



Home > Journal > Social Sciences & Humanities > BLR

[Indexing](#) [View Papers](#) [Aims & Scope](#) [Editorial Board](#) [Guideline](#) [Article Processing Charges](#)

BLR> Vol.3 No.4, December 2012

Open Access

Protecting Minorities on a Non-Territorial Basis—Recent International Developments

PDF (Size: 161KB) PP. 170-183 DOI : [10.4236/blr.2012.34023](https://doi.org/10.4236/blr.2012.34023)

Author(s)

Bertus de Villiers

ABSTRACT

The protection of minorities by way of non-territorial arrangements, also called cultural autonomy, is receiving increased attention in theory and practice. While federalism and decentralisation often afford indirect protection of minorities on a territorial basis—be it by way of autonomy to state or local governments—Dispersed minorities often fall through the territorial “ cracks” . Cultural autonomy can potentially play a vital role to grant protection to minorities that do not have a territorial base of their own. This article, which reflects on recent international developments to protect minorities by way of non-territorial arrangements, shows how the theory and practice of cultural autonomy have gained legitimacy in countries such as Estonia, Slovenia, Kosovo and Finland. Finally, potential lessons are identified for potential application in other emerging democracies.

KEYWORDS

Protection of Minorities Decentralisation; Autonomy; Cultural Councils

Cite this paper

B. Villiers, "Protecting Minorities on a Non-Territorial Basis—Recent International Developments," *Beijing Law Review*, Vol. 3 No. 4, 2012, pp. 170-183. doi: [10.4236/blr.2012.34023](https://doi.org/10.4236/blr.2012.34023).

References

- [1] F. Capotorti, " Study of the Rights of Persons Belonging to Ethnic, Racial and Linguistic Minorities," 1977.
- [2] D. L. Horowitz, " Conciliatory Institutions and Constitutional Processes in Post-Conflict Societies," *William and Mary Law Review*, Vol. 49, No. 4, 2008, pp. 1213-1248.
- [3] H. Hannum, " Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights," University of Pennsylvania Press, Philadelphia, 1990.
- [4] R. Lapidoth, " Autonomy: Flexible Solutions to Interstate Conflicts," United States Institute of Peace, Washington DC, 1997.
- [5] M. Suksi, " Autonomy: Applications and Implications," The Hague, Kluwer, 1998.
- [6] Y. Ghai, " Autonomy and Ethnicity: Negotiating Competing Claims," Cambridge University Press, Cambridge, 2000. doi: [10.1017/CBO9780511560088](https://doi.org/10.1017/CBO9780511560088)
- [7] K. Myntti, " A Commentary to the Lund Recommendations on the Effective Participation of National Minorities in Public Life," Abo Akademi, Abo, 2001.
- [8] K. Gal, " Minority Governance in Europe," Open Society Institute, Budapest, 2002.
- [9] S. C. Roach, " Cultural Autonomy, Minority Rights and Globalization," Ashgate, Aldershot, 2005.
- [10] E. Nimni, " National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism," *Ethnopolitics*, Vol. 6, No. 3, 2007, pp. 345-364. doi: [10.1080/17449050701487363](https://doi.org/10.1080/17449050701487363)
- [11] M. Markert, " Unity in Diversity" in Council of Europe The Constitutional Status of the Regions in the Russian

