

## **Exploring the Opportunities for Trans-Ethnic Cooperation Within and Across Serbia Through the National Minority Councils**

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This paper examines opportunities and possibilities for national minority councils (NMC's) to serve as a channel for dialogue and cooperation between national minorities, governmental authorities and non-governmental organisations within the Republic of Serbia and across this state. The main objective of this paper is to review the constitutional and legal framework of trans-ethnic cooperation in Serbia. In order to achieve this, I am analysing the constitutional and legal status of NMC's, and their competences and role in the trans-ethnic cooperation in Serbia and across it. The model of trans-ethnic cooperation and its functioning in practice is analysed especially within the case study of the Slovak NMC in Serbia. The previous framework of cooperation was restricted by the decision of the Serbian Constitutional Court in 2014. Remaining opportunities and possibilities for NMC's in trans-ethnic cooperation are not fully used in practice. There is no systematic cooperation of the Slovak NMC with other organisations of ethnicities within and across Serbia. Trans-ethnic cooperation is not so common and is conducted usually on an ad hoc basis. Nevertheless, the existing institutional and legal model for trans-ethnic cooperation is relatively good. NMC's can and should be active agents fostering trans-ethnic cooperation in and beyond Serbia.

**Keywords:** trans-ethnic cooperation, national minority councils (NMC's), National council of Slovak national minority, constitutional and legal framework of trans-ethnic cooperation.

National councils of national minorities (NCNM) or national minority councils (NMC's) or national councils (NC's) are representative organs of national minorities as collectives in Serbia and they are legally designed to be partners and advisory bodies of state authorities. NMC's are

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special bodies of self-government in the fields of culture, education, information and official use of minority languages and scripts. These special bodies participate in decision-making processes or decide on the issues related to these fields, and they can establish institutions, business companies and other organisations in the fields mentioned. As such NMC's can serve as a channel for dialogue and cooperation between the ethnicities that they represent and state governments, local authorities, non-governmental organizations, international organizations and other actors.

Serbia is a multi-ethnic (Appendix A, pp.22-23), multi-faith and multilingual country. More than twenty different ethnic communities live in Serbia. The total population of Serbia without Kosovo and Metohija<sup>1</sup> is estimated to be 7 186 862<sup>2</sup>. The largest ethnic group is Serbian, constituting 83,3 % of total population. Of the ethnic minorities, the largest group is Hungarian (3,5 %), followed by Roma (2,1%) and Bosniaks communities (2%). Other ethnicities constitute less than 1% of total population.<sup>3</sup> The dominant religion in Serbia is Orthodox Christian (84,6%), followed by Catholic (5%), Islam (3%), Protestant (1%) and other religions<sup>4</sup>. The official and most widely used language is Serbian; about 88 % of people use it as a mother tongue. The official script is Cyrillic. Other recognized and traditionally used minority languages and scripts in Serbia are: Albanian, Bosnian, Bulgarian, Bunjevac, Vlach, Hungarian, Macedonian, German, Romani, Romanian, Ruthenian, Slovak, Ukrainian, Croatian and Czech (Council of Europe 2015). In the Autonomous province of Vojvodina (APV) six languages are in official use, namely Serbian, Hungarian, Slovak, Croatian, Romanian, and Ruthenian<sup>5</sup>. Currently, there are twenty one registered national councils of national minorities in Serbia<sup>6</sup>. These national minorities established their councils in the following chronological order: Hungarian, Croatian, Ruthenian, Slovak, Romanian, Ukrainian, Roma, Bunjevci, Bosniak, Bulgarian, Greek, Macedonian, Egyptian, Vlach, German, Slovenian, Czech, Albanian, Ashkali, Jewish, and lastly Montenegrin.

In this paper I explore the opportunities for trans-ethnic cooperation within and across Serbia through the NMC's. Since there are no earlier scientific studies examining trans-ethnic cooperation in Serbia and there is a very little expertise literature that covers this topic in some aspect (Surová 2006i, Surová 2006ii, Surová 2012, Surová 2014),<sup>7</sup> I decided to do exploratory research. According to McNabb (2015: 96), exploratory research can be conducted with the objective of carrying out a preparatory examination of issues in order to gain insights and ideas, or to gather information for immediate application to an administrative problem. The reasons to conduct exploratory research are to investigate the issues or topics with the purpose of developing

notions and ideas about underlying nature of investigating phenomena. The main objective of exploratory research is to obtain as much information as possible, in little time and with minimal expenditure of money. Therefore, exploratory research cannot serve as an “in-depth look into all the factors related to a political phenomenon” (McNabb, 2015: 96). This paper is based on a conference paper prepared for the conference ‘Trans-ethnic Coalition-building within and across States’ organised in Uppsala in January 2015. Data for the paper were gathered through a literature review, an interview and a case study. As mentioned earlier, there is no scientific literature on trans-ethnic cooperation through NMC’s within and beyond Serbia. The only reference to relations of councils with republic, regional, local and international organisations and institutions could be found in the last publication of Provincial Protector of Citizens – Ombudsman of Autonomous Vojvodina on the work of NMC’s, which was published in the end of 2014. This publication deals with the work of NMC’s in the last four years and doesn’t focus solely on trans-ethnic cooperation.

For that reason, I decided to analyse the Serbian constitutional and legal model of trans-ethnic cooperation and to identify basic institutional predispositions for this cooperation. The research method applied in this study is neo-institutionalism. This approach is concerned with the impact of the institutions upon individuals, but also with the interaction between institutions and individuals. The term ‘institutions’ here means formal constitutions and organizational structures as well as informal rules of political behaviour. Neo-institutionalism refers more broadly to regular and repeated patterns of behaviour (Lowndes, 2010). The focus of neo-institutionalism is on values and power relationships that are embodied in institutions, as well on institutional design and the opportunities and obstacles that confront it. This paper also builds on the neo-institutional notion that political institutions play an autonomous role in shaping political outcomes and the idea that the “organization of political life make a difference” (March and Olsen in Lowndes, 2010: 63). The core features of this approach depart from previous ideas along six analytical continua: from a focus on organizations to a focus on rules; from a formal to an informal conception of institutions; from a static to a dynamic conception of institutions; from submerged values to a value-critical stance; from a holistic to a disaggregated conception of institutions and from independence to embeddedness (Lowndes, 2010).

