

NON-TERRITORIAL MINORITY AUTONOMY IN ESTONIA

Abstract

Non-territorial minority autonomy/self-governance is one of the models for the protection of national minorities. Non-territorial minority autonomy is guaranteed in Estonia by constitutional provisions and it is defined as one of the minority rights. In this sense, the paper analyzes the legal nature and the scope of such an autonomy in the legal order of Estonia.

Keywords: Estonia, national minorities, non-territorial autonomy.

1. Introduction

In minority discourse, autonomy is often defined as means of enabling ethnic groups to exercise direct control over matters of particular importance to them, while simultaneously leaving the wider entity to exercise competencies related to common interests (Ghai, 2002, p. 8). In legal and political science studies, it has been noticed that territory, along with the issues of existence and determination of ethno-cultural group and autonomy, is one of the variables within the observed triadic nexus (Malloy, 2015, p. 2). The ultimate ratio of establishing territorial autonomy for minorities is principally based on transforming the solutions of minority issues into the rule of the majority, so that those issues are addressed through the classical logic of majority democracy, since minorities, by establishing territorial autonomy for them, become the majority in the sub-state entity (Palermo, 2015, pp. 20-21). In fact, territorial autonomy for minorities whose essence is the recognition of the special status of a particular territory designed to serve the interests of that minority can only make sense, according to some authors, if the minority has majority status within that territory, since modern territorial administration cannot be different from majoritarian democracy. Otherwise, minorities would not be able to profit from the democratic institutions created in such territorial units (Brunner & Küpper, 2002, p. 21). Moreover, according to some opinions, it does not make much sense to entrust minority territorial autonomy only with powers related to minority issues, because that would mean that general functions of territorial administration would have to be performed by special state agencies that would not have any function in other areas of the state, which would result in decreased autonomy (Brunner & Küpper, 2002, p. 24).

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Also, there are certain limitations to the approach that supports the opinion that establishment of territorial autonomy for minorities can only make sense if the minority has the status of a majority within the territory. The main limitation in setting up the territorial autonomy for national minorities is in its relation to the circumstances of the ethnic group (Ghai, 2002, p. 8) regional concentration. Furthermore, the limitations stated in theoretical works regarding national territorial autonomy are embodied in the fact that it includes persons who are not members of the minority and in whose favor the autonomy is established, as well as that the national composition of the population, since there is a tendency to migration, may change. Thus, the former majority becomes a minority and the autonomy loses its *raison d'être* (Lapidoth, 1997, pp. 39-40), or the autonomous authorities face the demands of internal minorities within the framework of territorial autonomy (Smith, 2014, p. 18). An alternative to the limitation in territorial autonomy, especially for dispersed minorities, but also in minority territorial nationalism and security challenges that the demands of minority political elites for its introduction can cause, is often seen, alone or in combination with other solutions, in non-territorial autonomy.¹ Such a form of autonomy could be defined as *the self-governance of a group of persons through a sub-state entity with a non-territorial character in matters that are considered to be vital for maintenance and reproduction of their distinctive cultural characteristics that may relate to the language, culture, religion or customs of particular groups* (see Online Compendium Autonomy Arrangements in the World, 2016). One of the European countries that has opted for such a form of minority protection is Estonia. The subject of this paper is the institutional aspects of the bodies and arrangements through which such autonomy/self-governance is exercised in Estonia and the determination of their legal nature. The first step in such an analysis is to consider the constitutional regulation of the protection of national minorities in Estonia.

