

ENHANCING MINORITY GOVERNANCE IN ROMANIA

REPORT ON THE PRESENTATION ON CULTURAL AUTONOMY TO THE ROMANIAN GOVERNMENT

D. Christopher Decker

ECMI WORKSHOP

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I. Background to the Project

The goal of the project is to strengthen the qualitative aspects of inter-ethnic dialogue and minority representation vis-à-vis the Romanian government. The project seeks to improve inter-ethnic relations in a visible and sustained manner by enabling the Romanian Government to develop a new law on the status of national minorities based upon good practices and to establish standards for enhanced minority governance. It is hoped that the project will improve inter-ethnic understanding and acceptance by clarifying the legal status of national minorities; improving stakeholder involvement in the drafting of the law on national minorities; improving the quality of the draft law; and enhancing awareness of minority issues among the main political parties in parliament.

In March 2004, the Romanian state secretary and head of the Department of Inter-Ethnic Relations (DRI) came to the European Centre for Minority Issues (ECMI) headquarters to discuss the minority situation in Romania. At this meeting it was decided that the DRI and ECMI would forge a working relationship on minority-related issues and, particularly, the draft law on the status of national minorities that the government was planning to submit to parliament. ECMI was invited by the DRI to attend a seminar in Romania on the draft law in May 2004. Following the presidential and parliamentary elections which took place in November and December 2004, a new government was formed and a new head of the DRI was appointed by the prime minister. Cooperation between ECMI and the DRI has grown progressively closer over time and activities concerning the drafting of the law and capacity building of the Council of National Minorities are set to continue.

Since 1993, nine drafts of the law on the status of national minorities have been drafted by different minority groups. However, none has received sufficient support. There has been little progress in reconciling the views of the various minority organizations, let alone between them and the majority. Inter-ethnic relations in Romania are negatively affected by the poor socio-economic situation of the Roma population and the political debates between Romanians and Hungarians on the autonomous organization of Hungarians in Transylvania, as well as questions of local

self-government and academic education in the Hungarian language. In spite of the Roma community's significant size (between 1,800,000 and 2,500,000 people according to experts), Roma continue to be underrepresented in parliament and in public administration. Moreover, observers of the 2000 elections in Romania expressed concern over the use of anti-minority sentiments by the Greater Romania Party, which became the largest opposition party in parliament with 25 per cent of the seats. While the Greater Romania Party received roughly 13 per cent of the vote in the 2004 election, its leader placed third in voting for the Presidency. ¹

Romania is a country of many national, linguistic and religious minorities. Although formal mechanisms for consultation on minority issues do exist, minority organizations (especially smaller minorities' organizations and the Roma) often lack the technical competence to engage the government at a commensurate level where concrete aspects of proposed legislation or implementation of programmes or projects for minorities are concerned. In the preparatory discussions on this project, representatives of both the Romanian Government and of various minority communities have strongly encouraged ECMI to pursue this project to enhance legislation and practice on minority issues in Romania.

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¹ OSCE (2005), OSCE/ODIHR Assessment Mission Report on Parliamentary And Presidential Elections in Romania on 28 November and 12 December 2004, 14 February. http://www.osce.org/documents/odihr/2005/02/4281_en.pdf?PHPSESSID=dcf490b26320756cea03d50 a5bd36886.

II. Introduction

ECMI organized the first event of the "Improving Inter-Ethnic Relations through Enhanced Minority Governance" project on 3 February 2005 in Bucharest, Romania. The deputy prime minister, the head of the Department for Inter-ethnic Relations and four members of parliament attended the meeting. ECMI and two experts met with the group in the Government Building to discuss the issues surrounding cultural autonomy and the draft law on the status of national minorities. The purpose of the meeting was to provide the government with information concerning the issue of cultural autonomy for the draft law on the status of national minorities, which is currently being drafted by the Hungarian Democratic Union from Romania (UDMR) and the other 18 national minority parties represented in the Chamber of Deputies. This report seeks to provide an account of the presentations and discussions that took place during this meeting, including the theory and practicalities of cultural autonomy and the model of cultural autonomy used in Estonia.

