

## **Non-Territorial Autonomy during and after Communism: In the Wrong or Right Place?**

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Paradoxically, the concept of non-territorial autonomy (NTA) is in relatively high demand in post-Communist countries, although it is at the same time an environment that seems hostile to it. Marxism-Leninism had rejected the idea of NTA for decades. Most countries of Central and Eastern Europe and the former Soviet Union continue to seek to keep minorities under control. Some countries are under authoritarian rule or have institutional designs that are unfriendly to civil society activities and all forms of self-governance. Nevertheless, several national legislations contain the notions of non-territorial cultural autonomy and some countries have institutional arrangements including elements of NTA. The NTA concept is increasingly welcomed by governments, academia and minority activists. The author seeks to explain this contradiction. First, the author considers that the vision of ethnic groups as internally coherent social entities is not alien to all currents of Marxism. The Soviet and other Communist regimes resorted in practice to discourse and even institutional arrangements resembling NTA. Second, NTA turns out to be part of symbolic rather than instrumental policies that provide for ideological control over minorities. Third, in several cases (like the Baltic states), the concept of NTA fit their respective restititional framework or return to the pre-Communist 'golden age'.

**Keywords:** non-territorial autonomy; minorities; Central and Eastern Europe; authoritarianism; nationalism; symbolic policies; restitution

Over the past decade, the concept of ethnicity-based non-territorial autonomy (NTA) has become popular among policy-makers and scholars, for the second time, following the heated scholarly and political debates of the early twentieth century. This is shown in the growing number of academic publications (e.g. Nimni, 2005; Smith and Cordell, 2008; Roach, 2005; Gal, 2002) concerning the theoretical implications of this notion and the opportunities that NTA can create for conflict prevention and minority protection. Several European countries have adopted legislative provisions resting on the notion of cultural or non-territorial autonomy or

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self-government. Politicians and civic activists repeatedly refer to NTA as a possible solution for conflict-prone situations and international organizations also respond to the emerging agenda in their comments<sup>1</sup> and in expert conclusions.<sup>2</sup>

Generally speaking, the term NTA and similar notions encompass a broad range of institutional setups which envisage self-organization and self-administration of ethnic groups for the fulfilment of public functions in the ways other than territorial dominance and administration of a certain territory. Paradoxically, the concept of NTA is in relatively high demand in post-Communist countries, although it is at the same time an environment that seems hostile to them. This positive attitude towards NTA is not common for all post-Communist countries—some governments (like in Bulgaria and Slovakia) have already demonstrated negative positions—but nevertheless one can talk about a clear positive trend. This article does not seek to explain all existing modes of addressing NTA; it rather aims to answer the question of whether NTA was, in principle, at odds with the Communist legacies and the authoritarian trends manifesting themselves in the transition period.

### **1. The idea and related terminologies**

NTA, as well as similar or derivative terminologies, lack a uniform and consistent application both in theoretical and practical domains. Terms related to non-territorial autonomy are different and include such notions as ‘cultural’, ‘personal’, ‘exterritorial’, ‘corporate’ and ‘segmental’, as well as ‘autonomy’ (Heintze, 1998; Lapidoth, 1997; Safran, 2000); meanwhile, ‘autonomy’ might be interchangeable with ‘self-government’ (Henrard, 2005: 134). One should not forget that the term ‘national-cultural autonomy’ is also widely employed in the former Soviet Union and in Central and Eastern Europe as a synonym for ethnicity-based non-territorial autonomy. Recently it has also become recognizable in English-language academia (Nimni, 2005). Each term has certain implications and nuances, which can generally be neglected here without causing harm to the purpose. Non-territorial autonomy seems to be the broadest and most neutral, and thus preferable, term.

It is important here to distinguish between categories of practice used by social actors in real life and categories of analysis used by researchers to interpret empirical realities. NTA, although used in academia, lacks a uniform definition in any of the social sciences. Terminologies pertaining to the ideas of NTA basically serve as categories of practice. They usually serve as ‘folk’ categories, meaning the wording

that politicians, lawmakers and ethnic activists use in their practical work and rhetoric.

There are two main approaches to the theoretical understanding of NTA. They are both used interchangeably for descriptive and normative purposes. The two do not contradict each other and do partly overlap. One is the general principle according to which an ethnic group enjoys (or should enjoy) a certain degree of freedom in handling its internal affairs, as a rule presumably pertaining to broadly understood 'culture'. The second approach rests on interpreting 'autonomy' as a special type of ethnicity-based organization that combines self-administration with managing certain public resources and competences.

