

Balázs Vizi – Norbert Tóth – Edgár Dobos eds.
 (2017): *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*
 Baden-Baden, Nomos, 272 pages

CSILLA VARGA

Analysing minority representation in Central and South-Eastern Europe is a big challenge not only because of some non-negligible characteristics of the mentioned countries but also because of the complexity of the issue. However, there is no scarcity of writings dealing with the situation of minorities and minority rights; the presently reviewed volume focuses specifically on Central and South-Eastern European countries. The aim of the contributors is to give an overview of specific representative arrangements being developed and modified in the past five to ten years and about the gaps between law on paper and in practice.

The goal of the contributors – *Markku Suksi, Balázs Vizi, Maria Dicosola, András Pap, Ivan Vukovic, Filip Milacic, Stevo Pendarovski, Ivan Dodovski, Marina Andeva, Zarije Seizovic and Adrian Zeqiri* – is to identify the theoretical, legal and political problems related to the political participation of minorities based on international standards.

Markku Suksi in his essay about the effective participation of minorities in public affairs in the light of the Lund Recommendations poses the question how did interpretations of main treaty bodies in Europe evolve in the light of the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life. Focusing on the practice of the European Court of Human Rights (ECtHR), it can be stated that the practice of the Court permits different electoral systems in order to enhance the position of minority populations through participation in electoral structures. The Court sees the possibility of securing reserved seats for minorities in a constitutional system as a positive achievement, and disapproves discriminatory arrangements in domestic election law in connection with minorities. It is not possible for the Court to propose any electoral system for the promotion of minority interests, though; it depends on the decision of each state. Suksi also examined the praxis of the Advisory Committee (AC) on the Framework Convention for the Protection of National Minorities (FCNM). The majority of their recommendations is based on the importance of consultations and consultation mechanisms with

national minorities. However, arrangements and different mechanisms which could benefit minority communities in real terms are less favoured than arrangements which do not transfer or give more specific power from the State to the minority group; Suksi calls into question the real effectiveness of consultations and dialogue in order to reach effective participation of national minorities. These arrangements are less favoured than those not transferring power from the state to the minority group, and so it is worth questioning whether the mentioned consultations and dialogue can in reality lead to effective participation of national minorities.

The author finally concludes that while the ECtHR has rather limited boundaries, based on different cases, resolving the election-related and other individual issues and having detailed judgments, the AC has more possibilities developing its recommendations based on the FCNM concerning effective minority participation in public life.

Balázs Vizi discusses the European integration and minority rights conditionality policy in CEE countries which faced the challenge of political transition and ethnic diversity in the 1990s, often complemented with inter-ethnic conflicts. International organizations, promoting the protection of minority rights, could deliver many positive developments in CEE countries and offering membership in CoE, NATO and EU strongly motivated the mentioned group of states. It also meant that these organizations incorporated conditionality to their membership policy. Vizi argues that, for instance, the EU could not promote its own minority protection regime in CEE countries, but it tried to transfer international norms into domestic legislations of candidates, and particularly the standards of the International Covenant on Civil and Political Rights, the 1990 Copenhagen Document, the 1992 Helsinki Document, the European Charter for Regional and Minority Languages and the Framework Convention for the Protection of National Minorities. However, the mentioned documents contain mostly weak and flexible provisions and “soft control mechanisms”. The author poses the question whether EU conditionality policy on minority rights can meet the criteria of effective and credible conditionality policy in view of three important elements which are credible conditionality, concrete conditions and more promising external incentives than domestic political costs. By reason of missing legal minority standards in the EU, many minority norms can only be seen as “soft norms” and conditionality has different outcomes in EU member states, even if the principle of non-discrimination is a legally accepted “hard” requirement. Vizi also mentions the European Commission’s practice not paying equal attention to all minority communities, establishing political hierarchy between minority-related problems, and neglecting the conceptual debates about the situation of minorities, as well.

The concluding remarks of the chapter contain that although the EU was successful in changing anti-discrimination legislation, in connection with minority rights, positive outcomes cannot be affirmed and political conditionality has not been translated into normative requirements. EU membership conditionality was

effective only in cases when it changed domestic policies and initiated the adoption of legislative measures affecting minorities; in other cases, concerning the appropriate implementation, it remained in the background.

