Introduction

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1. The Issue of National Minorities: An Old Problem in the New Europe

1.1 Problem Analysis: Peoples, States, Minorities, or: Ethnicity and the Nation-State

Between the Atlantic and the Urals live 768 million Europeans whose ethnic distribution does not correspond with Europe's political division into states. Because there are over one hundred peoples, large and small, in Europe, but only forty-seven states. That means that there are twice as many peoples as states, or half as many states as peoples!

This is where the idea of nation-state that was developed in the nineteenth century with its principle "one nation [that is, one people], one state" comes into play, and its practical implementation has been linked many times to the attempt to artificially resolve the existing quantitative discrepancy between peoples and states in Europe. In this way, although it proved to be fiction, states were supposed to come into being with ethnically homogeneous populations such that national borders and the borders of the settlements of the various peoples would be brought into concordance. However, this equation, according to which the nation-state was regarded as the constant and the ethnic reality as the variable, could never work, as we now know.

Ethnic "cleansing" in all of its variations, from tolerated or intentional assimilation, infiltration, or exchange of populations to deportation and mass expulsion to even the diminution of the size of peoples through ethnocide and genocide, was and is the logical conclusion of this mistaken starting point. Although this is a crime against humanity, it has nevertheless been tolerated in the politics of appeasement as the putative necessary price for stability and peace, both in the 1930s with respect to Hitler's Germany and in the 1990s with respect to demands for a Greater Serbia.[1]

The increase in the number of states (i. e., nation-states) was a further strategic approach toward dealing with the problem without, however, really solving it. It was especially given expression after the First World War, when eight new states came into being.[2] More recently, it took on a new impetus

1 It was not until 1999, on the occasion of the Kosovo crisis, that an international governmental organization — that is, NATO — halted such crimes with armed force. For the first time in the history of international law, this took place with reference to the principle (which qualified national sovereignty) "human rights as a matter of direct and legitimate international concern" (see KSZE 1991b, Preamble, Par. 9; KSZE 1992b, Point 8).

2 Czechoslovakia, Estonia, Finland, Ireland, the Kingdom of Serbs, Croats, and Slovenes (later Yugoslavia), Latvia, Lithuania, and Poland. Austria and Hungary were not newly

starting from 1991–1992, as in fact sixteen of the current forty-seven states of Europe are either new or else have been recreated since that time.[3] For understandable reasons, though, the number of states in Europe cannot continue to arbitrarily increase. Above all else, the arithmetic increase in the number of states is linked to a nearly exponential increase in the number of minorities or ethnic groups.[4] The number of minorities has thus not diminished through the increase in the number of states; on the contrary, it has even increased considerably. Thus in Europe — that is, from the Atlantic to the Urals — there are currently already 360 larger or smaller minorities,[5] with a total of 107 million members, which corresponds to one seventh of all Europeans.

Most of the thirty-eight states of Europe that are relevant to minorities are still structured as nation-states in spite of the fact that they are not ethnically homogeneous and in reality are multinational states with traditional ethnic groups or national or ethnic minorities whose share of the population ranges from a few percent up to as high as 48 % (such as Montenegro). Ethnic homogeneity in a state, such as in Iceland or San Marino, is therefore the exception which is limited to a few small states and in no way represents the rule.

The ensuing relationship of tension between the organizational model of the nation-state and the sociological phenomenon of ethnicity[6] delineates an important point which, under the conventional term "*national minorities conflict*", has continuously influenced European development up to the present.

This relationship of tension can be toned down first and foremost when the existing ethnic-cultural actualities are viewed as the constant while the

created, but rather both successor states to the former Habsburg double monarchy have become independent subjects of international law.

3 Belarus (1991), Bosnia and Herzegovina (1992), Estonia (1991), Croatia (1991), the Czech Republic (1993), Kosovo (2008), Latvia (1991), Lithuania (1991), Macedonia (1991), Moldova (1991), Montenegro (2006), the Russian Federation (1992), Serbia (2006), Slovakia (1993), Slovenia (1991), and Ukraine (1991).

4 The term *"national minority"* is broadly used here as synonymous with the terms "ethnic group/minority".

5 Including small peoples without their own state.

6 *Ethnicity* should be understood here as the ethnic identity or sense of belonging of a person, that is, the identification with the language or culture of a people. In this respect, ethnicity is an instrument of social orientation that is politically indifferent but socially indispensable. Every person possesses ethnicity and also has the right to it, although in most cases this only becomes known to him or her when it is brought into question. Ethnicity can also be exaggerated or understated, and both even to an extreme. Making ethnicity absolute drives *nationalism*, which is to be understood as a collective egoism which withholds from others that which one claims for oneself (example: "Wherever a Serb lives is Serbia… or: "Wherever a German lives is Germany..."). The opposite position is represented in *national nihilism*, which views ethnicity only as an artificial instrument of the class struggle with which capitalism wishes to splinter the unity of the proletariat or to hinder its successful internationalization.

political organization of states is treated as the variable. The latter is thus to be revised, and the real necessities of the former are to be adapted to. The "nation-state" in the form of the mononational state was a fatal mistake of history. As the most current model for the political organization of states in Europe it has been overtaken, both in theory and in practice.

Polyethnic populations require multinational states. This insight is the indispensable precondition for a reform of the states with the goal of overcoming national conflicts between ethnically heterogeneous segments of populations of differing size through integration, enabling them to live together peacefully within a state as partners with equal rights. It is only in this way that the security risk posed for Europe by conflicts between nationalities can be eliminated in a lasting manner.

It is no accident that the CSCE summit in Paris in November 1990 declared human rights, democracy, and the rule of law as the supreme maxims for the construction of the new Europe.[7] The kind of state resulting from this is a democratic state under rule of law which is not of a national type, but a *multinational* one.

1.2 Ethnicity and Democracy

Ethnicity and democracy[8] are the fundamental cornerstones in another area of conflict that is in a close historical and factual connection with the problem of nation-states. Herein also lies a dilemma which has been handed down as an unresolved problem area and consequently as a burden from the nineteenth century without the solution of which there can be no new Europe.

To address the point immediately: ethnicity and democracy are not irreconcilable opposites, but on the contrary are extremely compatible with each other and in practice also very amicable.

