The Many Faces of Minority Non-Territorial Autonomy

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The idea of non-territorial autonomy (NTA) has received renewed attention both in policy documents and academic literature starting from the 1990s and the redesign of minority protection in Europe. In the context of the bloody breakups of Yugoslavia and the Soviet Union along ethnic lines, as well as the general reluctance in eastern Europe towards territorial autonomy as a perceived stepstone towards secession, NTA has been discussed as a tool to reconcile minority interests for internal self-determination and the states' needs for stability, sovereignty, and territorial integrity. However, this has not resulted in defining a uniform model of NTA. Moreover, NTA is "rather a multiplicity of interpretations loosely connected to each other than a single normative principle or coherent model" (Osipov, 2015, p. 207). It lacks certainty as a general concept and only some core "components may be easier to pinpoint" (Suksi, 2015, p. 84). As a result, "NTA operates in different and varied forms" and "includes a mixture of different arrangements" (Nimni, 2015, pp. 68, 70).

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The purpose of this chapter is to demonstrate this multi-faceted nature of NTA by pointing out some core conceptual unclarities/variations, as well as by outlining the main types of NTA. The first section outlines the vagueness of the NTA concept, or concepts, through explaining manifestations of the territoriality and personality principles in the NTA, discussing the difficulties in defining 'autonomy' and to what extent NTA can be considered as a fully-fledged autonomy, and finally showing how the very term NTA has been interpreted in various ways by different authors. In the second section, the chapter provides an overview of the most common types of NTA: cultural, functional, and personal autonomy. It explains core features of each of the type and offers some real-life examples that can help to better grasp the variety of manifestations of the NTA. As a result, the discussions in the chapter shall help to understand that NTA is not a uniformed and coherent model, but has various forms and components that can be differently combined. While such vagueness of the NTA can be considered its weakness, at the same time such flexibility is also its strength, as it enables the NTA to be tailor-made to meet the given context and best address the specific needs of diversity accommodation.

8.1   The Vagueness of the NTA Concept(s)

There are a few underlying principles behind the NTA. First is the group recognition and the personality principle. The bearer of the autonomy is a designated ethnic, linguistic, or religious group, and the democratic principle and the diversity accommodation are combined in the NTA in the manner to enable governance by the minority and for the minority. The main rationale behind the NTA is to provide a channel for self-rule for dispersed or small minorities, who cannot benefit from territorial autonomy (TA). However, the distinction between the personal and territorial elements in NTA is not so straightforward, and they are often combined rather than clearly distinguished. Second principle rests on the idea that the NTA should provide a channel for internal self-determination and self-rule for the minority. However, the very concept of autonomy remains rather blurred and "the expression ´autonomy´ is itself subject of debate" (Prina, 2020, p. 426). Plus, the existing NTA arrangements grant weak powers to the respective minority institutions. Third principle is that NTA is primarily cultural autonomy: the functional focus of NTA lies "on cultural rather than material matters" (Coakley,

2016, p. 11). Its main goal is to facilitate protection of the core minority identity (cultural) traits. However, the term culture is to be interpreted broader, so that NTA goes beyond 'folkloristic' understanding of cultural preservation. Plus, some variations exist depending on whether the NTA arrangement rests on public or private law. All this leads to the fact that NTA can be implemented in different formats.

8.1.1   Territoriality and Personality Principles in the NTA

The very idea of the NTA is to adjust the relationship between the ethnicity (group belonging), power, and territory and enable peaceful coexistence of various ethnic groups on the same territory. Because of the relevance of the territory not only for the governance but also for the protection of ethnic identity, territorial autonomy (TA) has been viewed as the main instrument for accommodating diversity in ethnically diverse (multinational) states. For numerically bigger, territorially concentrated, and politically well-organized national minorities, territorial autonomy comes as a proper format for internal self-determination and managing of own affairs. For such groups, NTA is barely attractive as it cannot serve as an adequate alternative or substitute for TA, but at best as a complementary tool. The NTA has traditionally been perceived as a suitable model for dispersed minorities, who cannot be territorially organized and as such do not meet the preconditions of territorial autonomy. Such perceptions of dichotomy between the TA and NTA have created the impression of TA as being the primary instrument for minority accommodation and internal self-determination, whereas the NTA is the second-best alternative, a sort of a 'comfort' solution for the groups who have failed to obtain TA. This dichotomy, which is largely conditioned with the still dominant understanding of the nation-state, creates some conceptual misunderstandings with the NTA.

