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# HANDBOOK ON MINORITY LANGUAGES AND COMMUNITIES

## National Cultural Autonomy and Linguistic Rights in Central and Eastern Europe

*Federica Prina, David Smith, Judit Molnar Sansum*

This chapter examines the theory and practice of non-territorial National Cultural Autonomy (NCA) from the perspective of linguistic rights of national minorities in four countries in Central and Eastern Europe (CEE): Russia, Estonia, Hungary and Serbia.<sup>1</sup> The NCA concept was first developed in the twilight of the Austro-Hungarian Empire and is based on the “personality principle”—the notion that ethno-linguistic communities can be autonomous (and sovereign) within a multi-ethnic state, regardless of their members’ place of residence. In its original conceptualisation, it envisaged the establishment of self-government in the

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spheres of culture and education, where local languages would be employed. Subsequent practical application of the NCA system has been limited to only a few cases, with the closest approximation to the original model being found in Estonia during the 1920s (Coakley 2016; Smith and Hiden 2012). The notion has, however, intermittently formed the object of wider discussion, with a rediscovery particularly since the 1990s. In addition to raising the interest of academics (Malloy et al 2015; Nimni 1999, 2005, 2007; Nimni et al 2013; Roach 2005; Smith and Cordell 2008), NCA has been incorporated into the law and practice of several CEE post-Communist countries.

As an alternative form of diversity management, NCA is explored here as a potential vehicle to advance the linguistic rights of national minorities and linguistic pluralism in CEE. Following an overview on NCA's original model, the chapter will outline the practice of NCA in Russia, Estonia, Hungary and Serbia. These countries were chosen in light of the fact that they all have adopted NCA legislation in the post-Communist period.

## **Non-Territorial Cultural Autonomy and Linguistic Rights**

Non-territorial autonomy has been described as “one policy tool of a greater family of statecraft tools”—including the more well-known and widely researched forms of territorial autonomy (e.g. Hannum 1990; Lapidoth 1996; Suksi 1998; Weller and Wolff 2005)—that “aims to consolidate the state and promote social unity through accommodating ethno-cultural demands and requirements” (Malloy 2013: 1). There are two main approaches to non-territorial cultural autonomy: as a general principle of an ethnic group's autonomy in managing its internal (primarily cultural and linguistic) affairs; and as a system of ethnicity-based *institutions* that manage autonomously public competences (again, in the cultural and linguistic realm), regardless of place of residence (Osipov 2013b: 9). We focus here on the second approach, in the sense of cultural (also known as “personal”) autonomy (Lapidoth

1996: 37-40). This type of arrangement is clearly auspicious when multiple ethnic groups inhabit same territory, which precludes territorial solutions to diversity management. While there have been historical precedents of NCA—for example in the shape of the *millet* system in the Ottoman empire<sup>2</sup>—a theory was only elaborated by Austro-Marxists Karl Renner and Otto Bauer, starting with Renner’s 1899 article *State and Nation*.<sup>3</sup>

The publication of *State and Nation* had been preceded already by decades of social transformation in CEE. These changes created a crisis of what had been “constants” of the socio-political order since the Middle Ages. Modernising reforms indirectly strengthened ethnic identity, which also translated into a struggle for linguistic equality, as non-dominant groups came to see a connection between their social inequality and linguistic difference. Meanwhile, new forms of group solidarity compensated for the crisis of decaying “constants” (Hroch 2007a, 2007b): language connected individuals of the same ethno-linguistic background by creating a sense of community (Stokes 1974: 536-7). Language was then placed at the forefront of national movements, from its codification/standardisation to the struggle for national schools and the use of non-dominant languages in the public administration (Fishman 1972; Gellner 1987: 24; Hroch 2007a, 2007b). The link between nationalism and language resulted in the belief that a nation’s existence was directly menaced by a possible loss of its language (Fishman 1972: 54; Hroch 2007b: 93), and, in turn, that language preservation was a prerequisite for the survival of national identity.

In this context, national movements were seen by the Austro-Marxists are likely to dismember the state.<sup>4</sup> The problem was linked to territoriality—namely the fact that a

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<sup>2</sup> See Lapidoth (1996: 37-40).

<sup>3</sup> The theory was later developed by Otto Bauer ([1907] 2000).

<sup>4</sup> As noted, the Austro-Marxists based their theory on the circumstances surrounding the Austro-Hungarian

numerical minority tends to be subjected to the domination of the majority within a state, with the routine imposition of its legal system as well as language (Renner (2005 [1899]: 27-8). Renner started from the premise that “the territorial principle [...] can only produce struggle or oppression, because its essence is domination” (Renner 2005: 28): specifically in relation to language, Renner referred to the postulate of *cuius region illius lingua* caused the “state language” to become “a perennial source of strife” (Renner 2005: 30). The proposed solution was a shift of emphasis from territory to *nations* (as personal associations), and, consequently, from states to peoples. Indeed, in Renner’s opinion, problems associated with the “national question” stemmed from the fact that “[w]e still cannot rid ourselves of the patrimonial approach to the state constitution, according to which an administrative authority is above all attached to a region to which in turn ... people belong” (Renner 2005: 36). By turning this upside down, each community would be afforded the agency to organise the (cultural) life of the nation, by exercising their collective rights.

Clearly one cannot completely do away with territory: institutions are physically located in particular districts, and factors such as geographical density of individual settlements can only play a role in the organisation of such communities (Renner 2005: 31). At the same time, NCA would incorporate a novel feature: the differentiation between spheres of general administration (involving the country—and its nations—as a whole, such as security and the military), and cultural issues (pertaining to each nation). This would lead to (a cultural form of) self-determination, while not infringing the state’s (politico-administrative) competences.