The dilemma between ethnicity and democracy did not first arise in 1989, just as the myth of the awakening of peoples in the nineteenth century, discounted as middle-class or bourgeois, is not only a product of German romanticism but is based upon a reality which is logically explicable. The year 1789 saw an end to the legitimization of power or of sovereignty "by divine

7 KSZE 1990a.

8 In *political sociology*, "democracy" is understood to be an exercise of rule by a combination of competing groups that tend toward alternating leadership, on behalf of and under the control of the people (Stammer/Weingart 1972, 95). See also the *national law* definition of "democracy", according to which "the exercise of any state power requires democratic legitimation and thus — in an 'uninterrupted chain of democratic legitimation' — must be traceable back to the people [authors' note: as sovereign]…In this sense, democracy is the 'rule of the people'" (translation from the original German text of Degenhart 1988, 1).

right" and a beginning of the age of democracy. This legitimized the sovereignty, and thus the exercise of rule, as emanating from the people, whereby "the people" is understood as a community of citizens (*demos*) and not as an ethnic community (*ethnos*). Now, however, *demos* is concretely linked to *ethnos*. Because the "citizens" as concrete people are French, English, Russians, Germans, Italians, and so on. The disregard of this "minor" difference between *demos* and *ethnos* had serious consequences in that in many cases it led to ethnocracies rather than democracies. In a political legacy of the era of the nation-state, this always occurred against the background of Europeans being divided into the two categories of either "national majority" or "national minority". This made it possible for the eponymous ethnic community (titular nation) of a state as the national majority to exploit its numerical dominance, which resulted in the suppression of the smaller ethnicities, that is, the national minorities.

1.3 The Discrimination Dilemma of Democracy and the ECHR System

Even without the intentional repression of ethnic groups, they are confronted with the problem which the "law of majority rule" brings with it: in a democracy, this serves as the final authority for the legitimate acquisition of power. It decides which of the forces that, in the open competition for power, attempt to gain state leadership are to be legitimized for the formation of the government or the opposition. A minority or ethnic group whose numerical strengths are by nature always less than those of the remaining population in the state cannot really freely compete under these compulsory preconditions in the formation of the power for the leadership of the state. By definition, they remain excluded from the very outset.

It is, in fact, in the nature of human rights that they are universal, that they are inalienable, and that their validity cannot be linked to numerical strength. Nevertheless there exists in Europe — not excluding the ECHR states parties — a significant difference as a result of numerical strength. It is just not the same when two parties do the same thing: one can express one's ethnicity as identification with the language and culture of one's people without any problem, even unconsciously, such as through the use of his or her native language in everyday life, provided that he or she belongs to a national majority. On the other hand, someone else who is a member of a minority must, with the same undertaking, surmount numerous difficulties. That which to the first person can be taken for granted as just falling in his or her lap must by the other often be won only with personal sacrifices and risks, in the event that it is even possible at all. The ECHR System does not automatically guarantee both of them the same protection.

Although the problem of minorities in this respect is therefore inherent in the system, its solution is nevertheless not to be found in the abolition of the system but rather is to be sought in its correction. Such a solution is possible through comprehensive measures of the *positive (above all else supportive) protection of minorities* within the framework of democracy, human rights, and the rule of law, fully conforming to the goals of the CSCE Charter of Paris for a New Europe.

It also needs to be taken into consideration that the process of democratization has two essential aspects, of which the first is generally known but the second is all too often overlooked. The first is the individual component, inasmuch as the person as individual is emancipated from being the object of power of the authoritarian state to the subject of power of the democratic state under the rule of law, that is, from an underling to a citizen. The second has to do with the group component, inasmuch as the person as a rule possesses ethnicity as a result of his or her social nature, that is, he or she is ethnically identifiable and belongs to a concrete ethnic community. The freedom and equality of individuals consequently also postulates the freedom and equality of peoples or ethnic communities over the short or long term. This is also where the above-formulated requirement of multinational states comes full circle.

It is thus no accident that the citizens' revolution of 1789 was followed somewhat more than a century later, in 1918, with the proclamation of the right of self-determination and the revolution of the peoples. Like most revolutions, however, the latter was able to only partially achieve its ideals.

1.4 The Redistribution of Power as the Heart of the National Minorities Issue

The problem of the redistribution of power lies at the vertex of the relations between states and national minorities. Because the granting of rights of protection to national minorities means that the states must relinquish certain positions of power, while conversely the minorities gain new positions of power as a result of specific rights of protection.

A situation of contrary interests consequently exists between states and minorities because it has to do with positions of power which each of the two parties maintains and which neither of the two parties wants to relinquish. Furthermore, it apparently deals with a clash of interests which is asymmetrical, that is, instituted one-sidedly at the cost of the states and to the benefit of the national minorities. This is precisely what makes the solution of the minorities issue so difficult and what often ends in conflicts being settled violently, as has been shown by the events in the former Yugoslavia, in the Caucasus including Chechnya, and in Ukraine, as well as with the issues of the Palestinians and Kurds.

Nevertheless, the process of redistributing power addressed here is in reality not as one-sided as it may appear at first glance. It is indeed correct that in the area of the protection of minorities it is the national minorities which make the demands and the states which have the demands made upon them. But it is just as correct that by relinquishing positions of power, the states receive stability and peace and under certain circumstances can even achieve added economic value,[9] while conversely the national minorities, with the assumption of new positions of power, also take on the responsibility for some of the active running of the state — whereby this responsibility is then taken on to a special degree if the national minority is granted a state-constituent position.

Furthermore, in an age of democracy, human rights, and the rule of law, many European states have no chance, when viewed in the middle to long term, of evading the requirement of the protection of national minorities and the redistribution of power associated with it. On the other hand, the national minorities have just as little chance of accomplishing the protection of their minority rights against the will of their national majorities which are always numerically superior.

From this, it follows that in every case, cooperation is more reasonable than conflict. Because the reasons of state and the reasons of the minorities each have to represent their legitimate interests, in between which a reasonable balance is to be sought and also to be found. Cooperation offers better possibilities for this than does conflict. That means that all those involved would do well to seek national partnership in place of national confrontation.

1.5 The Current Situation of the National Minorities Issue

From the perspective of the minorities in Europe, it can be said that only a portion of them enjoy legal protection to such an extent that their existence is not directly endangered. For long-term survival, however, more than this is required. Moreover, insufficient or even a lack of the legal protection of minorities carries the danger of substantial potential for conflict. This has also clearly been shown by the separatist tendencies in Scotland, Catalonia, and Ukraine.

More than four fifths of the minorities in Europe have fewer than 300,000 members, and most of them do not think of having their own viable state or revising existing international borders. This could change rapidly, however, if for lack of minority protection they were exposed to incessant and existence-threatening discrimination. In that event, increasing separatism

9 For further details on this, see the chapter "Minority Protection and Economics" in Part III of this Handbook.

and border revisionism are the foreseeable results. The case of Kosovo is an example of this. Other cases which are not directly comparable to Kosovo but are still impressive are the independence referendums or public opinion polls of 2014 in Scotland, Catalonia, and Ukraine.

In the United Kingdom, the devolution legislation of 1998 was not capable of loosening the centralism of London in Scotland, Wales, and Northern Ireland to such an extent that the independence movement in Scotland was pulled out of its breeding ground. On the contrary, the demands by the Scots for more participation in the formulation of their specifically Scottish needs grew faster than the concessions which devolution was capable of granting. The result was the independence referendum in Scotland on September 18, 2014 which, although it was rejected by more than half of the Scots, was able to nevertheless demonstrate a considerable number of supporters with nearly 45 % of the vote.