The very idea of NTA or national-cultural autonomy goes back to the late nineteenth and early twentieth centuries, when some liberal and socialist thinkers had put forward plans for the non-territorial organization of ethnic groups. The leading Austro-Marxist ideologists, Karl Renner and Otto Bauer, proposed the organization of ethnic groups as corporate entities with mandatory membership independent of individual residence, and the granting to these corporations of certain legislative and executive powers with respect to education and culture. These measures were expected to put an end to ethnic conflicts over territory and access to state power (Renner, [1899] 2005). The proposal triggered a Europe-wide discussion among scholars and political activists on the left (Coakley, 1994; Bowring, 2005) and eventually materialized in a number of legislative and institutional arrangements at the national level.

## **2. Practical utilization and political context**

Post-Communist countries turn out to be the primary scene for ideological, legislative and political exercises with NTA. Several national legislations, such as those of Croatia, Estonia, Russia and Ukraine, contain notions of non-territorial or cultural autonomy and in some countries the notions are reflected in institutional arrangements. The NTA concept is increasingly welcomed by governments, academia and minority activists. This phenomenon is not in compliance with common sense assumptions, as there are sufficient reasons to expect that the environments in most post-Communist countries would be strongly opposed to minority self-organization and self-government.

The Leninist version of Marxism prevalent in most states of the Soviet bloc for decades was explicitly hostile to the very idea of NTA. Almost all countries of Central and Eastern Europe and the former Soviet Union are ‘nationalizing states’ in the terms of Rogers Brubaker (1995)<sup>3</sup> and many of them demonstrate rigid ethnic nationalism (Offe, 1995: 51)—such as Hungary<sup>4</sup> and Slovakia (Lugosi, 2011: 111-120; Smooha, 2001: 64-71)—or are characterized as ‘ethnic democracies’ (Smooha, 2005) directly or indirectly privileging their ‘titular’ nations over minorities. All seek to keep minorities under governmental control regardless of the existing political regimes. Some countries are under authoritarian rule or have institutional designs unfriendly to many forms of civil society activities or minority self-governance. Despite all these general considerations, many post-Communist countries demonstrate not only the acceptance of the general idea of NTA, but also positive approaches towards its implementation.

The most salient example is Hungary. The 1993 Law on National Minorities established and the new 2011 Nationalities Rights Law reaffirmed the system of local, regional and national self-governments for 13 officially recognised minorities.<sup>5</sup> Those self-governing bodies are elected by popular vote. Before 2005, their constituencies comprised all people who used their unrestricted right to vote for this or that self-government without any qualification or proof of their belonging to that particular minority (Vizi, 2009: 119-24). Since 2005, people wishing to participate in the election of minority representative bodies must be registered on the special minority voting lists. This change was made to prevent the election of persons who are not members of one of the recognized minority groups.<sup>6</sup> In fact, minority representative bodies are re-elected on a regular basis and are really functional. They engage in dialogue with public authorities on minority issues and they establish and run cultural and educational programmes and institutions that are funded from public budgets.

The Russian Federation is repeatedly referred to as a good example of NTA in practice (Kymlicka, 2001: 68; Ghai, 2005: 41) because it has adopted legislation on ‘national-cultural autonomy’ and numerous organizations have actually enjoyed this status. Since 1992, the term was introduced in several federal and regional laws and other normative acts (Osipov, 2004: 112-150). In 1996, the Federal Law on National-Cultural Autonomy<sup>7</sup> (hereinafter, the NCA Law) was adopted as the basic act determining related policies. That law, as well as other pieces of legislation, prompts two basic interpretations of ‘national-cultural autonomy’. The first one sets up a

general principle by which individuals use various institutional formats to collectively pursue their rights and interests related to their ethnic origin, language and culture. The second indicates a specific form of ethnicity-based non-governmental organizations. The frequency of the latter has been steadily growing and, by the end of 2011, the number of such organizations reached 900 throughout the country.<sup>8</sup>

In the meantime, organizations called ‘national-cultural autonomies’ in Russia have obvious disadvantages *vis-à-vis* ‘ordinary’ ethnicity-based civil society organizations, which have been freely established in the country since the late 1980s. The former are subject to more strict, complicated and time-consuming regulations concerning their establishment and reporting to the authorities. Along with this, they enjoy fewer rights and less flexibility in their choice of internal structure than ‘ordinary’ non-governmental organizations (NGOs) (Osipov, 2010). In particular, they are not allowed to engage in activities other than the development and promotion of minority cultures and languages, as well as educational projects and the provision of facilities for minorities. National-cultural autonomies (NCAs) cannot choose their organizational form and thus can be established only as ‘social organizations’ with fixed individual membership.