Notwithstanding that many countries in Eastern Europe have introduced some forms of NTA out of a fear of separatism stereotypically associated with (minority) TA and as a sort of compensation for it, it is wrong to perceive NTA as an alternative to the TA. Territorial and non-territorial autonomy are not mutually exclusive but rather mutually complementary concepts. Thus, opting for one does not automatically exclude the other, and the same minority regime can indeed combine both territorial and non-territorial autonomy. For instance, persons belonging to a minority living outside the autonomous territorial unit can enjoy some

benefits based on the NTA. Or persons belonging to a minority in the autonomous territorial unit can enjoy some collective rights in the form of NTA too. Finally, the two can be combined in the sense that territorial autonomy is group-neutral (pure or 'standard' territorial division), whereas group recognition is provided through the NTA.

The conceptual difference between TA and NTA can also been observed through the feature that TA primarily rests on the territoriality principle while NTA is based on the personality principle, but this is not so straightforward. Indeed, the guiding principle in forming TA is that the autonomy is vested in the territorial unit and the autonomous decisions affect all persons living in the given territory, whereas NTA rests on persons belonging to the specific group, and autonomous decisions affect only those people. Yet, territory and personality cannot be rigidly separated. In territorial autonomies where territorial division aims at accommodation of ethnic diversity, the group (personal) dimension can be manifest too: territorial autonomy de facto serves to the self-rule of the specific ethnic group. On the other hand, NTA cannot entirely decouple from territory. People live in spaces, and decisions made within autonomy have effects in some territory/territories. Moreover, many examples are indicative of territorial restrictions to the NTA, i.e. minority right to NTA is limited to designated areas where the group traditionally lives (for example, the link between the Sami Parliaments and Sami Homeland, the autonomy of Muslims in Western Thrace, the 'ethnically mixed areas' in Slovenia, to name but a few). Other examples show that even the models entirely based on the personality principle require some territorial organization (as proposed in the Renner/Bauer model, or the organization into local, regional, and national nationality self-governments in contemporary Hungary). Finally, if applied to territorially concentrated minorities in the position of local or regional majorities, the NTA can de facto produce effects of territorial autonomy.

Notwithstanding all the nuances, the guiding rule underling every NTA is that the bearer of autonomy are persons belonging to the designated (ethnic, religious, or linguistic) group. In that sense, every NTA is in its nature a personal autonomy, although many authors list personal autonomy as a variant of NTA. Simply put, NTA is an autonomy of the group for the group: only persons belonging to the group can establish the NTA and participate in the decision-making, and only they are (directly) affected by the decisions taken through this arrangement. This core feature of the NTA poses one of the main challenges to the very

concept: how to identify who is in and who is out, who belongs to the group and who does not. This is one of the contested issues not only in theory but also in the existing practical examples. While acknowledging the necessity to observe the freedom of self-identification, many models search for solutions to secure some sort of 'objectivity check' and thus minimize the potentials for abuse. Moreover, as the democratic standard requires for the autonomous bodies to be directly elected, the NTA presupposes creation of special voting registers of persons belonging to the specific group, which is also challenging.

The Group Recognition and the Question of Belonging

Based on the personality principle, NTA opens the important question of the personal scope of application, both on the group and individual levels. The concept of NTA inevitable calls for some sort of group recognition and differentiation. This selection of the groups who can form a NTA can be challenging and calls for some negotiation based on various criteria: historical, political, demographical, economical, to name but the central. States are generally restrictive in approach, reserving the NTA arrangements for only a few groups, usually 'autochthonous' or 'traditional' minorities. For instance, Hungary recognizes 13 national minorities who are entitled to form nationality self-governments, provided that the demographic criteria are met; in Slovenia, only the Italian and the Hungarian communities can establish the self-governing national communities, and only in the so-called 'ethnically mixed areas'; in the Nordic countries, the Sami enjoy the right to establish the Sami Parliament; in Germany, only Danes and to some extent Sorbs can benefit from some sort of minority autonomy.

