

## THE PRINCIPLES, ORGANIZATIONAL STRUCTURE AND LEGAL NATURE OF INSTITUTIONAL ARRANGEMENTS OF NON - TERRITORIAL CULTURAL AUTONOMY<sup>2</sup>

### *Abstract*

*In this work, the author analyses the solutions for the principles of formation, the organizational structure and the legal nature of institutional arrangements for non-territorial cultural autonomy in comparative law. The conclusion is that the organizational structure and the legal nature of the institutional arrangements of non-territorial cultural autonomy are different in comparative law. The complex organizational structure of such arrangements and their existence at different levels of political and territorial organization, which prevails in comparative law, problematizes the „non-territorial” character of such autonomy and deviates from the theoretical model according to which non-territorial cultural autonomy carries out its authority over certain issues within the entire territory of the state, posing a risk that from the process of forming of bodies, through which such autonomy is realized, especially in the case of dispersed minorities, a certain number of their members could be excluded. The explicit definition of the legal nature of such arrangements is rare in the comparative law, but in most countries where such arrangements exist, the status of legal entities of public law is recognized at least indirectly or in constitutional court jurisprudence.*

**Keywords:** *non-territorial cultural autonomy, principles, organizational structure, legal nature, comparative law.*

### **1. The meaning of non-territorial cultural autonomy**

In general, the meaning of autonomy is derived from the Greek words „*autos*”, with the meaning autonomous (self), on its own and „*nomos*”, with the meaning of the law, the norm. Hence it would follow that the

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term „*autonomy*” can be translated as its own legislation, that is, its own regulation of norms, self-regulation. A closer definition of autonomy in the legal theory suggests that autonomy is a form of organization in which certain *territories or social groups* (underlines V.Đ.) have a special status and autonomous rights due to their peculiarities. A set of these autonomous rights means for their realization and a special organization constitute the autonomous status of those territories and social groups within a state, which guarantees such status.<sup>3</sup> Therefore, as this is correctly noticed in theory, most authors make a distinction between personal, administrative, functional, cultural and territorial forms of autonomy.<sup>4</sup> However, the meaning of these terms is neither identical nor uniform.

In constitutional and administrative law, the use of the term „territorial autonomy”, or „political-territorial autonomy”, is much more frequent and somewhat clearer. It implies the right of territorial units to make their own laws or the form of internal organization of a state or federal unit in a federal state through their bodies within the constitutional and legal order of the state. It is characterized by a relatively high level of autonomy of a particular territory and population of that territory, which is expressed in the sphere of legislation and execution, but not in the judiciary.<sup>5</sup> On the other hand, a somewhat broader definition of political autonomy of territorial units is given in the political literature. Thus, for example, it is stated that territorial political autonomy is an arrangement whose aim is to allocate resources to the group that differs from the majority of the population in the country, but which makes up the majority in a certain region. These resources should help the group express its different identity.<sup>6</sup>

*If we take into account the above stated, and at least in the legal science relatively clearly defined concept of territorial autonomy, then we could conclude, according to approach per negationem, that „non-territorial autonomy”, as a separate form of autonomy, is reduced to all forms which are not territorially based, that is, they do not have a territorial basis and do not refer to certain territories.*<sup>7</sup> However, it is important to

<sup>3</sup> D.Mitrović, „Autonomija kao pojam i oblik, O smislu, vrstama i domašajima autonomije“, *Anali Pravnog fakulteta u Beogradu*, vol. 51/3-4, 2003 417.

<sup>4</sup> M. Ackrén, *Conditions for Different Autonomy Regimes in the World*, Akademi University Press, Åbo 2009, 16.

<sup>5</sup> P. Nikolić, *Ustavno pravo*, Savremena administracija, Beograd 1994, 426.

<sup>6</sup> R. Lapidot, *Autonomy. Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, Washington, D.C.: 1996, ch. 3.

<sup>7</sup> In theory, for example, it is stated that non-territorial jurisdiction exists when independent public authority is exercised in respect of certain individuals throughout the country, regardless of the fact that they inhabit a territory where other persons are subordinate to a similar authority with territorial jurisdiction - see A. Légaré, M. Suksi, „Rethinking the Forms of Autonomy at the Dawn of the 21st Century“, *International Journal on Minority and Group Rights*, 15 (2008), 144.

point out that territorial and non-territorial autonomous arrangements do not exclude each other and that they can be simultaneously applied to a particular territorial unit or the entire state.

