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The Status of Members, Employees, and Engaged Persons in Minority non-Territorial Autonomy

Abstract: Minority non-territorial autonomy/self-government exercised through collegial bodies raises the question of the legal status of their members, employees, and other engaged persons. Although the issues involved concern the rights and obligations of members, employment relationships and remuneration, as well as incompatibility and conflicts of interest, they constitute a broader area of inquiry, since they reveal the approach adopted by comparative legal systems regarding the legal nature of minority non-territorial bodies. In other words, if minority non-territorial autonomy/self-government is regarded as a public-law institution, state intervention in matters relating to members' rights and obligations, employment relationships and remuneration, as well as incompatibility and conflicts of interest, will be more pronounced.

Key words: national minorities; non-territorial autonomy/self-government; rights and obligations of members; employment relationships and remuneration; incompatibility and conflict of interest.

1. INTRODUCTION

Non-territorial minority autonomy (NTA) denotes the self-government of persons belonging to national minorities through a non-territorial sub-state entity in matters regarded as essential for the preservation and reproduction of their distinct cultural identity, including language, culture, religion, and customs.¹ Such a sub-state entity constitutes an institutional framework, namely the bodies and arrangements through which non-territorial autonomy is exercised.

The bodies through which minority self-government is exercised are typically collegiate in nature. In addition to issues concerning their organizational structure, elections, legal status, financing, role, functions, and powers, their existence also raises questions regarding the rights and obligations of their members. In most cases, the activities of these bodies involve not only elected members but also employees and other persons engaged by them, making it necessary to examine the legal status of such personnel. The issues of members' rights

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¹ Online Compendium Autonomy Arrangements in the World 2016.

and obligations, employment relationships and remuneration, as well as the incompatibility of offices and conflicts of interest, will be analysed through examples drawn from the legislation and legal arrangements of Finland, Hungary, the Russian Federation, Estonia, Slovenia, Croatia and Serbia.

2. RIGHTS AND OBLIGATIONS OF MEMBERS

The Finnish Act on the Sámi Parliament² does not contain a provision explicitly regulating the rights and obligations of members of that body. As a matter of principle, and as reflected in several provisions of the Act, every member of the Sámi Parliament has the right to participate in its work, which includes the right to submit proposals and vote, to initiate meetings together with other members, to elect and be elected to committees established by the Parliament, to request that decisions adopted by committees be submitted for deliberation by the Parliament, and so forth. The Act also prescribes certain obligations of members, including the duty to refrain from voting in matters involving their personal interests, as well as the prohibition on disclosing information obtained in the course of performing their duties and liability for damages caused to the Sámi Parliament (Section 42b).

Pursuant to Section 101(1) of the Hungarian Act on the Rights of Nationalities,³ members of nationality self-governments have the right to request information from the self-government, its chairperson, and/or its committees and to receive a response within fifteen days; to request that their written submissions be attached to the minutes of the self-government's meetings and that the opinions they have expressed be duly recorded; to represent the self-government when authorized to do so; to participate in meetings of the self-government; and to attend training sessions organized by county authorities at least once a year. Under paragraph 2 of the same section, members of nationality self-governments are released from their employment obligations while attending meetings of the self-government and are entitled to compensation for lost earnings, paid by the self-government, in accordance with the relevant social security rules. Pursuant to paragraph 3, members are entitled, at the expense of the self-government, to use sign language or other forms of communication during meetings. Although the Act does not contain a provision expressly defining the duties of members, several such duties are prescribed elsewhere. In addition to the obligation to abstain from voting in matters involving a personal interest, a member is required to attend meetings of the self-government at least once a year, since failure to do so results in the loss of mandate. Members are also required to submit a declaration of assets (Section 103), as well as to comply with other statutory obligations.

The legislation of the Russian Federation,⁴ Slovenia,⁵ Estonia,⁶ and Croatia⁷ does not regulate the rights and obligations of members of minority representative bodies. The

² <http://www.finlex.fi/fi/laki/kaannokset/1995/en19950974.pdf>

³ <https://njt.jog.gov.hu/jogszabaly/en/2011-179-00-00>

⁴ http://www.consultant.ru/document/cons_doc_LAW_10722/

⁵ Act on Self-Governing National Communities (*Zakon o samoupravnih narodnih skupnostih*), Official Gazette of the Republic of Slovenia, No. 65/94 and 71/17 (ZFO-1C).

⁶ <https://www.riigiteataja.ee/en/eli/519112013004/consolide>

⁷ Constitutional Act on the Rights of National Minorities (*Ustavni zakon o pravima nacionalnih manjina*), Official Gazette of the Republic of Croatia (*Narodne novine*), Nos. 155/02, 47/10, 80/10, and 93/11.

Croatian Act on the Register of Councils, Coordinations of Councils and Representatives of National Minorities⁸ merely provides that the statute of a coordination body established at the level of the Republic of Croatia shall determine the rights and powers of representatives of national minorities elected within units of regional self-government in the work of the coordination body.

