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The Hungarian Minorities Act*

"[...]a myriad of unforeseeable accidents can happen in any age; but the age itself is not an accident: its features are marked and unmistakable."

José Ortega y Gasset: "The Modern Theme"

In his speech celebrating the 60th anniversary of the existence of the Soviet Union on 20 December 1982, Yuri Andropov, general secretary of the Communist Party of the Soviet Union (CPSU), declared that differences between nations will survive much longer than differences between classes. Thereby he crushed a dogma, which was about the peoples and ethnic groups of the Soviet Union becoming one nation under Socialism. One decade after the collapse of the Soviet Union, the nightmare of a classless society has vanished, but the demand for ethnic identity continues to grow despite the unifying processes of globalisation. The late head of KGB (Committee of State Security) surely knew the currents whirling in the deep. Yet, he might not even have suspected that a time was approaching when life would finally formulate its true objectives and the political systems built on alien, anti-human, and utopian ideologies would crumble like houses of cards.

When presenting the Hungarian Minorities Act, it is essential to say a few words about the era in which it was conceived. The fifty years preceding the fall of Communism marked an abnormal age: viable institutions that had existed for centuries either ceased to exist or the party-state sought to deny their legitimacy. In a country controlled by the party it was impossible from the very first to legislate about the rights of social groups that, as feudal-capitalist leftovers, were destined to perish anyway. Only a secret party resolution was adopted about the officially non-existent and yet, problematic Roma population.

As opposed to the ideological mainstream that propagated official optimism, the few foreshadowing endeavours were refreshing exceptions. Among these latter, there were a concept drafted by Mihály Samu in 1979 and a bill by András Baka in 1988 and, as a sign of the changes under the Németh cabinet, the bill prepared by Gáspár Bíró at the Secretariat of National and Ethnic Minorities led by Csaba Tabajdi.

¹ Edited version of a speech given at the conference Minority Legal Norms in Hungary and South-east Europe, held on 7–9 November 2003.

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Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, despite certain points in common, is not a direct result of the previous bills but a peculiar offspring of the transition. Civil society, primarily a minority formation, the Round Table on Hungarian National and Ethnic Minorities, played a crucial role all through its formulation.

The transition in Hungary affected the political, economic and intellectual spheres to differing degrees. Peculiar events were going on in the life of Hungarian minorities with the socio-political developments of 1989–1990 also influencing minority communities. In 1990, the former Yugoslavia that ignored ethnic identity dissolved and democratic societies of Serbs, Croatians and Slovenes were set up in Hungary. The Roma population also emerged from under the guardianship of the Patriotic Popular Front and created, this time freely, several organisations.

The other minorities also established or revived their associations. The first inter-minority formation, the Alliance of Ethnic Groups (*Nemzetiségi Unió*), which sought to represent the common case of minorities in Hungary, was formed in 1990. The political changes exerted their influence from two directions: from the direction of the new, democratic government and that of minority society. The demand for the enactment of minority rights simultaneously emerged at both sides.

In the early 1990s, both the domestic and foreign policy situation was favourable for the regulation of minority rights. The agreement of parliamentary parties necessary in principle and in practice came about regarding NATO and EU accession, and the Hungarians living outside the borders and minorities living in Hungary. The human rights and minority protection requirements and recommendations formulated by the UN, the OSCE and the Council of Europe also pointed towards a more favourable management of the minority issue in Hungary. The regulation started out from the minority provisions of the Constitution. After the democratic elections, in August 1990, the Antall cabinet established the Office for National and Ethnic Minorities (ONEM), the central body responsible for domestic minority issues. Once the minorities rejected the bill prepared by the Ministry of Justice in autumn 1990, ONEM started to draft its own version.