In the broadest sense, non-territorial autonomy is a generic term that refers to different practices and theories of empowerment and self-determination of minority communities that do not include exclusive control over a particular territory, but rather require the representation of the cultural segment of the population that inhabits that territory.<sup>8</sup> Since it can be seen as a generic term that refers to different practices and theories, non-territorial autonomy can encompass and/or be closely related to other terms from a wide spectrum of terms that relate to autonomy.

It is primarily about the terms of personal and cultural autonomy. In theory, it is specified that these are very closely related terms that refer to minority rights, or the rights of indigenous people.<sup>9</sup> The emergence of the terms „cultural” and „personal” autonomy relate to the works of the Austro-Marxists who considered them as a complex institutional arrangement in which ethnic groups („nations”) would be organized as corporate self-governing entities based on individual membership, rather than territorial principle or place of residence.<sup>10</sup> In domestic theory, personal autonomy refers to the autonomy of communities that are not territorial, but personally based, respectively, it refers to certain national, religious, professional, class and similar social groups. Cultural autonomy refers to the rights of nations or ethnic groups as such, regardless of the territory that they inhabit, to develop their culture through their cultural institutions and the freedom to use their language.<sup>11</sup>

However, recently, in theory, the terms personal and cultural autonomy started to separate more distinctively. *Personal autonomy* implies individual freedom in exercising and dealing with personal identity<sup>12</sup> interests. In a similar context, it is emphasized that personal autonomy primarily refers to the use of the right of association in a horizontal dimension, between persons belonging to a minority group, to perform various cultural and other activities that the minority considers important.<sup>13</sup> A somewhat different approach, following the

<sup>8</sup> E. Nimni, „The Conceptual Challenge of Non-Territorial Autonomy“, in: *The Challenge of Non-Territorial Autonomy, Theory and Practice*, (eds. E. Nimni, A. Osipov, D. J. Smith) 2013, 1.

<sup>9</sup> M. Ackrén, 16.

<sup>10</sup> K. Renner, „State and Nation“, in: *National-Cultural Autonomy and its Contemporary Critics*, (ed. E. Nimni), 2005, 15-47.

<sup>11</sup> R. Marković, *Ustavno pravo I političke institucije*, Beograd 1995, 538.

<sup>12</sup> G. Shopflin, *Nations, Identity, Power*, 2000, 283, 284.

<sup>13</sup> M. Suksi, „Functional Autonomy: The Case of Finland with Some Notes on the Basic of International Human Rights Law and Comparisons with Other Cases“, *International Journal on Minority and Group Rights*, 15 (2008), 196, 197.

Austro-Marxists, the term *personal autonomy* implies the legal link of the individual with certain autonomous institutions based on individual characteristics different from the place of residence.<sup>14</sup>

*Cultural autonomy* is by its nature based on the community, that is, collectivity, and it differs from personal autonomy by its purpose and goal, which is the reason why it expands the rights of a certain cultural, religious or linguistic groups. This form of non-territorial autonomy is inherent in regulatory powers so that it implies the right of self-regulation of a culturally determined group in terms of issues that affect the maintenance and reproduction of their culture.<sup>15</sup> In the regime of cultural autonomy, the state chooses not to impose its power on a minority group concerning a particular set of questions.<sup>16</sup> Such autonomy is non-territorial regarding exercising its powers in respect of certain issues on the territory of the whole state.<sup>17</sup> Cultural autonomy implies, according to some authors, that a cultural or ethnic group, which is empowered, must be organized as a vertically integrated corporation based on the individual membership with the elected management body that carries out certain public functions and authorities. It refers to ethnocultural self-management institutions which are not part of territorially determined public authorities and which regularly possess certain material or authoritative public resources.<sup>18</sup> Bringing the non-territorial autonomy in relation to certain institutions is of crucial importance for defining the concept of non-territorial autonomy by some authors. In this sense, it is concluded that the difference between personal (cultural) autonomy and minority rights is mainly institutional; without self-regulating institutions, personal (cultural) autonomy does not exist.<sup>19</sup> In theory, it is pointed out that the use of pure private law forms for the implementation of the aim embodied in the delegation of public powers, authority and tasks to an entity that presents itself as an autonomy arrangement for a minority is probably not possible.<sup>20</sup>

In order to examine comprehensively the legal position and the character of institutions of non-territorial cultural autonomy, first, it is

<sup>14</sup> E. Nimni, Introduction: National Cultural Autonomy Revisited, in *National-Cultural Autonomy and its Contemporary Critics*, (ed. E. Nimni), 2005, 8.