The original 2009 Serbian Act on National Councils of National Minorities (hereinafter: ACNCM)⁹ did not contain a single provision comprehensively regulating the rights and obligations of members of a national council. Instead, these matters were regulated through a number of separate provisions. The most important among them were the provisions of Article 41, which governed the mandate of council members and the termination of membership in a national council. These provisions were amended in 2014 and remained unchanged following the amendments adopted in 2018. Under the current legal framework, the mandate of a member of a national council lasts for the duration of the mandate of the council to which he or she was elected (paragraph 1). A member's mandate terminates before the expiration of the council's term of office in the following cases: (1) resignation; (2) loss of one of the general requirements for the exercise of active voting rights; (3) absence from council meetings for a period exceeding one year; (4) cessation of residence in the territory of the Republic of Serbia; (5) deletion from the special electoral roll of the national minority by a final decision of the competent authority; (6) conviction by a final court judgment for a criminal offence resulting in a prison sentence exceeding six months; and (7) death (paragraph 2).

Pursuant to paragraphs 4 and 5 of Article 41, the termination of a member's mandate is formally acknowledged by the national council at its first subsequent meeting following receipt of information regarding the occurrence of a ground for termination. The president of the national council is then required to notify the Republic Electoral Commission and the competent ministry thereof. It is important to note that the Act does not expressly provide for any legal remedy against a decision of the council declaring the termination of a member's mandate. From a general legal perspective, it may therefore be argued that a member whose mandate has been terminated in this manner should have access to an appropriate legal remedy, which, by its nature, should fall within the jurisdiction of the Administrative Court.

Since one of the grounds for termination of a member's mandate is absence from council meetings for a period exceeding one year, the 2018 amendments introduced Article 1b(1), according to which a member of a national council is obliged to participate in the work of the council. The regulation of other rights and obligations of council members was, pursuant to paragraph 2 of the same article, left to the council's statute. Bearing in mind the subordinate legal nature of such statutes, it should nevertheless be emphasized that the provisions of the ACNCM, both expressly and implicitly, confer upon members of national councils the following rights: to participate in the work of the council; to propose

⁸ Act on the Register of Councils, Coordinations of Councils and Representatives of National Minorities (*Zakon o registru vijeća, koordinacija vijeća i predstavnika nacionalnih manjina*), Official Gazette of the Republic of Croatia (*Narodne novine*), Nos. 80/2011, 34/2012, and 98/2019.

⁹ Act on National Councils of National Minorities (*Zakon o nacionalnim savetima nacionalnih manjina*), Official Gazette of the Republic of Serbia (*Službeni glasnik RS*), Nos. 72/2009, 20/2014 (Constitutional Court Decision), 55/2014, and 47/2018.

decisions and other acts; to be nominated or to stand for election to various positions within the council; to serve on committees and other bodies established by the council; to resign; to be informed about all matters relevant to the performance of their duties; to enter into an employment relationship with the council; and, together with at least one-third of the total number of council members, to initiate proceedings before the Administrative Court for the annulment of a general act of the council that is inconsistent with its statute, among others.

Likewise, the provisions of the ACNCM, both expressly and implicitly, impose several obligations upon members of national councils. These include the duty to participate in the work of the council; to comply with the Constitution and laws during their membership; in the event of resignation, to certify their resignation before the competent authority for signature authentication and submit it to the national council within three days, either in person or by registered mail; and to notify the council of the occurrence of any other grounds for the termination of their mandate.

Apart from regulating the duration of the mandate and the grounds for its termination prior to the expiration of the term of office of the national council, the Act on National Councils of National Minorities (ACNCM) contains no provisions governing other issues of relevance to the mandate of council members. In particular, the Act does not address the legal nature of the mandate of members of national councils. Given that a national council represents a national minority and that its members are expressly required to participate in its work, the question arises as to whether the mandate of council members is of an imperative nature.

On the one hand, it may appear somewhat plausible to argue that members of a national council, considering that the council constitutes an institutionalized form of exercising the constitutionally guaranteed right to self-government as a collective right of all members of a national minority, should be bound by the instructions of the minority they represent and should advocate particular positions and vote in accordance with such instructions. On the other hand, bearing in mind that the national council represents all members of the national minority, as well as the fact that the ACNCM provides for the possibility of resignation, that is, the free disposal of the mandate, while not providing for any form of recall of council members, it would appear more appropriate to conclude that, by its legal nature, the mandate of council members is a free mandate.

However, the analysis of the legal nature of the mandate of national council members cannot end there. Precisely because the national council represents the national minority as a whole, it may be argued that the council, in performing this representative function, and consequently each of its members individually, is nevertheless subject to certain limitations. In other words, their mandate cannot be regarded as absolutely free. This follows from the fact that, although constitutionally recognized, the collective rights and activities of the national council, as the institutional representative of minority self-government, must neither undermine nor be exercised at the expense of the individual freedom to express one's identity and the legally relevant group identity, or particular components thereof, constituted on that basis.