2. Constitutional Regulation of the Protection of Ethnic Minorities in Estonia and Legal Regulation of Non-Territorial Autonomy

The 1992 Constitution of the Republic of Estonia in paragraph 1 proclaims that Estonia is an independent and sovereign democratic republic wherein supreme political authority is vested in the people. Although it proclaims demos as the holder of sovereignty, the Estonian Constitution recognizes the existence of the majority and ethnic minorities. Namely, the Preamble of the Constitution clearly stresses that the state, among other things, must guarantee the preservation of the Estonian people, the Estonian language and Estonian culture. The second part of the Constitution, which deals with human rights, freedoms and duties, contains several provisions that mention ethnic minorities. Firstly, in paragraph 49, everyone has the right to preserve his or her ethnic identity. Paragraph 50 clearly regulates *the right of national minorities to cultural autonomy* (see below), while paragraphs 51 and

¹ Learn more about that in Nimni, 2007, pp. 345-364; Roshwald, 2007, pp. 365-378; Kymlicka, 2007, pp. 379-393; Nootens, 2015, pp. 33-55; Coakley, 2016, pp. 1-23; Smith & Hiden, 2012, p. 109; Ghai, 2002, p. 9; Lapidoth, 1997, p. 40 etc; Đurić, 2017a, pp. 26-27.

52 are dealing with the use of language. According to article 2, paragraph 51, in local self-government units where at least half of the population belongs to ethnic minorities, everyone has the right to receive responses to their address in the language of the national minority language from government agencies, local authorities and their officials, while according to article 1, paragraph 52, in local self-government units where the language of the majority of the population is not Estonian, local authorities may, to the extent and pursuant to a procedure provided by law, use the language of the majority of residents as internal working language, while, according to article 2 of the same paragraph, the use of foreign languages, including the languages of national minorities, in government agencies and courts is provided by law. Those are also the only provisions of the Constitution of that state on the protection of national minorities.

Therefore, according to the Constitution of the Republic of Estonia, national minorities have the right to establish self-governing bodies (agencies) in the interest of their ethnic culture in accordance with the conditions and procedure provided by the Law on Cultural Autonomy for National Minorities (*Vähemusrahvuse kultuuriautonomiam seadus*; de Villers, 2012, p. 175). Since the Constitution recognizes the right to non-territorial cultural autonomy for national minorities, it is important to determine how Estonian legislation determines the holder of that right. Estonian legislation has chosen to combine the general definition of a national minority with individual naming of each minority group. According to Article 1 of the Law on Cultural Autonomy for National Minorities, the term “national minority” applies to Estonian citizens (citizens) who reside on the territory of Estonia, have long-standing, firm and lasting ties with Estonia, who are distinct from Estonians based on their ethnicity and cultural characteristics, religion or language and who are motivated by a desire to collectively preserve their cultural traditions, religion or language which constitute the basis of their common identity. Article 2, paragraph 2 of the Law proclaims that bodies of cultural autonomy may be established by members of the German, Russian, Swedish or Jewish minorities, as well as members of national minorities numbering more than 3.000, thus specifying a numerical criterion that shows the smallest number of members required for the existence of a national minority, at least in terms of exercising that right. On the other hand, the stated definition means that explicitly listed minorities do not have to meet the legal criteria to qualify for cultural autonomy (de Villers, 2012, p. 175). In fact, a quantitative limit is not set for explicitly listed minorities, so they can form cultural autonomy with fewer members (Suksi, 2015, p. 104). Bearing in mind that the criterion of citizenship also applies to explicitly listed minorities, and since there is a huge number of persons who haven't acquired Estonian citizenship within the Russian community in Estonia, and consequently the status of members of the Russian national minority, some authors pointed out that Estonian legislation on cultural autonomy is discriminatory (Groenendijk, 1993, p. 20).

Pursuant to Article 2, paragraph 1 of the Law, cultural autonomy is the right of members of a certain national minority to establish bodies of cultural autonomy in order to achieve the cultural rights given to them by the Constitution. Pursuant to Article 11 of the Law, the principal organizations of cultural autonomy are the cultural council of the national minority and the cultural boards that organize the activities of cultural autonomy