The issue of individual identification appears even more challenging for the NTA. There are various models of individual identification with the minority, whereas the main two options are the self-identification and identification by others. Moreover, the identification can rest on subjective and/or objective criteria. The European standard favours self-identification based on the individual (subjective) sense of belonging. However, bearing in mind the shortcomings in the fully subjective self-identification and potentials for the abuse in accessing the benefits of minority protection, justified imposing of objective criteria and identification by other has also been accepted as a complementary method. Such objective criteria usually refer to maintaining the links with the group, minority language proficiency, family links with the members of the group, etc. The criteria for identification with the minority benefiting of the NTA has been a contested issue in almost all cases: the definition of who is Sami has for years called for intensive debates in Finland and has been subject to striking court battle between the Sami Parliament and the Finish state; in Slovenia, the question of who can be enrolled on special voting registers (reserved for members of Italian and Hungarian communities) has also been disputed, brought before the Constitutional Court, and provoked the reaction of the Parliament, which had to set guiding criteria for the enrolment. The question here is not only about what are the 'objective' criteria of belonging to the protected minority, but also who decides on these criteria and whether they are met: is it the state through its legal order, or the minority as part of the autonomous prerogatives?

Concept in depth

8.1.2   *The Scope of Autonomy*

The main rationale behind the NTA is to provide a channel for minority internal self-determination through transferring decision-making powers in areas pertinent to the minority identity to the minority itself. Along this line, the NTA is a form of minority self-rule. However, the substance/content of the minority self-rule under NTA remains rather vague. The very concept of autonomy is quite blurred, not to mention the minority autonomy, which has not even been recognized in international law as a separate minority right but derived from the right to participation. As it has been rightly observed, the literature offers "a great deal of confusion when it comes to explaining precisely what [autonomy] is" (Nootens, 2015, p. 35). Is it self-government or self-rule, form of self-legislation, subsidiarity, or something else? Simply put, a fully-fledged autonomy has three core dimensions: legislation—power to adopt binding rules, governance—power to administrate the delegated issues, and finances-taxation: the power to impose taxes and to autonomously manage the budget. The existing analyses of NTA examples at least in Europe show that "many arrangements that are called 'autonomous' are in fact far from fulfilling the stronger definitions of autonomy" (Salat & Székely, 2014, p. 472). There are a few arguments that underpin such statement. First, the NTA "normally does not entail the exercise of law-making powers" (Suksi, 2015, p. 113) and the examples throughout Europe show that the self-rule competences of NTA bodies are limited to internal self-organization. Second, in most cases, the autonomy is in fact limited to self-governance manifested through delegation of mainly administrative tasks from the state to the NTA body. Moreover, "the low level of public authority that entities belonging to the category of NTA generally can exercise" (Ibid., p. 114) often suits better to the consultative arrangement than the autonomy. Finally, in most cases the NTA bodies are (over-) dependent on the state funding and lack financial autonomy.

The quality of autonomy does not only depend on the level of delegated public powers, but also the areas in which it can be exercised. It appears that there is a general consensus in perceiving NTA as mainly cultural autonomy (as opposed to political autonomy embedded in territorial autonomy). It has been rightly observed that "autonomies based on the personal principle are most often confined to competences regarding cultural matters, while additional political competences are only to be seen in territorial arrangements" (Salat & Székely, 2014, p. 453). Hence,

education, language, culture in a narrow sense, and religious issues (if applicable) form the core of the NTA arrangement, as being central to the protection (preservation and development) of the minority identity. Indeed, this can be unattractive for politically well-mobilized minority groups, especially if the instruments for minority participation in decision-making are weak. Moreover, the effects of the NTA on the minority protection will depend on the quality of the delegated public powers (as briefly described above). The argument here is that if the autonomy arrangement in the NTA is limited in scope (culture), this can be compensated through the high level of delegated public powers. Unfortunately, this is not the case in the reality, and most of the NTA arrangements are in essence 'soft' or 'symbolic' autonomy.