For this reason, for example, it would appear that a national council, and consequently each of its members individually, although the council is *ex constitutione* entrusted with representing the national minority in matters relating to the official use of language and script, should neither be entitled nor able—and, in our view, ought not—to classify or des-

ignate the language of the national minority differently from the manner in which the majority of the members of that minority identified it in the population census.¹⁰ In this respect, it may be concluded that the mandates of both the council itself and its members are, to a certain extent, subject to substantive limitations.

By its very nature, a free mandate is closely associated with the immunity of its holder. Accordingly, members of parliament cannot be held liable for opinions expressed or votes cast in parliament.¹¹ Similarly, under the Serbian Law on Local Self-Government, a municipal councillor may not be subjected to criminal liability, detention, or punishment for opinions expressed or votes cast at sessions of the municipal assembly or its working bodies. By contrast, the ACNCM contains no provisions concerning the immunity of members of national councils. It may therefore be argued, *a contrario*, that the mandate of a national council member does not entail immunity and that such a member may be held legally accountable for opinions expressed and votes cast at sessions of the national council. Does the absence of immunity undermine and/or restrict the non-territorial self-government of national minorities? The answer would appear to be negative. Minority self-government is exercised within constitutionally defined areas of social life through the

¹⁰ See, in this regard, Đurić, V. (2014), *Pravni aspekti prikupljanja, upotrebe i značaja statističkih podataka o nacionalnoj, jezičkoj i verskoj pripadnosti stanovništva*, Beograd: Republički zavod za statistiku, Institut za uporedno pravo, pp. 45–46. This issue also has a broader theoretical dimension. Namely, it encompasses not only the potential conflict between individual and collective rights, more precisely between what Kymlicka termed the group's "external protections" and the "internal restrictions" of the individual rights of group members (Kymlicka, W. (1995), *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Clarendon Press, p. 42), but also, in a certain sense, a conflict between the collective interest—if understood as something more than a mere aggregation of the individual interests of group members—and the interests of the majority of the group's members. Some authors in Serbian legal scholarship maintain that, in certain cases, a collective right may prevail over an individual right; more specifically, that following a proportionality test, priority should in some situations be accorded to the collective interest over the interest of the individual (Jovanović, M. (2009), „Kolektivna prava i pozitivna diskriminacija – konceptualna razjašnjenja“, *Kolektivna prava i pozitivna diskriminacija u ustavnopravnom sistemu Srbije*, Beograd: Pravni fakultet, Službeni glasnik, pp. 22–23). The same author further argues that it is entirely a "legitimate, albeit contestable interpretation" that the collective interest of a nation in its continued existence might, in certain circumstances, be better and more permanently secured if the interests of the majority of its members had not been expressed in a particular manner (Jovanović, M. (2008), „Postoje li kolektivna prava?“, *Analiza Pravnog fakulteta u Beogradu*, 56(1), p. 105). Such an approach, however, cannot be fully accepted from a legal perspective. If one of the conditions for the legally relevant constitution of a group as the holder of collective rights is the notification of its existence through the free declaration of affiliation by its members—for example, in a population census—then the existence of legally relevant distinctive features of that group, such as its language, must likewise be determined on the basis of the declarations made by the majority of the group's members. Such an interpretation, of course, does not as a collective entity, nor that it may possess interests that cannot be reduced to the mere aggregation of the interests of its members. It does, however, indicate that such interests, at least with regard to the group's distinctive characteristics, cannot and should not be constituted contrary to the freely expressed will of the majority of its members.

¹¹ See, on this issue, Marković, R. (1995), *Constitutional Law and Political Institutions (Ustavno pravo i političke institucije)*, Belgrade, pp. 364–366.

exercise of public powers entrusted by law to national councils. As will be demonstrated below, the exercise of such public powers does not entail the original regulation of social relations. Indeed, the original regulation of social relations is not characteristic even of territorial self-government. Consequently, there is neither a practical necessity nor a compelling public interest in granting immunity to members of collegiate bodies entrusted with the exercise of such powers. Moreover, if members of national councils were to enjoy immunity—that is, if they could not be held accountable for opinions expressed or votes cast at council sessions—the scope of criminal-law protection afforded to certain important social values could be significantly curtailed. This is particularly relevant in light of the possibility that some national councils, notwithstanding the fact that such matters fall outside their statutory competences, may in practice begin to adopt positions on identity-related issues or even deny the existence and distinctiveness of particular national minorities in the Republic of Serbia. In such circumstances, immunity could unduly limit the effectiveness of legal mechanisms designed to protect values such as the prohibition of incitement to national hatred and intolerance.