In practice, in multi-ethnic areas, various ethnicities would form national councils to deal with ethnicity-related matters autonomously, while the municipality’s politico-administrative functions would be distributed partly to the national community and partly to joint colleges

headed by a state functionary (Renner 2005: 35-6). National councils would include representatives democratically elected on the basis of national registers, following enrolment on the basis of self-identification. This system envisaged the ethnic community's own language as the working language in national self-administrating bodies.<sup>5</sup> Consequently, even if persons belonging to minorities employed a *lingua franca* as a means of (inter-ethnic) communication,<sup>6</sup> minority languages would continue to be widely employed in local institutions, also in light of the fact that education (up to tertiary level<sup>7</sup>) would be available in these languages (Renner 2005: 39, 43-5). Communities were to be equipped with their own finances to sustain their institutions (including schools) operating in local languages, through a portion of the taxes paid by members of the community themselves. As Nimni (1999: 298, 2007: 348-9) argues, the resulting *cultural autonomy* would free a nation from the condition of "minority" in need of protection, as "[t]he status of national minorities is a by-product of a national state that has a sovereign national majority" (Nimni 2007: 348).

In this way, the Austro-Marxists attempted to create an innovative model, overcoming age-old practices by transcending territoriality-centred approaches. It was an effort "to break out of normative straightjackets", as Nimni (1999: 295) writes. Some features of the NCA model are forward-looking, even by today's standards: NCA upheld the notions of minorities' empowerment and collective rights, by arguing that these communities ought to control their cultural destiny and actively participate in the affairs of the state. This can seem particularly

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<sup>5</sup> Ethnically mixed districts would have a requirement of bilingualism among civil servants.

<sup>6</sup> Renner conceded that the language of communication between the multiple nations' institutions would be German.

<sup>7</sup> Similarly, the (Council of Europe) Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) has recommended that education in minority languages is provided up to university level, so as to enable students to consolidate their language skills. See for example, ACFC (2002: §105; 2012b: §75). See also the European Charter for Regional or Minority Languages, Article 8(1)(e)(i).

aspirational in today's world, where minorities' collective rights remain controversial, a state's monolingualism is often considered desirable—as it simplifies and expedites state administration—and states (rather than nations) remain the principal actors in international relations. In this sense, NCA has been seen as a hope for greater accommodation of the rights of nations (Nimni 1999, 2007), including their linguistic rights, while also reflecting the modern criticism of the nation-state's "sovereign territorial ideal" that routinely places minorities in a subordinated position vis-à-vis the majority (see, for example, Nootens 2006). Indeed, the nation-state, even when purporting to treat all citizens equally, tends to be fundamentally assimilationist (Ra'anana 1991: 20-25): state "neutrality" vis-à-vis various communities has then been described by Nimni (2007: 351) as a "chimera", while others (Kymlicka and Grin, 2003; Kymlicka and Patten 2003; Wright, 2001: 48) have pointed out that the choice of a state language can never be considered "neutral" (in the sense that it fulfils a purely communicative—and thus "instrumental"—function). Rather, this choice carries an underlying social and political significance: it can then become a "perennial source of strife", as Renner (2005: 30) argued.

In the 1990s the post-Communist states considered in this chapter were—like the Austro-Marxists nearly a century earlier—attempting to find new solutions to old problems. They were grappling with drastic socio-political changes, while also having inherited a highly complex (socio-)linguistic situation (Paulston et al 1998, Pavlenko 2008, Sloboda et al 2016), with a striking politicisation of language issues (Kamusella 2009).<sup>8</sup> The resulting instability created new fears of societal fragmentation along ethnic, social and political lines. Apprehension over a possible torrent of demands of territorial autonomy was particularly evident in Russia. In Estonia the primary concern was regulating relations between the

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<sup>8</sup> Meanwhile, post-Soviet states were striving to promote (newly-declared) state languages while distancing themselves from Russian (Pavlenko 2013).

substantial minority (and former dominant group) of ethnic Russians and the titular majority group. In Hungary the priority was the creation of a system of reciprocity which, by safeguarding the rights of Hungary's ethnic minorities, would simultaneously act to promote the rights of Hungarian co-ethnics residing outside Hungary. Claims by the local Hungarian minority were in turn a key driver behind the adoption of NCA legislation in neighbouring Serbia, as it sought new ways of accommodating ethno-linguistic diversity following the dissolution of the federal union with Montenegro and the secession of Kosovo.

## **NCA Laws and Practice in Central and Eastern Europe**

During the period of post-Communist transition, CEE countries reached out to various models to stabilise their inter-ethnic relations. The countries considered in this chapter made the choice to incorporate NCA in their strategies for diversity accommodation. As different motivations guided the governments of these states, NCA can be seen to having fulfilled—at least partially—a historically determined political function. At the same time, this chapter focuses on another possible function: the potential role played by NCA in enhancing the linguistic rights of minorities, including by reflecting the spirit of the original NCA model.

### **1. Russia**

Russia is an exceptionally vast multi-ethnic and plurilingual country. Cultural, linguistic, ethnic and linguistic diversity has been a feature across the tsarist, Soviet and post-Soviet eras. In the 2010 census, as many as 19.1% of the population declared themselves non-Russian. Census data list 193 minority groups and subgroups, of which the largest are Tatars (3.87% of the population), Ukrainians (1.40%), Bashkirs (1.15%), Chuvashes (1.05%) and Chechens (1.04%).<sup>9</sup> The census recorded 169 languages<sup>10</sup> besides Russian.