The Minority Round Table was set up on 30 January 1991 at the initiative and authorisation of the minority organisations and with the purpose of providing a framework that united domestic minorities and articulated the fundamental objectives of minority society. The Round Table developed its own system of representatives, organisation, and operations, prepared an outline for legislation, and formulated its own bill. In May 1991, bringing an end to the original routine of rotation for the sake of effectiveness and efficiency, it unanimously elected a permanent president, a secretary, and a negotiating delegation the composition of which regularly changed according to predetermined rules. At ONEM's suggestion, instead of the coordination of two drafts, the parties began working on a consensus bill. Following three months of strained efforts, the draft that both parties accepted was ready by September 1991. The representatives of the Round

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Table also participated at the subsequent inter-ministerial coordination and the negotiations with the MEPs of the parliamentary parties.

The Round Table remained a non-governmental, non-corporate and non-registered body throughout its work, and it was maybe due to this character that it could successfully represent the main objectives of the minorities: the drafting of a bill in harmony with their interests and the winning of public opinion and majority society to the minority cause. Naturally, the Round Table did not lack sharp, internal quarrels. The differing opinions occasionally led to utmost tension but interests were nonetheless successfully coordinated, tensions were eased and, in crucial situations, a display of unity was achieved for almost three years. It was an admirable accomplishment indeed to cooperate with several dozens of organizations of a dozen minorities and, at the same time, conduct continuous coordination and debates with the government as well.

The Round Table used standard and novel forms of representation and assertion of interests and applying pressure where needed, and used various means of public and secret negotiations; it used its personal relationships to lobby at MEPs and managed to win renowned experts and university professors to draft the Round Table's professionally established political objectives. It described its position at Hungarian and international forums and built substantial relationships with the leaders of Hungarian organisations and parties outside the borders and the president of the republic. The government, motivated by a sense of responsibility toward all Hungarians, also sought agreement. It was aware that it can truthfully intervene for the rights of Hungarians outside the borders only if it reached agreement in the case of minorities within the country. The adoption of the bill required a two-thirds majority, so its approval also needed the support of the opposition. Their factions, though to a differing degree from party to party, also declared their solidarity with the approach of the Round Table.

The printed and electronic media were also sympathetic to the Round Table's efforts. It was due to their fruitful cooperation that the Hungarians realised at all that not only Hungarians live in minority outside the borders but that Hungary was a multiethnic state as well: nearly every tenth person belonged to one ethnic group or another.

According to ONEM and press information, no writings or statements appeared that opposed the Act. The media felt the minority issue to be a new, interesting phenomenon and, according to the classic casting of the time, gave a wide range of opportunities to the critics of governmental conceptions and the champions of opposition positions. Officers of the Round Table appeared on the screen with their frequently broadcasted interviews. Thereby they helped society become more open and the minority communities more informed and strengthened in their identity. The public sphere became the primary means of applying pressure. When in early 1992 the Round Table and the government clashed because the latter, against previous agreements, wanted to withdraw the Roma population from under the jurisdiction of the Act, the Round Table managed to make the govern-

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ment back down through the mobilisation of Hungarian and foreign public opinion. The government was constrained to return to the coordinated, consensus version. Prior to tabling the bill, the government charged a commission to continue the negotiations. The commission was headed by a minister without portfolio responsible for the field and comprised of delegates from the competent ministries (Ministry of the Interior, Ministry of Justice and Ministry of Finance) and the president and experts of ONEM. The government delegation conducted negotiations with that of the Round Table for several days between 8 and 19 May 1992. They discussed every provision of the draft and, in the majority of cases, reached an agreement. Despite the difficult negotiations, the minorities' overall view on the Antall government was – as opposed to the opinion of its vehement critics – that it largely respected and took into consideration the claims of civil society.

The Round Table remained in contact with the parties during the parliamentary stage, it made its voice heard in the Committee on Human Rights, Minority and Religious Affairs, that is, it followed the whole legislative process.