The following chapter written by *Maria Dicosola* deals with the rights of national minorities in Croatia. She starts her article pointing out the fact that the war of the 1990s happened partly because of the failed experiment to keep different national groups together in the same territory. After the war two opposite processes started: the first was the establishment of a new independent state and the second was the process of European integration where the respect of democratic standards and particularly minority rights had to be followed. In Croatia it meant that the development of minority rights legislation has been supported by the impact of European conditionality. In the 1991 Croatian Constitution the state is defined as a nation state, but also as the state of the members of its national minorities. Furthermore, the Croatian legislation is very detailed on national minority rights because of the supervision of European institutions. These rights are also based on the principle of non-discrimination and secure, for instance, the right of national minorities to elect their representatives into Parliament, freedom to use their languages (also in education and at local level) and cultural autonomy. However, there are some downsides of the Croatian legislation. According to the Constitution only those national minorities have the above mentioned rights who are citizens of the country, and the Preamble contains a list of “accepted” groups of national minorities. In addition, cases of ethnic discrimination are frequent against Roma and Serbian minorities and the implementation of minority rights, such as the use of minority languages at local level, is often missing. Dicosola explains that there are noticeable adverse effects of the legislation which are based on European standards, and the principle of equality amongst minorities is jeopardized. She ends with the conclusion that the case of Croatia shows that European conditionality can influence the national legal drafting process on a wide basis, and in many cases the legislation is not in line with reality in the given country. Croatia has to find the way between nation building and the protection of minority groups in the future.

András Pap in his article explains the new institutional arrangements in the Hungarian multiculturalist model, particularly the new 2011 Hungarian Constitution and the newly adopted Act on the Rights of Nationalities. He states that the model is inconsistent because it does not contain exact policy goals and does not answer certain minority demands. It also means that the model cannot fulfil its goals mainly because of its theoretical and procedural weaknesses, for instance because of the unclear policy goals causing problems in the voting system, not to mention the difficult situation connected to passive and active voting rights. There are some deficiencies in the Hungarian model concerning the recognized minorities and affiliation criteria, as well. The author shortly sums up a few arguments in favour

of and against parliamentary representation of minorities. On the one hand, parliamentary representation is an acquired right according to the 2010 amendment of the Constitution which was already present in the previous document. It also supports legal protection and representation of minority interests which can serve as an example for other countries, as well. On the other hand, the notion that the previous Constitution contained the obligation of parliamentary representation of minorities is based on improper reading of the document. Besides this “ethno-corruption”, the utilization and misuse of remedial measures for private means that are contrary to the legislators’ intentions, and the abuses in minority elections leads to negligence of the issue. There are also serious theoretical concerns about minority representation, and also the minority law or protection is used as a justification in representing the interests of ethnic Hungarians abroad which is hardly defensible from a legal and moral point of view. Pap makes the conclusion that the legislator of the Constitution has unduly restricted the principle of equal voting rights, and it is difficult to identify how it deals, for instance, with multiple identities. National minorities, other than Roma and German minorities, are limited to the institution of the advocate who represents their interests, and because of their modest activities only the future can tell how this institution works.

Through the chapter of *Ivan Vuković* and *Filip Milačić*, the reader gets a closer look into the minority representation in Montenegro, as they analyse the status of ethnic minorities in Montenegro prior to and after the 2006 referendum on independence. After the political crisis in the 1980s, the Parliament of Montenegro passed a new Constitution in 1992 in which “all of the citizens of the Republic of Montenegro” received sovereignty, and the coexistence of the minority and majority population is more adequate than in other parts of the former Yugoslavia. The 1992 Constitution also contained a section named *Special Rights of National and Ethnic Groups* such as protection of identity, the right to use their mother tongue, the right to education etc. In 1997 the Parliament adopted a document called *The Agreement on the Minimum Principles for the Establishment of a Democratic Infrastructure in Montenegro* containing a section about the status of minorities. The Albanian, Bosniak, Croat and Muslim minority belonged to the so called “minority nations” as being autochthonous in the country. The Roma, Hungarian and Slovenian minority formed a part of ethnic minorities, which are seen as groups affected by migration. Another reform in 1998 lowered the threshold to three per cent in connection with parliamentary representation of, mainly, Albanian minority, and so more ethnic political parties were strengthened and created. The referendum of Montenegro’s state independence took place in 2006 when the country received full sovereignty. The new *Law on Rights and Freedoms of Minorities* provided a general minority protection framework and strengthened the multi-ethnic character of the country and of the society.