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<sup>9</sup> 2010 Census. Available at: [http://www.perepis-2010.ru/results\\_of\\_the\\_census/results-inform.php](http://www.perepis-2010.ru/results_of_the_census/results-inform.php)



Characteristic of Russia is also its ethno-territorial federalism, introduced during the Soviet period. In light of this legacy, the Law “On National Cultural Autonomy”<sup>11</sup> (hereinafter “the NCA Law”) was adopted in 1996 as a form of *extra*-territorial accommodation of minority interests, with a view to pre-empting claims for supplementary ethnicity-based territorial formations from the numerous ethnic groups which did not have been “assigned” a territory during the Soviet period.<sup>12</sup> At the same time, NCA has continued to coexist with ethno-territorial federalism. Thus, for example, the Republic of Tatarstan exists alongside a network of Tatar national cultural autonomies (NCAs).<sup>13</sup> In fact the NCA system aims at complementing ethnic federalism: NCA provisions apply to groups “in a situation of minority”:<sup>14</sup> this means titular nationalities outside “their own” territorial units, and those without a territory named after them (“non-titular” nationalities), no matter how small.

The provisions contained in the NCA Law are, for the most part, vague and declarative. For example, Article 4 stipulates that an NCA “has the right to receive support from the organs of state power and the organs of local self-government, that are necessary for the preservation of national distinctiveness (*samobytnost'*), the development of national (native) language and

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<sup>10</sup> The census gathered data generally on “knowledge of languages by the population of the Russian Federation”, so this number encompasses languages other than minority languages. See the 2010 census, Part IV, Item 5. Official figures refer to 130-160 minority languages in Russia (government data provided supplied for the 2009-2011 project—with the EU and Council of Europe—“Minorities in Russia: Developing Languages, Culture, Media and Civil Society”, and cited in Oeter 2013: 38).

<sup>11</sup> No. 74-FZ, 17 June 1996.

<sup>12</sup> On the introduction of NCA in post-Soviet Russia, see Osipov (2004). The ethnic groups that were “assigned” a territorial unit during the Soviet period became known as “titular nationalities.”

<sup>13</sup> Another institution that represents a form of non-territorial cultural autonomy is that of peoples’ congresses (see Osipov 2011), such as World Congress of Tatars.

<sup>14</sup> Article 1.

national culture.” Even though the expression “right” is employed, this and other related provisions have not been interpreted as conferring corresponding obligations on the state (i.e. to provide funding for their realisation). Similarly, the law refers to NCAs’ “right” to establish media outlets operating in minority languages, receive and impart information in such languages, and establish minority educational institutions, but no specific mechanisms are envisioned.<sup>15</sup>

NCA in Russia was meant to streamline interaction between the state and minority communities, by creating an integrated system comprising institutions at the local, regional and federal level. At the same time, there is no clear differentiation in terms of role, rights or responsibilities between NCAs and other institutions promoting minority languages and cultures (such as cultural centres and NGOs that have opted not to register as NCAs). This results in only partial streamlining of efforts towards the preservation of cultural and linguistic pluralism, and of exchanges between government and minority representative institutions. Since the NCA Law’s adoption in 1996 there has been little effort towards its practical implementation (Osipov 2013a; see also Bowring 2005, 2007). At the regional and federal levels, NCA institutions have remained at the periphery of the formulation of state policies. And, generally, opportunities for civil society to feed into decision-making have been much restricted through legal and policy changes under Putin.<sup>16</sup> Moreover, there is no legal obligation to elect representatives in NCAs; while many have opted to do so, electors are persons who have chosen to affiliate themselves to NCA institutions and participate in their activities, rather than the ethnic community in the wider sense, which can raise issues of representation.

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<sup>15</sup> On the inadequacy of legal mechanisms for the effective functioning of NCAs, and for the exercise of minority rights more generally, see Bowring (2013), Oeter (2013) and Prina (2016).

<sup>16</sup> See, for example, Gilbert (2016); Horvath (2011).

Unlike in Renner's model, Russia's NCAs do not directly run their own educational institutions. NCAs' activities remain frequently linked to inter-ethnic festivals, with an ethnographic, folkloristic flavour typical of the Soviet period. At the same time, in Russia language has historically been considered a highly salient ethnic marker, and NCA representatives recognise it as indissolubly linked to identity preservation.<sup>17</sup> Consequently, today NCAs devote considerable attention to language issues. Their activities in this sphere have included: teaching of languages (through NCA institutions themselves); co-operation with schools (e.g. in producing teaching materials, including textbooks to teach minority languages);<sup>18</sup> and monitoring the fulfilment of legal obligations in the sphere of minority-language education.

Language tuition outside the formal education system is often provided directly by NCAs. This involves the teaching of minority languages, particularly through Sunday schools, by volunteers but also by teachers remunerated by NCAs. In the case of migrants moving to Russia for work and better financial prospects—who mostly originate from the Central Asia and the South Caucasus—NCAs fulfil a dual role by aiding their integration and preserving their linguistic distinctiveness. The Russian government's official position, however, has seen the balance between linguistic integration and plurilingualism tipping towards the former, with a strong emphasis on the promotion of the *state* language.<sup>19</sup> This trend is exacerbated by

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<sup>17</sup> Interviews held in Russia in 2015-2016; 76 persons were interviewed (in Moscow, St Petersburg, Saransk, Kazan, Petrozavodsk and Ufa). Respondents were civil society activists (from national cultural autonomies, peoples' congresses and minority NGOs), academics and public officials, from a range of ethnic backgrounds.

<sup>18</sup> Some textbooks were funded through initiatives of inter-governmental organisations, such as the 2009-2011 project "Minorities in Russia: Developing Languages, Culture, Media and Civil Society", implemented by the EU and Council of Europe in cooperation with the Russian government.