III. Theory and Practicalities of Cultural Autonomy

After introductions by Deputy Prime Minister Bela Markó, Head of the DRI Attila Markó, and ECMI Research Associate D. Christopher Decker, Prof. John Hiden began with a presentation on the theory and background of how cultural autonomy functions.

Prof. Hiden stated that cultural autonomy allows a national minority—for the express purposes of managing its own cultural and educational affairs—to constitute itself as a public corporation. The individual chooses whether to be a member of the national minority, generally through enrolment on a 'national register'. A percentage of the state budget set aside for all educational and cultural purposes is then to be allocated to the national minority in proportion to the minority's population. Supplemental funding for educational and cultural purposes comes from self-taxation of members of the national community and, in some cases, from a kin-state.

A. Implications for the State as a Whole

Prof. Hiden emphasized that cultural autonomy does not in any way threaten the territorial integrity of the state since cultural autonomy is granted to persons. Cultural autonomy is not territorial. The concept of cultural autonomy was first developed in the multi-national environment of the Habsburg Empire territories by Karl Renner² and Otto Bauer³ and, subsequently, by nationalities in the Russian Empire, most notably by Baltic Germans. Cultural autonomy assumes that all citizens, both the majority and minority, have a vested interest in the overall well-being and prosperity of the state in which they live. A leading inter-war Baltic German theorist, Paul Schiemann argued that "politics means working for the state in which one lives; any other end is suicide". He also insisted that there are "no rights without obligations". Since allowing a national minority autonomously to manage its own cultural life is premised on the national minority's absolute loyalty to the state in which it resides, it follows that cultural autonomy does not automatically create 'states within states'. However, cultural autonomy does challenge the concept of the 'nation state', which equates one nation with one state. Instead, the theory of cultural autonomy conceives the 'state' as a 'state community' and understands it in terms of territory jointly occupied over time by minority and majority alike. In other words, cultural autonomy creates a 'shared territorial space'.

B. Taking Culture Out of Politics

Prof. Hiden explained that intrinsic to the theory of cultural autonomy is the belief that the settlement history of Europe is too complex for minority disputes *ever* to be resolved simply by redrawing borders. Overwhelming evidence for this comes from post-World War I (WWI) peace settlements and their utter failure to end nationality conflicts. In place of this, cultural autonomy seeks to resolve the only obvious source

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² Karl Renner, an Austro-Marxist, was primarily concerned with the problem of nationality and the sociology of law. His 1904 text remains perhaps the classic Marxist work on the role of law in society. During World War I, Renner broke with the left wing of the Austrian Social Democrats (Bauer's group), and attempted to re-orient Marxist thought to account for the rise of white-collar workers and the growth of the state. Renner was the first chancellor of the Austrian Republic in 1918 and president of Austria in 1945. He was born in 1870 and died in 1950.

³ Otto Bauer was one of the most renowned Marxist theorists in Vienna and analyzed the connection between nationalism and class conflict. His 1912 work on capital is perhaps his best known work. He was also the leader of the left wing of the Austrian Social Democratic Party and served in the early Austrian governments of 1918–19. He was born in 1881 and died in 1938.

⁴ See generally, John Hiden (2004), *Defender of Minorities: Paul Schiemann 1876-1944*. London: Hurst.

of possible conflict between different nationalities—namely culture—in their 'shared territorial space'. Furthermore, advocates of cultural autonomy (e.g., Paul Schiemann) saw no necessary clash between obligations to one's own national community on the one hand, and the individual's duty to the overall state community on the other. He argued that this was due to the two sets of obligations being in different spheres. This idea derived from a comparison between culture and religion, which is a purely human and private choice that the state has no control over by definition. Prof. Hiden illustrated the point by making reference to the religious conflicts plaguing Europe prior to the end of the 30 Years War, and how the war's conclusion finally allowed freedom of worship and led to the acceptance throughout Europe of the futility of wars over religion. Just as religious freedom had shown that a person's religion did not impede an individual from working for the good of the state, a similar outcome could be expected from allowing individuals the freedom to practice their culture. Advocates of cultural autonomy concluded that, like religious autonomy, cultural autonomy would only strengthen the state and not weaken it, by giving more people a stake in the state's existence and well-being. Lastly, it was emphasized that cultural autonomy is against assimilation but not against integration of national minorities.