For a quarter century, namely from 1979 to 2006, Spain and Catalonia got along with the first autonomy statute for Catalonia. With the reform of this statute in 2006, it turned out that the clocks in Madrid were ticking substantially slower than those in Barcelona. The reform statute was subjected to an application for judicial review with the Spanish constitutional court, which led to the court declaring in 2010 that a total of fourteen articles of the statute were invalid, and for another twenty-seven provisions, a restrictive interpretation was provided that conformed to the constitution.[10] No small number of observers viewed this to be a significant step backwards for Catalan self-government, in particular in the area of language, but the decision showed above all else "the limits of the decentralization of the Spanish state."[11] The subsequent growth of the independence movement in Catalonia has in many cases been considered to be a reaction to the excess of centralism in Madrid. It then came down to the *public opinion poll on the independence of Catalonia* on November 9, 2014. There had previously been several attempts on the part of Catalonia to create a legal basis for a plebiscite (a referendum on independence) or a (non-binding) public opinion poll which failed due to corresponding decisions by the Spanish constitutional court. And the alternative survey, which in the end was called a "citizen participation process on the political future of Catalonia" was halted by the court in the face of a

10 The applicant had challenged the constitutionality of 114 out of the 223 articles that made up the autonomy statute. For further details on this, see López Bofill 2012, 107–113.

11 According to López Bofill 2012, 113. In that regard, also see Arraiza 2013, 101–118. With regard to the role that was played within this context by the ambiguity of the term *nation* (state, people) and its different interpretations in Madrid (nation = state) and Barcelona (nation = people), see the chapter "The Minorities Issue in Europe" in Part III of this Handbook.

complaint by the Spanish government which, however, did not prevent the Catalan government from nevertheless carrying it out. Within that context, approximately 80 % voted for Catalonia's independence from Spain, but only about one third of those entitled to vote participated in the election, as a result of which the high result is to be viewed in relative terms. Nevertheless, this vote obviously implies an urgent need for action and negotiations.

As a further case, Ukraine drew the attention of Europe in the spring of 2014. It is well known that in the eastern districts of the country and in Crimea, Ukraine has an extraordinarily high number of Russian-speakers.[12] The polarizing linking between party politics and minority policy proved to be especially dire there. Thus the governments of the country that were close to Moscow tended to behave in a "minority-friendly" manner toward the Russian-speakers, while the more Western-oriented governments displayed clearly less sensitivity and openness in that respect, in any case when what was concerned was a federalization and a desire for autonomy for Eastern Ukraine.[13] On the whole, with regard to minority policy, Kyiv had repeatedly provided the government of Russia under Vladimir Putin with pretexts.[14] Russia thereupon annexed Crimea in February and March 2014 and at the same time began to latently or openly support the separatists in Eastern Ukraine. In a survey (a "referendum") on May 11, 2014—which, according to the OSCE (and others) was in the end illegitimate—the question of whether the state independence of the "People's Republic of Donetsk" and the "People's Republic of Lugansk" should be supported was answered with 90 % "Yes" according to the pro-Russian separatists in Donetsk with voter turnout of 75 % and in Luhansk/Lugansk with over 80 % voting "Yes" with voter turnout of nearly 96 %. Both in the case of Crimea[15] and for Eastern

12 Within that context, the number of Russian-speakers is not limited just to the (ethnic) Russians, since among ethnic Ukrainians and members of minorities in Ukraine, there is a relatively high share of people for whom Russian is the main language.

13 This is in keeping with the attempt that was made immediately after the fall of the Moscow-aligned Yanukovych government in February 2014 to once again abolish the new Ukrainian language law. The language law had been introduced in 2012 without a parliamentary debate and had further improved the status of Russian which had also already previously been relatively well ensured, and it did so partly at the expense of Ukrainian (in that regard, see Venice Commission 2011). The attempt to abolish that law (once again, without debate) caused many Russian-speakers to fear the worst from the new government, with or without justification.

14 Thus, for example, by the announcement of the pro-Western Ukrainian Prime Minister Yatsenyuk of March 18, 2014 to *decentralize* Eastern Ukraine within the framework of a new constitution and to provide it with more responsibilities. As a result of this, *the demands for federalization* by the Russian-speakers, which was classified by Kyiv during this phase as a threat to its own sovereignty, received a clear rejection.

15 Here, as well, a "referendum" was carried out on March 16, 2014.

Ukraine, the right of self-determination of the peoples — understood here as the right of secession — which was demanded by the Russian president was in fact lacking any basis from the point of view of international law. Nevertheless, it is to be recognized that Kyiv had not made use of the opportunity for the *lasting integration* of the Russian-speaking minority — which, in view of its size (over eight million) and settlement structure, could have been realized above all else through a *federalization* of the country, but at minimum through reasonable forms of *autonomy* — and thus had played into the hands of the great power interests of the neighboring titular nation (Russia). The consequences have been and continue to be grave: just in the first five months, the battles in Eastern Ukraine led to around four thousand dead and a threat to the stability of all of Europe.

In conclusion, it is worthwhile to once again emphasize the following: it was and is a fiction that democracy and human rights automatically settle the national minorities issue. Such automatism does not exist in reality. Europe now "exports" democracy and human rights to the whole world — and along with them the national minorities issue. In order to keep the security risk that is associated with the minorities conflict within limits throughout the world, this also places Europe under a special obligation to offer the key to the solution. But the key to the solution of the problem can only consist of the prevailing system of human rights, democracy, and the rule of law in Europe being supplemented by an *efficient system of the protection of minorities.*

2. European Protection of Minorities within the Framework of Human Rights, Democracy, and the Rule of Law

Human rights, democracy, and the rule of law form the fixed coordinate system within which an efficient system of minority protection in the interest of a solution to the problem of national minorities in the new Europe can range.[16]

General international approaches at a protection of minorities on the level of human rights are found, among other places, in the prohibition against discrimination in Art. 14 of the European Convention on Human Rights (ECHR)[17] and in the individual, especially cultural rights of protection in

16 See KSZE 1990a.

17 Also see Art. 21 of the Charter of Fundamental Rights (CFR), which became binding through the Treaty of Lisbon (Art. 6, Sec. 1 TEU) which for the first time binds the bodies, institutions, and member states of the EU to a prohibition of discrimination that is specific to minorities and (minority) languages in the implementation of Union law (see Art. 51 of the CFR).

Art. 27 of the United Nations International Covenant on Civil and Political Rights (ICCPR).

Within this framework, however, the application in practice of the democratic rule of law and the ECHR system does not sufficiently take into consideration the fact that members of national minorities and national majorities are fundamentally subject to different conditions with respect to the enjoyment of human rights and fundamental freedoms. Their purely *formal equal treatment* is therefore not suitable for solving the discrimination dilemma through democracy and human rights alone, but on the contrary it leads to a majority-specific favoring which goes against the spirit and purpose of the prohibition against discrimination.