On 7 July 1993, the National Assembly adopted an Act that, despite the changed circumstances of transition, enjoyed the support of most minority organisations due to its unchanged principles and the fact that, as the Round Table demanded, the scope of duties and authority of national self-governments was expanded and they were also granted the necessary financial guarantees.

The Minorities Round Table, as a civil organisation, achieved an unparalleled political and social accomplishment. It was able to integrate and mobilise national and ethnic minorities living in Hungary, and, by displaying and representing their interests and cooperating with the government, the parliamentary parties, and the media, it effectively and successfully asserted their interest. It was an equal to the government during the formulation of regulations, the shaping of the minority institutional structure, and the elaboration of multi-channel financing. It was an example of harmonious cooperation throughout the negotiations based on mutual understanding.

Looking back to the past ten years, one can assert with proper pride and delight that minority and majority managed to create a new, autonomous, and automotive world from scraps.

And now, let's take a closer look at the Act, which is still in effect.

The Minorities Act is the result of a six-party compromise that was developed on the basis of the draft jointly elaborated by the government and the Minorities Round Table. As usual in the case of social agreements, the parties actively involved in the preparations were not fully satisfied by the result. However, it would have been nearly impossible to frame an Act that would have suited each and every claim of the thirteen minorities in Hungary (whose social and historical experiences and traditions differ considerably). The greatest virtue of the Act lies in its existence: it is an opportunity, a framework, and a reference and a starting point for improvement and a closer compliance with the diversity and challenges of life.

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Minorities wanted the Act to make the assertion of their interests more effective. But is it possible to talk about common interest in the case of thirteen minorities? It seems so, since it is a fundamental interest of all national and ethnic minorities to survive as such and yet, not to suffer any disadvantage due to their minority existence. The Act stipulates these demands in Articles 15 and 16: “The preservation, fostering, strengthening and passing on of their minority identity is the unalienable collective right of minorities” and “It is the right of minorities to cultivate and develop their historical traditions and language, to preserve and enrich their intellectual culture, and their culture as incarnated by physical objects.” On the other hand, Point 5 of Article 3 declares: “Any form of discrimination against minorities is prohibited.” The experiences of the past ten years proved the presupposition true that there would be marked differences in the aspirations of the Roma and the other minorities. The main objective of the latter was the preservation of identity and the fostering and promoting of diversity based on their cultural features. Other purposes of safeguarding of interests and assistance only came after that. As opposed to this, the importance of the two was reversed in the case of the Roma population. The misinterpretation of the Act not once resulted in misunderstandings since its provisions are not suitable for the management and even less for the solution of the minorities’ economic and social problems. The Act was not enacted with that purpose. When this became manifest, it was proved by governmental practice – in various packages of measures under the Horn and Orbán cabinets – that existing social tensions can be dealt with other laws or other legal instruments.

Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, which went through smaller amendments in 1994 and 1999, consists of a Preamble and nine chapters. These are: Basic Provisions, Individual Minority Rights, Rights of Minorities as Communities, The Governments of Minorities, The Local Spokesperson for Minorities, The Cultural and Educational Autonomy of Minorities, Language Use, Assistance to Minorities, the Financial Management and Property of Minority Governments, and Closing Provisions. The structure of the Act and the 64 Articles and appended Sample forms reveal that nearly half of the Articles deal with local and national minorities, the rules of their formation and operation (the Chapter on the local spokesperson can also be included here, together with Chapter 8 on the assistance to minorities, the financial management and property of minority governments, and two points of the Closing Provisions on the minority compensation fund and the once-off allocation of property). From a formal point of view, one could object to all this, just as against the fact that the amendment of the Act on Local Minorities (that is, the detailed regulation of direct and indirect minority government elections) figures among the Closing Provisions. However, as regards its content, it is vital that the “sine qua non” of the practice of minority rights and the operation of their institutions, that is, financial assistance is also included in the Act (Chapter 8 deals with it in detail).