<sup>19</sup> Since 2001 there have been several programmes for the promotion of the Russian language, both at the federal and regional levels (see Prina 2016: 102-105).

the fact that, in the presence of difficult economic conditions, the younger generations—and their parents—often decide to prioritise fluency in the state language, or marketable foreign languages such as English, over the inter-generation transmission of minority languages.

Unlike in the original NCA model, most of the funding for NCA institutions derives from the state: grants are accessed through project applications, or, in some cases, regular (if unsubstantial) state financing. Financial resources also originate from private sponsors and/or from community members. Overall, financial resources are very limited, which cause NCAs to operate in precarious conditions.

While NCAs' cultural "autonomy" *per se* is limited, a form of partial autonomy—including with regard to cultural matters affecting minorities—is, instead, found in the Russian Federation's territorial arrangements: some of the titular languages are required to be studied in the ethnic republics<sup>20</sup> (in some cases by *all* residents, including ethnic Russians), and most (republican) legislation recognises titular languages as co-official alongside Russian.<sup>21</sup> At the same time, there are considerable disparities between the conditions of various titular groups in "their" territorial formations, in terms of numbers and resources. And, while Russia is *de jure* a federation, its political centralisation has meant that policies and legislation affecting national minorities, including minority-language education, have been primarily conceived at the central, federal level.<sup>22</sup> Autonomy in managing cultural matters has, overall, decreased in the Federation's subjects, with a generalised tendency to reduce the teaching of (and through the medium of) minority languages, and increasing switching to Russian (Aldòs i Font 2014;

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<sup>20</sup> According to Russian government data from 2012, 39 minority languages were languages of instruction and 50 were taught as subjects (ACFC 2012a: 6).

<sup>21</sup> The exception is Karelian in the Republic of Karelia.

<sup>22</sup> For example, the ACFC (2006: §90) stated that Russia's minority advisory bodies in Russia's regions are in some cases "expected to implement rather than contribute to the preparation of minority-relevant legislation."

Chevalier 2012; Prina 2016; Zamyatin 2012). This has resulted in assimilatory tendencies,<sup>23</sup> even in a republic such as Tatarstan, where—compared to other regions—the titular nationality has been in a strong position financially and demographically.<sup>24</sup>

Moreover, it is in situations of *extra-territoriality*—outside titular groups’ “own” territorial formations—that a greater need for NCA exists. For a titular group such as the Tatars—the second largest ethnic group after the Tatars—NCA could fulfil the significant role of promoting the interests of Tatars residing outside the republic (approximately two thirds of Russia’s entire Tatar population). Yet the limited impact of NCA was particularly apparent outside the ethnic republics, as the conditions and resources for the teaching of titular languages exist primarily within the republics.<sup>25</sup> There are clearly logistic difficulties in reaching out to non-titular groups that are territorially dispersed, such as Georgian and Armenians. If a school introduces a course for the study of a minority language, it is likely that only a small number of students will live sufficiently close to make their regular attendance viable.<sup>26</sup> Particularly challenging are cases of highly vulnerable languages, such as those of Russia’s numerically-small indigenous peoples.

## **2. Estonia**

Estonia’s law on national minority cultural autonomy, adopted in 1993, has since been implemented by the country’s small Ingrian Finnish (2004) and Swedish (2007) minorities. It

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<sup>23</sup> The study of and through the medium of minority languages has tended to decrease since 2000 (see Prina 2016: ch. 6).

<sup>24</sup> Tatars are a numerical majority within the Republic of Tatarstan.

<sup>25</sup> When titular nationalities are a small numerical minority in a republic the teaching of these languages is limited.

<sup>26</sup> Interviews with minority education specialists, Kazan, 2015.

has also featured in debates on the status of the Russian language, spoken as a mother tongue by a quarter of the country's current 1.1 million inhabitants.

The contemporary Republic of Estonia is a *restored* state: established in 1918, it was forcibly annexed by the USSR in 1940 and was under Soviet rule until August 1991, when it re-attained *de facto* sovereignty. The current law on NCA is portrayed as a restoration of the more famous one previously in force during 1925-40,<sup>27</sup> when small, territorially dispersed German and Jewish communities created Cultural Councils (public-legal bodies with devolved state funding and tax-raising powers, elected through voluntary enrolment on national registers) with direct responsibility for running public schools teaching in the relevant language(s) of the minority group (Smith 2016).

This system, however, was not restored to being in 1993. The current law, the National Minorities Cultural Autonomy Act ("NCA Act") gives "persons belonging to German, Russian, Swedish and Jewish minorities and persons belonging to national minorities with a membership of more than 3000" (Article 2(2)) the right "to establish cultural autonomy in order to achieve the cultural rights given to them by the constitution" (Article 2(1)). Autonomy bodies are elected, but lack public-legal status and clear funding guarantees. They cannot assume control of public schools, but only establish private ones (Article 25). There is, therefore, little to differentiate the rights of NCAs from those of regular NGOs, which are far easier to establish (Poleshchuk 2013, 2015; Smith 2014).<sup>28</sup>

Restoring a more substantial variant of NCA was never likely, given the legacies of a Soviet period that saw the ethnic Estonian share of the population decline from 88% to 61%,

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<sup>27</sup> Lagerspetz (2014: 458 & 465).

<sup>28</sup> Interviews with Ülo Kalm, Chair of the Swedish Cultural Council, Aleksandr Aidarov, Advisor to the Ministry of Culture (both 2015) and Toivo Kabanen, former Chair of Ingrian Finnish Cultural Council, 2012.

principally due to mass settlement by mainly Russian-speaking Soviet citizens. The official emphasis on knowledge of Russian as the *lingua franca* of the Soviet state meant that new settlers were neither required nor encouraged to learn Estonian. Ever more prevalent use of Russian in an urban context gave Estonians the consciousness of embattled minority within a larger state, facing the prospect of longer-term assimilation.