The Estonian model of ‘cultural autonomy’ implemented on the basis of the 1993 law<sup>9</sup> resembles to a large degree the Russian model in its practical implications. The 1993 Estonian Law on Cultural Autonomy has received good publicity because it has some parallels with the famous Law on Minority Self-Government of 1925, but in fact the contemporary law rests on a different approach. The 1925 law stipulated that minority self-governments were public law associations that were granted certain competences in the spheres of culture, education and welfare with a guaranteed share of public funding. In particular, self-governments were to be responsible for the administration and supervision of minority language schools (Kössler and Zabielska, 2009: 59-60). According to both the 1925 and 1993 laws, cultural associations may apply to the government for the establishment of minority self-government and for the permission to create a register of persons belonging to that minority group. People enrolled on the register are eligible to elect the governing bodies for the given minority. However, the practical meaning of self-government under the 1993 law remains hazy. Minority self-governments are not deemed legal persons<sup>10</sup> and, as such, they cannot establish other institutions, hold property or conclude agreements, and they have no guarantees of public funding. Since 1993, only two self-governments of

small minority groups have been established, namely the Finns and Swedes (Poleshchuk, 2009: 63). The government did not allow the establishment of the Russian minority self-government on several occasions under a variety of pretexts (Gromov, 2008).

Slovenia has a comprehensive system of self-government for its Hungarian and Italian minorities. Minority governing bodies are elected by the people listed on special minority registers. Those minority councils represent minority claims and interests before municipal and regional authorities and also run cultural and educational programmes (Korhecz, 2002).

Croatia employed the term ‘cultural autonomy’ in its legislation as an overarching notion pertaining to the official minority policies as a whole. Since 2002, the country has been introducing a system of minority councils elected by popular vote.<sup>11</sup> A similar system of minority self-government was established in 2006-10 in Montenegro<sup>12</sup> and in 2002-10 in Serbia.<sup>13</sup> The institutional setup adopted by these three countries basically follows the Hungarian model.

A few countries along with Croatia use the term ‘cultural autonomy’ just as a general label for their minority policies. The Law on the Unrestricted Development and Right to Cultural Autonomy of Latvia’s Nationalities and Ethnic Groups was enacted in Latvia in March 1991 even before its independence was reinstated.<sup>14</sup> This framework law concerns a variety of issues pertaining to minority protection. Commentators and the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities agree that the Latvian law is merely a general declaration, lacks clarity and envisages no mechanism for its implementation.<sup>15</sup> The Ukrainian Law on National Minorities enacted in 1992<sup>16</sup> can be seen in the same light.<sup>17</sup> Its Article 6 refers to ‘cultural autonomy’, which is described as a general principle guaranteeing several basic ‘negative’ rights for persons belonging to minorities. The law is also an ambiguous declaration and is lacking mechanisms for implementation.

One should add that a draft Law on Cultural Autonomy was debated in Romania in the first half of 2000s (although in 2005 the draft was rejected).<sup>18</sup> Several countries (such as Kosovo, Bosnia and Herzegovina and Macedonia) employ the language of ‘rights of national communities’ in their legislations; some (like Belarus<sup>19</sup>) also establish self-governing and publicly-funded minority bodies and institutions.

Thus, regardless of their ideological and institutional constraints in the past and present, the post-Communist countries turn out to be fertile soil for the promotion and implementation of NTA. Below I will offer some explanations of the reasons why countries with totalitarian legacies, authoritarian trends, and politics driven by nationalist aspirations welcome the ideas of NTA and even the related institutional arrangements.

### **3. Symbolic v. instrumental policies**

#### **3.1 *Group-centric approach as the point of departure***

There is an assumption that might be conceived of in Rogers Brubaker's terms as 'groupism'—*i.e.* 'the tendency to take discrete, sharply differentiated, internally homogeneous, and externally delineated groups as the basic constituents of social life, the chief protagonists of social conflicts and the fundamental units of social analysis' (Brubaker, Loveman, and Stamatov, 2004: 45). "'Group" functions as a seemingly unproblematic, taken-for-granted concept, apparently in no need of particular scrutiny or explication' (Brubaker, 2002: 163). If 'group' was a self-evident social actor possessing will and interests, as well as an internally cohesive social unit, then treating it as an independent, self-governing entity would look like a feasible and even inevitable solution. Indeed, '[a]utonomy is a device to allow ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them' (Ghai, 2000: 8).