The Preamble reflects the spirit of the whole Act, and is thereby endowed with a unique significance of principle. Besides referring to general legal principles that

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served as starting points for the drafting of the Act, it enumerates significant international legal documents. It is a special feature that the Act formulates not only universal standards that regulate the relationship between minority and majority, but also actual objectives of Hungary that are to be achieved in the short run: "In preparing this Act, the National Assembly of the Republic of Hungary is guided by the vision of the establishment of a Europe without frontiers, reduction and elimination of the disadvantages which result from living in a minority, and the development of the democratic institutional structures necessary to achieve these goals."

The Act offers a relatively effective solution for the problem of the scope of individual rights. Besides guaranteeing the free acknowledgement and manifestation of identity as an inalienable right of the individual, it prohibits registration. It provides the following definition based on the most generally accepted, Capotorti definition: "For the purposes of the present Act a national or ethnic minority (hereinafter 'minority') is any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history." [1. § (2)] The Act further specifies scope of individual rights when it makes it subject exclusively to Hungarian citizenship [1. § (1)] and provides further interpretation by stating that it "does not apply to refugees, immigrants, foreign citizens settled in Hungary, or to persons of no fixed abode." (2. §) The Act provides not only a definition but also enumerates ethnic groups that is considers autochthonous and thereby renders the present situation clear-cut (otherwise the term "one century" would be disputable in the case of certain minorities): "In accordance with this Act the following ethnic groups qualify as ethnic groups native of Hungary: Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian." 61. § (1). At the same time, the Act leaves open the possibility of recognising other minority groups. If they "meet the requirements specified in this Act, they may submit a petition related to this subject to the Speaker of the National Assembly if supported by at least 1,000 voters who declare themselves members of this minority." 61. § (2). This possibility was maintained as a compromise solution for the Jews living in Hungary, although they took advantage of it neither then nor later. However, the representatives of the Chinese did demonstrate a readiness of initiative, although this was due to the misinterpretation of the text. The Macedonians and Cumanians have also expressed their interest.

The Chapter on Individual Minority Rights, beyond the general legal principles, includes a new and interesting element: it reflects real life and recognises dual or multi-affiliation.

The most important part of the Hungarian Minorities Act, even as to its international bearing, is the recognition the collective rights of minorities, and the stipula-

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tion that it is the right of minorities to preserve, foster, strengthen and pass on their minority identity, to cultivate and develop their historical traditions and language, to preserve and enrich their intellectual culture, and their culture as incarnated by physical objects, to hold their own events and celebrate their own feasts free from disturbance, to establish civil organisations, as well as local and national self-governments, to establish and maintain extensive and direct international contacts. Furthermore, public service television and radio stations shall ensure that national and ethnic minority programmes are produced and broadcast and the government shall promote the reception of radio and television programmes from the kin state. Article 20 of Chapter 3 refers to the representation of minorities in the National Assembly and the establishment of the office of the Ombudsman for National and Ethnic Minority Rights. The first ombudsman was elected in 1995 and has been successfully operating ever since. As opposed to this, the National Assembly has so far rejected the representation of minorities twice: in 1993 and 1998.

Minority self-governance is a completely new institution of collective rights. The Act, with the exception of the national minority self-government, integrates local minority self-governments into that of the system of the townships, towns, or the districts of the capital city. And, although the concept of the Act seeks to establish individual-based cultural autonomy, it also indicates the possibility of the territorial autonomy with the institution of minority municipal governments.