institutions. However, the Law does not explicitly proclaim the legal nature of those bodies, so it is rightly noted in theoretical comments that the Law in force is nothing more than a “broad framework” (Smith, 2013, p. 125), i.e. that the status of those bodies is not clear and that, more importantly, they have neither acquired legal personality (Poleshcuhuk, 2013, p. 156) nor public status, which limits the possibilities for the cultural development of the minority through the structures of non-territorial autonomy (Smith, 2015, p. 171). In general, some analysis of Estonian legislation points out that the Law is the direct successor to the 1925 Law, which has always been considered as the proof of liberality and tolerance of the Estonian state towards the minorities, but that the current Law in its character is nothing more than a “performative law” whose success, as is the case with all laws of such nature, is reflected in the fact that it has been adopted (Aidarov & Drachsler, 2011, p. 171), i.e. it is pointed out that, unlike the 1925 Law, the practical meaning of self-governance in the current law is not clear, and the scope of its provisions is somewhat limited since the minority self-governments are not regarded as legal entities and there is an open question whether they can establish other institutions, manage properties or conclude contracts. Also, there is neither a stable nor a clear guarantee of their financing (Osipov, 2013, p. 11). Since they do not have the status of a legal entity, the bodies of non-territorial cultural autonomy in Estonia can at best function as “coordinating councils of their minority” (Osipov, 2015, p. 217). Although the prevailing understanding of the theoretical comments on Estonian legislation is that cultural councils do not have the status of a legal entity, there are also opinions based on their right to set taxes (see section on financing), and that it is still a “public authority”, more precisely a “public law corporation with powers similar to local self-governance” (Decker, 2008, p. 108). In 2012, the Estonian Ministry of Culture supported the opinion that cultural autonomy is a form of self-governance that can be realized by legal entities that can be non-profit associations and/or foundations, which has led some authors into concluding that cultural autonomy is, in other words, a form of organizing persons who had been voluntarily organized already (Poleshcuhuk, 2015, p. 241).

Bearing in mind somewhat unclear legal status and legal nature of non-territorial cultural autonomy in Estonia, and with the purpose of understanding them properly, attention should be paid to issues of organizational structure and the formation of arrangements through which such autonomy is exercised.

3. Formation, Organizational Structure and Termination of the Body of Non-Territorial Autonomy

In principle, in Estonia it follows from the relevant legal solutions that a certain minority group can be qualified for non-territorial autonomy by the very fact that it is recognized, but its members can choose not to activate for that purpose, so there is no obligation by the minority group to form its own non-territorial cultural autonomy (de Villers, 2012, p. 175). The bodies through which such autonomy is exercised are constituted through direct elections where members of national minorities, who have the right to such

autonomy, participate.² Direct elections for such bodies raise the issue of creating electoral roll that lists persons who may participate in such elections. Article 7 of the Law on Cultural Autonomy in Estonia stipulates that ethnic cultural societies or their associations shall constitute national registers of national minorities, and that the Government of Estonia shall establish regulations for the maintenance and use of national registers. The Government of Estonia has passed Regulation no. 238 (*Vähemusrahvuste rahvusnimekirjade pidamise ja kasutamise kord*), which has regulated the issues of keeping and using those registers in more detail. According to Article 8, paragraph 1 of the Law on Cultural Autonomy, such registers shall include, inter alia, data on ethnicity, mother tongue, religion and children of persons belonging to national minorities, with the possibility for children under 15 to be registered in the national register at the request of their parents. Paragraph 3 of the same article of the Law stipulates that the name of a minority member shall be registered *based on a personal application*. Article 9 of the Law regulates the possibility of deletion from the register *at personal request* [emphasis added by the author]. Based on the presented decisions on entry and deletion from the register, it is clear that in Estonia, the basic criterion for belonging to a certain national minority is the self-identification of an individual (Suksi, 2015, p. 105). In the reality of social life, the Swedish national minority in Estonia, when constituting cultural autonomy, have faced the fact that many of its members, especially children from that community, have been largely integrated into the Estonian community, which has led some authors into concluding that there is a typical challenge of non-territorial protection of minorities in case of overlapping, or multiplied ethnic identities, which, when it comes to classification requirement that one person belongs to one ethnic identity, can be problematic (de Villers, 2012, p. 175). Besides at personal request, the Law stipulates that deletion from the register is also done in case of death; also if a person renounces Estonian citizenship, but particularly interesting is a decision according to which deletion from the register is done if a minority member *permanently resides in a foreign country*, which actually means that citizenship and residence are the criteria for exercising the right to vote for the election of a body of non-territorial cultural autonomy in that state. Since the registers of national minorities are composed of cultural societies, some authors point out the distinction regarding citizenship in the process of forming a body of cultural autonomy. Namely, while on the one hand foreign citizens cannot participate in the elections for bodies of cultural autonomy, nor be elected or appointed to leading positions in cultural autonomy, on the other hand, such persons can be members of organizations created under private law, which participate in the preparation of national registers (Suksi, 2015, p. 106).