On the one hand, NTA was ideologically unacceptable to Marxism-Leninism. National-cultural autonomy was a topical issue in the early twentieth-century discussions on the left of Russia's political spectrum. A radical wing of Russian social democrats (better known as the Bolsheviks), and Lenin personally, vehemently criticized national-cultural autonomy as an approach undermining the international unity of the working class (Lenin, [1913] 1973a; [1913] 1973b; [1913] 1973c). As a result, official Soviet propaganda condemned and rejected the idea of NTA (see Zheleznov, 1984; Bowring, 2005).

On the other hand, the vision of ethnic groups as internally coherent social entities was not alien to all currents of Marxism. All programme statements of the ruling Communist party in the Soviet Union pertaining to the 'nationalities question' contained rhetoric on group rights and the development of ethnic groups. Communist parties in the other socialist countries followed the same basic paradigm, as was most

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evident in Czechoslovakia and Yugoslavia, which officially represented themselves as multi-national states.<sup>20</sup>

In practice, the Soviet power and other Communist regimes sometimes resorted to institutional arrangements resembling NTA. Even Vladimir Lenin himself explicitly acknowledged the feasibility and acceptability of NTA under certain conditions (Lenin, [1919] 1973d: 462). Institutions segregated along linguistic or ethnic lines were not uncommon in the countries with ethnic minorities, including the USSR. In the 1920s, the Soviet authorities allowed in practice elements of self-government within organizations designed to unite and organize dispersed minorities, particularly in urban areas, for the purpose of their social and cultural advancement (Asukhanov, 2004: 30-1; Demetradze, 2003: 470; Musaeu, 2004: 96-97).

Thus, the 'real socialism' generated ideas, discourses and praxis that were substantively compatible and had much in common with NTA.

### ***3.2 Autonomy as group recognition***

References to 'cultural autonomy' in the legislations of Latvia and Ukraine, as mentioned above, bear no direct meaning in practice. At the same time, there is still a clearly manifested interest by scholars and minority activists in non-territorial autonomous arrangements although the idea might be already compromised.

In the Russian case, as noted, organizations called NCAs have no advantages over other types of NGOs, which can be also established on ethnic grounds and strive to represent ethnic interests and claims. In a strictly utilitarian sense, national-cultural autonomy adds nothing to the opportunities provided by the legislation on NGOs, but rather creates additional bureaucratic burdens and impediments for those people who want to establish an organization to pursue and defend their interests related to their ethnicity (Osipov, 2010).

Symbolically, NCAs may have a privileged position in relation to ordinary NGOs, since they are mentioned separately from ordinary cultural associations. In practice, federal, regional and local authorities tend to treat NCAs in the same way as other ethnic NGOs (Osipov, 2010: 47-8). No type of ethnic minority organization receives any regular and significant funding from domestic public sources (Osipov, 2010: 49-50). What is puzzling is the high level of public demand for the arrangements labelled 'national-cultural autonomy' and the growing number of NCAs. Few minority activists point out the deficiencies and contradictions of the

existing legislation, and hardly any one criticizes its conceptual fundamentals (Osipov, 2004: 242-249).

Minority self-governments in Estonia are even less practical than NCAs in Russia. Like in Russia, the intended aims of self-governments can be achieved through ‘ordinary’ NGOs with less effort and bureaucratic burden. The difference between the two countries in this area is that fewer people in Estonia take NTA seriously; unlike in Russia, most minority—especially Russian—activists in Estonia are sceptical towards cultural autonomy. Nevertheless, the general idea remains popular among scholars and some minority spokespersons (Shiriyayev, 2009; Nikiforov, 2008).

The Hungarian system of minority self-government has been routinely regarded as the most prominent example of NTA. However, within Hungary proper it has been subject to severe criticism for its inefficiency and for the limited capacities of the self-governing bodies (Kaltenbach, 2007; Deets and Stroschein, 2005: 298-299; Papp, 2006; Danka and Pallai, 2004). Nevertheless, the system exists and proliferates.

The contradictions between the limited practicality of these arrangements and the high public demand for them could be explained if NTA is examined not as a set of legal regulations and institutions, but rather as a narration reflecting certain official views and broader societal perceptions of what ethnic heterogeneity is or ought to be.