The supplementation or correction of the system of human rights, democracy, and the rule of law to cover minority rights according to the principle of *positive protection of ethnic groups* is thus imperative. It must succeed in two respects, namely, in regard to human rights and to democracy.

1. On the level of *human rights, minority-specific rights* are to be established in order to provide *real equal rights and equal opportunity* and thus balance out the disadvantage inherent in the system of members of national minorities in the social area with respect to members of national majorities. This consists first and foremost of *individual* rights which in particular also comprise the areas of language and culture. But as individual rights, these also refer to the collective criterion of "national minority".
2. On the level of *democracy policy*, it deals above all else with *collective measures of protection* for the purpose of forming "multinational" states according to the principle of equality of peoples and ethnic groups.

Both levels can only guarantee a comprehensive and effective system of minority protection in their entirety.

2.1 The Need to Supplement the System of Human Rights

On the level of human rights, the ECHR came into existence in 1950 as the universal instrument of protection in Europe. With the exception of the prohibition against discrimination including because of "association with a national minority" in Art. 14, it did not directly touch upon the issue of national minorities. With regard to the special requirements of national minorities, the ECHR is therefore frequently too vague or composed too broadly and is in need of minority-specific supplementation. The Council of Europe summit of October 9, 1993 was not able to ignore this finding, which is one reason why it instructed the Committee of Ministers:

- to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities …;
- to begin work on drafting a protocol complementing the European Convention on Human Rights in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities.[18]

While it has thus far not been possible for the second part of this legislation instruction, an additional protocol to the ECHR *in the cultural field*[19] with individual rights (including) for national minorities, to be realized,[20] the framework instrument that was also ordered in Vienna *as the Framework Convention for the Protection of National Minorities* (FC) was already adopted on November 10, 1994 and entered into force on February 1, 1998. The area of validity of the Convention has in the meantime come to encompass thirty-nine of the forty-seven member states of the Council of Europe (as of September 30, 2017).[21] The second convention that is significant for the minorities of Europe, the European Charter for Regional or Minority Languages (LC), also entered into force in 1998, and thus far its area of validity encompasses twenty-five member states of the Council of Europe (as of September 30, 2017).[22]

There is a conceptual difference between these two conventions:[23] the Language Charter directly serves the protection of regional and minority languages and does not provide for any direct rights for members of national minorities, while the Framework Convention, on the other hand, is the "first legally binding multilateral instrument devoted to the protection of national minorities in general."[24] But in their combination which in part is synergistic, in the end the two conventions stand for significant *progress specifically with regard to the need for minority-specific supplementation* of the *system of*

18 Council of Europe summit in Vienna of October 9, 1993 (Council of Europe 1993, Appendix II). In that regard, see Pan 1994, 25; Pfeil 2006, 466 et seq.

19 The restriction of the content to the *cultural area* under this formulation must not and should not necessarily be understood narrowly. "Culture" in this sense is not limited to language and education, but rather it necessarily includes as well the spiritual substratum of a society (people, ethnic group) and the totality of institutions which the persons belonging to this society have in common.

20 For further details on the failure (for the time being) of the project, see Pfeil 2006, 470–473.

21 Four more states have in fact signed the Framework Convention but have not yet ratified it.

22 Eight more states have in fact signed the Language Charter but have not yet ratified it.

23 With regard to the following paragraphs of Section 2.1, see Pfeil 2013c, 149–151.

24 According to the formulation of the Explanatory Report to the Framework Convention, no. 10. For the subject as a whole, see Pfeil 2013c, 149 et seq.

human rights that has been anchored above all else in the ECHR. This holds true, however, with the restriction that not all of the specific rights and legal positions that have been formulated here in terms of minority policy as being desirable are covered by the two conventions (for further details on this, see Points 1 and 2 below). In addition, in contrast to the ECHR and its additional protocols, the two instruments do not contain any directly justiciable subjective rights, but rather are merely state obligations. What is required is consequently first of all an efficient and consistent implementation and application in each of the individual signatory states[25] — whereby it is specifically the efficiency of the implementation that is fundamentally threatened by discretionary powers that are opened up to the signatory states in both instruments and, in the case of the Language Charter, by the partly excessive options granted to the states in view of their obligations under the Charter.[26]

The progressiveness of the two instruments that is nevertheless present results very fundamentally from the fact that with them, for the first time, the principle of *positive discrimination* – and thus the idea of compensating for the systemic disadvantages of members of minorities through the creation of real equal rights or equal opportunities – has found its way into international law that is in force.[27] The minority-specific (individual) rights that have also become a central topic through the Framework Convention and the Language Charter concern on one hand the area of those general human rights that are also especially significant to members of minorities and, on the other hand, certain language-specific minority rights.[28]

1. *General human rights:* both conventions are based upon the premise that members of language minorities have a right to *identity* which has been put into concrete terms by the state obligations that are contained in the

25 This ideally also occurs through the granting of corresponding subjective rights.

26 For further details on the Framework Convention and the Language Charter in general and on the discretionary powers and options contained in them, see Pfeil 2006, 467–470 (FC) and 473–475 (LC).

27 Pfeil 2013c, 150. In that regard, see Art. 4, Sec. 2 of the FC ("full and effective equality" in economic, social, political, and cultural life), Art. 7, Sec. 1 c and d of the LC ("the need for resolute action to promote regional or minority languages in order to safeguard them" and "the facilitation and/or encouragement" of their use). Also see Art. 5, Sec. 1 of the FC (promotion of the conditions necessary to maintain and develop culture and to preserve their identity). In Art. 5, Sec. 2 and Art. 6, Sec. 2 of the FC and Art, 7, Sec. 2, Clause 1 of the LC, certain active state *protective measures* are provided (FC: protection "from any action aimed at … assimilation" or "acts of discrimination", SC: elimination of "any unjustified distinction, exclusion, restriction relating to the use of a regional or minority language…"). The corresponding supportive measures shall not be considered as an act of discrimination, Art. 4, Sec. 3 of the FC, Art. 7 Sec. 2, Clause 2 of the LC.