3. EMPLOYMENT RELATIONSHIPS AND REMUNERATION

The Finnish Act on the Sámi Parliament does not expressly provide for the possibility of members of the Parliament being employed by that body. However, Section 11(2) of the Act stipulates that the position of the Speaker is a full-time office, which means that the Speaker serves on a permanent basis within the Parliament. Pursuant to Section 17, members of the Sámi Parliament are entitled to remuneration for their work, reimbursement of travel expenses, daily allowances, and other benefits in accordance with a Remuneration Decision adopted by the Parliament. The Parliament may employ staff. With regard to certain aspects of employment relationships, particularly employment contracts and the legal status of employees of the Sámi Parliament, the rules applicable to public servants apply. This arrangement, which entails the partial application of legislation governing public service, together with the fact that the Government may not issue binding instructions to employees of the Sámi Parliament, has led some authors to conclude that, although the Sámi Parliament is a public-law body, it does not form part of the ordinary state administration.¹² Under Section 42 of the Act, all persons employed by the Sámi Parliament are entitled to pension benefits to the extent provided for employees in the state service. These provisions effectively mean that employees of the Sámi Parliament enjoy the status of public servants. The Sámi Parliament is required to make pension contributions on behalf of its employees in accordance with the legislation governing the pension fund.

The Hungarian Act on the Rights of Nationalities provides, in Section 112, that matters relating to employment, work organization and working hours, remuneration, allowances, and reimbursement of expenses of employees, committee members, and members of nationality self-governments that are not specifically regulated by the Act shall be governed by the relevant provisions applicable to mayors and members of local representative bodies. Although the Act contains no explicit provision permitting members of nationality self-governments to enter into employment relationships with such bodies, neither does it preclude that possibility. It does, however, expressly provide for such arrangements with

¹² Myntti, K. (2021), “The Sami Cultural Autonomies in the Nordic Countries”, in: *Minority Governance in Europe* (ed. K. Gál), Budapest: Local Government and Public Service Reform Initiative of the Open society Institute, p. 58.

regard to certain officeholders. Under Section 105, a local nationality self-government elects a chairperson and a deputy chairperson who perform their functions without additional remuneration, whereas a national nationality self-government may elect a chairperson and deputy chairpersons who serve on a full-time basis. Except where the chairperson and deputy chairperson(s) are elected to perform their functions without remuneration, a nationality self-government may establish allowances for its officials—namely, the chairperson and deputy chairpersons, the chairpersons and members of committees, as well as for the members of the self-government themselves. The Act sets maximum amounts for such allowances by determining the maximum multiple of the basic salary applicable to public servants and also regulates the proportional relationship between allowances payable to different categories of recipients. Information concerning such allowances is classified by law as information of public interest and is therefore publicly accessible. It should also be noted that the Act provides that chairpersons and deputy chairpersons may not receive any other remuneration or financial benefits from organizations established by the nationality self-government or in which the self-government holds an ownership interest.

The Croatian Constitutional Act on the Rights of National Minorities provides, in Article 30, that members of national minority councils perform their duties, as a rule, on a voluntary basis and with the diligence of a prudent administrator. This general preference for the voluntary performance of council functions is accompanied by a provision stipulating that council members may receive, from council funds, only reimbursement of expenses incurred in carrying out council activities and a periodic honorarium, whether monthly or for another period, provided that such payment is approved by, and does not exceed the amount authorized by, the minister responsible for general administrative affairs. The Regulation on Reimbursement of Expenses and Remuneration for Work provides that members of national minority councils are entitled to reimbursement of public transportation costs and daily allowances, as well as to a monthly honorarium not exceeding fifty per cent of the compensation received by members of the representative body of the local self-government unit in which the council operates.¹³ Some authors have concluded—perhaps somewhat boldly—that this financial component constitutes the decisive factor motivating members of national minorities to stand as candidates in elections.¹⁴ At the same time, they argue that such a system prevents the professionalization of council members, as it effectively places them in a position where their duties can only be performed as a secondary or temporary occupation. The Croatian Act on the Register of Councils, Coordinations of Councils and Representatives of National Minorities also regulates remuneration within the framework of coordinations of national minority councils. Pursuant to Article 22(4) of that Act, the president of a coordination body, the deputy president, and members of its working bodies may receive reimbursement of actual expenses incurred in the performance of their duties from the funds allocated for the operation of the coordination

¹³ Regulation on the Reimbursement of Expenses and Remuneration for the Work of Members of Councils and Representatives of National Minorities (*Pravilnik o naknadi troškova i nagradi za rad članova vijeća i predstavnika nacionalnih manjina*), Official Gazette of the Republic of Croatia (*Narodne novine*), No. 24/2006.