The authors finally sum up that after the renewal of the state independence, national parties of Montenegro could gain more power and support, and the country

has begun its way towards democratization and Europeanization also benefitting national minorities. However, some representatives of Albanians, who were left out from the power-sharing arrangements, are very critical towards the situation of their minority group based on the fact that from 2011 their representation in state institutions was lowered. In spite of that, according to Vuković and Milačić, Montenegro serves as a positive example of politically stable and ethnically-nationally inclusive Western Balkan state.

Minority representation in the Republic of Macedonia is analysed by *Stevo Pendarovski, Ivan Dodovski* and *Marina Andeva* explaining that in the early 1990s the Republic of Macedonia, as a newly independent state, started to go through a social transition. It was the only country of the former Yugoslav Republic who managed to make a peaceful transition to statehood. The 1991 Constitution guaranteed basic minority rights naming minority groups as “nationalities” from which ethnic Macedonians and ethnic Albanians expel the largest group, alongside a few smaller ethnic communities. Tensions between these two major groups ended in violence in 2001; subsequently they signed the peace accord named the Ohrid Framework Agreement (OFA) which laid down the principles of minority representation, as well. The state became a country of ethnic Macedonians and other constituent peoples.

Authors deal with the Macedonian power-sharing arrangements which include several instruments of minority representation (Badinter double-majority voting, equitable representation, proportional electoral model and special representation bodies at the state and local levels). The forthcoming parts of the chapter reveal that minorities in Macedonia can have their own ethnic parties, nevertheless they also have the possibility to be included in mainstream parties. The proportional system increased the number of competing parties, and also the share of ethnic communities in policy-making, however there are differences between the representation of the Albanian ethnic community and smaller ethnic communities. The merit of the 1991 Constitution is introducing a Council for inter-ethnic relations within the parliament, as well.

According to the authors, Macedonian politicians recognized that the inclusion of minorities is crucial to state stability, and a convincing proof for it is that since 1991 all governments were coalition governments.

At the local level, according to the 2002 Law on Local Self-Government, commissions for inter-ethnic community relations can be formed in those municipalities where at least 20% of the total population are members of an ethnic community.

Coming to the conclusions, it can be seen that despite some setbacks, Macedonia could keep the balance in the distribution of political power. However, not all ethnic communities are treated equally; Macedonian and Albanian ethnic communities have the biggest influence and smaller communities receive less attention. A possible solution, offered by the authors, would be the revision of the OFA, so that the minority protection model would not depend on the demands of the Albanian political parties.

The forthcoming chapter written by *Zarije Seizović* demonstrates the ethno-political dilemmas in Bosnia and Herzegovina where the Dayton–Paris Agreement started the democratization process, also creating a strange political structure based on ethnic representations of three “constituent peoples”. The artificial institutional renewal was led by the International Community. In the State of BiH the Law on Rights of National Minorities was adopted which is based on international human rights standards. It calls on the respect, protection, preservation and development of the ethnic, cultural, linguistic and religious identity of the national minorities of the country (seventeen national minorities that live in BiH). They have the possibility, for instance, to establish and preserve their private institutions for education and vocational training in minority languages where they represent an absolute or relative minority, establish radio and TV stations, issue newspapers and other printed information in minority languages and so on.

As it was mentioned before, the Constitution defines Bosniaks, Croats and Serbs as “constituent peoples”, and so individual rights were granted to these groups but not to all citizens. Besides, discriminatory tendencies can be noticed throughout the country because Bosniaks and Croats were not considered to be constituent peoples in the Republika Srpska, and Serbs did not have this status in the Federation of BiH, as well. Although the Constitutional Court of Bosnia and Herzegovina obligated Bosnia and Herzegovina and the Republik of Srpska to amend their constitutions in order to ensure full equality for all three constituent peoples, it did not improve the situation and the position of the mentioned groups. The European Court of Human Rights also established that the Constitution of BiH contains discriminatory provisions, and the political practice in the country can be described as the “democracy of ethnic oligarchies”, and not as a “democracy of citizens”. Positive changes concerning the issue did not occur so far.