- [12]D. J. Elazar, "Exploring Federalism," University of Alabama Press, Tuscaloosa, 1987.
- [13]M. van der Stoep, "Peace and Stability through Human and Minority Rights: Speeches by the OSCE High Commissioner on National Minorities, Nomos, 1999.
- [14]Y. P. Ghai, "A Commentary on the Place of Minorities and Indigenous Communities in Nepal," Kathmandu, Adhikari, 2010.
- [15]M. Lawoti, "Non-Territorial Federalism," The Kathmandu Post, 2012. <http://www.ekantipur.com/the-kathmandu-post/2010/07/08/oped/non-territorial-federalism/210257/>
- [16]P. Peeters, "Federalism: A Comparative Perspective— Belgium's Transformation from a Unitary to a Federal State," In: B de Villiers, Ed., Evaluating Federal Systems, Juta, Cape Town, 1994, pp. 194-207.
- [17]K. Deschouwer, "Kingdom of BELGIUM," In: Kincaid and Tarr, Eds., Constitutional Origins, Structure, and Change in Federal Countries, McGill-Queens University Press, Montreal, 2005, pp. 48-75.
- [18]A. Lecours, "Belgium," In: Griffiths, Ed., Handbook of Federal Countries, McGill-Queen's University Press, Montreal, 2005, pp. 58-72.
- [19]K. Deschouwer, "Kingdom of Belgium," In: J. Kincaid and A. Tarr Eds., Constitutional Origins, Structure, and Change in Federal Countries, McGill-Queen's University Press, Montreal, 2005, pp. 48-75.
- [20]H. Dumont, N. Lagasse, et al., "Kingdom of Belgium," In: A. Majeed, R. L. Watts and D. M. Brown, Eds., Distribution of Powers and Responsibilities in Federal Countries, McGill-Queen's University Press, Montreal, 2006, pp. 3465.
- [21]W. Pas, "A Dynamic Federalism Built on Static Principles: The Case of Belgium," In: Tarr, Williams and Marko, Eds., Federalism, Subnational Constitutions, and Minority Rights Prager, Westport, Frankfurt, 2004.
- [22]J. Fitzmaurice, "The Politics of Belgium," Hurt, London, 1988.
- [23]W. Swenden, "Asymmetric Federalism and Coalition-Making in Belgium," The Journal of Federalism, Vol. 32, No. 3, 2002, pp. 67-85. doi:10.1093/oxfordjournals.pubjof.a004960
- [24]I. Busygina and A. Heinemann-Gruder, "Russian Federation," In Moreno and Colino, Eds., Diversity and Unity in Federal Countries, McGill-Queen's University Press, Montreal, 2010, p. 263.
- [25]B. Bowring, "The Tartars of the Russian Federation and National-Cultural Autonomy: A Contradiction in Terms," Ethnopolitics, Vol. 6, No. 3, 2007, pp. 417-435.
- [26]B. Bowring, "Legal and Policy Developments in the Russian Federation in 2007 in Regard to the Protection of Minorities," European Yearbook of Minority, Vol. 6, No. 35, 2006-2007, pp. 529-543.
- [27]D. Wirda, "Legislation of the Russian Federation Concerning Ethnic Minorities and Its Shortcomings," 2012. <http://www.eawarn.ru/EN/pub/Projects/TacisProject/Widra.htm>
- [28]B. Bowring, "Austro-Marxism's Last Laugh? The Struggle for Recognition of National-Cultural Autonomy for Russians and Rossians," Europe-Asia Studies, Vol. 54, No. 3, 2002, pp. 229-250.
- [29]N. Chronowski, T. Driconzi and T. Takacs, "Governmental Systems of Central and Eastern European States," Klubur, Warszawa, 2011.
- [30]W. Kymlicka, "National Cultural Autonomy and International Minority Rights Norms," Ethnopolitics: Formely Global Review of Ethnopolitics, Vol. 6, No. 3, 2007, pp. 379-393.
- [31]M. Suski, "Personal Autonomy as Institutional Form— Focus on Europe against the Background of Article 27 of the ICCPR," International Journal on Minority and Group Rights, Vol. 15, No. 1, 2008, pp. 157-178.
- [32]T. H. Malloy, "National Minority Rights in Europe," Oxford University Press, Oxford, 2005. doi:10.1093/acprof:oso/9780199274437.001.0001
- [33]J. Marko, "The Referendum on Decentralization in Macedonia in 2004: A Litmus Test for Macedonia's Interethnic Relations," European Yearbook of Minority, Vol. 4, No. 2, 2004, pp. 695-721.
- [34]I. Tomovska, "Post-Conflict Developments and Decentralization in Macedonia," European Yearbook of Minority, Vol. 7, No. 3, 2008, pp. 146-147.
- [35]R. Hofmann, "Political Participation of Minorities," European Yearbook of Minority, Vol. 6, No. 1, 2006, p. 11.