One should also take into account the distance between symbolic and instrumental policies. Symbolic policies can be conceptualized as the sphere where the dominant narrative is produced, while instrumental policies are actions resulting in the enforcement of concrete strategies and decisions; rhetoric can be open to different interpretations, while actions may have a symbolic meaning or not necessarily embody the related rhetoric (Birkland, 2005). In brief, instrumental policies are viewed as activities having ‘resource’ effects while symbolic policies have ‘interpretative’ effects (Schneider and Ingram, 2008: 206-07). Acknowledgement of the difference between these two types of activities is nowadays commonplace for the social sciences, although there is no consensus yet on the definitions and no uniform understanding of how these two areas correspond to one another (Schneider and Ingram, 1997: 150-88).

Symbolic recognition of ethnic groups as internally coherent social entities must be a value in itself. The portrayal of a certain country as a combination of ethnic groups existing as separate social units and acting as ‘collective individuals’ is

common for many mainstream national public discourses. Moreover, in the Russian Federation, official and unofficial texts, such as legislative acts, policy guidelines and expert reports, explicitly acknowledge that ethnic groups possess collective interests, rights and a sort of ‘sovereignty’.<sup>21</sup> The main rhetorically acknowledged group ‘right’ is the ‘right to development’. The notion of group development has become a pivotal term in addressing ethnic issues and is widely present in the legislation.

The idiom of ethnic groups’ development reflected the modernist worldview of the Communists and has been inherited from the Soviet period. It was included in the USSR Constitutions of 1924 and 1977, the 1961 Programme of the Communist Party of the Soviet Union, the Resolution on the Nationalities Question of the XIX Communist Party Conference in 1988, numerous other party statements and resolutions, and in academic texts. The important thing here is that a rhetorical acknowledgement of ethnic groups as social entities developing economically, socially and culturally requires also a rhetorical acknowledgement of appropriate organizational forms for the group and its development.

Another group right routinely mentioned in Russia is the ‘right to self-determination’. The principle of ‘equality and self-determination of peoples’ is a constitutional provision and the fact that the notion of national-cultural autonomy is referred to as a form of self-determination secures the rhetorical recognition of the principle. Although the NCA Law calls this kind of autonomy just ‘a form of national-cultural self-determination’ without identifying its subjects, governmental officials and academics describe national-cultural autonomy as ‘peoples’ self-determination’ or ‘internal self-determination’ alongside ethnic federalism and territorial autonomies (Samoilenko, 2008: 2633-2638; Tarasov, 2002: 56-74; Fomichenko, 2005: 35-41).

One should also note that NTA concerns other key notions crucial for the conceptual organization of ethnic divisions like territory, culture and equality.

### ***3.3. De-territorialization***

Interest in NTA routinely stems from a widespread desire to resolve the fundamental contradiction between the territorial institutionalization of ethnicity and personal ethnic affiliation. NTA is often deemed as a solution that diverts an ethnic group’s aspirations, claims, and desire to fight for control over territory and a state apparatus. Manifestations of such a desire were illustrated first and foremost within the former

USSR, particularly in the last years of the Soviet Union and in the early years of post-Soviet Russia (Brubaker, 1996: 30-32; Bowring, 2002, 229-50). In the late 1980s, before the breakdown of the USSR, the authorities of the Union Republics and leaders of separatist movements were striving to gain the loyalty of their ethnic minorities.<sup>22</sup> Following the end of the Soviet Union, the former autonomous republics within Russia have for the most part become active supporters of ‘national-cultural autonomy’. The central governments of the USSR in late 1980s and early post-Soviet Russia encouraged the activities of ‘non-titular populations’ in order to counter-balance nationalist movements (Osipov, 2004: 55-65). In total, NTA is associated with groups that are not entitled to territorial dominance and the rhetoric of autonomy may be employed as a soft denial of territorial claims.

### ***3.4 Culturalization of the social***

The very term NTA implies an emphasis on culture and autonomy and should thus be viewed as part of the broad discourse and practice where this term is employed. All kinds of official and non-official actors routinely resort to the notion of culture in addressing a variety of social and political issues concerning ethnicity and ethnic relations. First and foremost, the cultural theme in official rhetoric serves as a tool to pull ethnicity-related issues out of the domain of politics. Encoding social issues—in particular, the problems of participation, equality, and non-discrimination—in culture-based idioms allows for the avoidance of risky, burdensome, and potentially destabilizing agendas. In a broader framework, addressing social issues through the notion of culture also provides a suitable cognitive framework and explains exclusion and conflicts in terms of cultural differences rather than institutional deficiencies and social deprivation.