Seizović concludes that the situation of national minorities is intolerable in the country, and in the past seven years almost nothing has been changed in order to fight or abolish discriminatory measures. He suggests that it would be inevitable to review the Constitution from a political, legal and constitutional point of view because if this does not happen the country will remain on the margins of the Euro–Atlantic integration.

Adrian Zeqiri illustrates the details of the effective participation of minority communities in the local and central government of Kosovo. The Constitution defines Kosovo as a multi-ethnic state; many rights and competencies are given to municipalities complementing the rights of minority communities. The Law on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo, the Law on the Use of Languages and also the legislation about local self-governments and decentralization protects minority communities and secures different rights for them. However, as the author mentions, there is a difference between the legal background and what is being applied in practice. In the late 1980s

and in the 1990s the inter-ethnic tensions between Albanians and Serbs led to war in 1999. The reconstruction period begun under UN administration in the same year promoting inter-ethnic co-existence. In 2008, after Kosovo's independence a law has been adopted recognizing the participation of different communities in the country. Although the truth is that it does not necessarily mean that minorities can determine the issues of particular relevance and importance for them, nor does it guarantee their secured position in decision-making.

The author deals with positive outcomes of the legislation as well, firstly with the Consultative Council for Communities which is a constitutionally mandated institution whose members are community representatives from the civil society, political parties and key government officials in order to exchange ideas between Kosovo's various communities and the government. The shortcoming of the institution emphasized by Zeqiri is the non-appropriate budget allocation and the legally non-binding nature of its decision. Concerning the guaranteed minority seats in the parliament, the Constitution declares that it will always be an integral part of representation of minority communities consisting of 20 seats, 10 for the Serb community and 10 for non-Serb non-majority communities.

In the local government, which is the basic unit of local self-governance for all citizens, municipalities deal with many issues concerning citizens and minorities. Certain municipalities enjoy broader set of rights than others; enhanced competencies are delegated to municipalities with a Serb-majority in order to integrate this community into the public and political life. Since 2010 every municipality has a Municipal Office for Communities and Return with the aim of protecting and promoting the rights of communities. Also, each municipality has to establish a Municipal Human Rights Unit monitoring the compliance with human rights at the municipal level, especially in the field of discrimination, gender equality, use of languages and so on.

The author points out in the conclusions section that the constitutional framework in Kosovo is highly advanced and the rights secured for minority communities are uniquely built up in the country implemented in the field and in practice, as well. Furthermore, with the creation of Serb-majority and non-Albanian majority municipalities with enhanced competencies gave the possibility for Serbs and other minority communities to govern themselves which seems to be effective so far.

Norbert Tóth discusses the case of the national councils of national minorities in Serbia where the effective participation of national minorities was an issue even in times of the communist Yugoslavia. The Constitution of the Republic of Serbia strengthened the autonomous provinces in the 1990s making possible to establish national councils for national minorities. The adoption of the Charter on Human and Minority Rights and Civil Liberties and the Act on the Protection of Rights and Freedoms of National Minorities in 2002 was an important step concerning domestic legislation. In 2009 Parliament also adopted the Act on National Councils of National

Minorities regulating the election procedure of the national councils and their composition. National minorities can choose between direct and indirect methods in order to elect the members of national councils; each council has general and special competences. National minorities have the right of taking part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages.

Representatives of minority groups should also be consulted for any draft act in connection with the participation of their members in public life before it is adopted by the legislature. However, the 2009 Act has been challenged at the Constitutional Court of the Republic of Serbia because some of its articles were, according to several applicants, contrary to the 2006 Constitution of Serbia. The author analyses the majority of these claims concluding that the Constitutional Court has unnecessarily restricted the right to effective participation of minorities in political or public life to certain kinds of modalities. Also, based on the decision, national councils retained mainly their consultative role in issues influencing the quality of legislation concerning them.

Tóth emphasizes that the 2009 Act was a significant step towards effective minority representation, the improper implementation of its rules weakens its efficiency, and furthermore state authorities do not treat national councils as equal partners. Finally, the author states that the Act provides less effective participation than before the decision of the Constitutional Court was made, and it would be necessary to revise the constitution in order to restore the pre-2014 situation of wider participation.