¹⁴ Petričušić, A. (2015), „Non-Territorial Autonomy in Croatia“, in: *Managing Diversity Through Non-Territorial Autonomy: Assessing, Advantages, Deficiencies and Risks* (ed. T. Malloy, A. Osipov, B. Vizi), p. 60; Petričušić, A. (2017), „Vijeća nacionalnih manjina, Institucija upitnog legitimiteta i uglavnom neostvarene nadležnosti“, *Revus* 17, p. 97.

body, in accordance with the regulations governing compensation for members of national minority councils.

The Estonian Cultural Autonomy for National Minorities Act does not regulate employment relationships or remuneration of members of the cultural councils of national minorities, nor do the legislative frameworks of the Russian Federation and Slovenia address these issues.

The original text of the Serbian Act on National Councils of National Minorities (ACNCM) contained no provisions governing employment relationships or remuneration of persons employed by national councils. As a matter of principle, however, since national councils possess legal personality, the possibility of establishing employment relationships existed from the moment these bodies were introduced into the legal system and was exercised in practice. In this regard, a particularly important issue arose concerning the employment status of members of national councils. While it was entirely clear, and generally accepted in practice, that employment relationships involving persons who were not members of a national council were established and governed pursuant to the general provisions of labour law, the possible employment of council members themselves was open to debate in two respects. First, questions arose concerning the very possibility of establishing such employment relationships. Second, uncertainty existed regarding the legal nature of such employment, particularly whether members of national councils, as elected officeholders, should be subject to a labour-law regime analogous to that applicable to other elected officials in state, provincial, and local government bodies, including with regard to remuneration.

Proceeding from the position adopted by the Constitutional Court,¹⁵ according to which national councils constitute non-state bodies, the 2018 amendments to the ACNCM addressed these issues in the following manner. Article 7b(1) of the Act provides that a member of a national council may enter into an employment relationship with the council during the term of his or her mandate. This provision essentially means that membership in a national council does not constitute an obstacle to employment within that body. An employment relationship established during the term of office of a council member may, but need not necessarily, be temporary in nature. Several observations should be made regarding the statutory phrase “during the term of office.” On the one hand, fixed-term employment under the Serbian Labour Act (hereinafter: the Labour Act)¹⁶ is limited in duration and may not exceed twenty-four months. Consequently, it would be difficult to regard the employment of a national council member whose mandate lasts four years as fixed-term employment corresponding to the duration of that mandate. On the other hand, a member who is entitled to establish an employment relationship during his or her mandate may remain employed even after that mandate expires. This conclusion follows from a systematic interpretation of the Act. Since a member of a national council may seek re-election and may be elected again, it is evident that the employment relationship is not subject to a resolutive condition linked to the termination of the mandate. Such an interpretation, however, potentially allows

¹⁵ IY3-882/2010

¹⁶ Civil Servants Act (*Zakon o državnim službenicima*), Official Gazette of the Republic of Serbia (*Službeni glasnik RS*), Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 (Constitutional Court Decision), 113/2017, 95/2018 (Authentic Interpretation), and 109/2025 (Other Act).

all members of a national council, in every composition of the council, to be employed by that body, subject only to applicable financial constraints. Such a result appears neither particularly rational nor readily justifiable.

Article 7b(2) of the ACNCM provides that employment relationships within national councils are governed by the legislation regulating employment. In other words, the Act does not establish any special labour-law regime for members of national councils and makes no distinction between them and other employees in the Republic of Serbia. On the one hand, this solution is logical and justified, since it relieves national councils, as non-state bodies, from obligations relating to the classification of positions, official ranks, conditions for recruitment, the requirement to pass the state professional examination, supervision by administrative inspection authorities with regard to employment matters, and numerous other obligations that would arise if the provisions of the Civil Servants Act¹⁷ and/or the Act on Employees in Autonomous Provinces and Local Self-Government Units¹⁸ were applicable *mutatis mutandis*. On the other hand, this legislative approach leaves a number of important questions unanswered. For example, it remains unclear how the work of council members who are employed by the national council should be treated when council meetings are scheduled after regular working hours, on weekends, or on public holidays, given that attendance at council meetings constitutes a legal duty of council members. Likewise, questions arise as to whether such persons are entitled to paid or unpaid leave, overtime work, and other rights regulated by the Labour Act.

Answers to these questions should be sought through the appropriate application of the Labour Act. In other words, it would appear reasonable to maintain that, in the context of the rights and obligations of national council members, some of the aforementioned questions should be answered in the affirmative. Thus, attendance at council meetings held on weekends could constitute grounds for overtime work. At the same time, it would be difficult to justify granting council members leave from duties arising from their membership, except in cases related to maternity protection. Furthermore, members of national councils who are employed by the council should not be entitled to separate allowances for performing their membership duties. Instead, where they perform work beyond regular working hours, on weekends, or on public holidays, they should be entitled to increased remuneration in accordance with the general rules of labour law governing overtime and special working conditions.