Neo-institutionalism is understood by scholars as an organizing perspective and not casual theory. It is considered as a broad, variegated approach to politics (Hall-Taylor, 1996; March-

Olsen, 2005, Lowndes, 2010, Lowndes, 2013), which holds that institutions as a variable can explain most of political life, and therefore institutions are the factors that require explanation. For the analysis of trans-ethnic cooperation through NMC's, neo-institutionalism appears to be a relevant and adequate approach. Constitutional and legal framework are important in this issue, as they set up formal rules for trans-ethnic cooperation. Equally important are informal rules. The institutional model of trans-ethnic cooperation can be seen as an institutional arena, where the rules of the game are established by both formal and informal rules. In this arena, the players are different and numerous actors representing state authorities, national minorities, civil society etc. The aim of this paper is to analyse the Serbian arena in which trans-ethnic cooperation takes place, and the formal and informal rules that have impact on this cooperation through NMC's.

In order to better understand how the institutional model of trans-ethnic cooperation functions in practise and to identify opportunities as well as obstacles that are confronting this model, a qualitative method was also applied in this research. A semi-structured interview, combining close-ended and open questions (all together 66 questions), was conducted with Anna Tomanova Makanova, president of National Council of the Slovak National Minority (NCSNM). The questions concerned the cooperation of NCSNM with the republic organs, relations with the organs of the autonomous province and unit of local self-government and international and regional cooperation, as well as the modes, frequency and issues of this cooperation.<sup>8</sup> All the questions were built upon the previously analysed Serbian constitutional and legal model of trans-ethnic cooperation. The main goal of the interview was to investigate the single case of the Slovak council, with regards to what extent the existing institutional possibilities and opportunities for trans-ethnic cooperation through NMC's are realised in practise.

The main objective of this paper is twofold: to analyse institutional models of trans-ethnic cooperation through NMC's within and across Serbia, and to examine to what extent the constitutional and legal framework works in practice. The research questions concerning trans-ethnic framework of cooperation are:

1. What is the current constitutional and legal status of NMC's?
2. What kind of competencies and roles do NMC's have in this model?
3. What kind of model for trans-ethnic cooperation is established in Serbia?

Questions relating to the practical side of trans-ethnic cooperation through Slovak councils are:

1. With which organisations and institutions is this council cooperating?
2. What are the main modes of this cooperation?
3. How often does this cooperation take place?
4. What are the main issues of cooperation?

Based on my research I argue that the current constitutional and legal framework, even though it was restricted recently, still offers relatively good possibilities and opportunities for NMC's for trans-ethnic cooperation on all the levels of state power in Serbia as well across it. Secondly, institutional predispositions for trans-ethnic cooperation are not maximally exploited in practice. Thirdly, even though the rules for trans-ethnic cooperation are set up by the constitution and laws, in practice systematic, regular trans-ethnic cooperation doesn't exist. Trans-ethnic cooperation through NMC is conducted usually on an ad hoc basic. Fourthly, NMC's should be more active in using constitutional and legal predispositions for trans-ethnic cooperation within and across Serbia.

In the first part of the paper, I analyse the constitutional and legal status of NMC's, their competences and role in the trans-ethnic cooperation with governmental authorities on all levels of state power, and their cooperation with other organisations representing different ethnicities in and beyond Serbia. This part also elaborates on restrictions in the legal model of trans-ethnic cooperation after the Serbian Constitutional Court revoked certain provisions of the Law on National Councils of National Minorities. In the second part of the paper I look into the modes, frequencies and issues of trans-ethnic cooperation through the Slovak National Council while analysing the potentials and limitations of the Serbian model in practice. The conclusion offers a summary of the findings and concluding remarks.

## **1. Constitutional and legislative framework of trans-ethnic cooperation**

Firstly, I will discuss the constitutional and legislative framework of trans-ethnic cooperation through the NMC's in Serbia and across it. The main scope of the analysis examines the Constitution of Serbia (2006),<sup>9</sup> the Law on the Protection of Rights and Freedoms of National

Minorities (2002)<sup>10</sup> and the Law on National Councils of National Minorities (2009)<sup>11</sup>. The other laws and documents relevant to minority rights and competences of NMC's are also reviewed<sup>12</sup>. The contemporary framework is examined within the perspective of the decision of the Constitutional Court of Serbia<sup>13</sup>, which declared certain provisions of the Law on National Councils of National Minorities unconstitutional and repealed them. The main focus is on the NMC's and their status, competences and role in cooperation with republic organs, organs of the autonomous province, organs of the unit of local self-government, and on the cooperation with international and regional organizations and institutions. Before I discuss the existing trans-ethnic model of cooperation through the NMC's, I will briefly introduce the historical development of the minority councils in the Serbian constitutional and legal system.

### ***1.1 Historical background of development***

As a result of the disintegration processes that started in the beginning of the 1990s on the territory of the Socialistic Federative Republic of Yugoslavia (SFRY), new independent republics were established. Serbia was the last republic of the former SFRY to gain independence, which it did in 2006 after the break up of the Serbia and Montenegro union. These disintegration processes culminated with a unilateral declaration of independence of the Serbian Autonomous region Kosovo and Metohija in the year 2008. Since the dissolution of SFRY many constitutional and institutional changes have taken place in Serbia. At the beginning of the 1990s Serbia was a part of the Yugoslav federation (Federal Republic of Yugoslavia 1992-2003), and later it was a member of the state union Serbia and Montenegro (2003-2006). In 2000 major political changes occurred. Slobodan Milošević's regime was finally changed and democratic powers under the name of Democratic Opposition of Serbia (DOS) came to power. After the democratic changes, reform processes started. The priority of the democratic government was the issue of the status of national minorities in the country. This process had both external and internal dimensions.