<sup>15</sup> M. Suksi (2008b), 196.

<sup>16</sup> M. Tkacik, 375.

<sup>17</sup> *Ibid.*

<sup>18</sup> A. Osipov, „Non-Territorial Autonomy and International Law“, *International Community Law Review*, 13 (2011), 396.

<sup>19</sup> T. H. Malloy, „Introduction“, in: *Managing Diversity Through Non-Territorial Autonomy: Assessing, Advantages, Deficiencies and Risks* (eds. T. H. Malloy, A. Osipov, B. Vizi), 2015, 5, 7.

<sup>20</sup> M. Suksi, „Non-Territorial Autonomy, The Meaning of '(Non)-Territoriality'“, in: *Minority Accommodation Through Territorial and Non-Territorial Autonomy* (eds. T. Malloy, F. Palermo), 2015, 86.

necessary to determine how the principles and organizational structure are regulated in the comparative law, as well as how the legal nature of the institutions that make such autonomy is regulated. To be more precise, does the institutionalization of such autonomy indeed have non-territorial and public law character in all? This issue will be examined in the examples of the countries where non-territorial cultural autonomy is most developed - Hungary, Finland, the Russian Federation, Slovenia, Croatia and Estonia.

## **2. Principles and organizational structure**

Legislation regulating non-territorial arrangements of minority self-government, that is autonomy, most often does not explicitly regulate the principles which such autonomy and organizational structures of institutions are based on and through which this autonomy is exercised. The legislation of the Russian Federation is an exception within the comparative law. According to the Article 2 of the Law on National Cultural Autonomy, the national-cultural autonomy in the Russian Federation is based on the principles of the freely expressed will of the citizens to belong to a certain ethnic community, their self-organization and self-government, the diversity of forms of internal organization of national-cultural autonomy, public initiatives with government support, respect for language, culture, tradition and customs of citizens belonging to different ethnic communities and legality. With some exceptions regarding the obligation to form a body through which non-territorial cultural autonomy is realized and the possibility for minority members to participate in the formation of such bodies, one can represent the viewpoint that minority non-territorial autonomy in other countries are based on similar principles, although these principles are not explicitly specified in the relevant legislation.

It is completely different regarding the organizational structure of the bodies through which non-territorial cultural autonomy is realized. This issue is clearly regulated in all analysed legislation. There are different solutions concerning the organizational structure of such bodies in comparative law.

In Finland, the Sami Parliament itself is a central organizational structure through which a non-territorial self-government is exercised in that country. This body is formed at the entire state level, which means that it represents the people of Sami and that it exercises its powers at the state level, which for understandable reasons, especially arising from the fact that the Sami people inhabit certain areas, has their own territorial dimension. Namely, the Law on the Sami Parliament prescribes

in the Article 38 that the candidates who received the highest number of votes, that is, the majority of votes, will be elected for the members of the Parliament, but under one corrective condition - that there are at least three candidates from each municipality in Sami homeland. If there are no such candidates from any of these municipalities, the three candidates with the largest number of votes from such a municipality will become the members of the Sami Parliament. In fact, this means that at least twelve members of the Parliament come from the municipalities in Sami homeland, while the other nine members may come from other parts of Finland, depending on the support they get, but in practice, this is rarely the case.<sup>21</sup> If such a solution is considered in the context of the fact that more than 60% of the Sami population lives outside of their homeland, it can be concluded that prescribing a corrective condition for determining election results, to some extent, was done at the expense of democratic legitimacy in order to promote the interests and connection with homeland. In fact, by such a solution, i.e. some kind of „key”, it is ensured that, regardless of all circumstances, all parts of the Sami homeland are represented at least in the prescribed minimum extent.<sup>22</sup> In all the other countries, which are chosen for a comparative presentation, the organizational structure of the bodies, through which non-territorial autonomy is exercised, is not centralized. It is complex and, to a certain extent, it corresponds with the administrative-territorial organization of the state.