Concept in summary	**Autonomy in a Nutshell** The word autonomy has Greek roots: it comes from the Greek 'autonomia'/ αὐτονομῑᾱ /, combining the words auto (self) and nomos (custom or law). On the individual level the term is usually understood as personal freedom, whereas at the institutional (political) level is interpreted as the power to self-rule and/or self-governance. International law does not guarantee minority right to autonomy, and it is usually derived from the minority right to participation. Autonomy presupposes that some public powers are transferred to the autonomous entity, in the case of NTA a minority group represented in a body or institution. Such autonomous powers are limited to organizational issues (self-organization) and management of minority culture (in the wider sense, also covering education, religion, and language). In a fully-fledged NTA, the minority would have full powers to set rules on the minority culture and implement those through own institutional framework. The practice, however, shows, that the states tend to keep the core of the competences, and through NTA arrangements simply open channels for minority participation in decision-making by public authorities. Thus, in many instances, minority self-rule is transformed into shared-rule. Management of minority institutions is another very important aspect, through which self-governance can be manifested. In this case, the minority represented through the NTA body can be vested with the power to autonomously run minority institutions within the legal framework set by the state, or to participate in managing institutions to the various degrees, which is also indicative of the quality of autonomy.

8.1.3   One Term Many Meanings

The term NTA is a generic term covering a variety of meanings and interpretations. There is no single uniformed NTA model, and this vagueness enables NTA to take various shapes. On the practical level, this is rather an asset than a failure, because various NTA elements/features

can be differently combined and adapted to the specific situation in the respective state. More problematic is however the inconsistency in the academic approach to the NTA: not only there is "a diversity of terminology" (Coakley, 2016, p. 11), but authors give different meanings to the same terms. The analysis performed by the Nootens is indicative in this respect. It has been identified that most of the authors define NTA as either personal or cultural autonomy, with the aim to address religious, ethnic, cultural, and/or linguistic issues. This is widely acknowledged and can be considered the standard. Yet, for some authors "'cultural autonomy' is the generic expression encompassing all forms of NTA", whereas others use the term "'personal autonomy' as the generic expression", and sometimes these two are used as synonyms (Nootens, 2015, p. 42). Moreover, in some classifications, personal and cultural autonomy are put as separate types of NTA (for example, Suksi, 2015, or Heintze, 1998), or references are made to "cultural autonomy based on the personality principle" (Salat & Székely, 2014, p. 443). In addition to cultural and/or personal autonomy, functional autonomy is usually identified as one of the subtypes of NTA. However, again, the interpretations of the functional autonomy vary: is it, for instance, a transfer of public powers to civil law entities or (personal) autonomy given to religious communities, or both? Some understandings of NTA go so far to include consociationalism and "forms of representation that de-territorialize self-determination, as in the case of indigenous communities, the juridical autonomy of religious communities, or in the practice of many forms of religious and/or multicultural forms of representation" (Nimni, 2015, p. 68). On the other hand, it has been argued that consociationalism does not fit the NTA, because it fosters cooperation beyond ethnic lines (Salat & Székely, 2014, p. 445). However, the concepts of 'legal pluralism' and 'institutional completeness' "become increasingly relevant to the study of non-territorial autonomy arrangements" (Ibid.).

Such a terminological and conceptual mishmash clearly shows that the categories of NTA are not clearly defined, that the borderlines between them are rather soft, for which reasons "it is not possible to clearly distinguish between them" (Heintze, 1998, p. 21). Moreover, they "often overlap or have a complementary role in the various institutional set-ups" (Salat & Székely, 2014, p. 445).

NTA Revealed: key points
- Being based on the personality principle, every NTA is per se a personal autonomy (as opposed to territorial autonomy).
- With the main focus put on the protection of the national identity, and under understanding that the culture in wider sense is core for such protection, every NTA is per se also a cultural autonomy (as opposed to political autonomy).
- As there is no one uniform model of NTA, each NTA arrangement is a mixture of different elements, with the milestones being the identification of groups and individuals covered, the quality of transferred powers (areas and functions), and the very institutional setup for the exercise of transferred powers.

Concept in depth

8.2 THE MAIN TYPES OF NTA

Notwithstanding the various conceptual interpretations of NTA as well as variety of NTA arrangements, one can identify three standard types of NTA: cultural, personal, and functional autonomy. As already mentioned, the understanding of these types, or modalities, of NTA are not uniform and there are conceptual nuances in approaches, but some core features can be singled out. These will be briefly explained, based on the academic discussion and the available practical examples in Europe.