A minority municipal government can be established if more than half the members of the elected body have been elected as candidates of one national or ethnic minority and more than half of the minority representatives vote affirmatively to declare their municipality a minority municipal government. The Act seeks to guarantee through local minority self-governments that minority rights are realised in the course of local public affairs management. The legislators, according to their intentions, assumed that members of a particular minority will initiate the formation of their own self-government, choose candidates among themselves for the preservation of their identity and the representation of their interests, and vote for these candidates at the local elections. However, not only people affiliated with the given minority community made use of the opportunities in economic and public life guaranteed by the Act. It is in part because of these irregularities that the Act needs to be made more accurate. The Act makes possible the formation of any of the three forms of self-governments on the local level: a minority municipal government or an indirectly formed local minority self-government ("if more than 30% of the members of the municipal government have been elected as candidates of one particular national or ethnic minority, the representatives may form a minority self-government [...] with a minimum of 3 members per minority") or a directly formed local minority self-government in accordance with the provisions of the Act in force on the election of local government representatives and mayors. One minority in one settlement may establish only one local minority self-government according to the order established above. The scope of duties and authority of local minority self-governments dif-

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fers from that of municipal self-governments, so no dual administration can be present. The local minority self-government shall decide within its authority – and within the framework of the regulations of municipal governments – the questions assigned to it by law. The most important authority of the minority self-government is that any municipal government decree affecting the minority population (local basic education, local media, the promotion of local traditions and culture, and the collective usage of the language) may only be made with the approval of the minority self-government that represents this population. The same is true in the case of the appointment of heads of minority institutions. In the absence of a minority self-government, the opinion of the spokesperson for the minority (the candidate of a particular minority who receives the largest number of votes of that minority at the local elections), or in the absence of a spokesperson, the opinion of the local association of the given minority is necessary.

The mayor's office, established by the municipal government, is obliged to help the work of local minority self-governments.

The national self-government – one for each minority – is elected, in accordance with the rules of procedure of the Act, by minority electors. That is, by representatives elected municipal or local minority self-government representatives at the last local elections. Spokespersons are also members of the electoral body that elects the board of representatives of the municipal government. At local electoral meetings, in their absence, the directly elected electors have the same function. This election system aims at providing representation to the entire minority population of the country (despite the scattered settlement pattern) in the electoral body that elects the national minority self-government.

The scope of duties and authority of the national minority self-government was defined as to favour primarily the representation of interests and the establishment of the educational and cultural autonomy of a given minority. The national and local minority self-governments are not in a hierarchic relationship. The national self-government decides independently on its own affairs; on the core curriculum of minority education (except for higher education) it has the right of agreement. It may state its opinion, seek information, submit proposals, seek measures, and has the right of co-operation in any question relevant to the situation of minorities. The national self-government represents the given minority against the state.

Language is a fundamental feature of minorities living in Hungary. Chapter 6 on The Cultural and Educational Autonomy of Minorities the Act enumerates the languages used by minorities and, in the case of the Roma population it mentions both Romani and Beash. The Act includes only the most important rules concerning the educational and cultural issues of minorities. Those concerned can find further instructions regarding implementation in the provisions of public and higher educational regulations. In accordance with Article 43 Point 2 of the Minorities Act, children belonging to a minority may be educated in their mother tongue or “bilingually” (in their mother tongue and in Hungarian). The permissive rule becomes compulsory at the request of the parents or legal representatives of

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eight students belonging to the same minority group. The provision includes the guarantee that the extra costs of minority education are to be met by the state as well as the municipal government but never by the parents. It is another principle included in the Act that public educational system has to ensure that students acquire knowledge of their people. The members of minorities can participate in training at foreign institutions teaching in the relevant minority language, the state shall support the employment in Hungary of visiting lecturers from the mother country, and, to relieve the disadvantages of the Gypsy minority in the field of education, specific educational conditions may be introduced. The minority government may assume control of an educational institution if it can ensure the maintenance of the same standards of education but, in the case of a transfer, the amount of state subsidy granted to the institution may not be reduced.

In the field of cultural rights, the state supports the collection of material monuments of minority cultures, the establishment and enrichment of public collections, the publication of books by minorities, and the publication of their periodicals.