4. INCOMPATIBILITY OF OFFICES AND CONFLICTS OF INTEREST

The Finnish Act on the Sámi Parliament contains no provisions concerning the incompatibility of offices held by members of the Sámi Parliament or situations that would constitute a conflict of interest on the part of a member of the Parliament.

¹⁷ Labour Act (*Zakon o radu*), Official Gazette of the Republic of Serbia (*Službeni glasnik RS*), Nos. 79/2005, 81/2005 (Correction), 83/2005 (Correction), 64/2007, 67/2007 (Correction), 116/2008, 104/2009, 99/2014, 94/2017, 95/2018, 157/2020, 142/2022, 13/2025 (Constitutional Court Decision), 19/2025, 109/2025, and 9/2026.

¹⁸ Act on Employees in Autonomous Provinces and Local Self-Government Units (*Zakon o zaposlenima u autonomnim pokrajinama i jedinicama lokalne samouprave*), Official Gazette of the Republic of Serbia (*Službeni glasnik RS*), Nos. 21/2016, 113/2017, 95/2018, 113/2017 (Other Act), 95/2018 (Other Act), 86/2019 (Other Act), 157/2020 (Other Act), and 123/2021 (Other Act).

In Hungarian legislation, the rules governing incompatibility of offices and conflicts of interest applicable to members of nationality self-governments are formulated in a particularly broad manner. In this regard, one important clarification should be made. Although the relevant provisions of the Hungarian Act state that persons holding certain offices or performing particular functions “may not be elected,” the holding of such offices does not in itself constitute an obstacle to election. Rather, the issue is one of incompatibility of offices or conflict of interest, which must be resolved within a statutory period prescribed by law. Pursuant to Section 106 of the Act, the chairperson, deputy chairperson(s), and members of a nationality self-government may not simultaneously serve as the President of the Republic, a member of the Constitutional Court, the Commissioner for Fundamental Rights (Ombudsman) or a deputy commissioner, an official or auditor of the State Audit Office, a public servant, a notary, a judge, a professional member of the armed forces, or a manager or senior official of institutions and business associations established or controlled by the nationality self-government, among other positions. It is noteworthy that the Act expressly excludes incompatibility arising from simultaneous membership in two nationality self-governments. A person in a situation of conflict of interest is required, under the provisions of this section, to eliminate that conflict within thirty days from the date on which its existence is established. If the person concerned fails to do so, the nationality self-government shall, upon the request of any of its members, formally determine the existence of the conflict of interest. It is also significant that a decision of the nationality self-government establishing the existence of a conflict of interest may be challenged through a separate legal action brought by the person concerned. Furthermore, chairpersons and deputy chairpersons serving on a full-time basis may not engage in any other occupation, except for scientific, teaching, editorial, artistic, or other activities falling within the scope of intellectual property protection.

In Croatia, neither the Constitutional Act on the Rights of National Minorities nor the Act on the Election of Members of Representative Bodies of Local and Regional Self-Government Units expressly regulates issues of incompatibility of offices and conflicts of interest with regard to members of national minority councils. Since the Act on the Election of Members of Representative Bodies of Local and Regional Self-Government Units provides that matters relating to the election of members of national minority councils that are not expressly regulated shall be governed by the corresponding application of the remaining provisions of that Act, it may be argued that members of national minority councils may not simultaneously serve as members of other representative councils, judges, judges of the Constitutional Court, members of the Government, the Ombudsman and deputy ombudsmen, assistant ministers, heads and deputy heads of state administrative organizations, military personnel, or civil servants and employees of the armed forces, among others, as prescribed by Article 5 of the Act with respect to members of representative bodies of local and regional self-government units. Paragraph 2 of the same article provides that the performance of such functions, with the exception of service in the armed forces, does not constitute an obstacle to election. However, a person holding an incompatible office is required, following election, to declare whether he or she intends to continue performing the incompatible function or to assume the newly acquired office to which he or she has been elected.

Legislation of the Russian Federation, Estonia, and Slovenia regulating minority cultural autonomy or self-government does not contain provisions concerning incompatibil-

ity of offices and conflicts of interest on the part of members of the bodies through which such autonomy or self-government is exercised.

The 2018 amendments to the Serbian Act on National Councils of National Minorities (ACNCM) introduced a new Article 7a, which regulates issues of incompatibility of functions, i.e. offices and activities, as well as the prohibition of conflicts of interest. This constitutes a particularly significant amendment, given that the pre-2018 text of the Act did not expressly regulate the incompatibility of offices or functions of members of national councils, despite the necessity of such regulation in light of the fact that national minority councils exercise public powers within the legal order of the Republic of Serbia. Furthermore, this amendment is consistent with the recommendations of relevant international bodies, particularly those aimed at ensuring the depoliticisation of national councils.¹⁹ In this regard, the amended provisions stipulate that the president of a national council and a member of its executive board may not be members of the governing bodies of a political party, including, *exempli causa*, the president, presidency, executive board, and similar bodies (paragraph 1), nor may they simultaneously be elected or appointed officials in state bodies, provincial bodies, or bodies of local self-government units that, within their competences, decide on matters relating to the work of national councils (paragraph 2). It is further expressly provided that, upon such election or appointment, the mandate of the president of the national council, or membership in the executive board, shall cease, and the national council shall formally acknowledge this at its first subsequent session upon receipt of notification of the occurrence of such grounds.

