directed by the deputy minister Csaba Tabajdi. The basic approach was elaborated by Mr. Gáspár Bűrö.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

National self-government<sup>16</sup> (the "national minority council" in the law) is an elected body whose electors are persons working in the lower self-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

from the Fund for National or Ethnic Minorities but the Parliament<sup>17</sup> also contribute to special programs) at every level where self-government operates. Electoral legitimacy bolsters the responsibility of the representatives of minorities and at the same time, confers the of choosing between the various forms of organisation upon those directly concerned. In this way, it is also hoped to guard against government patronage (clientelism).

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

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

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

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