8.2.1 National Cultural Autonomy

Cultural autonomy is the usual form of NTA, to the extent that it is often perceived as synonymous to the NTA. The Renner/Bauer model of NTA, which is consider the only fully-fledged *model* of NTA, is also in essence a cultural autonomy. Moreover, most of the existing NTA arrangements in Europe show features of cultural autonomy. Simply put, cultural autonomy can be defined as "a personal autonomy of some kind which is limited to cultural affairs" (Heintze, 1998, p. 21).

The rationale of cultural autonomy rests on two important premises. First is the understanding that one of the central goals of minority protection and accommodation of diversity is the protection of minority identity, i.e. the core identity (cultural) traits: cultural affairs lay at the heart of minority protection. Second is the understanding that the application of the majoritarian democratic decision-making would result in (ethnic) majority to decide on the issues pertinent to minority national identity. Against this backdrop, cultural autonomy should enable for the minority to decide on cultural issues and facilitate cultural development of the

minority group. It is important to note that cultural autonomy is more than cultural freedom. It goes beyond the right to education in own language, the right to use of language, or the right to manifest own culture. The core feature of cultural autonomy is creation of a public body through which minority can manage own cultural and educational affairs. Moreover, it is necessary that the state transfers some of the public powers to such body of minority cultural autonomy. To some extent, cultural autonomy can be perceived as a top-down arrangement, because it is the state who establishes special legal persons-statutory associations under public law, which are then vested with some decision-making powers in minority relevant cultural areas. Such bodies can then manage minority educational and cultural institutions and have a say in all issues relevant for the minority (for instance, school curricula and textbooks, cultural strategies and programmes, policies aimed at language protection, to name but a few). Noteworthy is that such bodies are directly elected by persons belonging to the minority in question, which poses challenges to defining criteria of belonging as well as creation of special voting registers, as already explained above.

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Case studies

National Cultural Autonomy in Practice

The first practical experiment with the institutionalized minority cultural autonomy was made in the interwar Estonia, based on the Cultural Autonomy Law of 1925. In this model, any ethnic group with more than 3,000 people could create a legal body, which had some powers in the areas of education and culture, including managing institutions, plus could levy taxes on the group members. The system was revoked when Estonia became part of the Soviet Union, and reintroduced in 1993, after Estonia regained its independence. However, the national cultural autonomies in Estonia have no significant public powers, and are rather of symbolic nature.

Hungary has introduced minority cultural autonomy in 1993, and this model is often considered as an exemplary model of cultural autonomy in Europe. National minorities ('nationalities') in Hungary can establish nationality self-governments at the local, regional, and national levels. These are directly elected bodies, with a wide range of public functions, covering self-organization, representing minority interests in various instances, managing institutions, participation in decision-making, to name but a few.

In Serbia, cultural autonomy is facilitated through national minority councils. These are centralized bodies, and one minority can establish one council. The system is rather liberal and any group that meets the criteria of national minority stipulated in the law and numbers at least 300 people can establish the council. So far, 23 national minority councils have been established. The competences of national minority councils cover four areas of minority self-governance: culture, education, information/media, and official use of minority language. Core is the authority to establish minority institutions or participate in managing public institutions (schools, cultural institutions, media). In addition to this, national minority councils can have a say in issues pertinent to curricula and text-books, protection of cultural heritage, media programmes in minority language, topographic indications, just to name a few.

In addition to these examples, national cultural autonomy can be found in Slovenia, Latvia, and the Russian Federation, although the latter two have been contested.