28 Points 1 and 2 below are also essentially based upon Pfeil 2013c, 149–151.

conventions and which should be realized. Elementary rights of protection such as the right to one's homeland or protection from deportation or expulsion are not, however, addressed in that context. In contrast, both the Framework Convention and the Language Charter encompass the principles of *equality* and *non-discrimination* with reference to members of national minorities or the use of a regional or minority language, respectively.[29] The Framework Convention makes reference in Art. 8 to the right of members of minorities to establish their own *organizations* and associations, but it remains silent on the question of whether that is also to encompass the right (which specifically for minorities is often an especially important one) to establish their own political parties. Art. 17 of the FC establishes a right of members of minorities to *unimpeded contact* between individual persons or organizations, especially beyond state borders. Finally, both conventions also advocate the concluding or application of agreements under international law in order to ensure protection of minority members or to support cross-border exchanges of people of the same culture and language.[30]

2. *Language-specific minority rights*: both conventions aim at the guarantee of the free use of minority languages both in private and in public life, both in speech and in writing,[31] and also at the possibility of using personal names in the minority language.[32] In addition, although these do not provide for the granting of a status of an official regional or local language for regional or minority languages, they at least deal with the concrete issue of the use of minority languages *in contact with administrative authorities.*[33] Furthermore, the Language Charter also deals with language usage

29 Art 4, Sec.1 of the FC and Art. 7, Sec. 2, Clause 1 of the LC.

30 Art. 18 of the FC, Art. 14 a of the LC. In that regard, see Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning *Euroregional Co-operation Groupings (ECGs)*, which entered into force in 2013 and which is not minority specific but nevertheless is particularly interesting for minority border regions. It makes cross-border associations of local authorities and other public bodies possible which, within this framework, can jointly exercise their respective competences and prerogatives across borders. In an analogous manner to this, at the EU level there is the organizational form that was made possible by regulation in 2006 of the *European Grouping of Territorial Cooperation* EGTC (for further details on this, see Obwexer/Happacher 2010; Engl/Eisendle 2011).

31 Art 10, Sec.1 of the FC and Art. 7, Sec. 1 d of the LC.

32 Art 11, Sec.1 of the FC and Art. 10, Sec. 5 of the LC.

33 Art. 10 of the LC and Art. 10, Sec. 2 of the FC. Within that context, the Framework Convention reduces the state obligation for language usage in contact with *administrative authorities* to a simple endeavoring "as far as possible". In addition, language usage is restricted to "areas inhabited by persons belonging to national minorities tra-

with reference to *public services* and *judicial authorities*.[34] Issues of place names are also addressed, although very cautiously, in both the Framework Convention and the Language Charter.[35] The subject of the use of minority languages in the *educational system* in the variants of language of instruction or teaching subject is addressed in Art. 14 of the FC[36] and Art. 8 of the LC, whereby the Language Charter makes concrete classifications according to the areas of pre-school, primary, secondary, technical and vocational, university, and continuing education in which the states can each optionally commit themselves to minority language instruction.[37] Both the Framework Convention and the Language Charter also address the important issue of *teacher training* and *instruction materials*.[38]

ditionally or in substantial numbers" upon request and with a "real need". According to Art. 10, Sec. 4 b of the LC, the recruitment and training of officials in the minority language is also envisaged.

34 Art. 9, Sec. 1 of the LC, Art. 10 Sec. 3 of the LC. Also see the restrictions with government authorities and public services with Art. 10, Sec. 1–4 of the LC.

35 In that regard, see Art. 11, Sec. 3 of the FC, which contains many restrictions. According to this article, the Parties "shall endeavour" to display traditional topographical indications "in areas traditionally inhabited by substantial numbers of persons" belonging to a national minority "in the framework of their legal system" and "taking into account their specific conditions" when there is a "sufficient demand". In addition, no. 70 of the Explanatory Report emphasizes that this "does not imply any official recognition" of these place names. Art. 10, Sec. 2 g of the LC speaks only vaguely of a state permission or encouragement of the use or adoption exclusively of the minority language *place names* by local and regional authorities on whose territory the number of speakers of minority languages "justifies" these measures.

36 According to Art. 14, Sec. 2 of the FC, the states in any case merely have to "endeavour … as far as possible and within the framework of their education systems" to ensure instruction of or in the minority language and to do so only "if there is sufficient demand". In no. 75 of the Explanatory Report, the "very flexible" formulation of Art. 14, Sec. 2 is justified by the otherwise possible "financial, administrative and technical difficulties". The reservation of Art. 14, Sec. 3 of the FC — according to which in this way, the learning of or teaching in the official language must not be affected — offers the signatory states if necessary another starting point for massive restrictions on minority language instruction.

37 If applicable, this occurs only if there is sufficient demand and with "sufficient" numbers of pupils (details in Art. 8, Sec. 1 a–f of the LC). With regard to minority languages at universities, also see Art. 7, Sec. 1 h of the LC. Here, as well, the restriction holds true that official language instruction must not be affected, Art. 8, Sec. 1 of the LC.

38 Under Art. 8, Sec. 1 h of the LC, the Parties undertake to provide the basic and further training of teachers. Under Art. 7, Sec. 1 f of the LC, they are obligated to "the provision of appropriate forms and means for the teaching and study of regional or minority languages." According to Art. 12, Sec. 2 of the FC, the Parties shall provide "adequate opportunities for teacher training and access to textbooks."

Finally, the area of *media* is dealt with by both conventions: very vaguely in the Framework Convention,[39] and in the Language Charter by a differentiated offering of options that range from separate radio stations or television channels or print media to certain broadcast times on the public airwaves to the simple possibility of individual articles in a minority language in otherwise majority language print media.[40]

2.2 The Need to Supplement the System of Democracy

The system of democracy is also in need of correction, especially with regard to certain collective rights. It must be taken into consideration that the basic needs of majorities and minorities, and thus their chief interests, as well, are in fact completely analogous by nature but that the national minorities, in looking after these interests just as a result of the democratic principle of majority, have other and sometimes substantially more difficult problems to deal with than do the national majorities. There are basically three types of participation in the political decision-making process to be differentiated, according to the type and intensity of the interest that national majorities and national minorities take in certain matters, which are to be granted to national minorities in order to achieve their real equality with the corresponding national majority:

1. *Proportional representation:* where matters of a general nature are concerned in which the national majorities and national minorities have an equal interest (such as traffic laws, taxes, etc.), then the national minorities are to be offered the possibility of participating in the democratic decision-making process with equal rights, that is, without unreasonable limitations of the right to vote, such as basic mandate or percentage clauses. Aside from that, they are to be guaranteed proportionately equal access to the civil service, that is, a portion of public offices and positions proportionate to their numerical percentage of the population is to be reserved for them in the filling of the civil service.
2. *Equal representation:* in the case of matters which are of *vital interest*, that is, of an *extraordinarily high interest* to both the national majority and the

39 For details, see Art. 9 of the FC. Access to the media is in fact supposed to be positively supported beyond the simple general prohibition against discrimination (Art. 9, Sec. 1, Clause 2 of the FC), but in the relevant Art. 9, Sec. 4 of the FC, there is no concrete discussion of either broadcasters in minority languages or of broadcast times, but rather only of measures to facilitate access.