The external dimension of the reforms was related to the renewal of the country's memberships in international organisations such as the United Nations (UN) and the Council of Europe (CoE), as well as to the process of signing and ratifying international documents, namely the Framework Convention on National Minorities (Framework Convention) in 2001 and the European Charter for Regional or Minority Languages (Charter) in 2005, both documents of the Council of Europe. Serbia started negotiations with neighbouring countries about minorities'

status and bilateral agreements were signed. At the state level, the process of building constitutional and institutional framework for the protection of the rights of national minorities and improving their status began. In this respect, the introduction of the federal Law on the Protection of Rights and Freedoms of National Minorities (2002)<sup>14</sup>, which regulated the legal status of national minorities at that time in FRY, was very important. It was the first special minority law in FRY, in which constitutional norms were elaborated,<sup>15</sup> along with basic solutions of international agreements concerning the rights and freedoms of national minorities, to which FRY became a contracting party.<sup>16</sup>

Furthermore, this law brought the institution of National Minority Councils (NMC's) into the Yugoslav legal system for the first time in 2002. New mechanisms were established for the effective participation of minorities in decision-making processes in the government and state administration. For this purpose, the law envisaged a Federal Council on National Minorities (FCNM), National Councils of National Minorities and a Federal Fund for National Minorities (FFNM). According to this law, the main objective of the minority councils is to maintain, protect and develop the national, ethnic, religious, linguistic and cultural distinctiveness of the national minorities. For the first time, national minorities obtained the right for self-government in the fields of official use of language and script, education, informing and culture in the legal system of Yugoslavia. Through minority councils, national communities should participate in decision-making processes in the above-mentioned areas or make decisions and establish institutions from this area (Article 19, paragraph 7).<sup>17</sup> Part of the authority in the fields of education, culture, informing and official use of the languages and scripts of national minorities could be delegated to the NMC according to federal law (Article 19, paragraph 10). The purpose of creating the Federal Fund for National Minorities was to support social, economic, cultural and general development of national minorities. The law guaranteed minority councils the right to address issues regarding the violation of minority rights to the relevant courts. Together with the Federal Council, minority councils could file complaints with the Federal Constitutional Court in cases of apparent violations of constitutional rights and liberties of minorities.<sup>18</sup> The Federal Law on the Protection of Rights and Freedoms of National Minorities introduced many new elements into the Yugoslav legal system, including the definition of the term of national minority, collective rights, and NMC's as self-governing and consultative bodies for national minorities. The shortcomings

of the law were primarily its problematic implementation in practice, due the discrepancy between federal and republic constitutions and laws (Surová, 2007).

National minority councils became a constitutional category in the legal system of Serbia after adopting a new Constitution of the Republic of Serbia<sup>19</sup> in 2006. The Serbian constitution recognizes NMC's as special bodies that members of national minorities can set up in order to accomplish their rights to self-government in culture, education, information and official use of language and script. The new constitution grants national minorities additional individual or collective rights that other citizens do not have. Collective rights of national minorities should allow their members to participate in decision-making processes or to make decisions in areas of self-government directly or indirectly.<sup>20</sup> Similarly, the Law on National Councils of National Minorities, adopted in 2009, defines NMC's as representative bodies and the bodies that should participate in decision making processes or decide on the issues related to minority fields. Defined constitutionally and legally as representative organs of national minorities, as well as consultative and advisory bodies of state authorities, NMC's can be a channels for dialogue and cooperation between minorities and state organs and other governmental institutions as well as non-governmental organisations, bodies of other ethnicities, and international and regional actors. In the following sections I will analyse constitutional and legal opportunities and possibilities for trans-ethnic cooperation through NMC's within and across Serbia, focusing firstly on the republic level, secondly on the provincial and local level, and thirdly on the international and regional level.

### ***1.2 Institutional model of trans-ethnic cooperation at the republic level, the provincial and local level, and the international and regional level***

NMC's as representative and self-governing bodies of national minorities as well as consultative and advisory bodies of state authorities cooperate in their daily work not only with the state authorities but also with non-governmental organisations, bodies of other ethnicities, and international and regional actors in the fields relating to their jurisdiction. The Serbian constitutional and legal system regulates the basic legislative rules by which this cooperation should be governed. On the republic level, NMC's have the right to submit their proposals, initiatives and opinions regarding issues under their jurisdiction to state bodies and special organisations. On the other hand, state bodies and special organisations shall request an opinion



from the NMC's before consideration and adoption of decisions on the issues of education, culture, information and official use of minority language and script. Furthermore, NMC's can submit an initiative to the Government to repeal the regulations of state bodies and special organisations which are not in compliance with the provisions of the Law On National Councils and other laws and regulations related to national minorities.<sup>21</sup>

Firstly, in the adopted Law on the Protection of Rights and Freedoms of National Minorities in 2002, it was not determined to which state bodies and special organisations NMC's can refer. The absence of definitions or clarifications of the terms used in the law created complications in the implementation of legal provisions and guaranteed rights for NMC's in practice. Only recently, at the beginning of 2014, did the Constitutional Court explain the terms used in the law. Further, the court clarified with which state authorities NMC's can and should cooperate. The general phrase “state bodies and special organisations” should, according to the Serbian Constitutional Court, be understood exclusively as organs of state administration<sup>22</sup>. The Law on State administration<sup>23</sup> stipulates that state administration consists of ministries, administrative authorities within ministries (integrated authorities) and special organizations. Secondly, before the Constitutional Court decision, it was not clear from the wording of the law whether state bodies and special organisations had a legal obligation to ask for an opinion from NMC's, or if they had the freedom to decide whether they would or would not ask for an opinion from NMC's. The Constitutional Court made the clarification that the obligation of the competent organ of the state administration consists of asking an opinion of NMC's and conscientiously considering the findings in their opinion. Recent explanations of the Serbian Constitutional Court (2014) specified and elaborated some provision of the Law on National Councils of National Minorities (2002). Regulation of the cooperation of NMC's with state bodies and special organisations is too general in its content. There are still a large number of open questions relating to trans-ethnic cooperation. What exactly does it mean to “conscientiously consider” the opinions of NMC's? In what way should this process be followed? Should state bodies and special organisation give feedback to the NMC's? What happens if the state bodies and organisations do not “conscientiously” consider the initiatives of the NMC's? There are no legal sanctions prescribed in the case that these provisions are not implemented in practice.