The right to free language use is mentioned several times in the Act but it is also discussed in a separate chapter. The use of mother tongue is to be ensured in every field of public life and politics, in the National Assembly and the meetings of local self-governments. The acts and announcements are also made in the language of the minority, the minutes of the local self-governments, besides Hungarian, can also be recorded in the mother tongue of the given minority, the forms used in the course of administrative procedures can also be available in the language of the minority, and signs bearing the names of settlements and streets, public offices, and companies undertaking public services may also be read in the mother tongue of the minority.

The use of the mother tongue is also ensured in the administration of justice. A person belonging to a minority has the right to choose his/her own first name and the first name of his/her child freely, and to have the first and last name of his/her child registered under the conventions governing the orthography of the mother tongue. The Act reveals a strong intention of protecting the language of minority communities.

The Act, in accordance with its significance, deals with the financial assistance of minorities in a separate chapter but it also touches upon it in the Closing Provisions. Accordingly, the state budget provides additional standard assistance for the kindergarten education of minorities and for their mother tongue (bilingual) schooling; it ensures the operation of the governments of national or ethnic minorities with direct assistance or through the budget of municipal self-governments; it supports, although not fully, the operation of national or ethnic civil organisations. The state provides once-off allocation of property to the national self-governments and, for two fiscal years, sets aside a fund for the premises of national self-governments and the compensation of costs related to providing premises to local self-governments. The fund provides financial assistance to the projects of minority self-governments and civil organizations. All in all, the state guarantees the minimum financial tools needed for the operation of the public life and institutions of minorities.

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In sum, the Act, at the time of its adoption and ever since, has been dealing with the issue of minorities living in Hungary in a way that suggests progress even on a European scale. Its provisions have properly managed to concretise the principles formulated in its Preamble. There is no space here for further analysing the positive results of the Minorities Act, although the golden rule states that the worth of an Act can be measured by the accomplishments it gives rise to. In the general assessment of the Act one cannot ignore the time and the circumstances of its enactment. It was drafted three years after the collapse of Communism, in a post-Socialist country that had just freed itself from under foreign occupation and was struggling through the process of democratisation. In a rich and solid state with centuries-long democratic traditions, like Great Britain, there was no need either for a minorities act or for state assistance to revive the nearly extinct Welsh tongue. In Hungary, where every civil initiative had been prohibited or considered suspicious at the least for fifty years, where civil society had been in ruins, and where the standard of life, economic production and financial well-being had fallen below former levels, nothing could have been achieved without the financial guarantees of the state. The lack of elegance of the structure of the Act, the repetitions, e.g. the inclusion of Article 68 of the Constitution, reveal the distrust minorities had toward the state because of negative former experiences. Their distrust was not completely unfounded, since despite repeated promises, the representation of minorities in the National Assembly has not been achieved and the reference to other pieces of legislation also made the honouring of promises doubtful. Yet, it is to be acknowledged that, with the minority elections of 1994 and 1995, a new and operable institutional system of minority self-governments was established at last. For several thousands of fellow citizens who belong to a minority, the system of self-governments has provided, besides the preservation of identity, a democratic school of public life and a stage where civic pride and civil courage could be acquired. Thereby, the minorities contributed to the development of the democratic institutional system, the strengthening of the rule of law, and the development of tolerant and, at the same time, proud public spirit and a readiness for initiatives. The practice of the past ten years also proved that, in essence, the Act works. Therefore, besides the indicated structural errors and redundant parts only the outdated sections or those that absolutely require changes need to be amended. Primarily the rules of minority elections have to be reviewed and regulated. However, it is rather sad that self-government resulted in considerable dysfunctions as regards mother tongue use. Despite the guarantees of the Act, the use of mother tongue not only faded in administration but, in general, Hungarian has made headway. On the other hand, the development of the cultural autonomy of minorities has shown progress. The experiences thus prove that good legislation is not enough; one also has to make use of the freedom it provides. It is time that we all realise: freedom consists not only in waiting for some better future of our liking. Freedom is an extraordinary resource that our will can work into a most wonderful shape.