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8.2.2 Cultural Autonomy Plus: Indigenous Peoples

NTA can provide a suitable framework to accommodate indigenous peoples, and it comes as no surprise that many autonomy arrangements for indigenous peoples throughout the world contain NTA elements. The position of indigenous peoples is slightly different than of national minorities, because of the understanding that the international law envisages the right to (internal) self-determination to indigenous peoples from which they can derive the right to autonomy. Moreover, international law has set the standard of the 'free, prior, and informed consent' as a

necessary element in the protection of indigenous peoples, which presupposes existence of some form of institutional organization of the group. The requirement of the 'free, prior, and informed consent' means that states (public authorities) are obliged to "consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions (…) before adopting and implementing legislative or administrative measures that may affect them" (UNCHR, 2013). The scope of issues in which indigenous peoples must be consulted goes beyond the protection provided to national minorities, and covers not only 'cultural' affairs, but also questions pertinent to land, territory, and resources, including mining and other utilization or exploitation of resources. The obligation to obtain the consent from indigenous peoples is even stronger in the cases of relocation from their lands or territories, and/or the storage or disposal of hazardous materials on these lands or territories. Hence, while the autonomy arrangements for national minorities in the format of institutionalized cultural autonomy typically cover issues pertinent to education, language, cultural heritage, autonomy arrangements for indigenous peoples usually go beyond and include land, resources, environment, indigenous economic activities, and protection of the indigenous 'way of life' in a broader sense. Because of the specific attachment of the indigenous peoples to the land/territory that is not only spatial but also emotional/spiritual, autonomy arrangements for indigenous peoples even when based on personality principle inevitably have a strong territorial dimension, and indeed combine territorial and non-territorial elements.

A variety of autonomy arrangements for indigenous peoples can be found in non-European contexts, which is not surprising due to the historical reasons. The Americas (Canada, USA, and a handful of states in Latin America) and New Zealand are typical examples of systems that provide protection for indigenous peoples through autonomy, usually based on personality principle (hence, NTA) but limited to designated 'homelands' (territories). In Europe, the Sami have the status of the indigenous peoples and enjoy some degree of autonomy in the three Nordic countries (Finland, Norway, and Sweden). Some ethnic groups in the Russian Federation and Ukraine also enjoy the status of indigenous peoples and some NTA arrangements can be found there too. On the other hand, the autonomy for the indigenous peoples in Denmark is facilitated through territorial autonomy (Greenland).

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Case study

The Sami Parliaments in Brief

The Sami of Norway, Sweden, and Finland enjoy autonomy that has been institutionalized through the Sami Parliaments. They are democratically elected representative bodies, with some powers in areas such as education, language, and indigenous status. Although the competences of the Sami Parliaments are restricted to the areas of Sami homeland, the elections for the Sami Parliaments take place throughout the states' territories, meaning that Sami who do not live in the homeland can vote and stand for the elections. The question of the legal definition of who is Sami and thus has voting rights is "one of the most critical, complex, and contested matters in Sami legislation" (Stępień et al., 2015, p. 124). The criteria of demonstrating belonging to Sami vary among the three countries, but in essence they rest either on the Sami language or the family ties with the Sami. Although Sami Parliaments are considered as institutionalized form of Sami autonomy, they "remain primarily advisory bodies without legislative authority" (ibid., p. 124). They have most say in the areas of language, culture, and education, and to a much lesser degree (if at all) in the areas of land, resources, and agriculture.

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8.2.3   *Functional Autonomy*

While the national cultural autonomy is rather top-down driven, based in public law, and institutionalized through a public body, the core feature of functional autonomy is that it is based on private law and has a stronger 'bottom up' character. This type of NTA rests on the minority right to association, whereas the state delegates (or transfers) some functions (powers) to minority civil organizations. To some extent, functional autonomy is sort of a public–private partnership. Positive aspect in such an arrangement is its bottom-up foundation that provides more organizational autonomy for the minority: the minority group "assembles voluntarily and unbureaucratically" (Heintze, 1998, p. 24) with only minimal state interference (through setting the general rules for the creation of civil organizations). As a consequence, minority can have a stronger sense of ownership of the autonomy arrangement, plus it can be more flexible and adaptable to minority needs. Yet, on the other hand, the legal entrenchment in civil law can weaken the stability, sustainability, and the impact of the arrangement. Much depends on the specific contexts then. Although the model rests on minority civil organizations, the state remains an important stakeholder too. The finding that "any autonomy arrangement requires (…) a state which (..) is willing to share part of its autonomous powers" (Salat & Székely, 2014, p. 444) is applicable

to functional autonomy too. There is a need to distinguish functional autonomy from pure exercise of the right to association: sample establishment of a minority organization does not suffice to label this as autonomy. Crucial is the exercise of public powers, "the provision of public services and exercise of public authority for the minority and by the minority" (Suksi, 2015, p. 88).