At the level of the Autonomous Province of Vojvodina or provincial level, as well at a local level, NMC's can address their suggestions, initiatives and opinions to provincial organs and

organs of the unit of local self-government. The issues in which NMC's can refer to regional and local authorities are more broadly established than on the republic level. The right of NMC's to contact autonomous and local authorities is stipulated in a broader sense, since it concerns the issues of national minorities' status and their preservation, which covers many aspects and not only the four areas in which national councils have their explicit jurisdiction by the Law on National Councils.

The Serbian Constitution and laws embrace provisions regarding the international and regional cooperation of NMC's. National councils may co-operate with international and regional organisations, organisations and institutions in the native countries, and other national councils or similar bodies of national minorities in other countries<sup>24</sup>. At the international and regional level, NMC's can participate in the area of drafting, implementation and protecting of minority rights in bilateral agreements between the kin-state and the state where minorities live. This participation involves negotiations or consultations on the issues that directly relate to minority rights. Representatives of the NMC's can also participate in the activities of mixed intergovernmental bodies established to supervise the implementation of bilateral agreements in the protection of a national minority's rights.<sup>25</sup> Even the bilateral agreements<sup>26</sup> that Serbia has with its neighbouring countries explicitly require the participation of the representatives of national minorities in the work of intergovernmental commissions, which monitor the implementation of the agreements. In addition, national minorities can take part in the conclusion of international agreements in the process of gaining access to international or regional agreements related to the status and minority rights through the Republic Council for National Minorities<sup>27</sup>.

In 2014, established formal rules based on Serbian laws, policies and standards in minority rights were clarified and explicated but also restricted in the area of trans-ethnic cooperation through the NMC's. In the next section I elaborate on the most important changes regarding the institutional arena for trans-ethnic cooperation.

### ***1.3 The limits of trans-ethnic cooperation model: changing the rules of the game***

Before the decision of the Serbian Constitutional Court from 16th January 2014, which declared certain provisions of the Law on National Councils of National Minorities unconstitutional and repealed them, NMC's had greater legal possibilities for cooperation with state authorities at the republic level. Until 2014, NMC's could also submit their proposals, initiatives and opinions

regarding the issues under its jurisdiction to the National Assembly and the Government as well as to other state bodies and special organisations. Repealed provisions were prescribing the obligation of the mentioned state authorities to request an opinion from the NMC's in the case of consideration or decision making on issues related to culture, education, information and official use of minority language and script. The procedure for this cooperation should have been prescribed by the rules of particular organs involved. These provisions were declared unconstitutional. According to the Constitutional Court, the repealed provisions were limiting the autonomy of the parliament and government in their jurisdiction and work deriving from the constitution and laws. It was also stated by the court that the obligation of the parliament and government to ask for an opinion from NMC's in areas of their competences limits and conditions the right for legislative initiative<sup>28</sup>.

Other provisions regulating the cooperation of NMC's with the state bodies and special organisations remain in force, while in the scope of ministries work are areas in which the national minorities exercise their collective rights. The opinion of the court is that the rights of national minorities can be effectively implemented through the mutual cooperation of NMC's and line ministries, because this cooperation provides possibilities for minorities to be involved in the creation of the laws and other legal acts directly affecting them. The question of the legal nature of the cooperation between NMC's and state authorities is relevant here as well. The position of the Constitutional Court also clarifies this important question by emphasising the consultative (advisory) nature of NMC's opinions, proposals and initiatives. Initiatives from NMC's are not legally binding for the state authorities. Nevertheless, state organs are obliged to ask opinions from NMC's and have to properly consider it, as was already mentioned in previous sections. In addition, initiatives of the NMC's with regards to government, such as a proposal to repeal or nullify the regulation of other organs of state administration, are not legally binding either. They should serve only as a signal to the government.

Similarly, the Constitutional Court declared a few provisions concerning the regional and local cooperation of NMC's unconstitutional as well. The nullified provisions prescribed an obligation to the bodies of the autonomous province and the bodies of the local self-government units to consider the suggestions, initiatives and opinions of the National Council and to undertake adequate measures<sup>29</sup>. At the republic level, before the constitutional decisions it was not clear if the government, parliament, state bodies and organisations were obliged to contact the

National Councils while considering or deciding on issues under National Council jurisdiction. In contrast, the autonomous province and local self-government units were legally bound to do so and even to undertake their actions accordingly, until the court nullified these provisions. The repealed provisions stipulated the obligation of the bodies of the autonomous province and the local self-government units to ask for an opinion of the NMC's before the adaption of general documents in the area of national council jurisdiction<sup>30</sup>. These provisions were declared unconstitutional and nullified for reasons of autonomy and independence, guaranteed to the organs of the autonomous province and organs of the unit of local self-government by the Serbian constitution and laws.

In spite of this fact, the autonomous province can arrange its relations with the NMC's in its own statute. Relations with the unit of local-self government are set in a more detailed way in the Law on Local Self-Government and they raise some important questions. The Law on Local Self-Government prescribes a duty to the local unit to require an opinion of NMC's in the area of official use of minority language on its territory when changing the names of streets, squares etc. Further, in the ethnically mixed units of local self-government a council for interethnic relations consisting of representatives of both the Serbian nation and national minorities should be established.<sup>31</sup> The council for interethnic relations considers the questions of realization, protection and promotion of national equality. If the representatives of a national minority have established their own NMC, then they are appointed on the proposal of NMC. There have been many cases when the organs of local self-government had established councils for interethnic relations but they did not ask NMC's suggestion on representatives for minorities in it. A local inter-ethnic council can address its proposals and opinions to the council of local self-government, which is obliged to comment on them in the next session or at latest within 30 days. These kinds of detailed specifications of the relations of the interethnic council and organs of self-government unit appear reasonable. Similarly, as on the republic level, the cooperation of NMC's and organs of the autonomous province and organs of the unit of local self-government is stipulated too generally and broadly in the law. More detailed specification about the cooperation and its nature is needed at a provincial and local level too.