40 Art. 11, Sec. 1 b, c, and e of the LC and Art. 11, Sec. 1 a of the LC (for media with a public service mission). Also see the options in Art. 11, Sec. 1 d of the LC (the production and distribution of audio and audiovisual works in minority languages) and Art. 11, Sec. 1 g of the LC (the training of journalists for media using minority languages).

minority, such as in the case of the introduction of minority rights and their domestic implementation, then no side may be at the mercy of unilateral outvoting by the other side. Interests of extraordinary significance also require extraordinary procedures to look after them, in this case, the equal representation of both sides.

3. *Internal self-determination (autonomy)*: where matters are concerned which lie *exclusively or primarily* in the interests of the national minorities,[41] the principle of self-determination (applied on the *internal* level) requires that the national minorities be fundamentally responsible for dealing with them. In that regard, the appropriate instrument is autonomy, which is understood to be a form of division of labor between the central state administration and self-government by minorities which is appropriate for the corresponding circumstances. The instrument of autonomy occurs in three main forms of application: territorial autonomy, cultural autonomy, and local autonomy (local self-government).

Unlike at the level of human rights (Point 2.1 above), international law that is currently in force — in particular, through the Framework Convention and the Language Charter — has thus far offered at this level of democracy policy only very weak and allusive approaches for such minority-specific (group) rights (for further details, see Point 3.1 below) which in the end are non-binding.

3. Autonomy as a Requirement of Democracy

3.1 Autonomy as a Path to "Internal" Self-determination

At the latest with the changes in Europe after the fall of communism and the coming into existence of numerous new states that was associated with them, it became apparent that the application of the external right of self-determination could no longer continue in a linear fashion without completely destroying Europe. As a consequence, there has been a greater tendency for autonomy as an integral component of the right of self-determination (internal self-determination) to be viewed as a solution, since with it, the territorial integrity of the states remains uncompromised. Correspondingly, the proposals for autonomy as a concept for the settlement of the national

41 Within that context, it concerns those matters which specifically grow out of the difference between the national minority and the national majority, that is, above all else in the areas of language and culture, whereby "culture" is to be understood here as tendentially broad (see Point 2.1 above). For further details on this, see Pfeil 2008a, 48 et seq.

minority protection issue have increased at the international level — within the framework of international *soft law* — first with a very restrained formulation but gradually gaining in clarity:[42]

- In 1990, the CSCE/Copenhagen only "noted" the fact that the establishing of local or autonomous administrations represented one of the possible means for the protection of national minorities.[43]
- In 1991, the European Parliament recognized the right of national minorities to democratic self-determination (local and regional self-government or the self-government of individual groups).[44]
- In a NATO document of 1992, a form of *autonomy* is already indicated as the best option for all parties.[45]
- With its Resolution 1201 (1993), the Council of Europe declared itself in favor of a national minority's right to local or autonomous authorities or to a special status in regions where they are in a majority.[46]
- In the UN's Eide Report of 1993, it was then recommended to examine the following forms of application according to the special features of the situation:
  - *Self-administration (functional autonomy, cultural autonomy)*[47];

42 With regard to the following list, see Pan 1995, 53 et seq.

43 KSZE 1990b, Art. 35, Sec. 2: "The participating States note the efforts undertaken to protect … the … identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations…"

44 Europäisches Parlament 1991, Art. 3 b: "The Community and its Member States shall recognize the right of such groups to democratic self-determination. In order to encourage ethnic and linguistic communities that historically have existed on the territory of the Member States to express their identity, and in order to promote peaceful co-existence in the regions concerned, the Community and its Member States shall provide special guarantees of real equality for citizens and adopt special methods for protecting and promoting minority languages and special forms of local, regional or group self-government and of interregional cooperation, including transfrontier cooperation."

45 NATO 1992, Point 87, Hyphen 2: "…a form of autonomy will generally be considered the most acceptable option for all parties, especially since the drive for independence often results from the failure by the central power to manage desires for autonomy in time."

46 Council of Europe/Parliamentary Assembly 1993 (Resolution 1201/1993), Art 11: "In the regions where they are in a majority, the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state."

47 *Cultural autonomy* offers members of a national minority the possibility of forming a statutory body under public law which has sovereign competences above all in the area of culture. The term *functional autonomy* is not used in a standardized way. As a rule, it does not contain any status under public law, but rather is restricted to the area under civil law and additionally to certain individual areas of competence (such as the educational system) which are transferred to organizations or institutions of

– *Decentralized or local forms of government or autonomous arrangements on a territorial basis*.[48]

In contrast to these (non-binding) soft law targets, the two binding conventions under international law avoid the subject area of classic collective rights[49] including autonomy. But according to Art. 15 of the FC, the Parties have to

> …create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

Under no. 80 of the Explanatory Report to the Framework Convention, possible measures for the implementation of Art. 15 explicitly also include "decentralised or local forms of government" and furthermore, the

> …effective participation of persons belonging to national minorities in the decision-making processes and elected bodies both at national and local levels.

Consequently, Art. 15 of the FC may also serve as an impetus and the legal basis for the introduction of collective rights, in particular autonomy rights, but this option is not compulsory.[50]

On the other hand, the aforementioned starting points have in a certain sense already been overtaken by political reality. After the onset of the Yugoslavia crisis with the resulting wars in Croatia and Bosnia and Herzegovina, a broad readiness to make concessions with regard to autonomy suddenly developed on the part of the governmental organizations of the UN and the EC/EU. In the Carrington plan, the Hague Peace Conference provided

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minorities and exercised by them. With regard to functional autonomy, see Küpper 2013, 13 and Arraiza 2015, 13.

48 UN Eide Report 1993, Point 17 c) and d): "It is recommended that States and minorities explore the following options as appropriate to their particular situation: … Self-administration (functional autonomy, cultural autonomy) on a non-territorial basis by a minority of matters which are essential to its particular identity, such as the development of its language or its religious rites… Decentralized or local forms of government or autonomous arrangements on a territorial and democratic basis, including consultative, legislative and executive bodies chosen through free and periodic elections without discrimination."

49 The Language Charter contains merely weak approaches for a certain right of *involvement* (not a right of *codetermination*) by speakers of minority languages. According to Art. 7, Sec. 4 of the LC, for example, "the Parties shall take into consideration the needs and wishes expressed by the groups which use such [regional or minority languages] languages" and "are encouraged to establish" corresponding bodies, "if necessary, for the purpose of advising the authorities", but this is subject to the possibility of a reservation under Art. 21, Sec. 1 of the LC. Also see Art. 11, Sec. 3 of the LC. For the subject as a whole, see Pfeil 2013c, 152.