Post-1991, state policy has therefore prioritised making Estonian the dominant medium for communication within society. Within this context, the NCA Act was not intended for use by the Russian population, which could already access a full publicly-funded system of education in its native language. A more pressing task was to increase the proportion of Estonian-language teaching in existing Russian schools, to facilitate integration into the structures of a restored nation-state. NCA was intended for minorities “whose problems derived from their small size,”<sup>29</sup> though even here the law had little immediate instrumental value: Estonia’s policy of granting automatic citizenship only to citizens of the inter-war Republic and their descendants left 30% of the population without full citizenship in 1993. Since the NCA Act defines persons belonging to national minorities as *citizens* of the Estonian Republic, smaller ethnic groups have struggled to meet the minimum threshold of 3,000 members: divided along citizen/non-citizen lines, most opted to create cultural NGOs.

For the groups in question, high levels of assimilation into the Estonian or Russian linguistic sphere mean that language learning has mainly been confined to organising hobby schools. The Estonian state has encouraged such initiatives, which help to counter claims of a single, homogeneous “Russian-speaking minority”. It also funds a Jewish Gymnasium in Tallinn (teaching in Russian and Hebrew) and secondary and vocational schools in western Estonia

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<sup>29</sup> VII Riigikogu Stenogramm, 30 September 1993, p.221.

teaching in Swedish, while in some schools, students can study other smaller minority languages for a couple of hours a week.<sup>30</sup>

The NCA Act has thus been described as an entirely “performative law”, designed to assert symbolic continuity with inter-war democracy and underscore a tradition of tolerance towards “genuine” national minorities (Smith 2000; Aidarov and Drechsler 2011). “Small, motivated” Finnish and Swedish groups have since implemented NCA (Poleshchuk 2013: 157), but in practical terms this has had little added value for minority language preservation. The Finnish minority (12,000-strong during the early 1990s) has undergone a steep demographic decline (largely due to migration to Finland), and activists underscore the challenge of encouraging younger people to learn the language.<sup>31</sup> In the Swedish case, most registered members of the NCA actually reside in Sweden rather than Estonia: these are interwar citizens (or descendants thereof) evacuated *en masse* to Sweden during World War II.<sup>32</sup>

For all this, Finnish and Swedish activists regard NCA as important in terms of conferring status and giving greater potential voice in shaping minority policy.<sup>33</sup> Both maintain that autonomy bodies should be given public-legal status, enhanced powers and greater funding.<sup>34</sup> Yet, the state seems unwilling to develop the legal base of NCA any further, fearing that this

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<sup>30</sup> Interview with Kalm, 2015 (note 28); and Aidarov and Drechsler (2013: 111-121)

<sup>31</sup> Interviews with Vladimir Vogt, Head of the Ingrian-Finnish Society of Tallinn and Taisto Raudalainen, Editor of *Inkeri* journal, 2015.

<sup>32</sup> Strictly speaking, this contravenes the terms of the law, but (at least until 2016) the Swedes were exempted from the requirement that citizens be resident in Estonia. Interview with Kalm, 2015.

<sup>33</sup> A former Head of the Swedish NCA claimed that an autonomy body has a more a legitimate and officially recognized voice compared to an association, since “we carry out democratic elections and ... have citizens, not members.” Cited in Lagerspetz (2014: 469).

<sup>34</sup> Interviews with Kalm, 2015, and Kabanen, 2012 (note 28).



might give rise to Russian minority institutions susceptible to external manipulation from Russia.<sup>35</sup>

The rejection of four separate applications for Russian NCA since 1996 indeed suggests that autonomy is securitised. At the same time, none of these applications reflected broad support for cultural autonomy among Russian minority activists. The latter have criticised a political system which, they claim, denies equal opportunities for political participation within the state. Russian elites had no say in the 1993 NCA Act, and since Russian-speakers could at that time already draw on existing institutional supports, the vague and minimalist framework of NCA offered them nothing – indeed, it ran the risk of “ghettoising” Russians.<sup>36</sup> Recent calls for Russian NCA have cited education reforms obliging upper secondary schools teaching in Russian to switch to a bilingual Estonian-curriculum from 2011. Here, though, critics rightly pointed out that adopting NCA would in no way assist efforts to maintain Russian-language tuition within state schools.<sup>37</sup> Indeed, when the state consulted an umbrella organisation of Russian cultural NGOs over NCA in 2009, it declared its opposition. For most Russian activists, attaining greater voice and influence in political decision-making remains more important.

### **3. Hungary**

Hungary was part of a multi-ethnic monarchy until the end of World War I. Its ethnic composition then changed significantly due to the loss of territory under the 1920 Trianon Treaty. As a result of deportations, population exchanges during and after World War II and a policy which promoted assimilation of national minorities during the Communist period, the

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<sup>35</sup> Interview with Kabanen, 2012. Also Aidarov and Drechsler (2011) and Lagerspetz (2014).

<sup>36</sup> Vabariigi Presidendi Ümarlaua istungite protokoll 1/2000, Tallinn, 11. veebruaril 2000.

<sup>37</sup> Interviews with Aleksey Semenov, Director of the Legal Information Centre for Human Rights and Yuri Polyakov, Director of the Russian Cultural Centre, 2015. See also Semenov (2006).

proportion of Hungarian citizens whose mother tongue was a language other than Hungarian fell from 10.4% (1920 census data) to 1% by the 1980s (only rising to 1.5% in recent decades). However, there has been a more significant growth in the proportion of persons self-identifying as national minorities since 1980 (0.5%), especially between 2001 (3.1%) and 2011 (5.6%). Although the real size of the minority population may in fact be double the official figure, the number of people with a mother tongue other than Hungarian is relatively small. For most national minorities the biggest concern is loss of their mother tongue and ethno-linguistic assimilation.

Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (thereinafter the “1993 minority law”) included regulations on: the rights of national minorities (as individuals and as communities), minority self-governments, the national minority representative’s role as spokesperson in municipal self-governments, cultural and educational self-administration of nationalities, minority language use and financial affairs of Nationality Self-Governments (NSGs).<sup>38</sup> Article 13 declared that “Persons belonging to a minority have the right to a) learn, foster, enrich and pass on their mother tongue, history, culture and traditions; b) participate in education and cultural activities in their mother tongue.” Chapter 7 of the law expanded on language-related provisions, by guaranteeing the right to freely use one’s mother tongue, and the use of minority languages in courts and the public administration. A new law, Act CLXXIX of 2011 on the Rights of Nationalities<sup>39</sup> retains the same provisions on language use, but more closely defines the parameters for their implementation, according to the percentage of the national minority within the local population (10 or 20 percent).

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<sup>38</sup> Unlike in Russia and Estonia, the minority law was not devoted exclusively to NCA, but related to minority protection more generally; NCA (in the form of NSGs) has however been its main mechanism

<sup>39</sup> This law repealed the 1993 minority law.

The legislation enables the creation of NSGs in a settlement where at least 25 people have declared to belong to one of the nationalities recognised under the legislation.<sup>40</sup> Members of NSGs are established through democratic elections held at the same time as local elections. NSGs are established at three levels: local settlement, regional and national levels. These minority institutions aim to support minorities in their cultural and educational needs; indeed, culture, tradition, language and education are considered crucial activities by NSGs' representatives.<sup>41</sup> NSGs have also directly taken over the management of educational and cultural institutions (ACFC 2016: §67, 70); consequently—compared to the Russian and Estonian systems—the Hungarian NSG institutions more closely resemble the original NCA model. There were 75 preschools/schools run by NSGs in 2015, 39 of them by German NSGs; altogether, in the same year, 846 preschools/schools offered programmes taught in a minority language. If an NSG runs a minority school, it receives additional financial support from the government, equivalent to the funding given to regular state schools offering minority-language programmes. There is thus a growing trend towards NSGs taking over the management of schools, with a view to avoiding centralisation and increasing local community oversight.

Despite this, Dobos (2013) observes a tendency whereby Hungary's national minorities have become Hungarian-speaking (while however preserving their distinct ethnic identities, cultural particularities and traditions). There are several factors behind the relatively rapid

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<sup>40</sup> There are 13 such nationalities (Article 61, 1993 law; Appendix 1, 2011 law).

<sup>41</sup> Interviews with representatives of Roma and German Nationality Self-Governments (language and education were mentioned less often than culture and tradition by the respondents). In Hungary 37 in-depth interviews were held in 2015, with members of the Roma and German NSGs (at three levels: local settlement, county and national levels) and with politicians and political activists involved in minority issues. Roma and Germans are the two largest minorities in Hungary, although their characteristics are very different.

loss of mother tongue competence: first, minorities live scattered across the country; second, nationalities represented in larger numbers (e.g. Germans, Slovaks, and Croatians) have been speaking regional dialects and, because they settled before industrialisation, their vocabulary did not keep pace with the development that modernisation would have required. This resulted in obstacles to their effective communication and hence increased pressure to assimilate linguistically (Demeter Zayzon 2003); and, third, under Communism the governments' minority policies did not value national minorities' identities and languages (Dobos 2013), which accelerated the movement towards assimilation.

In light of these factors, the revival of minority languages is a very challenging task in Hungary. A generation has grown up without speaking their mother tongue, while society as a whole has not become accustomed to national minorities using their native languages. Although the 1993 minority law guaranteed the right of minorities to use their mother tongue in public institutions and courts, in most cases the conditions for this have not been developed since then.

Within the existing NSG system, the Roma are the most disadvantaged among the 13 national minorities recognised under Hungarian law, given their social marginalisation. Those nationalities which are organised, have kin-states, and are better integrated into society seem to be in a position to advance the interests of their communities even in the presence of unfavourable circumstances, although the greatest threat continues to be advanced assimilation, which is likely to only intensify in the future. While the new spokesperson system in parliament<sup>42</sup> can count some successes,<sup>43</sup> persons belonging to minorities seem to

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<sup>42</sup> Hungary's 2011 Election Law allows the 13 officially recognised minorities to appoint a designated spokesperson, who has the right to address parliament, but not to vote.

be generally dissatisfied with national minorities' parliamentary representation.<sup>44</sup> Indeed, despite having guaranteed access to parliament the nationalities' spokespersons have no rights to vote in the parliament.

There are two different types of funds to support NSGs: the “operational” fund and the “task-based” fund. Although in 2015 the government raised the “operational fund”, financial support is relatively low. It is also independent of the size of minority communities, as every NSG is allocated the same amount. The “task-based fund” depends on how active each NSG is (as noted, additional funding is provided when an NSG manages a school). It has often been considered unclear how the “task-based” funding for individual NSGs is calculated.<sup>45</sup>

#### **4. Serbia**

The Law on National Councils of National Minorities (hereinafter “NC Law”<sup>46</sup>) was introduced in Serbia, after substantial delays, only in 2009, much later than in other CEE.<sup>47</sup> The law was not met with full consensus: a number of its provisions were later contested in the Constitutional Court (ACFC 2013: §190; Beretka 2014; Korhecz 2015; Surová 2015),

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<sup>43</sup> interview data revealed that\* as it has enabled the discussion of issues relating to language and minority-language teachers

<sup>44</sup> Interviews\*

<sup>45</sup> Some respondents referred to the lack of an obvious relationship between activities implemented and the monies received. Additionally, the ACFC (2016: §67-70), while welcoming the funding allocated to NSGs and their activities, has noted shortcomings linked to delays in transferring funds for the management of cultural and educational institutions run by NSGs.