In Hungary, the Constitution in Article XIX paragraph 2 clearly stipulates that nationalities have the right to establish their own self-government *at the local and national level*. Act CLXXIX/2011 on the Rights of Nationalities (Minorities) in Article 50, paragraph 1 specifies that local nationality self-governments may be set up in localities, towns and metropolitan districts, and regional nationality self-governments in the capital and in the counties (but in the Act, they are under the common term „local self-government”). All self-governments, both local and state, are set up in the same way – by elections (see further text). In the previous Act from 1993, which for the first time established the concept of minority non-territorial self-governments, it was envisaged that self-government on the state and on the local level may be elected by minority electors, which consisted of municipal self-government councillors, as well as minority MPs in the Hungarian Parliament. It also envisaged that state self-government had certain authorities over local minority self-governments. According to the current Act, all minority governments, no

<sup>21</sup> M. Suksi (2015), 109.

<sup>22</sup> B. Krivokapić, „Etničke manjine u Finskoj i njihov pravni položaj“, *Uvod u pravo Finske* (ed. B. Krivokapić), Beograd 2005, 82.

matter whether local or state, have the same legal status. They are set up in the same way and according to the provisions of Article 76, paragraphs 4 and 5, there is no hierarchical relationship between them. Therefore, the relations between local and national minority self-governments are based and realized within their competencies, obligations and responsibilities prescribed by the Constitution and the Act. Act CLXXIX on the Rights of Nationalities (Minorities) has also established a condition for the setting up of local minority self-governments. According to Article 56, paragraphs 1 and 2, elections for local nationality (minority) self-government shall be called if there are at least thirty members of the nationality (minority) on the site according to the results of the census regarding the nationality affiliation, or ten members of the minority in the case of regional self-government. Formation of local minority self-governments is not a condition for the formation of national minority self-government so that all groups that have the status of a national minority can constitute their self-government at the state level. Referring to the results of the population census is interpreted in theoretical works as an obvious effort of the legislator to avoid traps of abuse of the voting and voting rights, but such a solution, on the other hand, has raised a number of questions. Namely, during the 2011 population census, the declaration of nationality was optional and at the time of the census, there was no information that the results shall be used for the purposes of minority self-government elections. In practice, there were examples of significant differences between the results of the census and the factual situation. This was both in terms of population census recording a large number of members of a particular minority, disputed by minority self-governments, as well as in terms of the existence of settlements in which members of national minorities traditionally live, where a fewer number of members was recorded than expected. Therefore, on the recommendation of the Venice Commission, the Ombudsman proposed certain modifications in the legislation to ensure that in the event of a discrepancy between the population census and the factual situation, the legislator may establish a list of „historic settlements” in which minority rights would be directly guaranteed, but this proposal was not accepted.<sup>23</sup>

The complex organizational structure of non-territorial minority autonomous arrangements exists in Slovenia and the Republic of Croatia, but with somewhat different characteristics compared to the Hungarian model. Similar like in Hungary, members of national minorities in the Republic of Croatia can choose national minorities councils within local

<sup>23</sup> B. Vizi, „Minority Self-Governments in Hungary: a Special Model of NTA?“, in: *Managing Diversity Through Non-Territorial Autonomy: Assessing, Advantages, Deficiencies and Risks* (eds. T. Malloy, A. Osipov, B. Vizi), 2015, 50.

self-government units in which a certain number of minority members live. According to Article 24, paragraph 1 of the Constitutional Law on the Rights of National Minorities, members of each national minority may choose national minority council in the self-government units where members of a national minority have at least 1.5% share in the total population, or where more than 200 members of a national minority are resident, or in the area of a regional self-government unit where more than 500 members of a national minority are resident. If the number of members of the national minority is less than above stated, with at least 100 members of the national minority living in the area of the self-government unit, then the representative of the national minority shall be elected for the territory of such a local self-government unit. The members of the national minorities' councils and national minorities' representatives are elected through direct elections. It is important to point out that Croatian legislation does not recognize the organizational form of national minorities' councils at the state level. Instead, the Constitutional Law on the Rights of National Minorities envisages, in Article 33, paragraph 1, that national minorities' councils, formed in different local self-government units, as well as in different units of regional self-government, can, for the sake of coordination or improving common interests, form the coordination of national minorities' councils. According to paragraph 4 of the same article of the Constitutional Act, the coordination of national minorities' councils for the territory of the Republic of Croatia is considered to have been justified when more than half of the national minorities' councils of the regional self-government have entered into the agreement on the establishment of such coordination. Hence, the councils in the self-government units and the coordination of the state level councils are not established in the same way. There is no hierarchical relationship between the state-level coordination and councils in self-government units. Moreover, the Constitutional Law does not contain provisions on the manner of concluding, legal nature and eventual settlement of disputes in connection with the agreement on the establishment of the coordination of national minority councils for the territory of the Republic of Croatia.