The above provisions merit a more in-depth analysis and interpretation. Namely, they introduce incompatibility rules and implement the prohibition of conflicts of interest within the ACNCM. The incompatibility established by these provisions should be distinguished from ineligibility for election, since the performance of certain functions within a national council (such as president or membership in the executive board) does not constitute an obstacle to election to party bodies or to state, provincial, or local government bodies, and *vice versa*.²⁰ In essence, a candidate elected to both positions may opt for one of them after election. In this respect, the provision stating that upon election or appointment to the governing bodies of a political party or to state, provincial, or local government bodies the mandate of the president of the national council, or membership in the executive board, shall cease—subject to confirmation by the council at its first subsequent session following notification—should be interpreted to mean that a person so elected may, in the period between election or appointment and notification to the national council, choose not to accept such election and continue performing the function of president of the national council or member of the executive board.

In contrast to this interpretation, the Agency for the Prevention of Corruption, in its Opinion on the (in)compatibility of public office in local self-government bodies and in the

¹⁹ For example, the Advisory Committee on the Framework Convention for the Protection of National Minorities, in its Third Opinion on Serbia, highlights the need for depoliticisation – Advisory Committee on the Framework Convention for the Protection of National Minorities, *Third Opinion on Serbia*, adopted on 29 November 2013, ACFC/OP/III(2013)006, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c6aa>

²⁰ The interpretation presented is based on the theoretical distinction between incompatibility of offices and ineligibility for election – see R. Marković (1995), p. 309.

bodies of public enterprises and institutions founded by local self-government units with functions in the bodies of national councils of national minorities,²¹ adopts what appears to be an unduly restrictive approach. It holds that persons holding certain public offices in local self-government bodies or in public enterprises, institutions, and other organizations founded by or affiliated with local self-government units may neither stand for election nor be elected as president or members of the executive board of a national council of a national minority.

A closer examination of the relevant provisions reveals that incompatibility and the implementation of the prohibition of conflicts of interest are subject to two types of limitation. *Ratione personae*, they apply only to the president and members of the executive board. In practice, the question has arisen whether these provisions also apply to the deputy president of a national council, and whether a person elected as a member of parliament may, in any manner—whether through election or delegation of powers by a certified statement of the elected president—perform the function of vice-president or deputy president of a national council. The competent authorities applying the ACNCM have taken the view that, in light of the purpose of Article 7a of the ACNCM, vice-presidents or deputy presidents of national councils should likewise not be members of the governing bodies of political parties, nor elected or appointed officials in state, provincial, or local government bodies that decide on matters relevant to the work of national councils.²²

Ratione materiae, incompatibility and the prohibition of conflicts of interest are limited to membership in the governing bodies of political parties and to functions as elected or appointed officials in state, provincial, or local self-government bodies. With regard to membership in governing bodies of political parties, the legislator had in mind bodies at the national level. This interpretation follows from the illustrative drafting technique used in the provision, whereby, *exempli causa*, such bodies include the president, presidency, executive board, and similar structures. The use of an illustrative legislative technique reflects primarily the diversity of internal organisational structures of political parties, rather than any deficiency in legislative drafting technique.

With regard to the functions of an elected or appointed official in a state body, a provincial body, or a body of a local self-government unit, the legislator links these functions exclusively to bodies which, within the scope of their competences, decide on matters related to the work of national councils. At the state level, such bodies should first and foremost include the National Assembly and the Government of the Republic of Serbia, as well as the relevant ministries responsible for education, culture, public information, and human and minority rights. Although the provision refers to bodies which, strictly speaking (*stricto sensu*), do not include special governmental organisations and services, it may nevertheless be argued that, given their scope of activities, the functions of the president of a national council and membership in its executive board are incompatible with the functions of appointed officials within the Republic Secretariat for Legislation, which prepares regulations concerning the official use of language and script.

Furthermore, although the ACNCM provides that the president of a national council and a member of the executive board may not be an elected or appointed official in a body of a local self-government unit that, within its competences, decides on matters relating to

²¹ Opinion of the Anti-Corruption Agency, No. 014-011-00-0323/18-11, 18 December 2018.