C. Some Implications of Cultural Autonomy for the European Project

Minority rights activists pushing for cultural autonomy after WWI felt that cultural autonomy would best be realized in a more united Europe. This belief contributed to the setting up in 1925 of the Congress of European Nationalities in Geneva. The Congress' goal was to achieve cultural autonomy for all European minorities. Its delegates—mostly minority politicians from different countries—aimed to lobby all European governments to achieve their goal. In effect, the Congress' campaigning was aimed at bringing about European-wide statutory laws defining the rights of national minorities. Prof. Hiden reminded the participants that, after WWI, international law was still in its infancy. There was some initial optimism about minority protection treaties imposed on some Eastern European states by the new League of Nations, but national minorities saw the League as dominated by major powers and chiefly interested in the assimilation, not protection, of minorities, in the interests of international security. This reduced national minorities to mere objects of government policy, and any rights that were granted by states were done so at the whim of governments and could just as easily be withdrawn. The Congress sought to

make minorities into *subjects* that were able to influence policy. Schiemann, the major theorist of the Congress, conceived of Europe not as a conglomerate of nation states but as a collection of different 'co-nationals': a Europe of nations, rather than of nation states. Comparisons with religion enabled him to argue that cross-border ties between co-nationals were no more threatening than cross-border ties between religious confessions. Schiemann emphasized that culture, like religion, can know no borders. Cultural autonomy could, therefore, in time lead to a situation where actual physical borders became less relevant, a wholly novel idea in the 1920s and 1930s but hardly radical in today's European Union.

IV. The Case of Estonia

Dr. Smith then presented the Estonian model of cultural autonomy as one potential model that had been quite successful in preventing ethnic conflict.⁵ He began by explaining that the Estonian law on cultural autonomy for national minorities was first adopted in 1925 during the time of the first Estonian republic, when it was successfully implemented by the country's German and Jewish minorities. The law was unique in inter-war Europe and attracted much favourable comment internationally. The cultural autonomy law was restored in a virtually identical form in 1993, following the restoration of Estonian independence, but has yet to be implemented by any of the minority groups currently residing in Estonia.

A. How Does Cultural Autonomy Work in Estonia?

The Estonian Law on Cultural Autonomy for National Minorities⁶ (Cultural Autonomy Law) gives individuals belonging to national minorities the right to establish cultural autonomy in order to achieve the cultural rights given to them by the

⁵ The effectiveness of the cultural autonomy law has been somewhat undermined by the Estonian definition of citizen. "The widely criticized Estonian citizenship law requires evidence of pre-World War II historical roots in Estonia to be considered a citizen of Estonia. Those that do not fulfill this requirement must pass a language exam and demonstrate sufficient knowledge of Estonian history. Language restrictions also adversely affect ethnic [Russians'] educational and occupational opportunities. While the Russians are permitted to participate in local elections, there are significant legal restrictions in terms of voting and organizing at the national level and attainment of high political office for non-citizens. Once they achieve citizenship however, there are no restrictions." Minorities at Risk Project (2000), *Assessment of Russians in Estonia*. College Park, MD: University of Maryland. http://www.cidcm.umd.edu/inscr/mar/assessment.asp?groupId=36601.

⁶ Adopted on 26 October 1993. http://www.einst.ee/factsheets/cult_auton/.

Estonian Constitution. Article 50 states that "ethnic minorities shall have the right, in the interests of their national culture, to establish institutions of self-government in accordance with conditions and procedures determined by the Law on Cultural Autonomy for National Minorities". The Cultural Autonomy Law states that cultural autonomy may be established by persons belonging to German, Russian, Swedish and Jewish minorities, and persons belonging to national minorities with a membership of more than 3000. National minorities are defined as "citizens of Estonia who reside on the territory of Estonia; maintain longstanding, firm and lasting ties with Estonia; are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics; and are motivated by a concern to preserve together their cultural traditions, their religion or their language which constitute the basis of their common identity".