In the Republic of Slovenia, according to Article 6 of the Law on Self-governing Ethnic Communities, members of Italian and Hungarian ethnic communities, *autochthonously settled in ethnically mixed territories* (underlined by V.Đ.), found municipal self-governing ethnic communities. The concept of „ethnically mixed territories” is one of the basic elements of the autonomous minority arrangement in Slovenia, which, unlike the Hungarian and Croatian models, is not numerically determined, but is regulated by individual statutes of local self-government units that designate



such territories as those with the settlements where members of the Italian and Hungarian minorities autochthonously live. Such concept is one of the problems of the autonomous minority arrangement in Slovenia since the territorial framework for minority protection is not always in concordance with the lifestyle of individuals migrating due to work or education.<sup>24</sup> The largest body of such municipal self-government is the council of a municipal ethnic community with self-government, which is elected by the ethnic community members through direct elections. According to Article 9 of the Law, municipal self-governing ethnic communities integrate into Italian or Hungarian self-governing ethnic communities in the Republic of Slovenia. Its highest body is the council. In practice, such integration is based on the statutory regulation issued by municipality councils, as well as by the council at the national level, by which is provided the number of members of a council established at the state level. The law does not regulate the issue of the relationship between the state level council and councils of self-governing municipal communities, but we should represent the standpoint that this relation does not have a hierarchical character, but it is defined by their statutes and by their competences, obligations and responsibilities prescribed by the Law.

The organizational structure of ethnocultural autonomy in the Russian Federation depends on the location of Russian population belonging to certain ethnic communities, as well as from the statutory solutions of the national-cultural autonomy itself. The fact that the establishment and functioning of national cultural autonomy are strictly related to the administrative and territorial division of the Russian Federation has led some authors to conclude that national cultural autonomy can hardly be regarded as „extraterritorial” in that sense.<sup>25</sup> The Law on National Cultural Autonomy in Article 5 envisages the possibility for national cultural autonomy to be local, regional and federal. The law does not prescribe any numerical criteria for determining in which local units it is possible to establish local cultural autonomy. Local national-cultural autonomy of Russian citizens, who are regarded as a certain ethnic community, may form regional national-cultural autonomy, and two or more regional national and cultural autonomies created in subjects of the Russian Federation may establish interregional organs to coordinate

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<sup>24</sup> M. Komac, P. Roter, „The Autonomy Arrangement in Slovenia, An Established Institutional Framework Dependent on Implementation of Minority Protection“, in: *Managing Diversity Through Non-Territorial Autonomy: Assessing, Advantages, Deficiencies and Risks* (eds. T. Malloy, A. Osipov, B. Vizi), 2015, 99.

<sup>25</sup> A. Osipov, „Autonomy as Symbolic Production: The case of contemporary Russia“, in: *Minority Accommodation Through Territorial and Non-territorial Autonomy* (eds. T. Malloy, F. Palermo), 2015, 186.

their activities, but such bodies have no interregional national-cultural autonomy nature. At least half of the registered regional national-cultural autonomy forms federal national-cultural autonomy. There is a fundamental difference in the way of forming local cultural autonomy on the one hand and regional and federal cultural autonomy on the other hand. The citizens choose local cultural autonomy, while regional and federal cultural autonomy is chosen indirectly.

The legislation of Estonia envisages a very special model of the organizational structure of the bodies through which non-territorial cultural autonomy is realized. Namely, the cultural council, the main organization of cultural autonomy of the national minority at the state level, elected in direct elections, can form city or district cultural councils or establish local cultural representatives. The procedure for the forming of the city and/or district cultural councils, as well as their competencies, is regulated, according to Article 22 of the Law on Cultural Autonomy of National Minorities, by the statute of cultural autonomy adopted by the council elected at the state level. Such solution reminds some authors of the autonomous arrangements existing in federal or decentralized states in which the competences of constituent units are legally defined and protected.<sup>26</sup>

### 3. Legal Nature

A special issue within the analysis of institutional arrangements of non-territorial cultural autonomy is the definition of self-governing bodies through which non-territorial cultural autonomy is realized, that is, the legal subjectivity and legal nature of such institutions.