50 For the subject as a whole in detail, see Pfeil 2000, 10 et seq.

for broad-reaching autonomous powers for areas within Croatia inhabited predominantly by Serbs,[51] which subsequently were further developed for Bosnia and Herzegovina by the Geneva Peace Conference with the Vance-Owen plan.[52] After three years of war, these starting points were expanded still further and set out in detail in the Z-4 Plan of the Bosnia Contact Group (the United Kingdom, France, Germany, the USA, and the Russian Federation) of January 18, 1995.[53] With regard to the ending of the war, the so-called "Dayton Peace Accord" of December 14, 1995 that was finally brought about through the mediation of the USA and the participation of the EU proved to be successful. Annex 4 of the Dayton Accord incorporates the constitution that is in force of Bosnia and Herzegovina.[54] According to that, Bosnia and Herzegovina took on a federal structure, the starting point of which was the two so-called "entities" which are ethnically characterized and provided with broad-reaching competences, the Republika Srpska and the Federation of Bosnia and Herzegovina. The latter is, in turn, subdivided into ten cantons which are provided with their own constitutional and legislative competences. In addition, according to the Bosnian constitution, the Bosniaks, Croats, and Serbs "along with Others" are provided with state-constituent status. In

51 Haager Friedenskonferenz 1991, Chap. 2, Art. 3, Hyphen 4: "Persons belonging to a national or ethnic group, not forming a majority in the area where they live… living distant from others of the same origin, for example in isolated villages, shall be granted a practicable degree of self-administration."

Haager Friedenskonferenz 1991, Chap. 2, Art. 5: "In addition, areas in which persons belonging to a national or ethnic group form a majority will enjoy a special status (autonomy). Such status will provide for

a) The right to have and show the national emblems of that group;
b) The right to a second nationality for members of that group in addition to the nationality of the republic;
c) An educational system which respects the values and needs of that group;
d) i) A legislative body,
   ii) An administrative structure, including a regional police force;
   iii) And a judiciary,
   responsible for matters concerning the area, which reflects the composition of the population of the area;
e) Provisions for appropriate international monitoring."

52 On the basis of the Yugoslav proposal at the Hague Peace Conference of 1991, the Geneva Peace Plan (Cyrus Vance/Lord David Owen) proposed a new constitutional arrangement for Bosnia-Herzegovina in the form of a decentralized state with a number of autonomous provinces yet to be determined which, with the division of governmental functions, should receive their own responsibilities. For the (exclusive) responsibilities that are provided therein, see Geneva Peace Conference 1992, Annex I., II. D., V. B.1.2.

53 Z-4 Plan 1995.

54 With regard to these statements and those below, see Pfeil BIH 2006, 59–63, 69 et seq. (with a detailed description of the state structure and minority rights in Bosnia and Herzegovina).

any case and (only) in that respect, Bosnia and Herzegovina offers a prime example of a multinational state that was founded on the idea of autonomy and federalism.[55]

All in all, however, the theme of autonomy certainly contains a due portion of political explosiveness. Nevertheless, in many cases—under the precondition of its proportionality (under the rule of law) and, along those lines, its customized application to the specific individual case (such as according to history and settlement structure)—autonomy is a fundamentally suitable instrument for defusing potential tensions because it does not affect the issue of state borders. Thus it was and is necessary to take up the delicate topic of autonomy and to bring it up for discussion on a Europe-wide basis in order to bring about urgently necessary clarifications. The initiative for this was seized in the 1990s by the Federal Union of European Nationalities (FUEN) with the presentation of a Discussion Document on the autonomy rights of national minorities in Europe.[56] In it, autonomy was defined as an instrument of protection for national minorities which, while adhering to the territorial integrity of the states, is to guarantee the greatest possible degree of internal self-determination and, at the same time, a corresponding minimum degree of outside determination by the national majority population.

In summary, the point of autonomy as a supplementary corrective of the democratic system is:

– To protect persons belonging to a national minority from being outvoted in such majority decisions that are not justified from a human rights and democratic point of view;
– To do so under the safeguarding of, on one hand, the human rights and fundamental freedoms of members of national minorities and, on the other hand, the territorial integrity of the states concerned, in order in the end:
– To make a national partnership between the majority and the national minority (or minorities) a reality.

55 Within that context, it is, however, fundamentally to be taken into consideration that the concrete implementation of the principle of autonomy in the individual case offers great discretionary powers, within the framework of which the specifics of the individual case, such as the history of the state concerned or the settlement structures, can and should be taken into account. In the case of Bosnia and Herzegovina, there was less influence in the Dayton Accords from the (multicultural) history than from the facts caused by the war and ethnic "cleansing", which to this day had turned out to have been polarizing and led to conflict.

56 Adopted by the FUEN Delegate conference meeting in Gdańsk on May 12, 1994 (Ermacora/Pan 1995).

3.2 The Typology of Autonomy

There are fundamentally three main forms of the application of autonomy that can be differentiated, each of which is geared to different initial conditions:

1. *Territorial autonomy* for those cases in which the national minority forms the majority of the population in its area of residence;
2. *Cultural autonomy or personal autonomy* for those cases in which the national minority does not form the majority of the population in its area of residence;
3. *Local self-government (local autonomy)* for those cases in which persons belonging to a national minority reside in isolated dispersion and only form the local majority of the population within individual administrative units, such as in individual districts, communities, or parts of communities.

With all forms of autonomy, the decisive question is the separation of their area of competence from the area of competence of the state. As a line of orientation for this, those standards have been used in the FUEN Draft which have been established at international peace conferences for the former Yugoslavia or with the Middle East conflict by governmental organizations such as the UN or the EU (formerly the EC).[57]

3.2.1 Territorial Autonomy

"Territorial autonomy" is to be understood as a special status granted to a territorial unit which makes it possible for the residents of that territorial unit to regulate their very own affairs by themselves through autonomous legislation, government, administration, and, if applicable, legal precedents. A claim to sovereignty is not linked with it. The autonomous powers are to be precisely established in the law of each state.

Territorial autonomy must fundamentally include those areas of competence which are necessary for the national minority in order to look after its own matters,[58] such as:

57 See Haager Friedenskonferenz 1991, Chap. 2.5; Geneva Peace Conference 1992; Nahost-Friedenskonferenz 1993.

58 According to the UN Draft Declaration on the Rights of Indigenous Peoples of 1994, autonomy would encompass a series of special competences, such as: "culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment… ways and means for financing these autonomous functions," see UN Draft Declaration on the Rights of Indigenous Peoples 1994, Art. 31. The unofficial model for this proposal was European, namely, the Danish "Home Rule" legislation for Greenland (Danish law No. 577 of November 29, 1978). The Declaration on the Rights of Indigenous Peoples which was finally adopted in 2007 does in fact continue to provide in Art. 4 for a "…right [of indigenous peoples]

- The display of their own emblems,
- Participation in the settling of the issue of dual citizenship, where applicable,
- An educational system, including higher education (such as universities) which respects the values and needs of the national minority in question,
- Cultural institutions and programs,
- Radio and television,
- The licensing of professions and trades,
- The use of natural resources, such as agriculture, forestry, hunting and fishing, and mining,
- Health care and social services, including social welfare,
- Communications within the autonomous area, such as local roads and airports,
- Production of energy,
- Control of commercial and savings banks and other financial institutions,
- Police,
- Taxation for the purposes of the autonomous area.