The National Register is not an electoral roll, but a basis for registration in the process of electing a body of cultural autonomy. Namely, pursuant to Article 15 of the Law, electoral roll is compiled based on the National Register. Electoral roll is published no later than two months before the election, and every person registered in the electoral roll has the right to request deletion from the electoral roll no later than two weeks before the election. It is interesting to note that the Law on Cultural Autonomy for National Minorities does not explicitly regulate the issue of the right to vote. This issue is regulated

² On voting right for the election of the minority bodies and representatives see Đurić, 2017b.

by the Government Decree which, according to Article 14 of the Law, is authorized to pass election regulations for cultural councils of national minorities. According to Article 3 of the Regulation on Elections of Cultural Councils of National Minorities (*Vähemusrahvuse kultuurinõukogu valimise eeskiri*), persons registered to vote and those who reach the age of majority on the third day of the election at the latest (see below) have the active right to vote, while according to Article 12, persons who are registered in the electoral roll and who reside in the relevant polling location have the passive right to vote.

According to Article 16, paragraph 1 of the Law on Cultural Autonomy, the elections for a cultural council will not be held if less than one half of the minority members from the national register do not agree to be registered in the electoral roll. In Estonia, elections for those bodies of minority non-territorial cultural autonomy are held on the basis of an application submitted to the (existing) cultural council by the minority, which can be submitted at the earliest three years after the previous application. In fact, members of a national minority submit an application for the establishment of cultural autonomy and the election of the first cultural council to the Government through their ethnic cultural society or associations of societies. The Government decides on the application according to the General Administrative Procedure Act. In that part of the procedure, the Committee consisting of representatives of the Ministry of Culture, the Ministry of Interior and the cultural association that submitted the application first checks the quality and correctness of the application, and the Ministry of Culture is in charge of publishing a public call through which the other associations within ethnic minority are being informed about the procedure of establishing cultural autonomy. Such a decision actually means that non-governmental organizations and organizations established under civil law created to promote the position of national minorities are given “important positions” in initiating the creation of non-territorial cultural autonomy, but also on the other hand, that non-territorial cultural autonomy is not an appropriate concept for heterogeneous and passive minority communities (Aidarov & Drachler, 2011, pp. 45, 55). In that sense, it is clear that elections may or may not be held every three years. Estonian legislation (the Law or the Regulation) doesn't explicitly regulate the issue of calling elections, but it is clear from the present decisions that activities related to the initiation of the election procedure are divided between the Government (Ministry of Culture) in the case of the first or cultural council that admits an application for holding new elections and the General Election Committee, which is formed in case of a valid application, conducts elections and which, according to Article 11 of the Regulation, publishes electoral roll no later than two months before the first day of elections. The regulation in Article 2, paragraph 2 prescribes that the elections shall last for three days, of which one day must be Sunday.