In practical terms, ethno-cultural policies in post-Communist countries, particularly at the local level, basically manifest themselves in the encouragement of cultural events, such as folk festivals, concerts, and amateur performances. These kinds of activities are routinely combined with seminars or conferences convened for minority NGOs and academics and aimed at demonstrating ‘inter-cultural dialogue’. All this provides for a non-conflict protocol of communication between ethnic activists and official authorities, since all potentially difficult issues are kept aside.

### ***3.5. A substitute for equality agendas***

In the early 1990s, a number of Soviet scholars and officials explained that national-cultural autonomy would be a way to depart from the erroneous tradition of creating hierarchies of peoples. On the contrary, they said, cultural autonomy would mean the acknowledgement of all groups as equal participants in the country's 'nationalities policy' (Pain, 1995: 86; Pain 2004: 169; Savel'ev, 2008: 37). A common position of many authors is that the involvement of ethnic groups in dialogue with the state, and thus their symbolic recognition, could be expected to pacify public unrest and tensions and, therefore, contribute to social cohesion and integration (Fomichenko, 2005; Savel'ev, 2008; Zorin, 2002).

Issues of non-discrimination are not salient in public discussions in most post-Communist countries, either in terms of the treatment of individuals or structural conditions for social dynamics and mobility. Public attention is focused on extreme manifestations of ethnic enmity or on cultural policies and thus diverted from equality issues, which are overshadowed by such rhetoric terms as 'equal opportunities in cultural development' or just 'development'. Rhetoric strategies of this sort were repeatedly employed in a variety of forms. The explanatory note to the draft Russian NCA Law (March 1996) in particular stated that the institution of national-cultural autonomy was a tool to provide for equality on ethnic grounds.<sup>23</sup>

The attempts to set up NCAs for ethnic majorities or titular ethnicities were vehemently criticized by public authorities, intellectuals, and most ethnic activists. This attitude stemmed from the consideration that such an undertaking would be a violation of equality: majorities and titular groups maintain control over their own structures of government and the additional creation of NCAs would give them an unfair advantage in relation to minorities (Churbakov, 1999: 74-5; Petrova, 2007; Zorin, 2002: 26-8).<sup>24</sup>

The terms of 'autonomy' and 'development' replace the issue of social equality in favour of seeking 'fair' relationships between ethnicities. The organization of social space along ethnic lines means symbolically assigning different and unequal positions to various ethnic communities. Russian officials and ethnic activists perceive national-cultural autonomy as something related exclusively to 'non-native' or 'non-titular' populations (Osipov, 2004: 209-40). Similar attitudes can be witnessed in Central and Eastern Europe as well (Lapidot, 1997: 37; Mihalikova, 1998: 160).

### ***3.6 The logic of restitution***

In several cases (like the Baltic states) the concept of NTA fits the restitutorial framework, or return back to the pre-Communist good practices. The overall liberalization of the late 1980s known as ‘perestroika’ lifted the ban on debating the issue, and non-territorial arrangements for ethnic groups became the subject of extensive discussions again (Osipov, 2004: 55-75). Some intellectuals propagated national-cultural autonomy as a way to oppose Leninism and overcome the Soviet legacy. This approach is still evident in Russia. Until now, most Russian publications concerning autonomy contain references to the ideas of Austro-Marxists being erroneously rejected by the Bolsheviks (Asukhanov, 2004; Ivailovskii, 2010; L'vova, Nam, and Naumova, 1993; Musaev, 2004).

The idea of reinstating pre-Communist laws and institutions is most salient in the case of Baltic states (Smith, 1999; Smith, Galbreath and Swain, 2010). In the 1920s and 1930s Latvia and Estonia had comprehensive legislation on minority protection with elements of non-territorial autonomy. The adoption of the Latvian Law on Cultural Autonomy in early 1991 followed extensive nation-wide discussions on the heritage of pre-war independent Latvia (Cilevic, 1991).

The Estonian draft Law on the Cultural Autonomy of National Minorities was lobbied for and justified as a reinstatement of 1925 Law on Minority Self-Governments, although there were significant differences between the old and the new acts. The old law was considered to be a remarkable achievement by independent Estonia and an important element of the national statehood both among contemporary Estonian politicians and in Western academia. As Aleksandr Aidarov and Wolfgang Drechsler fairly point out, it would be impossible to understand the reasons for the adoption of the 1993 law beyond the framework of the restitutorialist logic (Aidarov and Drechsler, 2011: 55).

### **Conclusion**

NTA, as the cases of post-Communist countries show, turns out to be fully compatible—both ideologically and institutionally—with the legacies of ‘real socialism’, as well as with ethno-nationalism and the authoritarian trends of keeping civil society under governmental control. Acceptance of NTA or similar ideas is not the only one trend in the treatment of minorities in post-Communism; some countries reject group entitlements in favour of homogenizing policies. The issue at stake here

is the compatibility of NTA with ‘nationalizing’ statehoods and authoritarian techniques of government.