The Cultural Autonomy Law gives representatives of eligible groups the opportunity to elect their own cultural councils of between 20 and 60 people. Once established, these councils assume full responsibility for the organization, administration and control of public and private schools operating in the mother tongue of the relevant minority, as well as for the supervision of minority cultural institutions and activities more generally. Cultural autonomous institutions dealing with education are bound by certain national regulations laid down by the Ministry of Education. In the case of the Cultural Autonomy Law, it is stated that the establishment of a national minority school and the organization of its work is governed by the provisions of the Law on Private Schools.

Cultural self-governments are structured along the same lines as existing local authorities. The cultural council is a legislative body which in turn elects a cultural administration that acts as the executive arm for cultural autonomy. What is important is that the exercise of minority rights is *not* linked to particular territorial sub-regions

⁷ Estonian Constitution (1992).

⁸ Law on Cultural Autonomy for National Minorities, Article 2(2).

⁹ *ibid*, Article 1.

¹⁰ *ibid*, Article 18.

¹¹ *ibid*. Article 25.

of the state. Instead, each culturally autonomous minority has the status of a corporation at public law, whose remit extends to the state territory as a whole. The central organs of cultural autonomy have the right to appoint cultural committees that oversee the administration of cultural autonomy at the local level.

B. How is Autonomy Funded?

The institutions of autonomy are financed partly by the central and local governments, which are obliged to provide the same level of funding previously allocated to minority schools within the state sector. However, since cultural self-governments have the status of public corporations, under Estonian law they also have the power to levy taxes on members of the national minority, and the cultural council may determine the exact level of taxation. This power of self-taxation has the potential to provide the national minority with an important additional source of income. Moreover, the Cultural Autonomy Law states that donations from foreign organizations are permitted.¹²

C. How are Cultural Self-governments Established?

Dr. Smith then discussed how the principle organizations for the cultural autonomy of national minorities are formed. He explained that the first step is for representatives of ethnic minority cultural societies to prepare a national register listing the members of the relevant minority. Since cultural autonomy is based on the 'personal principle'—that it is the right of each person to freely determine his or her own ethnicity—anyone who wants to be considered as a member of a minority must voluntarily enroll him or herself on the national register. In Estonia, each individual entry contains the following information: name, date and place of birth, sex, ethnicity and mother tongue, personal code, marital status, data on children who are minors, place of residence, religious affiliation, signature and date.¹³

In inter-war Estonia, the nationality of each individual was indicated in his or her passport. Anyone wishing to enroll on, say, the German national register had to ensure that he had German ethnicity indicated in his passport. The Estonian Constitution at

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¹² *ibid*. Article 27.

¹³ *ibid*. Article 8.

that time stipulated that everyone had the right to freely determine his or her passport ethnicity.

Today, there is no such entry in the Estonian passport. Voluntary adhesion to the national register is the only way of confirming one's ethnic affiliation. A person can have his or her name deleted from the register upon personal request. Deletion from the national register also occurs if the person gives up Estonian citizenship or settles permanently in a foreign state. ¹⁴ The national register, once established, is used to draw up an electoral list. If at least 50 per cent of the people listed on the register agree to enroll on the electoral list, elections for a cultural council can be held. ¹⁵

Elections to the cultural council are direct and by secret ballot, and are organized on the basis of the same voting districts used in elections to the Estonian parliament. Expenses may be provided from the state budget for this purpose. ¹⁶ The Cultural Autonomy Law states that electoral lists shall be made public at least two months prior to the election; until two weeks prior to the election, every person entered on the electoral list has the right to request the withdrawal of his or her name. ¹⁷ Elections to a cultural council will be deemed valid if at least 50 per cent of those entered on the electoral register actually vote. ¹⁸ If elections are not valid, the given minority must wait three years before they can apply for new elections to be held. ¹⁹

Once the cultural council is established, a simple majority vote of its members is required in order to formally adopt the statutes of cultural autonomy necessary to proceed to the election of executive organs.²⁰ The cultural council is elected for a term of three years, after which fresh elections are held.