The right to nominate candidates for the election of members of the national minority cultural council, according to the Regulation on the election of cultural councils, belongs to ethnic cultural societies or their associations, but individuals can also file for candidacy or nominate another candidate if they collect 20 signatures of voters registered in the electoral roll. The candidates file to the competent election committee, and one person can be a candidate only in one polling location and only on one list of candidates. The candidacies must be submitted no later than 40 days before the first day of elections. If it

is determined that the candidacies filed on the day before the expiration deadline do not contain all the necessary documentation, the candidate will be given a deadline to correct the candidacy, but the corrected candidacies must be filed no later than 38 days before the first election day. Candidate registration, i.e. announcement of the list is done no later than 35 days before the first day of the election. Interestingly, the Regulation stipulates that, if the number of candidates is equal to or less than the number of members of the cultural council elected in the voting location, cultural societies of national minorities and their councils will be invited to submit a supplementary nomination of candidates, but no later than 15 days before the first election day. Pursuant to Article 13, paragraph 1 of the Law on Cultural Autonomy, in order to organize and conduct the election of cultural councils in that country, the ethnic cultural society or their associations will elect the General Election Committee whose composition is confirmed by the Government of Estonia and where the Government will nominate its candidate to monitor regularity of voting rules. If necessary, the General Election Committee forms local election committees and issues the organizational instructions for the procedure of holding elections, ranking and publishing the results. Voters choose directly and secretly between independent candidates who are on the so-called consolidated list of independent candidates, or between candidates from the list of candidates proposed by minority associations. The Regulation on the Election of Cultural Councils in Estonia prescribes a combined system of distribution of mandates. Namely, in each polling place, an electoral quotient is determined, which represents the quotient of the number of valid votes and the number of members of the cultural council who are elected in that polling location. Mandates are given to candidates who have received an equal or greater number of votes than the electoral quotient. If all members of the cultural council, being elected in that polling location, are not elected in that way, the remaining votes, which they received, are passed on to the lists where those candidates have been put (and in case of independent candidates, i.e. those candidates that have not been nominated by minority associations, but the voters themselves, the so-called consolidated list where they are put), and then the remaining seats are allocated according to D' Hondt method.

The Cultural Council, the main organization for the cultural autonomy of a national minority at the state level, which is elected by direct election, may form city or district cultural councils or appoint local cultural representatives. The procedure for forming city and/or district cultural councils, as well as their competencies, is regulated, pursuant to Article 22 of the Law on Cultural Autonomy of National Minorities, by the statute of cultural autonomy passed by the council elected at the state level. Such a solution reminds some authors of the autonomous arrangements that exist in federal or decentralized states where the competencies of the constituent units are legally defined and protected (de Villers, 2012, p. 176).

The Law on Cultural Autonomy in Estonia contains a very original solution regarding the abolition of cultural autonomy institutions. Pursuant to Article 28 of the Law, the Government of Estonia will stop the activities of cultural autonomy for national minority institutions, i.e. abolish cultural autonomy, if according to the data from the national register the number of a national minority members residing in Estonia fell below 3,000

in the last five years, and during two consecutive elections for the Cultural Council, as well as if it is not possible to form an electoral list for the election of the Cultural Council, and according to the legal requirement more than 50% of registered voters has to participate to make elections valid. Upon the termination of the activities, i.e. abolition, the property of the cultural autonomy institutions will be transferred to other entities in accordance with the decision of the cultural council.

Since Estonian legislation, on the one hand, does not regulate the matter of acquisition and loss of entity, as well as the relationship between units within the organizational structure of the cultural council, while, on the other hand, it proclaims the adoption of the statute of the cultural council, the attention should be paid to the issues of their role, tasks and powers, as well as the ways of financing such bodies in order to discover their legal nature.