The Conclusions section of the book, written by *Edgár Dobos*, *Norbert Tóth* and *Balázs Vizi*, summarizes the local variations of minority representation in South-Eastern Europe.

The starting remark is that EU member states like Hungary and Croatia, despite their significant historical and ethnic differences, both address minority issues from a strictly legal point of view.

In connection with South-Eastern European countries, in the majority of states there is a legislative minority protection framework underpinned by the Constitution. In these countries different minority groups are present, and so states had to adopt and develop different ethno-political strategies. According to the authors it is interesting to notice the important role of constitutional courts in shaping laws and regulations connected to minority protection, using different methods. For instance, in Croatia the constitutional court usually defends minority rights and interests, in Bosnia and Herzegovina it represents a human rightist approach and pro-state views emphasizing the collective ethnic rights and the combination of the principles of ethnicity and territoriality.

In South-Eastern European countries the traditional minorities are the beneficiaries of minority rights, being traditional or old minorities, while immigrants are mostly not entitled to it. However, there is a tendency in these countries to increase the number of

legally recognized minority groups creating more beneficiary communities. On that way a hierarchy is set up between different minority groups, such as the regime in Macedonia and Kosovo which is beneficial mainly for bigger and territorially concentrated minorities.

As explained by the authors, the mentioned countries face double pressure: the international community's demand of equality and respect for minority rights, and also their wish to secure the position of their kin-minorities living outside their borders.

Taking into account the international standards and European integration a setback occurs regarding the quality of minority protection when a country becomes member of the EU because it does not have a particular minority protection system, nor standards to which member states could refer to.

The chapter mentions Bosnia and Herzegovina as a special case because of its three "constituent peoples" instead of one titular nation. In the country three parallel nation-building and state formation processes take part, and the majority-minority power-sharing is realized within sub-state level administrative units. The officially recognized national minorities and the constituent minorities create the two basic sub-groups being entitled to different minority rights, for instance, in access to education, employment opportunities, healthcare, pension, public services and social benefits. In Macedonia and Kosovo there is also a hierarchy among minority communities benefiting Albanians and Serbs as the biggest and territorially concentrated minorities. However, it has to be mentioned that decentralization in both countries delegated political, administrative and fiscal competencies to municipalities subjugated to the central government. On that way, municipalities can influence central government politics, at least in principle.

Final remarks of the chapter, and also of the volume, are that international minority right standards and the evolution of domestic legislations about participation of minorities in South-Eastern Europe focused on the codification of the actual political situation and commitments. These compromises, however, cannot respond to the changing minority situation. In many cases there is a need for new legal mechanisms changing the existing structure and helping confidence-building between minority and majority communities.

Beyond International Conditionality is an original and thematically focused volume dealing with the challenging issue of minority representation in Central and South-Eastern Europe. The variety of authors and topics gives the opportunity to concentrate on different issues and aspects, also highlighting diverse effects and trying to offer a wider range of solutions and ideas. Also, due to the thematically defined nature of the volume, contributors could narrow down their topics to specific issues, making it easier for the reader to follow their reasoning. The short historical and/or legal overview at the beginning of almost each chapter provides a useful guide for those

less familiar with the relevant issue summarizing the crucial historical events and legal instruments related to minority protection.

Without focusing on a specific chapter, several critical remarks should be added, though. The conclusions and suggestions sections found at the end of each chapter, in a few cases contain too generalized findings only slightly reflecting the essence of the chapter. Furthermore, the book truly answers the question as to which arrangements have been developed or modified in the mentioned countries in the past ten years; some parts do not give possible solutions in order to solve presently disputed issues. It has to be added, though, that offering solutions is an almost impossible expectation concerning a few difficult minority issues placing a heavy burden on the expert.

In general, these critical remarks do not detract from the fact that the contributors' thoughts and research provide a fresh look at the situation of minority representation in Central and South-Eastern European countries, and the hits far outweigh the misses. The volume gives a great and professional background about the mentioned topics, and for those interested in minority issues of aforesaid countries, it is a collection worth to be drawn upon.