In a similar manner, cooperation of the NMC's at the international and regional level was constrained by the decision of the Serbian constitutional court. The restrictions concern areas and partners of cooperation. Firstly, the constitutional court limited cooperation of NMC's at the

international and regional level to those organisations that are dealing with the protection and promotion of human and especially minority rights, and whose jurisdiction is directly connected to the implementation of the collective rights of national minorities. Furthermore, the constitutional court determined in detail the nature of trans-ethnic cooperation. It should take the form of mutual contacts, visits, exchanging experiences, realization of mutual projects etc. Secondly, international and regional cooperation of the NMC's has to be in accordance with the constitutional framework of Serbia, as well as in compliance with the official Serbian foreign policy, and has to respect territorial integrity and the legal order of Serbia. Thirdly, the court nullified provisions that guaranteed the right of NMC's to cooperate with the state organs of their kin-states. The reason for this was explained as a conflict with the competence of the Serbian state, as cooperation with the organs of other states is international and interstate cooperation and is part of Serbian foreign policy. According to the constitutional court, the actors of international cooperation can only be states as subjects.

The decision of Serbian Constitutional Court put limits on trans-ethnic cooperation through the NMC's in Serbia. Not only did this decision restrict certain possibilities of NMC's to cooperate at a republic, provincial, local, international and legal level, it also reduced the overall standard of minority rights protection in Serbia. Even in spite of this, there are still a large number of constitutional and legal predispositions and opportunities for trans-ethnic cooperation, which NMC's can utilize in practice. The next section describes how the Slovak Minority Council in Serbia embraced the institutional possibilities for trans-ethnic cooperation in Serbia and across it.

## **2. Trans-ethnic cooperation of the National Council of the Slovak National Minority**

### ***2.1 Trans-ethnic cooperation of NCSNM on republic level***

The Slovak Minority Council (SMC) was relatively active in the period between 2010-2014, submitting proposals, initiatives and opinions concerning the issues of status, identity and rights of the Slovak national minority especially in the fields of education, culture, information in the Slovak language and the official use of Slovak language and script. Most initiatives were submitted to the Ministry of State Administration and local self-government under whose

jurisdiction the council belongs. SMC did not submit any initiatives to parliament or government although there was a legal possibility to address issues to these organs. At the republic level, SMC cooperated mostly with the Office for Human and Minority Rights in the Serbian Government. This cooperation was evaluated by the respondent as the best one. The Serbian government, ministries and special organisations initiated cooperation and they requested opinions from SMC in all fields of the council's competence. Even though SMC was following the implementation of the minority laws in practise, the council did not use its legislative right to propose nullification of the general acts of state organs and special organisations which were not in accordance with these laws.

Trans-ethnic cooperation at the republic level between SMC and state authorities was, according to the respondent, better in past, before the period 2010-2014. In the previous period there was a special ministry for human and minority rights. Currently NMC's belong under the competence of the Ministry of State Administration and Self-Government and they cooperate closely with the Office for Human and Minority Rights in the Serbian Government. SMC cooperates at the republic level with state authorities, but not regularly. For example, SMC was included in the legislative work of the Office for Human and Minority Rights, participating in working groups created to bring in changes in the Law on National Councils of National Minorities<sup>32</sup>. Nevertheless, there are no systematic or regular meetings with particular ministries. SMC mostly cooperates with the Office for Human and Minority Rights. Moreover, the outcome of the cooperation is questionable. In most of the cases, the suggestions of the council were not accepted. For example, a forum called Coordination of National Councils of National Minorities (hereinafter Coordination) was created to serve as a medium for meetings and cooperation between minority councils representing different national minorities in Serbia. Through Coordination, minority councils operate together on minority issues and execute joint actions. Coordination follows the implementation of minority laws in practice. Representatives of minorities have repeatedly addressed proposals to the Government (to finally establish a Republic Council for National Minorities), as well as to competent ministries in the fields of education, culture and information, but without success. The proposals of Coordination were not accepted. Likewise, suggestions from the minority councils to establish a coordination forum as a legal entity were unsuccessful in past years.

## ***2.2 Trans-ethnic cooperation of NCSNM on provincial and local level***

Similar to the republic level, SMC was active in trans-ethnic cooperation at a provincial and local level. SMC submitted initiatives, proposals and opinions regarding the status and protection of the distinctiveness of the Slovak national minority to organs of APV and to organs of the unit of local self-government. Cooperation concerned all four fields of council competence. At the provincial level, most initiatives were submitted from the fields of culture and information. At the local level, the council addressed issues mostly from the area of education and culture. Both organs, the provincial and local, took these initiatives into consideration in most of the cases. Accordingly, initiatives of SMC were taken into account and provincial and local authorities in most cases undertook adequate measures in the areas concerned. According to the respondent, satisfaction is higher with the cooperation with provincial organs than the local ones. It must be emphasized that the respondent identified two types of units of local self-government. The first type comprises the units in which the Slovak language is in official use. The second type of unit of local self-government is where the Slovak minority language and script are not in use. With the first type of units was cooperation better than with the units in which the Slovak language and script was not in official use. Even though cooperation is relatively good on the provincial and local level, it is not conducted in any systematic or regular way, only when some issues pop-up or when some of the involved party asks for collaboration.

## ***2.3 Trans-ethnic cooperation of NCSNM on international and regional level***

On an international and regional level, SMC cooperated with international and regional organisations, state organs in kin-state, other organisations and institutions in kin-state, national minority councils in other state, similar organs of national minorities in other states, and other organizations and institutions very actively. Trans-ethnic cooperation in the international and regional arenas through the SMC was very common. The issues of cooperation concerned the areas of education, culture, information, official use of language and script of national minorities, maintenance of minority distinctiveness, questions about status, identity and rights of national minorities, and similar areas. SMC cooperated mostly in the areas of education and culture on an international and regional level. The most frequent cooperative partners for SMC were the Organisation for Co-operation and Security in Europe (OSBE) and the Council of Europe (CoE). Besides these, representatives of SMC participated in the work of intergovernmental organs, a

role that involves the supervision of the implementation of bilateral agreements on the protection of national minority rights. Furthermore SMC was consulted in the process of negotiating bilateral agreements with its kin-state, and was involved by the state organs and institutions in the regional and international cooperation regarding national minority rights protection.