In Hungary, Act CLXXIX on the Rights of Nationalities (Minorities) from 2011, for whose adoption, according to the Constitution, two-thirds majority of the present members is required, defines nationality self-government in Article 2, paragraph 2 as *an organization established on the basis of this Act by way of democratic elections that operates as a legal entity, in the form of a body, fulfils the nationality public service duties as defined by law and is established for the enforcement of the rights of nationality communities, the representation and protection of the interests of nationalities and the independent administration of the nationality public affairs falling into its scope of responsibilities and competence at a local, regional or national level*; which is a legal person, according to Article 76 paragraph 3 of the Act. Nationality cultural autonomy is under paragraph 3 Article 2 of the Act, and in accordance with the constitutional formulation of the right on self-government, defined as

<sup>26</sup> B. de Villers, „Protecting Minorities on a Non-Territorial Basis – Recent International Developments“, *Beijing Law Review* 3/2012, 176.

a collective nationality right that is embodied in the independence of the totality of the institutions and nationality self-organizations under this Act through the operation thereof by nationality communities by way of self-governance. Based on the given provisions of the Constitution and the Act, it can be concluded that the law distinguishes cultural autonomy from nationality self-government. The cultural autonomy embodies a great variety of collective rights, including the establishment of nationality self-government. The self-government, as an elected body, is rather the materialization of cultural autonomy, a representative forum, and an administrative tool to realize cultural autonomy.<sup>27</sup> Also, it has the nature of the body, in fact, public law status.

Estonian legislation does not determine explicitly legal nature of cultural councils, and in theoretical comments, it is rightly observed that the Law in force is nothing more than a „broad framework”.<sup>28</sup> That is, the status of these bodies is not clear and, more importantly, they do not even have legal subjectivity<sup>29</sup> or public law status which obviously limits the possibilities for minority cultural development through NTA structures.<sup>30</sup> Minority self-governments in Estonia are not legal persons, and at best, a self-government established under the law may function as a „coordinating council of its own minority”.<sup>31</sup> Although in theoretical comments of the Estonian legislation the opinion that cultural councils do not have the status of a legal person prevails, there are opinions based on their right to establish taxes for the members of the minority and that they are the „public law authorities”, more precisely, a „public law corporations with powers similar to local self-government”<sup>32</sup>. In 2012 the Estonian Ministry of Culture finally represented the view that cultural autonomy is a form of self-government that may be realized by a legal person and the latter may be a non-profit association or a foundation. In

<sup>27</sup> B. Vizi, 46.

<sup>28</sup> D. J. Smith, „Challenges of Non-Territorial Autonomy in Contemporary Central and Eastern Europe“, in: *The Challenge of Non-Territorial Autonomy, Theory and Practice* (eds. E. Nimni, A. Osipov, D. J. Smith), 2013, 125.

<sup>29</sup> V. Poleshchuk, „Changes in the Concept of National Cultural Autonomy in Estonia“, in: *The Challenge of Non-Territorial Autonomy, Theory and Practice* (eds. E. Nimni, A. Osipov, D. J. Smith), 2013, 156.

<sup>30</sup> D. J. Smith, „NTA as a Political Strategy in Central and Eastern Europe“, in: *Minority Accommodation Through Territorial and Non-Territorial Autonomy* (eds. T. Malloy, F. Palermo), 2015, 171.

<sup>31</sup> A. Osipov, „Non-Territorial Autonomy in the Post-Soviet Space“, in: *Managing Diversity Through Non-Territorial Autonomy: Assessing, Advantages, Deficiencies and Risks* (eds. T. Malloy, A. Osipov, B. Vizi), 2015, 217.

<sup>32</sup> C. Decker, „Contemporary Forms of Cultural Autonomy in Eastern Europe: Recurrent Problems and Prospects for Improving the Functioning of Elected Bodies of Cultural Autonomy“, in: *The Participation of Minorities in Public Life*, 2008, 108.

other words, cultural autonomy is an additional form of organization of people who have already self-organized voluntarily.<sup>33</sup>

In Finland, Article 1, paragraph 1 of the Act on Sami Parliament, it is stated that Sami people shall, among themselves, elect the Parliament to carry out the tasks related to cultural autonomy. Therefore, it follows from the provision of the Act that Sami Parliament is a body that carries out tasks related to the cultural autonomy that the people enjoy. The Act does not explicitly determine the legal nature of that body, but it follows from a number of provisions of that Act that it is a special legal subjectivity with certain characteristics of state bodies, that is, of public law legal persons.