²² Letter of the Ministry of Public Administration and Local Self-Government, No. 011-00-00273/2019-27, 25 October 2019.

the work of national councils, the Agency for the Prevention of Corruption, adopting a perhaps overly broad interpretation, considers that this refers not only to the offices of mayor, deputy mayor, members of municipal or city councils, presidents and deputy presidents of municipal or city assemblies, and councillors of such assemblies, but also to employees of municipal or city administrations responsible for budget execution, provided that they qualify as officials or persons holding positions within the meaning of Article 2 of the Law on the Anti-Corruption Agency²³ or Articles 3 and 4 of the Law on Employees in Autonomous Provinces and Local Self-Government Units. This interpretation further extends to directors of public enterprises at the level of a local self-government unit in which the national council operates, where such enterprises are active in the fields of culture, public information, or the official use of language and script, in relation to which the national council exercises statutory competences. It also includes directors of primary schools in which the educational process is conducted in the language of a national minority, given that national councils have competences regarding the appointment of governing bodies and the selection and appointment of school principals.²⁴ On the other hand, the position adopted by the Ministry of Public Administration and Local Self-Government appears more appropriate, according to which, in light of the competences of assistant mayors—who, under the Law on Local Self-Government, initiate initiatives, propose projects, and prepare opinions on issues relevant to development—there is no obstacle preventing an assistant mayor from simultaneously serving as president of a national council or member of its executive board.²⁵

The restriction of incompatibility rules and the prohibition of conflicts of interest in both personal and material terms may, on the one hand, be criticised, as a consistently developed application of the underlying principles of these institutions would require their extension to all members of national councils, as well as, *inter alia*, to directors or members of the governing bodies of institutions, enterprises, or other organisations founded by a national council or whose founding rights have been transferred to it. On the other hand, the legislator likely introduced such limited incompatibility rules and conflict-of-interest restrictions having in mind the demographic structure and staffing capacities of certain national minorities and their national councils, since a strict and comprehensive application of incompatibility rules could potentially undermine the smooth functioning of both the councils themselves and the institutions established by them or whose founding rights have been transferred to them.

5. CONCLUSION

Minority non-territorial autonomy/self-government is a phenomenon that raises significant scholarly interest and analysis. It refers to the self-government of a group of persons belonging to national minorities through a sub-state entity of a non-territorial nature, in matters considered essential for the preservation and reproduction of their distinctive cultural characteristics, which may relate to language, culture, religion, or customs. The

²³ Official Gazette of the Republic of Serbia, Nos. 97/08, 53/10, 66/11 (Constitutional Court Decision), 67/13 (Constitutional Court Decision), 112/13 (Authentic Interpretation), 8/15 (Constitutional Court Decision), and 88/2019.

²⁴ Opinion of the Anti-Corruption Agency, No. 014-011-00-0323/18-11, dated 18 December 2018.

²⁵ See Letter of the Ministry of Public Administration and Local Self-Government, No. 011-00-00244/2019-27, dated 17 September 2019.

notion of a sub-state entity encompasses the institutional frameworks and arrangements through which non-territorial autonomy is exercised. The bodies through which minority non-territorial autonomy is exercised are collegial in nature, which raises questions concerning the rights and duties of their members. In most cases, in addition to members themselves, employees and other engaged persons may also participate in the work of such bodies, which necessarily requires an examination of their legal status.

Generally speaking, the bodies through which non-territorial autonomy/self-government is exercised do not possess a state character, but are nevertheless regarded as holders of public powers. Comparative legal analysis reveals two distinct approaches to this issue. The first is characterized by the complete absence of specific legal regulation in this field and is typical of states in which non-territorial autonomy/self-government bodies are considered to have neither a state nor a public-law character (Estonia, the Russian Federation). In contrast, other legal systems recognize the public-law character of such bodies, i.e., acknowledge that they exercise public powers, and cautiously provide specific rules regarding the rights and obligations of members, employment relations and remuneration, as well as incompatibility of functions and conflicts of interest. These rules do not fully correspond to those applicable to civil servants, but nevertheless introduce a set of functional and institutional specificities reflecting the hybrid nature of such bodies.

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Status članova, zaposlenih i angažovanih lica u manjinskoj neteritorijalnoj autonomiji

Apstrakt: Neteritorijalna manjinska autonomija/samouprava koja se ostvaruje posredstvom kolegijalnih tela, nameće pitanje pravnog statusa članova, zaposlenih i angažovanih lica. Iako je reč o pravima i obavezama članova, radnim odnosima i primanjima, kao i inkompatibilitetu i konfliktu interesa, ipak je u pitanju šira problematika, jer se u njoj može sagledati stav uporednih zakonodavstava o pravnoj prirodi neteritorijalnih manjinskih tela. Drugim rečima, ako manjinska neteritorijalna autonomija/samouprava ima javnopravni karakter, onda će državno intervenisanje u pitanja prava i obaveza članova, radnih odnosa i primanja, kao i inkompatibiliteta i konflikta interesa biti uočljivije.

Ključne reči: nacionalne manjine, neteritorijalna autonomija/samouprava, prava i obaveze članova, radni odnosi i primanja, inkompatibilitet i konflikt interesa



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