SMC was relatively active in trans-ethnic cooperation with the state organs and organisations at all levels of state power – republic, provincial, and local. SMC also cooperated actively at the international and regional levels in the fields of education, culture, information on the Slovak language, and official use of the Slovak language and script. Cooperation between SMC and other governmental and non-governmental entities and actors is not conducted on regular basis. Ad hoc communication is common for trans-ethnic cooperation through the SMC, with the all partners defined by constitutional and legal framework. SMC did not use all possibilities of the constitutional and legal framework of trans-ethnic cooperation within and across Serbia. Trans-ethnic cooperation for the Slovak council was best with the organs of Vojvodina province and better with the units of local self-government in which the Slovak language and script were in official use. It seems that some competences and rights of minority councils and legal terms and phrases are not very well understood by the Slovak council, which influences the realization of competences and rights in practice and has a direct effect on the quality of SMC's work. SMC could be even more active in relation to state authorities on all levels and with the international and regional actors, especially in those areas where they have the right to undertake initiatives and not to wait to be called from the competent organs.

### **Concluding remarks**

Based on the analysis of the constitutional and legal framework of trans-ethnic cooperation through the NMC's, it can be stated that NMC's have legal status and competences to serve as a channel for dialogue and cooperation with the state authorities and nongovernmental actors, both in and beyond Serbia. NMC's are representative, advisory and partner bodies of state authorities with the competencies in four areas, namely education, culture, information, and official use of language and scripts. Within these areas as well as in the issues concerning minority status and protection, NMC's can refer their opinions, proposals and initiatives to the state authorities on the republic, regional and local levels in Serbia. Moreover, NMC's can



cooperate with international and regional organisations and institutions in the area of protection of human and minority rights, specifically concerning implementation of the collective rights of national minorities. Furthermore NMC's can cooperate with non-governmental organisations locally and internationally.

The analysis of the trans-ethnic model of cooperation through the NMC's in Serbia, with a particular focus on the status, competences and role of NMC's in relations to republic organs, organs of autonomous province and unit of local self-government and international and regional organisations, has shown that there is a relatively good general framework of trans-ethnic cooperation in and beyond Serbia. Nevertheless, there are still too many open questions and issues which should be further elaborated and resolved. First of all, legal documents regulating trans-ethnic cooperation contain a lot of inadequate and incorrect words. Legal terms and phrases used therein are not defined or specified. A lack of conceptual and terminological clarity can impede and complicate the realization of the provisions in practice. Secondly, in many aspects, legal documents directly or indirectly concerning NMC's and their competencies are not harmonised and coherent. In some cases legal documents are not only inconsistent but also contradictory. This fact causes difficulties in the implementation of certain rights in practise as well. Thirdly, many legal documents from other areas than education, culture, information and the official use of language and script of a national minority do not contain the term National Council of National Minority.<sup>33</sup> Fourthly, the decision of the Serbian Constitutional Court, which declared some clauses entirely or in part unconstitutional and repealed them, significantly reduces the competencies of NMC's in general and partially in the area of relations with state authorities and organs of the kin-states. NMC's can no longer refer to the Serbian parliament or government regarding the issues of their jurisdictions. Organs of regional and local authorities are no longer obliged to ask for the opinion of NMC's before decision making or conducting general activities in the area concerning national minorities. On an international and regional level cooperation of NMC's has been limited only to issues of human and minority rights, while cooperation with the organs of minorities' kin-state has been abolished. It is highly questionable whether the Serbian Constitutional Court was following the constitutional clauses which stipulate that “provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society...”<sup>34</sup> and that an “attained level of human and minority rights may not be lowered.”<sup>35</sup> In the decision-making process regarding legal compliance of certain provisions of the Law on

National Councils of National Minorities with the Constitution of the Republic of Serbia and in courts' explication and reasoning of this decision, a very restricted approach was applied towards the interpretation of the Serbian constitution and general rights as well as minority rights guaranteed by this constitution. Many rights, competences and opportunities for effective trans-ethnic cooperation of NMC's were restricted by the Constitutional Court's decision, or were rendered legally null and void.

Even in spite of this fact, it can be argued that there is a relatively good constitutional and legal framework of trans-ethnic cooperation in Serbia, which constitutes a broad range of opportunities and possibilities for NMC's to cooperate with different state authorities as well non-governmental actors in and beyond Serbia. Nevertheless, discrepancy between the institutional model for trans-ethnic cooperation and the practical side of this phenomenon is too wide. Cooperation should not be restricted to the legal rights of NMC's to address certain issues with state authorities. These initiatives should also be taken into account by these authorities, in order to speak about meaningful and effective trans-ethnic cooperation. In addition, no regular, systematic trans-ethnic cooperation exists in practice. Usually this cooperation is on an ad hoc basis. Despite all the constraints and challenges that national minorities and NMC's face in practice, NMC's should be more active and initiative in fostering trans-ethnic cooperation in order to fully utilize institutional possibilities for this cooperation and to reinforce the status and rights of minority communities in Serbia and beyond.