The Slovenian Law on Ethnic Communities, which have self-government, does not explicitly determine the legal nature of the council of the ethnic community with self-government. However, according to Article 2 of the Law, which explicitly stipulates that ethnic communities with self-government are, as such, public legal persons, or legal persons of public law, it can be said that the community with self-government is, in fact, an institution. That is, as the Law explicitly stipulates, it is the body, through which a legal person of public law, performs its functions. Theoretical comments clearly emphasize that bodies of communities, having public-law status, perform public-law functions, unlike other organizations that gather community members for the purpose of social activities, but which act in accordance with civil law.<sup>34</sup>

The Constitutional Law on the Rights of National Minorities in Croatia in Article 25, paragraph 1 prescribes that a national minority council is a non-profit legal person in a territorial self-government unit. There was no provision in the original text in the Act from 2002 that explicitly determined the legal subjectivity and legal nature of the coordination of a national minority council, which has been created for the whole country. Amendments to the Act from 2010 stipulate that the coordination of a larger national minority for the territory of the Republic of Croatia is a „non-profit legal entity”. The Constitutional Court of the Republic of Croatia also dealt with the legal nature of the Council and the coordination of the national minorities councils. *In the decision in which it pointed out that the Constitutional Law on the Rights of National Minorities does not have the character of a constitutional, but organic law, the Constitutional Court has represented the view that the law „regulates the procedure of election, the way of work and jurisdiction of, among others, the national minorities’ councils as special political institutions*

<sup>33</sup> V. Poleschuhuk, “Russian National Cultural Autonomy in Estonia”, in: *Managing Diversity Through Non-Territorial Autonomy: Assessing, Advantages, Deficiencies and Risks* (ed. T. Malloy, A. Osipov, B. Vizi), 2015, 241.

<sup>34</sup> B. de Villers, 178.

(*underlines V.Đ.*) in order to ensure the participation of national minorities in the public and political life of the Republic of Croatia".<sup>35</sup> In a subsequent decision, the Constitutional Court of the Republic of Croatia considered the national minorities councils as „a particular institutional form through which members of national minorities in local and regional self-government units could have a direct influence on resolving issues within the authority of the local representative body and local executive and administrative bodies, which relate to them or affect their position or rights ...”. Therefore, „in accordance with the above, national minorities councils have the status of legal entities of public law”.<sup>36</sup>

The Law on National Cultural Autonomy (N 74-FZ) defined the term cultural autonomy in Russian Federation. *According to the Article 1 of this Law, cultural autonomy is a form of national and cultural self-determination through the public organization of citizens (underlines V. Đ.) of the Russian Federation belonging to certain ethnic communities who consider themselves to be in the status of a national minority in the relevant territory on the basis of voluntary self-organizing with the goal to solve issues related to preserving their identity, developing language, education and national culture, strengthening the unity of the Russian nation, harmonizing inter-ethnic relations, promoting inter-religious dialogue, and implementing activities aimed at social and cultural adaptations and integration of migrants.* In short, according to law, cultural autonomy is a non-territorial form of self-determination on cultural issues for ethnic groups<sup>37</sup> in the form of a public association. The *new State Strategy of state policy on nationalities*, which was approved by the President's decree in 2012, emphasizes that national cultural autonomy is „a civil society institution intended to enjoy ethnocultural rights regardless of the place of residence of the citizens”.<sup>38</sup> Although, as pointed out, national-cultural autonomy in the Russian Federation is legally determined as a public organization, in fact, a public association, it is somewhat different from ordinary (public) associations. First of all, only ethnic communities that have the status of a national minority in a particular territory can create it. Another difference between national cultural autonomy and other public associations is the definition of cultural autonomy according to which it represents a public association of *citizens* of the Russian Federation, although the Constitution does not know the restriction of citizenship

<sup>35</sup> U-I-1029/2007, *Narodne novine*, No. 47/2010.

<sup>36</sup> U-I-3553/2011.

<sup>37</sup> N. Torode, “National Cultural Autonomy in Russian Federation: Implementation and Impact”, *International Journal on Minority and Group Rights*, 15/2008, 180.