<sup>46</sup> “Official Gazette of the RS”, No 72/09, 20/14—CC and 55/14.

<sup>47</sup> Minority National Councils were established already in 2002 under Article 19 of a former Yugoslav Law on the Protection of Rights and Freedoms of National minorities. However, it was only in 2009 that a Serbian Law of the same name clearly determined their competences, funding mechanisms and election procedures (Korhecz 2014: 3).

resulting in rulings that have diluted the original law's provisions.<sup>48</sup> Practical difficulties have further stemmed from some contradictions between the NC Law and other Serbian legislation (ACFC 2013: §15).<sup>49</sup> Despite this, compared to other laws considered in this chapter, it provides much broader competences in the management of minority languages and cultures by minority representatives themselves.

The law stipulates that national minorities may elect National Councils (NCs) in order to realise their “rights to self-government in culture, education, information and official use of language and script” (Article 2). “Self-government” is to be understood in the sense of (partial) autonomy in managing cultural and linguistic matters. NCs have the right to express opinions on all issues concerning culture, education, information and language use of national minorities, including curricula (Article 13). Article 23 imposes sanctions on state bodies that do not respect the rights of NCs, and the Hungarian NC has successfully pursued lawsuits against local authorities that did not comply with this provision (Beretka 2014: 269). At the same time, this role is essentially advisory.<sup>50</sup> The law further contains provisions on funding of NCs' activities, and highly detailed regulations (Articles 44 to 109) on the elections of representatives.

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<sup>48</sup> In particular, the Court rescinded the provision that NCs could designate “institutions of particular importance” for the national minority, such as educational institutions and, on this basis, assert “founding rights” allowing them to nominate or approve candidates for management positions within these institutions. Thus, Malloy, Osipov and Vizi (2015) classify the Serbian NCA model as one that confers “voice through self-governing institutions” (see also Surová, 2015).

<sup>49</sup> Some contradictions were later rectified (ACFC 2013: §137).

<sup>50</sup> Interview with Ernő Németh, President of Information Committee of the Hungarian National Council, 2016.

Overall, NCs are the main institutions promoting minority rights in Serbia.<sup>51</sup> They have engaged in a range of activities, including: designating the traditional names (in minority languages) of local self-government units and settlements (Article 22, NC Law); funding minority-language newspapers (CoE 2016: §16, 59, 197); involvement in the provision of (minority-language) textbooks<sup>52</sup> (Article 14). NCs have also been active in expanding the teaching of minority languages at various levels of education. In the area of education, the (Council of Europe) Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) referred to a “broad offer” for the teaching in and of minority languages in schools in Serbia, while some schools provide bilingual education (ACFC 2013: §42; CoE 2016: §69). However, attempts to introduce minority languages as new subjects have not been successful in some schools (CoE 2016: §64, 69, 80), and there have been limited efforts to implement the legislation on minority-language education in some localities. The resulting shortcomings in minority-language education have led, in some cases, to parents transferring their children to schools functioning in the state language (ACFC 2013: §42; 153-4).

The NC Law presents some similarities with the NCA model inasmuch as it contains provisions on participation of minorities in elected bodies and the administration; yet in practice minorities—particularly numerically smaller ones—have been under-represented in these institutions (ACFC 2013: §30-31, 176-9, 183). Elections to NCs have taken place in 2010 and 2014, when 19 and 21 such bodies respectively were established. As in the NCA’s original model, elections occur following enrolment into special electoral registers on the

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<sup>51</sup> The ACFC (2013: §196) states that they play “an overwhelmingly dominant role” in the realisation of minority rights in Serbia.” Korhecz (2014) notes that in the case of the Vojvodina Hungarians, the law—at least in its initial incarnation—heralded a “new quality of life” for the minority in question.

<sup>52</sup> Compiled in Serbia or imported from minorities’ kin states.

basis of self-identification.<sup>53</sup> Unlike other countries analysed in this chapter, only one NC is elected for each minority for the country as a whole, with no smaller representative bodies at the local level. This is despite the fact that some initiatives concerning minorities (and their languages) occur at the local level, such as declaring a minority language official within a municipality.<sup>54</sup> Practical difficulties in implementing the language-related legal provisions also exist at the level of municipalities, and are linked to insufficient numbers of staff proficient in (official) minority languages, and inadequate resources for the translations of documents (ACFC 2013: §26, 139, 196).

With regard to funding, 30% is divided equally among the registered NCs, and 70% is allocated on the basis of the number of persons represented and of institutions of the minority concerned<sup>55</sup> (Korhecz 2014; Beretka 2014: 268). NCs receive less funding from the authorities if their minority language has not been introduced in local official use. Moreover, there are discrepancies in the funding available across the country: the Autonomous Province of Vojvodina benefits from more far-reaching programmes for the promotion of minority languages and cultures and greater funding opportunities, while minorities whose NCs are located outside Vojvodina have in practice been at a disadvantage (ACFC 2013: §14, 88, 138, 195; CoE 2016: §15).

In sum, particular circumstances in Serbia—including Yugoslav legacies, a desire to engage with the EU and the need to consolidate a newly-sovereign state after years of political struggle and ethnic conflict (Purger 2012)—contributed to the creation of an NCA system

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<sup>53</sup> Although direct elections to NCs are only held if a number of voters equivalent to 40% of the relevant minority population enrolls on an electoral register; otherwise, autonomy bodies are created indirectly by nominated electors. In 2014, 17 out of 21 NCs were directly elected, and 4 created indirectly.