¹⁵ *ibid*, Article 16(1).

¹⁴ *ibid*. Article 9.

¹⁶ *ibid*, Article 23.

¹⁷ *ibid*. Article 17.

¹⁸ *ibid*, Article 19.

¹⁹ *ibid*. Article 16.

²⁰ *ibid*. Article 22.

The Estonian government can terminate the institutions of cultural autonomy if the number of people listed on the register has been less than 3000 for the preceding five years or if on two successive occasions it is not possible to draw up an electoral list or hold a valid election according to the terms indicated above.²¹

D. Circumstances in which Cultural Autonomy is Most Appropriate as a Form of Minority Rights

Dr. Smith stated that it was best to examine practical experiences between the wars, and the arguments for and against cultural autonomy that are advanced today. Cultural autonomy is usually seen as most appropriate to the needs of small and territorially dispersed minorities. The German and Jewish minorities in inter-war Estonia both fell into this category. The German minority in particular was heavily involved in drawing up the law, which they saw as specific to their circumstances.

If one observes the case of inter-war Estonia, the largest minority, the Russians (10 per cent of the population) made no immediate move to implement cultural autonomy during the 1920s. This was mainly because most Russians lived compactly in the eastern border districts or in the large cities. On this basis, Russians were able to secure minority rights on a territorial basis, either through control of local government or according to the terms of the 1919 Estonian Law on Education. Under that law, areas where a national minority group constituted more than 50 per cent of the population, the relevant minority language could serve as a second official language of administration alongside Estonian. In certain districts of eastern Estonia, the Russian minority was able to establish a network of schools through its control of local government. The law on education stated that wherever a district contained thirty or more pupils belonging to a particular minority, the local authority had to provide teaching in the relevant language. For the territorially dispersed Germans and Jews, this meant that access to state-funded education in the mother tongue could rarely be guaranteed outside the main urban centers of Tallinn and Tartu.

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²¹ *ibid*, Article 28.

As a result, many Russians saw no real *need* to implement the cultural autonomy law. Some ethnic Russian leaders argued for the cultural autonomy law on the grounds that public–legal status would offer Estonia's Russians a far superior form of minority rights (more control over selection of staff, curriculum development, etc., than existed in local authority schools). Unlike Germans and Jews, however, the Russian minority consisted largely of impoverished peasants. Many ethnic Russians were reluctant to adopt a scheme that would entail additional financial burdens in the form of self-taxation. Ethnic Russians also lacked the social coherence and political organization characteristic of the ethnic Germans. The Russian political circles were noted for constant in-fighting and divisions.

A further interesting question that arises is why no group has adopted cultural autonomy since 1993. Thus far, the only group actively contemplating cultural autonomy has been the Ingrian Finns, who again fall into the category of small and territorially dispersed.

The relevance of this law to today's conditions is open to question. From the viewpoint of the various minorities, one can see both practical problems and principled objections. From a practical standpoint, the right to enter oneself on the national register and participate in elections to the cultural council is open only to citizens of the Estonian Republic. The vast majority of the large non-titular population in today's Estonia is still without citizenship, since it consists mostly of Soviet-era settlers and their descendents. The settlers and their descendents are excluded from automatic citizenship under the concept of legal continuity, which deemed the Soviet period to be one of illegal occupation. This fact has obvious organizational and financial implications. As ethnic Russian leaders point out, the definition of national minority in the Cultural Autonomy Law hardly applies to most non-titular people living in Estonia.

Many Russians would ideally like to see the continuation of the Soviet-era practice, when Russian was a *de facto* second state language. A commonly held view is that since ethnic Russians pay taxes to the state, the state should provide them with a full education in their mother tongue. In this regard, they do not see why they should pay additional taxes to a Russian cultural self-government. Also, Russians are suspicious

of cultural autonomy because they believe the state is seeking to divest itself of obligations in the sphere of minority education and that an increasing share of the burden will fall upon the Russian community itself. The obvious argument to this point is that greater rights entail greater responsibilities. This argument has yet to take hold.