Case study	**Autonomy of the Danish Minority in Germany** The organization of the Danish minority in Germany is usually considered as a book example of functional autonomy. Although Danish minority organizations do not perform public powers in a strict sense, they nevertheless "take over functions of societal management that are typically in the realm of the state or its bodies" (Wolf, 2019) and thus can be seen as some form of minority autonomy. Four Danish minority organizations serve as pillars of functional autonomy: *Dansk Skoleforening for Sydslesvig* (South Schleswig School Association), which administrates minority educational institutions (kindergartens, primary and secondary schools); *Sydslesvigsk Forening (SSF)*(South Schleswig Association), which is the cultural umbrella association; *Dansk Sundhedstjeneste for Sydslesvig* (Danish Health Service for South Schleswig), which administrates health services and elderly care; and *Südschleswigscher Wählerverband (SSW)*(South Schleswig Voters Association), a political party that represents Danish minority in decision-making processes by the authorities.

8.2.4   *Personal Autonomy for Religious Communities*

As already mentioned, every NTA is in its nature a personal autonomy, because it rests on the personality principle. Often, personal and cultural autonomy are taken as a synonymous, or one or another are taken as a generic category. Notwithstanding all the nuances, it is noteworthy to single out autonomy arrangements provided to religious groups. Several arguments speak in favour of such an approach: historical background, the issues covered, and the institutional setup. The historical roots of minority protection in Europe have strong religious dimension: the first legally relevant group differentiation and protection were based on religion, and it was the religious groups who first claimed some level of autonomy (notwithstanding the very historical development of the separation of state and church, and the position of the church in the sovereignty dispute as sealed with the Westphalia Peace). Europe has an important historical legacy of the religious autonomy both in the West (most prominently, the Catholic and Protestant churches) and the East (the Ottoman *millet* system). When it comes to the scope of issues, it is important to

note that they are not limited to religious freedom and manifestation of religion in narrow sense, but cover some broader aspects relevant for the religious identity, such as education, family matters, and exception from some general rules (taxation, military service, for example). Finally, institutional setup is driven by the organization of religious groups, as on the group level religious autonomy is exercised by churches and religious communities.

Although due the principle of separation of state and church combined with the individualization of human rights and freedoms, the public powers that churches and religious communities can exercise have shrunk, the autonomy on religious grounds remains one important form of personal autonomy. First, churches and religious communities enjoy high level of institutional/organizational autonomy as protected by the freedom of religion and the principle of state/church separation. Second, despite the secularization of the constitutional order, churches/religious communities have retained some powers in providing education, social services, taxation, and in family law (the legal validity of church marriage). In some sense, performing of these public functions can also be interpreted as form of functional autonomy too.

The question of personal autonomy for religious communities has recently gained renewed attention in Europe, mainly in the context of the accommodation of Muslim communities and the status of sharia law. The debate is most advanced in the UK, with regards to the use of sharia law and the legal status of sharia councils. Notwithstanding their role for the Muslim community/communities in the UK and their de facto powers, they cannot be considered as an autonomy in strict sense, because no public/state powers are formally delegated to them. Thus, the autonomy arrangement for Muslims in Western Thrace (Greece) remains the single European example of autonomy for Muslims in Europe. Moreover, it is the only European example of legal pluralism and legal recognition of sharia in Europe.

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<tr><td>Case study</td><td>**Autonomy for Muslims in Western Thrace (Greece)**
The autonomy arrangement for Muslims in Western Thrace rests on the Treaty of Lausanne of 1923, which has remained unchanged irrespective of the significant changes in the international law of minority protection. This model "reflects (…) a *millet*-like approach regarding the attribution of religious and linguistic rights through religion" (Tsitselikis, 2020). Some level of autonomy exists in three areas: education, religion (mufti offices), and community property. Muslim students can attend minority schools that offer bilingual education (Greek/Turkish), but the impact of the community on minority education is rather limited. The core feature of the model is the state recognized jurisdiction of muftis over family and inheritance matters (ibid.). Finally, the third core element of the model are the communal foundations, the *vakifs*, "pious institutions, the income of which is attributable to the religious or minority communities and therefore to the members of these minorities" (ibid.). However, while the minority foundations are legally visible, the question of their ownership is rather blurred, which "undermines the management and the legal status of the minority foundations." (ibid.)</td></tr>
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SUMMING-UP