4. Role and Powers

The legislation of Estonia, although it proclaims direct elections for bodies of minority cultural autonomy, i.e. self-government, does not contain provisions that would explicitly prescribe that such bodies represent minorities, which have elected them as collectivities. Instead, they prescribe the goals of cultural autonomy, i.e. self-government, because their governing bodies and institutions are being actually formed. Pursuant to Article 5 of the Estonian Law on Cultural Autonomy, the main objectives of cultural autonomy are to organize education in the mother tongue and monitor the use of funds provided for that purpose, to form cultural institutions of national minorities, to organize their activities and ethnic cultural events, to provide and give means, scholarships and awards for the promotion of national minority culture and education. In fact, according to Estonian legislation, the establishment and operation of such institutions is the core and basic activity of minority cultural autonomy, where, according to paragraph 2, article 2, members of national minorities, in the interest of their ethnic culture, have the right to form cultural autonomy institutions, which shall comply with the laws of Estonia when dealing with matters within their competence. Pursuant to Article 22 of the Law on Cultural Autonomy, the Statute of Cultural Autonomy passed by the Cultural Council, among other things, regulates the issues of forming institutions of cultural autonomy, as well as the rights and duties of cultural autonomy organizations based on their basic purposes. Article 24 proclaims that institutions of cultural autonomy are educational institutions that provide intensive instruction in the ethnic language or ethnic culture, ethnic cultural institutions, ethnic cultural enterprises and publishing houses, and ethnic social care institutions. However, the wide possibility of establishing and somewhat more distinct role of minority cultural autonomy bodies in determining the rights and duties of institutions is proclaimed by the legal provision in Article 25 that educational institutions have a private character, since the provisions of the Law on Private Schools apply to the organization of their work as well as the decision in Article 26, which stipulates that such institutions are independent legal persons that may own real property and are liable for

their financial obligations. In terms of the presented legal provisions, the statement specified in some works that (by passing the Law) it has not been assumed that cultural autonomy shall take over the existing public educational institutions seems to be true (Poleshcuhuk, 2013, p. 156; Poleshcuhuk, 2015, p. 240).

The Law on Cultural Autonomy for National Minorities in Estonia does not proclaim the right and authority of cultural councils of national minorities to decide on certain status issues, which are of importance to the entire national minority, such as language, symbols, signs, decorations, etc., and does not contain provisions on making decisions about their own funds and property of cultural councils, or about their authority, i.e. the obligation to decide on financial plans and final accounts. The absence of such provisions corresponds to the imprecise legal status of such bodies. Also, legislation in Estonia, except in financial matters and to a rather limited extent (see next section), does not proclaim any modalities for the participation of minority autonomous bodies in decision-making. Since cultural councils as their bodies in Estonia do not have the status of a legal entity and bearing in mind that due to that there is no significant scope of their powers, the Advisory Committee that monitors the implementation of the Framework Convention for the Protection of National Minorities has taken the view that the Cultural Autonomy Act in Estonia is “ineffective and impractical” (Advisory Committee on the Framework Convention for the Protection of National Minorities, 2011, para. 65).

The Law on Cultural Autonomy also does not contain an explicit provision on the participation of cultural councils in deciding on the distribution of funds from public sources intended for financing the activities of national minorities, but such participation cannot be excluded by a systematic interpretation of the Law, although its scope is somewhat limited due to ambiguities regarding legal subjectivity of cultural councils. Namely, Article 27 of the Law prescribes that the cultural autonomy of national minorities, i.e. the entire cultural autonomy, and not only the activities of cultural councils as a directly elected body and the main organization of cultural autonomy, will be financed from the state budget.

Bearing in mind that according to Article 5 of the Law, the principal objectives of cultural autonomy include monitoring the use of resources provided for the organization of education in the mother tongue, as well as establishing and bestowment of funds for the promotion of culture and education of national minorities and normatively expressed desire of the legislator that cultural councils shall be the main organizations of minority cultural autonomy, it could be concluded that cultural councils can play a certain role, at least in the form of suggestions, when it comes to distribution of funds intended for financing the activities of national minorities.

On the other hand, since the Law does not explicitly prescribe that cultural councils must have the status of a legal entity and starting from the fact that, in this regard, the Law does not prescribe that cultural councils have their own budget, or that they prepare and adopt a financial plan, it is clear that the possible role of cultural councils in deciding on the distribution of funds intended for the activities of national minorities is rather limited.