Until now, the Estonian state has continued to offer full state-funded instruction in Russian until age 19. This will change after 2007. While it will still be possible to get an education wholly in Russian until age 16, all gymnasiums (upper secondary schools) will switch to teaching 70 per cent in Estonian and 30 per cent in Russian.

Against this background, people might begin to see the practical benefits that cultural autonomy could bring them.

V. Discussion

Following the presentations, D. Christopher Decker made a few brief comments about the lessons learned from the presentations and their possible applicability to Romania. Mr Decker noted that the press has been widely covering the Romanian government's plans to restructure and put more power in the hands of local government. If the government plans to restructure to create more local autonomy (i.e. structural and territorial), then the government needs to be very clear about the aims and goals of cultural autonomy so as to reassure the population that cultural autonomy does not imply territorial division of the Romanian state. In this vein, the government needs to be clear about what it plans to include in this new autonomy (i.e. language, culture, education, regional government, etc.). Also, the point of defining which groups will be allowed to create cultural autonomy, whether this is done through a population threshold or a list of enumerated groups, must be determined. Lastly, 'selling' the idea of cultural autonomy to the Romanian public will be very difficult and it will be important to have a strong simple explanation of cultural autonomy for the public.

The floor was then opened for questions. One concerned how to define a national minority because there are several cases of minority parties receiving a significantly

larger amount of votes than their census population would indicate. Prof. Hiden noted that Baltic Germans always received more votes than their population because they appealed to wider voters.

A second question was asked about the relationship between local institutions of cultural autonomy and the central government. Dr. Smith reiterated that the minority institutions of self-government have complete autonomy over cultural issues but that there will be certain laws or standards which would need to be upheld, for instance in the area of education where, in the Estonian situation, the Estonian language must also be taught. Prof. Hiden stated that the purpose of cultural autonomy was to take these cultural issues out of the realm of politics so that they are not used as divisive issues.

Another question related to developing laws which would allow an area to retain its ethnic composition and therefore certain entitlements, without effecting people's freedom of movement. Prof. Hiden expressed the belief that while every government attempts to create ethnic quotas, it is simply not possible. Mr Decker stated that quotas were established in Finland in relation to creating bilingual municipalities (where government services would be offered in Swedish and Finnish). He explained that a municipality must be bilingual if 8 per cent or 3,000 people speak the minority language in the municipality, and that number must drop below 6 per cent before the municipality reverts back to being unilingual.²²

VI. Follow-up Activities

It was agreed after the meeting that ECMI would host other seminars and roundtable discussions about the issues that will be included in the draft law on the status of national minorities and that the audience should include all the national minorities. The next event was scheduled for 17–19 March in Romania and will consist of a discussion between the national minorities and a panel of international experts on the

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²² Anna Jungner (2004), *Swedish in Finland*. Oslo: Virtual Finland. http://virtual.finland.fi/netcomm/news/showarticle.asp?intNWSAID=26218.

definition of national minorities, the status of organizations and cultural autonomy models from Western Europe.

VII. Annexes

A. Programme of the Workshop

TIME	ACTIVITY
9:00	Introductions
9:10	Presentation by Prof. John Hiden
9:25	Presentation by Dr. David J. Smith
9:40	Questions
10:00	Wrap-up

B. List of Participants

	Name	Organization
1	Mr. Bela Markó	Deputy Prime Minister, Romanian Government
2	Mr. Attila Markó	Head of the Department of Inter-Ethnic Relations, State Secretary, Romanian Government
3	Mr. Árpád-Francisc Márton	Member of Parliament, UDMR
4	Mr. Attila Varga	Member of Parliament, UDMR
5	Mr. András-Levente Máté	Member of Parliament, UDMR
6	Prof. John Hiden	Glasgow Baltic Research Unit, Department of Central and Eastern European Studies, University of Glasgow
7	Dr. David J. Smith	Glasgow Baltic Research Unit, Department of Central and Eastern European Studies, University of Glasgow

ECMI Staff

1	D. Christopher Decker	Research Associate, Flensburg, Germany
2	Roxana Ossian	Project Officer, Bucharest, Romania