- There is no unique NTA model, nor a single comprehensive concept of NTA. Theoretical approaches to the NTA vary, same as the NTA examples in practice. Central to the NTA are its foundation on the group recognition and the personality principle, as well as the transfer (delegation) of public powers to minority institutions/organizations. Other elements can be combined in various ways and thus lead to different practical manifestations of NTA.

- Despite based on personality principle, NTA is not fully detached from territory, and often NTA arrangements combine both personal and territorial elements.

- Autonomy in a strict sense presupposes a wide range of powers from legislation to taxation. In most cases, NTA is not far-reaching when it comes to autonomous powers. At best, it provides a framework for minority self-governance (purely administrative), and in practice it is often narrowed to a consultative mechanism.

- Cultural autonomy as an institutionalized form of NTA exists when a minority representative body is established in the public law and then vested with some public powers. Members of such body are democratically elected among persons belonging to the minority in question. Powers of such body are limited to cultural affairs that are

crucial for the protection of minority identity: education, language, and culture. Because of the importance of the land and nature for indigenous peoples, autonomy arrangements in these cases goes beyond pure cultural questions and covers also land use, resources, environment, etc.

- Functional autonomy is based in private law and facilitated through minority civil organizations. The concept rest on the freedom of association, whereas state transfers some public powers to organizations autonomously established by the minority. The typical areas covered with functional autonomy are education and social services.
- Autonomy of churches and religious communities can serve as one example of personal autonomy, based on religious affiliation. The community can provide education, social services, or can levy taxes. In some instances, members of the religious community can be exempted from the application of general rules, and the state can accept the religious rules as legally binding for the members of the community. In Europe, the latter is the case only in Greece and applies to Muslims in Western Thrace.

Study Questions

1. How are non-territorial (personal) and territorial elements combined in NTA?
2. Why defining who belongs to the minority is an important and contested issue for the NTA?
3. When a NTA arrangement can be considered autonomy?
4. What are the main features of and main differences between cultural, personal, and functional autonomy?

Go Beyond Class: Resources for Debate and Action

- Autonomy Arrangements in the World: Non-Territorial Autonomies, at https://www.world-autonomies.info/non-territorial-autonomies;
- The European Non-Territorial Autonomy Network (ENTAN), at https://entan.org/;
- Samediggi, About the Sami Parliament, at https://sametinget.no/about-the-sami-parliament/;
- Sydslesvigsk Forening, About SSF, at https://syfo.de/en/about-ssf.

Future Readings

1. Nootens, G. (2015). Can Non-Territorial Autonomy Bring an Added Value to Theoretic and Policy-Oriented Analysis of Ethnic Politics? In T. H. Malloy & F. Palermo (Eds.), *Minority Accommodation through Territorial and Non-Territorial Autonomy* (pp. 33–55). Oxford University Press.
2. Suksi, M. (2015). Non-Territorial Autonomy: The Meaning of 'Non-Territoriality'. In T. H. Malloy & F. Palermo (Eds.), *Minority Accommodation through Territorial and Non-Territorial Autonomy* (pp. 83–115). Oxford University Press.
3. Salat, L. & Székely, I. G. (2014). Conclusions. In L. Salat et al. (Eds.), *Autonomy Arrangements Around the World: A Collection of Well and Lesser Known Cases* (pp. 443–478). Romanian Institute for Research on National Minorities.
4. Heintze, H. J. (1998). On the Legal Understanding of Autonomy. In M. Suksi (Ed.), *Autonomy: Applications and Implications* (pp. 7–32). Kluver Law International.

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Suksi, M. (2015). Non-Territorial Autonomy: The Meaning of 'Non-Territoriality.' In T. H. Malloy & F. Palermo (Eds.), *Minority Accommodation through Territorial and Non-Territorial Autonomy* (pp. 83–115). Oxford University Press.

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