

NORBERT TÓTH

A “STEPCHILD” OF MINORITY RIGHTS
ARRANGEMENTS – AN IMPORTANT PIECE
OF CONTRIBUTION ON NON-TERRITORIAL
AUTONOMIES

TOVE H. MALLOY – ALEXANDER OSIPOV – BALÁZS VIZI (EDS.):
MANAGING DIVERSITY THROUGH NON-TERRITORIAL AUTONOMY.
ASSESSING ADVANTAGES, DEFICIENCIES, AND RISKS.
OXFORD UNIVERSITY PRESS, OXFORD, 2015.

First volume of a planned series of five, the European Centre for Minority Issues, together with its international partners, published a volume that tries to provide an overall view on Non-Territorial Autonomies (hereinafter: NTAs). Academic literature has rather favoured territorial arrangements vis-à-vis NTAs so far, despite the fact that non-territorial solutions to majority-minority conflicts can be more attractive to ‘nation’ or even to ‘civic’ states. Consequently, NTAs occur much more frequently as practical arrangements albeit they do not necessarily overshadow certain territorial ambitions. The example of Macedonia for instance seems to confirm this statement, where the inter-ethnic conflict was ended by the conclusion of a political document among the major political parties, the so-called Ohrid Framework Agreement in 2001, within which the political actors refused to accept any territorial claims to the problem. Yet, the contemporary ambitions of certain minority communities of Macedonia seem to prefer some degree of improvement in their self-governance, including first and foremost territorial autonomy or even a sort of federalization of the country.¹ In case of NTAs one of the most important, but not too academic questions can be phrased as follows: Could the NTA exclude – on a permanent basis – the possibility of raising territorial claims for now and ever, or the proper solution to each case might differ and is determined by certain universal and objective criteria like the complicated interplay of geographical, historical, sociological and other aspects of the affected societies?

1 For more detailed information and a background see: Stevo Pendarovski, Ivan Dodovski and Marina Andeva, “Fearing Endless Demands and Learning to Negotiate the Change: Minority Representation in the Republic of Macedonia,” in *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*, ed. Balázs Vizi et al. (Baden-Baden: Nomos, 2017): 161–186.

Tove H. Malloy tells in her introductory remarks that the authors of the book would consider NTA as an institutional phenomenon throughout the volume(s) for distinguishing it from other significant areas of minority rights law. Quoting Ruth Lapidot, Malloy puts: “*without institutions, NTA is not an autonomy.*”² For this reason, the book is split into three major chapters based on the degree of autonomy of the case studies chosen by the editors.

The first part of the volume provides a thorough overview of different practical arrangements offering self-governing possibilities. The very first paper of the initial part, unlike the following ones, discusses the issue from a general point of view. Sherrill Stroschein argues that NTAs have certain advantages over territorial arrangements. For example, territorial autonomy can minimize the interest of the given minority group to take part in the central decision making process, and by doing so, it can isolate the minority group from nationwide issues as it establishes a ‘mini-state’ within the state. Stroschein usually considers NTA a better approach as it provides possibilities to create the institutions of minority self-governance without leaving the targeted minority community and its members uninterested in broader national issues. Certainly, there might be a consequence like that when a state decides to elaborate an autonomous territory for preferring a minority group, but one could disagree whether it necessarily does so. In case of these aspects are taken into proper consideration, an autonomous territorial unit can also be the main tool in the hands of minorities to participate in nationwide issues as well.

Balázs Vizi looks through the contemporary legislative framework of NTA in Hungary and he concludes that although certain improvements can be identified compared to the previous legal acts relating to the topic, some further amendments are needed to make the entire system more representative and functional. Tamás Korhecz – current member of Serbia’s Constitutional Court – primarily deals with the minorities’ National Councils of Serbia using a rather critical standing point. However, he admits that the so-called Serbian model of NTAs proved to be viable during the past few years. Korhecz proposes some recommendations to the existing framework of Serbia’s NTAs and so does Antonija Petričušić who reviewed the relevant Croatian legislation. Petričušić argues that the example of “NTA à la Croatia” has not necessarily improved significantly the situation of minorities living in Croatia. Miran Komac and Petra Roter examine the autonomy arrangement in Slovenia in their contribution. The co-authors also phrase some recommendations to the decision-makers. The most important challenge in relation to the affected Slovenian pieces of legislation is the lack of consequent implementation of its rules according to Komac and Roter. Finally, at least within the first chapter, the function of the Sámi parliaments of

2 Tove H. Malloy, “Introduction,” in *Managing Diversity Through Non-Territorial Autonomy. Assessing Advantages, Deficiencies, and Risks*, ed. Tove H. Malloy et al. (Oxford: Oxford University Press, 2015): 7.

three Nordic countries, namely Norway, Sweden, and Finland have been put under review by Adam Stępień, Anna Petrétei and Timo Koivurova. It seems that they were rather optimistic regarding the question of the draft Nordic Sámi Convention that may improve the room of manoeuvre of the Sámi communities significantly by creating the foundations of a potential pan-Sámi autonomy.

A lower level of autonomy is the subject of the second part of the volume that focuses on the self-management of minorities. Daniel Bourgeois's paper concentrates on the educational issues of the linguistic minorities in Canada. Bourgeois thinks the language rights-related legislation in Canada improved a lot through the past few decades though it is still not complete. Detlev Rein, who explains the legal position of the Sorbian community living in Germany, comes to the conclusion that even without creating institutions under public law it is possible to speak of autonomy, which is a rather interesting remark indeed. Tove H. Malloy, one of the editors of the book and director of the ECMI, put the Danes of Germany and the Germans of Denmark under investigation in her article. According to Malloy, the autonomy arrangements of the two minority communities living along the Danish-German borderland provide much more flexibility and thus, possibilities to the groups in questions than functional autonomies used to do. Malloy also argues that it is also suitable for integrating different groups in terms of culture into culturally diverse societies.

In its last substantial chapter, the book engulfs some examples of 'symbolic participation', including the autonomy arrangements of the post-Soviet area by Alexander Osipov and the Russian national cultural autonomy in Estonia by Vadim Poleshchuk. The whole volume is essentially framed by Levente Salat's important and elaborated conclusion, making the whole book a well-founded, useful, timely, and inevitable source to anyone who is interested in the issues of minorities.