<sup>38</sup> According to A. Osipov (2015), 185.

for membership or participation in public associations.<sup>39</sup> In other aspects of status, non-territorial cultural autonomy in the Russian Federation is identical to ordinary public associations.

#### 4. Conclusion

The analysis of the presented solutions suggests that the organizational structure and the legal nature of the institutional arrangements of non-territorial cultural autonomy are different in the comparative law. The complex organizational structure of the bodies through which the non-territorial cultural autonomy is realized and the existence of its institutional arrangements in areas smaller than the state is not fully in accordance with the theoretical model according to which non-territorial cultural autonomy exercises its authority over certain issues within the territory of the state and problematizes its „non-territorial” nature. The existence of various organizational forms and institutional arrangements in territories smaller than the state imposes the issue of the adequacy of such solutions because most minority rights and policies regarding national minorities are implemented, protected and formulated at the state level. Also, the correspondence of the organizational structure with the administrative and territorial organization of the state opens the issues of determining the administrative units in which such bodies can be formed, the uniformity of the way in which they are formed as well as the legal regulation of the relations between such bodies formed at different levels of organization. Establishing of non-centralized organizational structures through which non-territorial autonomy is realized at different levels of administrative and territorial organization on the one hand can reflect an approach that recognizes the fact that the connection between territory and national identity is very strong and that it is of a central importance for self-understanding, history and aspirations of national groups, which is clearly recognized in theory.<sup>40</sup> However, on the other hand, such approach, by means of norms that contain numerical criteria on minorities’ members regarding determination at which levels of administrative and territorial organization it is possible to educate minority non-territorial autonomous arrangements, risks to exclude a certain number of minorities’ members from the process of forming bodies through which non-territorial autonomy is realized, in the case of dispersed minorities, which problematizes the possibility that such bodies represent minorities as collectivities.

<sup>39</sup> A. Osipov, „National Cultural Autonomy in Russia: A Case of Symbolic Law”, *Review of Central and East European Law*, 35/2010, 39.

<sup>40</sup> W. Kimlicka, „National Cultural Autonomy and International Minority Rights Norms“, *Ethnopolitics* 6 no3/2007,388.

Comparative solutions regarding the legal nature of institutional arrangements for non-territorial cultural autonomy point to the conclusion that legislation rarely tends to explicitly define their legal nature. On the other hand, it is clear that in most of the countries where such institutional arrangements exist, even in an indirect way through the establishment of their powers, or in constitutional jurisprudence, the status of legal entities of public law is recognized. The solutions according to which such institutional forms do not have a public legal character deviate from the theoretical model according to which the use of purely private legal forms for the implementation of the goal embodied in the delegation of public powers, authorities and tasks to an entity which is an autonomous arrangement for a minority is not possible.

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## **NAČELA, ORGANIZACIONA STRUKTURA I PRAVNA PRIRODA INSTITUCIONALNIH ARANŽMANA NETERITORIJALNE KULTURNE AUTONOMIJE**

### Rezime

U radu autor analizira rešenja o načelima formiranja, organizacionoj strukturi i pravnoj prirodi institucionalnih aranžmana neteritorijalne kulturne autonomije u uporednom pravu. Zaključak je da su organizaciona struktura i pravna priroda institucionalnih aranžmana neteritorijalne kulturne autonomije u uporednom pravu različiti. Složena organizaciona struktura takvih aranžmana i njihovo postojanje na različitim nivoima političko-teritorijalnog organizovanja koje u uporednom pravu preovlađuje problematizuje „neteritorijalni” karakter takve autonomije i odstupa od teorijskog modela prema kome neteritorijalna kulturna autonomija svoja ovlašćenja u pogledu određenih pitanja vrši na čitavoj teritoriji države, rizikujući da iz procesa formiranja tela posredstvom kojih se takva autonomija ostvaruje, naročito u slučaju disperznih manjina, isključi određeni broj njihovih pripadnika. Izričito definisanje pravne prirode takvih aranžmana ređa je pojava u uporednom zakonodavstvu, ali je u većini država u kojima takvi aranžmani postoje njima, makar i

na posredan način ili u ustavnosudskoj praksi, priznat status pravnih lica javnog prava.

**Ključne reči:** neteritorijalna kulturna autonomija, načela, organizaciona struktura, pravna priroda, uporedno pravo.