<sup>54</sup> Legally there is an obligation to do so when the local minority population amounts to more than 15%.

<sup>55</sup> Article 115, NC Law.



which is, by regional standards, very far-reaching. However, autonomy remains politically contested and has been reduced in scope since 2013. The question therefore remains—as Korhecz noted in 2014 in “*Quo vadis Serbia?*”—whether or not the country’s continued engagement with the EU integration process will entail stronger guarantees for respect of minority rights, including the protection and promotion of minority languages.<sup>56</sup> In this regard, Petsinis (2012) observes that the law selectively applied elements of the federal legacy of the former Yugoslavia: these were reformulated and adapted to more recent European trends in minority rights protection, as part of Serbia’s engagement with the EU and other international organisations after 2000. Moreover, as in other cases considered by this chapter, most authors suggest that the system in place is far more effective in the case of larger and more territorially concentrated minorities—especially those, such as the Hungarian one, with support from external kin states—which can draw upon greater resources and have greater possibilities to achieve representation in the national parliament and local councils (Beretka 2014; Purger 2012; Surová 2015).

## **Conclusion**

The practices of NCA in the four countries analysed here have considerably distanced themselves from the theory first elaborated by Renner and Bauer. The Austro-Marxists’ model of NCA would have created a mosaic of multi-ethnic communities, united by a set of common interests within a polity, but with exclusive competence over the exercise of their linguistic and cultural rights. The reality in the four countries is that the levels of actual cultural *autonomy* afforded to minority communities are limited. Restricted is also NCA institutions’ influence on policy-making on (cultural or other) matters affecting minority

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<sup>56</sup> This was the view expressed by Bálint Pásztor, MP and Chair of the Hungarian Party VMSZ, in an interview in 2016.

communities, while resources remain a problem in all cases. Meanwhile, minority languages continue to be used only marginally, rather than being the working language of self-administering communities.

At the same time, there are some variations between the four countries, as NCA is considerably affected by historical legacies and local circumstances. While in the 1990s the countries in question shared a need to respond to emerging challenges posed by ethnolinguistic diversity, the motivations behind the introduction of NCA, and the type of NCA chosen, differed. For example, in the case of Estonia, the drive for the restoration of pre-Soviet conditions has been highly significant. NCA institutions' reliance on folklore and ethnography in post-Soviet states reflects a prolongation of Soviet practices. NCA's potential in the promotion of minority languages is circumscribed by the choices made by the relevant governments with regard to its application, which, while referring to the principles of "autonomy" or "self-government", have often effectively curtailed them.

Local circumstances have further influenced the conditions surrounding minority languages, and the way they may be protected and promoted. In all four countries, there is a tendency towards linguistic assimilation, exacerbated by the breaking up of linguistic communities: emigration, population decline, and generally the disappearance of areas once densely populated by speakers of minority languages—which created linguistic oases akin to those envisaged by the NCA theorists—lead to the use of the state language by default. At times the younger generations (and their parents) opt to learn languages that offer prospects for financial well-being, rather than marginalised minority languages. Overall, the opportunities offered by NCA are limited in the sphere of language revitalisation, if one considers that the successful promotion of minority languages would require not only enhancing language skills (e.g. through language tuition), but also providing opportunities and a *desire* to use it (i.e. raising its prestige of the language) (Grin and Moring 2002: 74). In practice, it is those

minority communities that have a kin state and (paradoxically) are territorially concentrated that have most benefited from NCA. Meanwhile, Russia and Estonia have seen a drive to promote their state languages, in an effort to consolidate national (majority) identities. In this sense, the scepticism<sup>57</sup> with reference to a presumed state neutrality in the treatment of ethno-linguistic groups does not seem unjustified.

At the same time, in the four countries NCA institutions have made use of opportunities available to them to promote minority languages and to see these languages and cultures—at a minimum—recognised within their societies, despite the restricted opportunities to participate in public affairs. Moreover, the cases of Serbia, Hungary and inter-war Estonia point to the fact that NCA-based systems tend to be more viable when they are closer to their original concept: by providing minorities not just with the option to engage in cultural and/or folkloristic events but to be involved in the running of cultural and educational institutions, with the support of public resources.

Admittedly, translating the original NCA model into reality would present considerable logistical difficulties, given its ambitious framework. Yet the NCA model identified very real concerns of minority communities: the need for steady, guaranteed—rather than intermittent—funding; the importance of representation and participation in decision-making; and the value of (long-term) minority-language education, including in the case of dispersed groups. It brought to the fore questions that still remain unresolved, such as the definition of the scope of collective rights, and of mechanisms to institutionalise the status of minority communities, particularly for those groups that are disadvantaged by their being territorially dispersed. NCA continues to remind us that the space between the individual and the state—and occupied by ethnic communities—can be easily neglected. Finally, Renner's

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<sup>57</sup> See above (“Non-Territorial Cultural Autonomy and Linguistic Rights”).

argument that the designation of a state language (and confining other languages to an inferior status) is a “source of strife” still rings true today. The concerns raised by minority communities in CEE today<sup>58</sup> tend to resemble those that Renner had regarded as crucial, particularly a drive to make minority languages more prominent, and the importance of participatory processes in devising and implementing linguistic policies. The spirit of the Austro-Marxists’ theory—inasmuch as it calls for minorities’ empowerment and autonomy in managing their cultural and linguistic uniqueness—has not ceased to be relevant.

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<sup>58</sup> As per the interviews carried out under the project (see n. 1).

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