The countries that followed the doctrines of Marxism-Leninism regarded ‘nationalities’, or ethnicities, as the structural units of the society. This vision, in principle, prompted arrangements based on institutions segregated along ethnic lines and there is a short distance between those arrangements and the ideas of NTA. Communist governance envisaged mobilization of the masses under the control of the ruling party, which also led to the engagement of ethnic minorities on the basis of limited and guided self-organization. NTA allows for the creation of symbolic hierarchies of ethnicities and the division of them into those which are entitled to gain control over territory and a state apparatus or those (‘non-territorial’) which are not. NTA also enables the diversion of public discourse from the issues of social equality and participation to cultural production. The notions of ‘cultural dialogue’ and the ‘development of ethnic groups’ in conjunction with ‘cultural autonomy’ helps to remove all controversial issues like social mobility and discrimination from public agendas.

These opportunities become real because NTA and similar notions turn out to be a matter of predominantly symbolic, but not instrumental, law and policy. From a broader perspective, the notion of national-cultural autonomy creates a non-controversial means of communication for different social and political actors and, as such, a legitimizing macro-narrative.

One should also take into account that the notion of autonomy and the related terminology are flexible, and leave room for manipulation. Some people can employ the term ‘cultural autonomy’ to express negative attitudes towards territorial autonomy or ethnic federalism; others (as in the case of Russia) can use it to defend ethnic territorial statehood and as a convenient way to satisfy the aspirations of non-titular groups. In certain situations, NTA may emphasize the symbolic equality of ethnic groups; in others, it creates separate classifications of ethnicities. Sometimes, the government relies on it to underline its achievements in supporting ethnic cultures; at other times, by pointing to the independent status of civil society organizations, the government uses the concept to avoid its positive obligations concerning minorities.

Notes

1. The OSCE High Commissioner on National Minorities, 'The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note', September 1999; Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), 'Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs', ACFC/31DOC(2008)001, Feb 27, 2008.
2. Jochem A. Frowein and Roland Bank, 'The Participation of Minorities in Decision-Making Processes', Expert study submitted on request of the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) of the Council of Europe, DH-MIN(2000)1, November 2000, at [http://www.humanrights.coe.int/minorities/eng/InterGovernmental/Publications/DHMIN\(000\)1.ang.doc](http://www.humanrights.coe.int/minorities/eng/InterGovernmental/Publications/DHMIN(000)1.ang.doc); Marc Weller, 'Towards a General Comment on Self-Determination and Autonomy', Working Paper submitted to the UN Working Group on Minorities, 11<sup>th</sup> Session, 25 May 2005, E/CN.4/Sub.2/AC.5/2005/WP.5; Tim Potier, 'Autonomy in the 21st Century: Through Theoretical Binoculars', Paper prepared for the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Minorities, E/CN.4/Sub.2/AC.5/2001/CRP.1, 7<sup>th</sup> Session, May 14-18, 2001, at [http://www.greekhelsinki.gr/bhr/english/special\\_issues/CEDIME-unwgm2001/G0112125.doc](http://www.greekhelsinki.gr/bhr/english/special_issues/CEDIME-unwgm2001/G0112125.doc).
3. Rogers Brubaker defines "nationalizing states" as 'states that are conceived by their dominant elites as nation-states, as the states of and for particular ethnocultural nations, yet as "incomplete" or "unrealized" nation-states, as insufficiently "national" in a variety of senses. To remedy this defect, and to compensate for perceived past discrimination, nationalizing elites urge and undertake action to promote the language, culture, demographic preponderance, economic flourishing, or political hegemony of the core ethnocultural nation' (Brubaker, 1996: 9).
4. See European Commission for Democracy through Law (Venice Commission), 'Opinion on the New Constitution of Hungary Adopted by the Venice Commission at its 87<sup>th</sup> Plenary Session (Venice, 17-18 June 2011)', CDL-AD(2011)016; European Parliament Resolution of 16 February 2012 on the recent political developments in Hungary, 2012/2511(RSP). Ethnic nationalism is referred to here as a characteristic of the general ideological environment. Practical applications of nationalist doctrines differ significantly. For instance, Hungarian nationalism targets predominantly kin minorities outside the country while the Slovakian one concerns primarily domestic policy.
5. ACFC, Third Opinion on Hungary, adopted on March 18, 2010, ACFC/OP/III(2010)001, paras. 19, 142, 144; Venice Commission, 'Act CLXXIX of 2011 on the Rights of Nationalities' (English translation), CDL-REF(2012)014, Strasbourg, 10 May 2012; Venice Commission, 'Opinion on the Act on the Rights of Nationalities of Hungary Adopted by the Venice Commission at its 91<sup>st</sup> Plenary Session (Venice, 15-16 June 2012)', CDL-AD(2012)011, Strasbourg, June 19, 2012 (Opinion no. 671/2012); see also Dobos, 2007; Krizsan, 2000; Teller, 2002.
6. ACFC, 'Third Opinion on Hungary', paras. 19, 65; see also Vizi, 2009: 126.
7. Federal'nyi zakon o natsional'no-kul'turnoi avtonomii [Federal Law on National-Cultural Autonomy'] (with subsequent amendments), No. 74-FZ, signed on June 17, 1996, *Sobranie Zakonodatel'stva Rossiiskoi Federatsii (SZRF)* (1996), No. 25, item 2965.
8. Calculated on the basis of the Russian Ministry of Justice Database, at <http://unro.minjust.ru/NKO.aspx>.
9. Law on Cultural Autonomy for National Minorities, adopted on October 26, 1993, at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>.
10. Even the Estonian government acknowledged that minority cultural self-governments cannot acquire the status of legal persons. See Third Report Submitted by Estonia

- Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2010)006, 6-7.
11. ACFC, Third Opinion on Croatia, adopted on May 27, 2010, ACFC/OP/III(2010)005, paras. 184-187, 206.
  12. ACFC, First Opinion on Montenegro, adopted on February 28, 2008, ACFC/OP/I(2008)001, paras. 46, 99-102; see also Zahova, 2011.
  13. ACFC, First Opinion on Serbia and Montenegro, adopted on November 27, 2003, ACFC/INF/OP/I(2004)002, paras. 106-109; ACFC, Second Opinion on Serbia, adopted on March 19, 2009, ACFC/OP/II(2009)001, paras. 245-250.
  14. Law about the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups, adopted on March 19, 1991, with amendments of June 15, 1994 (*Human Rights*, 1997: 42-43).
  15. ACFC, First Opinion on Latvia, adopted on October 9, 2008, ACFC/OP/I(2008)002, para. 55.
  16. Zakon Ukraïini, 'Pro natsionalny menshini v Ukraïini' [Law of Ukraine, 'On National Minorities in Ukraine'], No. 2494-XII vid, June 25, 1992.
  17. ACFC, Second Opinion on Ukraine, adopted on May 30, 2008, ACFC/OP/II(2008)004, para. 91.
  18. ACFC, Second Opinion on Romania, adopted on November 24, 2005, ACFC/OP/II(2005)007, paras. 67-68, 71.
  19. 'Polozhenie o Konsul'tativnom mezhethnicheskom sovete pri Upolnomochennom po delam religii i natsional'nostei' ['The Regulations of the Consultative Interethnic Council under the Plenipotentiary on Religions and Nationalities Affairs Approved by the Order of the Plenipotentiary on Religions and Nationalities affairs'], No. 7, January 23, 2010, at [http://belarus21.by/ru/main\\_menu/nat/consultation\\_centre/new\\_url\\_1285022831](http://belarus21.by/ru/main_menu/nat/consultation_centre/new_url_1285022831).
  20. Notably, the similar theoretical underpinnings did not necessarily lead to the same outcomes; some Communist countries (such as the USSR and Yugoslavia) employed the ideas of territorial autonomy for minority ethnic groups while, for some, a similar worldview resulted in the promotion of ethno-nationalism in favour of the majority nation (like in Romania or Bulgaria).
  21. Soviet legal theorists in the late 1940s invented the idea of 'national' (in the sense of 'ethnic') 'sovereignty' being different from popular and state sovereignty; this idea, which has no practical output, still survives in the post-Soviet academic literature (Karapet'an, 2001: 229-241; Zolotareva, 1999: 59-109; Ogorodnikova, 2001: 369-70; Topornin, 2001: 82).
  22. It is noteworthy that, within the Soviet Union, the notion of national-cultural autonomy was first incorporated into legislation in Latvia in 1991.
  23. The Archive of the State Duma of the Russian Federation Federal Assembly, Fund 10100, Inventory 24p-II, File 8, 75.
  24. For details of how the issue of equality was debated in the course of the adoption of the 2003 amendments to the NCA Law, see Osipov, 2008: 115-116.

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