5. Financing

Article 27 of the Estonian Law on Cultural Autonomy regulates the matter of financing cultural autonomy, i.e. the entire cultural autonomy, and not only the activities of the bodies through which it is realized. According to that article, cultural autonomy shall, among other things, be financed by allocations from the state budget in accordance with the law and special contributions for those purposes, which also applies to cultural councils as the main organizations of cultural autonomy. It is interesting to notice that the Law prescribes that cultural autonomy shall be financed from contributions specifically allocated from local government budget to cultural autonomy educational, cultural and social care institutions, but it does not mention that local committees established by the cultural council will be financed from local public funds. Such solutions are understandable since the bodies of cultural autonomy in Estonia do not have the status of a legal entity. In practice, the state assists cultural autonomy by providing assistance to “contractual partners” of the Ministry of Culture, which means that autonomies, i.e. cultural councils that are not legal entities and therefore do not have their own accounts, are assisted by other main minority organizations (Poleshchuk, 2015, p. 241).

On the other hand, the Law proclaims a wide range of non-budgetary sources to finance cultural autonomies, as well as their councils as the main organizations of cultural autonomy. Besides contributions, donations and gifts, as other non-budgetary sources of funding, Article 27 of the Law lists fees, i.e. taxes for non-cultural autonomy, the amount of which shall be determined by the cultural council and donations from foreign organizations. The decision according to which fees or taxes for non-cultural autonomy are determined by the cultural council is assessed in theoretical comments as the only exception to the position that national cultural autonomies in Estonia do not have any significant public powers, although such taxes could be characterized as annual membership fees (Suksi, 2015, p. 99), while receiving donations from abroad is considered to be a “generous concession” against possible suspicion of the state regarding foreign interference of home countries in matters of national minorities (Suksi, 2015, p. 99).

6. Conclusion

The Constitution of Estonia defines the right of national minorities to cultural autonomy as a special collective minority right. The constitutional determination of non-territorial minority autonomy as a special right raises the question of the manner of its exercising and regulation, as well as the content of that right.

The manner of exercising that right is normatively elaborated by the provisions of the Law on Cultural Autonomy for National Minorities. It seems that the Estonian legislator opted for the model according to which cultural councils, as bodies of minority non-territorial autonomy, are only one of the segments of such type of autonomy; in fact according to which they are not the exclusive institutional form of non-territorial autonomy so the realization of such type of autonomy has been shared between different

minority institution and organization. This corresponds to the fact that cultural councils undoubtedly do not have public law subjectivity.

The absence of public law, more precisely and explicitly recognized and determined legal status of cultural councils is an omission of the legislator, which can greatly prevent the realization of the role of such bodies. Since such bodies do not have a public law character, the key role in their formation is played by the initiative of minority members, which can be interpreted by consistently expressing concern to preserve identity, which is one of the constituents required internationally for the existence of a minority. On the other hand, the Estonian legislator, by explicitly stating certain national minorities, has recognized in advance their right to form cultural councils, and particularly interesting is the fact that despite the lack of recognition of the cultural councils' legal subjectivity, state legislation prescribes a special condition for validity of direct elections of such bodies. In any case, direct elections to cultural councils represent the expression and manner of exercising the collective right of a national minority to non-territorial autonomy.

On the other hand, the powers of cultural councils as main bodies of non-territorial cultural autonomy do not have a predominantly authoritative character and, with the exception of the right to determine taxes for financing cultural autonomy, which have the character of membership fees, lead into concluding that they are coordinating councils of minorities whose status and role are regulated by norms of a public law nature, but which cannot be considered public law corporations. For this reason, the relevant legislation failed to explicitly normatively regulate their status and character, which in turn leads to the limited scope of that type of protection of national minorities in Estonia.

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NETERITORIJALNA MANJINSKA AUTONOMIJA U ESTONIJI

Sažetak

Neteritorijalna manjinska autonomija/samouprava predstavlja jedan od modela zaštite nacionalnih manjina. Neteritorijalna manjinska autonomija u Estoniji zajemčena je odredbama ustava i definisana kao jedno od manjinskih prava. U tom kontekstu, u radu se analiziraju pravna priroda i obim ove autonomije u pravnom poretku Estonije.

Ključne reči: Estonija, nacionalne manjine, neteritorijalna autonomija.

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