## Notes

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<sup>1</sup> Or lately designated only as Kosovo. Designation as Kosovo is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

<sup>2</sup> Republički zavod za statistiku. 'Popis stanovništva, domaćinstava i stanova 2011. u Republici Srbiji'. Republički zavod za statistiku. <http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Popisni%20atlas%202011.pdf>

<sup>3</sup> Republički zavod za statistiku. 'Popis stanovništva, domaćinstava i stanova 2011. u Republici Srbiji. Stanovništvo. Nacionalna pripadnost. Podaci po opštinama i gradovima'. Republički zavod za statistiku. <http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Nacionalna%20pripadnost-Ethnicity.pdf>

<sup>4</sup> Republički zavod za statistiku. 'Popis stanovništva, domaćinstava i stanova 2011. u Republici Srbiji. Stanovništvo. Veroispovest, maternji jezik i nacionalna pripadnost. Podaci po opštinama i gradovima'. Republički zavod za statistiku. [http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga4\\_Veroispovest.pdf](http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Knjiga4_Veroispovest.pdf)

<sup>5</sup> Statut Autonomne pokrajine Vojvodine. "Službeni list APV", br. 20/2014, član 24.

<sup>6</sup> Ministarstvo državne uprave i lokalne samouprave. 'Izvod iz registra nacionalnih saveta nacionalnih manjina'. Ministarstvo državne uprave i lokalne samouprave. <http://mduls.gov.rs/latinica/dokumenta-nacionalni-saveti-manjina.php>. Retrieved: May 5, 2015.

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<sup>7</sup> Pokrajinski zaštitnik građana Autonomne pokrajine Vojvodine. 'Četiri godine nacionalnih saveta nacionalnih manjina'. 2014; Pokrajinski ombudsman. 'Položaj žena u nacionalnim savetima nacionalnih manjina u Srbiji'. Pokrajinski ombudsman: Novi Sad, 2014; Centar za regionalizam. 2014. Monitoring transparentnosti u radu nacionalnih saveta nacionalnih manjina. Centar za regionalizam: Novi Sad: 2014; Petar Teofilović. 2011. Savet za međunacionalne odnose i lokalni zaštitnik građana u multietničkim sredinama. Centar za istraživanje etniciteta: Beograd, 2011.

<sup>8</sup> Interview with Mrs. Ann Tomanová Mikanová, head of National Council of the Slovak National Minority in Serbia, on 27.12.2014. The interview was conducted via telephone with computer assistance.

<sup>9</sup> Ustav republike Srbije, Službeni glasnik RS, broj 98/2006.

<sup>10</sup> Zakon o zaštiti prava i sloboda nacionalnih manjina "Sl. list SRJ", br. 11/2002, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 72/2009 - dr. zakon i 97/2013 - odluka US (Law on Protection of the Rights and Freedoms of National Minorities, "Official Journal of the FRY", No. 11/2002, "Official Journal of Serbia and Montenegro", No. 1/2003 - the Constitutional Charter and "Official Gazette of the RS", No. 72/2009 - other law and 97/2013 - the Decision of the Constitutional Court).

<sup>11</sup> The Law on National Councils of National Minorities- the Law on National Councils, Article 2.

Zakon o nacionalnim savetima nacionalnih manjina. "Sl. glasnik RS", br. 72/2009, 20/2014 - odluka Ustavnog suda i 55/2014.

<sup>12</sup> Zakon o osnovama sistema obrazovanja i vaspitanja, "Službeni glasnik RS", br. 72/09, 52/11 i 55/13; Zakon o učeničkom i studentskom standardu, "Službeni glasnik RS", br. 18/10 i 55/13; Zakon o visokom obrazovanju, "Sl. glasnik RS", br. 76/2005, 100/2007 - autentično tumačenje, 97/2008, 44/2010, 93/2012 i 89/2013; Zakon o udžbenicima i drugim nastavnim sredstvima, "Sl. glasnik RS", br. 72/2009; Zakon o srednjem obrazovanju i vaspitanju, "Sl. glasnik RS", br. 55/2013; Zakon o kulturi, "Sl. glasnik RS", br. 72/2009, Zakon o radiodifuziji, "Sl. glasnik RS", br. 42/2002, 97/2004, 76/2005, 79/2005 - dr. zakon, 62/2006, 85/2006, 86/2006 - ispr. i 41/2009; Zakon o javnom informisanju, "Sl. glasnik RS", br. 43/2003, 61/2005, 71/2009, 89/2010 - odluka US i 41/2011 - odluka US; Zakon o državnoj upravi, "Sl. glasnik RS", br. 79/2005, 101/2007 i 95/2010; Zakon o utvrđivanju nadležnosti Autonomne pokrajine Vojvodine, "Sl. glasnik RS", br. 99/09 i 67/2012- Odluka Ustavnog suda (Law on Establishing the Competences of the Autonomous Province "Official Gazette of the RS", No. 99/09 and 67/2012- the Decision of the Constitutional Court); Statut Autonomne pokrajine Vojvodine, "Sl. Glasnik APV", br. 20/2014 (Statute of the AP of Vojvodina "Official Journal of the APV", No. 20/2014; Zakon o lokalnoj samoupravi, "Sl. glasnik RS", br. 129/2007 i 83/2014 - dr. zakon.

<sup>13</sup> Odluka Ustavnog Suda RS br. IUz-882/2010, kojom su utvrđene neustavne odredbe Zakona o nacionalnim savetima nacionalnih manjina, "Sl. glasnik RS", br. 20/2014.

<sup>14</sup> Zakon o zaštiti prava i sloboda nacionalnih manjina "Sl. list SRJ", br. 11/2002, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 72/2009 - dr. zakon i 97/2013 - odluka US.

<sup>15</sup> Ustav FRJ, "Sl. glasnik FRJ", br. 1/92.

<sup>16</sup> Mainly the principles of the Framework Convention for the Protection of National Minorities, ratification in 1998, acceding in 2001.

<sup>17</sup> The state bodies and the bodies of autonomous province or the unit of local self-government should ask for an opinion of National Councils when making decisions in the areas of their jurisdiction (Article 19, paragraph 8) and National Councils can refer to the state bodies with a questions that influence the rights and status of the national minorities (Article 19, paragraph 9) of the Zakon o zaštiti prava i sloboda nacionalnih manjina "Sl. list SRJ", br. 11/2002, "Sl. list SCG", br. 1/2003 - Ustavna povelja.