These standards have been formulated at a quite high level compared to some cases of currently existing autonomy, such as in South Tyrol, and at first glance they are capable of creating surprise. But in this regard, it is to be noted that the minimum of autonomy is that degree which is necessary for the preservation of the existence and identity of a national minority, while the optimum is as much autonomy as possible without threatening the territorial integrity of the state.[59]

It of course must be taken into consideration that in the case of territorial autonomy, those segments of the population which form a numerical minority within the area affected by the territorial autonomy are not discriminated against in the enjoyment of their generally recognized human rights and fundamental freedoms.

3.2.2 Cultural or Personal Autonomy

In contrast to territorial autonomy, in the case of the form of autonomy known as cultural or personal autonomy the autonomous special status for the looking after of their own matters is granted not to a unit of area but

to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions", but in contrast to the draft, the autonomous responsibilities that were comprised therein are no longer compulsorily listed in detail, see UN Declaration on the Rights of Indigenous Peoples 2007.

59 In that regard, see Murswiek 1993, 329.

rather to a group of persons which constitutes a form of union under public law that appears to be suitable.[60]

This form of autonomy is then appropriate when national minorities do not constitute the majority of the population in areas in which they reside or when national minorities, for whatever reason, do not consider the claim for territorial autonomy to be of use.

It is important that an association of persons provided with cultural autonomy has at its disposal sufficient democratic representation, that is, that it includes at least a substantial part of the persons belonging to an affected national minority and that the autonomous powers are exercised by freely-elected democratic organs.

Cultural autonomy has to include all those matters which are essential to the preservation, the protection, and the development of the identity of the national minority, in any case such substantial areas as:

- Culture,
- An educational system,
- Information, including by means of radio and television,
- Participation in the settling of the issue of dual citizenship, where applicable,
- The display of the minority's own emblems, and
- Any other matters which, in the opinion of the national minority, are useful to the preservation and exercise of the rights of protection to which they are entitled.

Cultural autonomy also includes the right to establish and maintain institutions, in particular in the fields of

- Instruction,
- Print and electronic media,
- The maintenance of traditions,
- The educational system,
- The safeguarding of economic activities.

60 In practice, the idea of cultural autonomy for minorities – albeit in combination with elements of territorial or local autonomy (see Brunner/Küpper 2004, 36) – has been realized, for example, in Hungary. This form of autonomy was first introduced by Law No. LXXVII/1993 of July 7, 1993. In 2011, the original law was superseded by Law No. CLXXIX/2011, which also contained interesting new terminology: the law "on the rights of the national and ethnic minorities" became one "on the rights of the nationalities of Hungary". Within that context, the so-called "self-government of minorities" that was established in 1993 was fundamentally maintained at the local/municipal and provincial level, but it was logically renamed "self-government of nationalities" and modified above all else in the area of the election process that was applied with the setting up of these self-governments. A detailed evaluation of the new "Nationalities Act" on the basis of international standards may be found in Venice Commission 2012; with regard to the Hungarian Minorities Act of 1993, see Brunner/Küpper 2004, 32–67.

3.2.3 Local Autonomy (Local Self-government)

The forms of classic territorial and cultural autonomy cover a broad spectrum of the legitimate need for the self-government by national minorities of their own matters, but they leave certain cases open in which those affected can in no way benefit from an extensive territorial autonomy and can only conditionally benefit from cultural autonomy. This deals primarily with people belonging to national minorities which reside in isolated dispersion but nevertheless form the local majority of the population within certain administrative units, for instance in individual districts, communities, or parts of communities. Local self-government (local autonomy) is to be designated for such cases, representing a special form of territorial autonomy which is limited to the lower levels of administration.

By means of local autonomy, residents of an administrative unit are guaranteed the possibility of looking after their own (ethnic group-related) matters themselves beyond the responsibilities that are normally legally assigned to the administrative unit (district, community, or part of community), and in particular those matters which essentially lie in the exclusive or predominant interest of the local community.

Therefore, it is particularly the following responsibilities which fall under the area of competence of local self-government (local autonomy):[61]

- The regulation of institutional bilingualism within the framework of local self-government,
- The use of minority-specific names and symbols,
- The regulation of local customs and festivals,
- The protection of local monuments and memorials,
- Local security and traffic police; health inspectors and building inspectors.

Within the framework of the means available to it by law, local self-government (local autonomy) should also include the right to establish and maintain institutions, in particular in the fields of

- Local instruction,
- Local print and electronic media,
- The maintenance of traditions,
- The educational system,
- The safeguarding of economic activities.

61 One of several possibilities for this was described in the 1991 Hague Peace Conference, Chap. 2, Art.3, Hyphen 4 for the case of members of a national minority or ethnic group which does not form the majority of the population in the area where they are settled: "Those persons of the same national or ethnic group living distant from others of the same origin, for example in isolated villages, shall be granted a practicable degree of self-administration."

In addition, the ethnic groups should participate in all other administrative matters in proportion to their share of the population.

3.2.4 Subdivision of Administration, Provision of Financial Means, and Legal Protection

Within the context of autonomy, the subdivision of administration, provision of financial means, and legal protection play a significant role.

First of all, the interests of the national minorities that are to be protected must be considered in the dividing of the national territory into political and administrative divisions, judicial districts, and constituencies. The respective administrative subdividing is therefore to be carried out in conjunction with the national minorities which are directly affected.[62]

The autonomous institutions must then be financially equipped to the degree that they are in the position to effectively carry out their responsibilities. In the redistribution of income between the state and autonomous territorial bodies, the latter is to be granted a fixed portion of all relevant state expenditures. If the administrative expenditures can be covered by its own taxes and levies, then they are to be used primarily for this purpose. In cases in which the share of the autonomous body in the taxes and levies in its territory falls short of the fixed share of income redistribution to which it is entitled in all relevant state expenditures, the state treasury should pay the difference to the autonomous body.

Finally, the validity of legal acts enacted by autonomous bodies should only be subject to supervision by independent supreme courts.

62 This aspect is only rudimentarily and incompletely taken into consideration in the Framework Convention. Thus Art. 16 of the FC merely requires the states to "refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present Framework Convention". A direct right of involvement of national minorities is not provided here, and in addition, it deals only with the safeguarding of already existing structures but not the creation of new, minority-friendly ones, above all administrative divisions. The Language Charter goes somewhat further in that respect. In Art. 7, Sec. 1 b, it also includes among its objectives and principles "the respect of the geographical area of each regional or minority language in order to ensure that existing *or new* [emphasis by the authors] administrative divisions do not constitute an obstacle to the promotion" of these languages. For the subject as a whole, see Pfeil 2006, 469, 474.