- [36]A. Legare and M. Suksi " Introduction: Rethinking the Forms of Autonomy at the Dawn of the 21st Century," International Journal on Minority and Group Rights, Vol. 15, No. 1, 2008, pp. 144-165.
- [37]T. H. Malloy, " The Lund Recommendations and NonTerritorial Arrangements: Progressive Deterritorialization of Minority Politics," International Journal on Minority and Group Rights, Vol. 16, No. 4, 2009, pp. 665-679.
- [38]K. Gal, " Minority Governance on the Threshold of the Twenty-First Century," In: K. Gal, Ed., Minority Governance in Europe, Open Society Institute, Budapest, 2002, pp. 17-42.
- [39]B. de Villiers, " Human Rights in Developing Countries: Some Crucial Issues," Journal of South African Law, Vol. 9, No. 3, 1996, pp. 180-201.
- [40]K. Henrard, " ' Participation' , ' Representation' and ' Autonomy' in the Lund Recommendations and Their Reflections in the Supervision of the FCNM and Several Human Rights Conventions," International Journal on Minority and Group Rights , Vol. 12, No. 1, 2005, pp. 133-168.
- [41]K. Alenius, " The Birth of Cultural Autonomy in Estonia: How, Why, and for Whom," Journal of Baltic Studies, Vol. 38, No. 4, 2007, pp. 445-462.
- [42]J. G. Jackson, " Estonia," Allen and Unwin, New York, 1941.
- [43]B. de Villiers, " Die Staatsregtelike Beskerming van Outonome Besluitneming Minderheids-groep," LL.D.Thesis, University of Johannesburg, Johannesburg, 1989, pp. 98-107.
- [44]R. T. Clark, " The Constitution of Estonia," Journal of Comparative Legislation and International Law, Vol. 3, No. 1, 1921, pp. 250-275.
- [45]V. Raud, " Estonia: Reference Book," Nordic Press, Tallinn, 1953.
- [46]E. Nodel, " Estonia: Nation on the Anvil," Bookman Associates, London, 1963.
- [47]<http://www.legaltext.ee/text/en/XX00038.htm>
- [48]M. Suski, " On the Constitutional Features of Estonia, Abo Akademis Tryckeri, Tallinn, 1999.
- [49]http://old.estinst.ee/factsheets/factsheets_uus_kuju/the_cultural_autonomy_of_ethnic_minorities_in_estonia.htm
- [50]" Cultural Autonomy in Estonia—Bane or Boon for Indigenous Cultural Survival," 2012. <http://www.eesti.ca/?op=article&articleid=26937&lang=en>
- [51]J. Petrone, " Estonian Swedes Embrace Autonomy Rights," The Baltic Times, 2012. http://www.citypaper.ee/estonian_swedes_embrace_autonomy_rights/
- [52]http://old.estinst.ee/factsheets/factsheets_uus_kuju/the_cultural_autonomy_of_ethnic_minorities_in_estonia.htm
- [53]U. Aikio-Puoskari and M. Pentikainen, " The Language Rights of the Indigenous Sami in Finland," University of Lapland, Rovaniemi, 2001.
- [54]" Act on the Use of the Sami Language When Dealing with Authorities," 1991.
- [55]U. Aikio-Puoskari and M. Pentikainen, " The Language Rights of the Indigenous Sami in Finland—Under Domestic and International Law," University of Lapland, Rovaniemi, 2001.
- [56]M. Tkacik, " Characteristics and Forms of Autonomy," International Journal on Minority and Group Rights, Vol. 15, No. 3, 2008, pp. 375-386.
- [57]L. Hannikainen, " Autonomy in Finland: The Territorial Autonomy of the Aland Islands and the Cultural Autonomy of the Indigenous Sami People," Baltic Yearbook of International Law, Vol. 32, No. 2, 2002, pp. 175-192.
- [58]K. Myntii, " The Nordic Sami Parliaments," In: P. Aiko and M. Scheiden, Eds., Operationalizing the Right of Indigenous People to Self-Determination, Abo Akademi University, Abo, 2000, pp. 203-221.
- [59]M. Scheinin, " The Right to Enjoy a Distinct Culture: Indigenous and Competing Uses of Land," In: T. S. Orlin, A. Rosas and M. Scheinin, Eds., The Jurisprudence of Human Rights Law: A Comparative Interpretative Approach, Turku, Finland, 2001, pp. 159-222.
- [60]M. Komac, " Protection of Ethnic Communities in the Republic of Slovenia," 2010. <http://www.ciemen.org/mercator/butlletins/46-10.htm>
- [61]M. Weller, " The Kosovo Constitution and Provisions for the Protection of Minorities in Europe," European Yearbook of Minority, Vol. 9, No. 6, 2006, pp. 485-527.

[62]A. Zeqiri, V. Stephens and M. Zhou, " Implementation of the Decentralisation Process in Kosovo: Challenges and Perspectives," European Yearbook of Minority, Vol. 7, No. 4, 2007, pp. 697-715.

[63]M. Weller, " Minority Consultative Mechanisms: Towards Best Practice," European Yearbook of Minority, Vol. 7, No. 1, 2007, pp. 21-58.

[64]B. de Villiers, " Creating Federal Regions—Minority Protection versus Sustainability," Heidelberg Journal of International Law, Vol. 72, No. 2, 2012, pp. 310-351.

[BLR Subscription](#)

[Free Newsletter Subscription](#)

[Most popular papers in BLR](#)

[Publication Ethics Statement](#)

[About BLR News](#)

[Frequently Asked Questions](#)

[Recommend to Peers](#)

[Recommend to Library](#)

[Contact Us](#)

Downloads:	39,051
------------	--------

Visits:	137,095
---------	---------

[Sponsors, Associates, and Links >>](#)