<sup>18</sup> In the case of violations of minority rights, individual minority members, and also the National Councils, can claim damages with relevant courts (Article 23, paragraph 1 and 2 of the Zakon o zaštiti prava i sloboda nacionalnih manjina "Sl. list SRJ", br. 11/2002, "Sl. list SCG", br. 1/2003 - Ustavna povelja.

<sup>19</sup> Ustav Republike Srbije, "Službeni glasnik RS", broj 98/2006. Constitution of Republic of Serbia, Official Gazette, No 98/2006.

<sup>20</sup> Article 75, paragraph 2 and 3 of Constitution of Republic of Serbia, Official Gazette, No 98/2006.

<sup>21</sup> Zakon o zaštiti prava i sloboda nacionalnih manjina "Sl. list SRJ", br. 11/2002, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 72/2009 - dr. zakon i 97/2013 - odluka US, član 25.

<sup>22</sup> Odluka Ustavnog Suda RS br. IUz-882/2010, kojom su utvrđene neustavne odredbe Zakona o nacionalnim savetima nacionalnih manjina, "Sl. glasnik RS", br. 20/2014, 13. Ocena odredaba člana 25. Zakona.

<sup>23</sup> Zakon o državnoj upravi, "Sl. glasnik RS", br. 79/2005, 101/2007 i 95/2010, article 1 defines the state

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administration as a part of the executive branch of the Republic of Serbia performing administrative tasks derived from the powers and responsibilities of the Republic of Serbia (Article 1, paragraph 1).

<sup>24</sup> The Law on National Councils of National Minorities- the Law on National Councils, Article 2.

Zakon o nacionalnim savetima nacionalnih manjina. "Sl. glasnik RS", br. 72/2009, 20/2014 - odluka Ustavnog suda i 55/2014, član 27, sekcija 1.

<sup>25</sup> Article 27, paragraph 2 and 3 of the Law on national councils of national minorities (Zakon o nacionalnim savetima nacionalnih manjina. "Sl. glasnik RS", br. 72/2009, 20/2014 - odluka Ustavnog suda i 55/2014.

<sup>26</sup> Sporazum između Srbije i Crne Gore i Republike Mađarske o zaštiti prava mađarske nacionalne manjine koja živi u Srbiji i Crnoj Gori i srpske nacionalne manjine koja živi u Republici Mađarskoj; Sporazum između Srbije i Crne Gore i Republike Makedonije o zaštiti srpske i crnogorske nacionalne manjine u Republici Makedoniji i makedonske nacionalne manjine u Srbiji i Crnoj Gori; Sporazum između Savezne vlade Savezne Republike Jugoslavije i Vlade Rumunije o saradnji u oblasti zaštite nacionalnih manjine; Sporazum između Srbije i Crne Gore i Republike Hrvatske o zaštiti prava srpske i crnogorske manjine u Republici Hrvatskoj i hrvatske manjine u Srbiji i Crnoj Gori.

<sup>27</sup> Article 28 of the Law on national councils of national minorities.

<sup>28</sup> Odluka Ustavnog Suda RS br. IUz-882/2010, kojom su utvrđene neustavne odredbe Zakona o nacionalnim savetima nacionalnih manjina, "Sl. glasnik RS", br. 20/2014, deo 13, Ocena odredaba člana 25. Zakona.

<sup>29</sup> Article 26, paragraph 2\* of the Law on national council of national minorities.

<sup>30</sup> Article 26, paragraph 3\* of the Law on national council of national minorities.

<sup>31</sup> Član 98 Zakona o lokalnoj samoupravi, "Sl. glasnik RS", br. 129/2007 i 83/2014.

<sup>32</sup> 'Zbog odluka USS Džudžević traži reakciju saveta', Tanjug, FoNet, 22. januar 2014.

<sup>33</sup> For example the Law on the Prohibition of Discrimination does not recognize the right for NMC's to submit complaints to the court in order to protect members of national minorities from discrimination.

<sup>34</sup> "...pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation." Ustav republike Srbije, Službeni glasnik RS, broj 98/2006, član 18, sekcija 3 (Constitution of Republic of Serbia, Official Gazette, No 98/2006), English version available on: [http://www.srbija.gov.rs/cinjenice\\_o\\_srbiji/ustav\\_odredbe.php?id=217](http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav_odredbe.php?id=217).

<sup>35</sup> Ustav republike Srbije, Službeni glasnik RS, broj 98/2006, član 20, sekcija 2.

## Appendix A

**Table 1: Ethnic structure of the population of Republic of Serbia based on the results of census in 2011**

Population	Serbia
Total population	7186862
Serbian	5988150
Albanians	5809
Bosniaks	145278
Bulgarians	18543

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Bunjevci	16706
Vlachs	35330
Goranci	7767
Jugoslav	23303
Hungarians	253899
Macedonians	22755
Muslim	22301
Germans	4064
Roma	147604
Romanians	29332
Russians	3247
Ruthenians	14246
Slovaks	52750
Slovenians	4033
Ukrainians	4903
Croats	57900
Montenegro	38527
Others	17558
Did not wanted to declare themselves	160346
Declared themselves in the regional sense	30771
Unknown	81740

Source: Republički zavod za statistiku. 'Popis stanovništva, domaćinstava i stanova 2011. u Republici Srbiji. Stanovništvo. Nacionalna pripadnost. Podaci po opštinama i gradovima'. Republički zavod za statistiku. <http://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Nacionalna%20pripadnost-Ethnicity.pdf>

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Zakon o ratifikaciji sporazuma između Savezne vlade Savezne republike Jugoslavije i Vlade Rumunije o saradnji u oblasti zaštite nacionalnih manjina. "Službeni list SCG"- Međunarodni ugovori, broj 14/2004.

Zakon o ratifikaciji sporazuma između Srbije i Crne Gore i Republike Mađarske o zaštiti prava Mađarske nacionalne manjine koja živi u Srbiji i Crnoj Gori i Srpske nacionalne manjine koja živi u Republici Mađarskoj. "Službeni list SCG"- Međunarodni ugovori, broj 14/2004.

'Zbog odluka USS Džudžević traži reakciju saveta', Tanjug, FoNet, 22. januar 2014.