

The Law & Economics of the Estonian Law on Cultural Autonomy for National Minorities and of Russian National Cultural Autonomy in Estonia

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ABSTRACT

This essay analyses the 1993 Estonian Law on Cultural Autonomy for National Minorities (LCANM), based on an earlier one of 1925 during the first period of Estonian national independence, as the potential basis for the National Cultural Autonomy (NCA) of the Estonian Russian community. The latter was in fact never established in Estonia – and the question would be, why not? Law & Economics analysis is used in order to find out more about this complex matter. First, we discuss the issue of whether the purpose of the LCANM has actually been to further (Russian or any) NCA in Estonia to begin with. Second, if it was, then the question remains whether it is a bad thing that this never worked, either from the perspective of the Estonian state or from that of the Estonian Russians.

Key words: national cultural autonomy; personal autonomy; cultural autonomy; Estonian Russians; integration; nation state; state continuity; Karl Renner; Estonian minority policy.

1. Introduction

In 1993, the Republic of Estonia, which had become an independent state again a few years before after decades of Soviet occupation, passed a Law on Cultural Autonomy for National Minorities (LCANM), based on the Law on the Cultural Self-Government of Estonian Republic National Minorities passed during the first period of Estonian national independence in 1925. This is the – potential – basis for the National Cultural Autonomy (NCA) of the Estonian Russian community, which, comprising very roughly one-third of the population, is by far the largest, most important, and therefore most controversial one; one which is also made more tricky by potential links to Estonia's largest, and not necessarily friendly, neighbouring country, and by the fact that it is the minority that used to be, USSR-wide, the majority and thus the dominating group. (For the purpose of this paper, we will use the term "Estonian Russian" for everyone residing legally within the Republic of Estonia who would define

him- or herself to a large extent via his or her cultural-linguistic-national roots from Russia and the former Russian Empire if it qualifies as Russia – the choice and definition of the term is a no-win situation, and so this one is just a working definition.)

Russian NCA, based on this law, has, however, actually never been established in Estonia – and the question would be, why not? To use Law & Economics (L&E) analysis in order to find out more about this complex matter seems to be particularly appropriate because of its objectivising nature in what can be described as maybe the number one mine-field of Estonian politics, especially after the Bronze Night *événements* in the spring of 2007. It is hoped that this will give us a clearer picture.

Looking at the matter from an L&E perspective, however, we cannot jump right away to the conclusion that the non-establishment of Russian NCA in Estonia is a failure of the law. In accordance with the Platonic question, “This is what the law-maker must often ask himself: What is my purpose? Do I indeed achieve this or rather miss my goal?” (*Nomoi*, 744a), an important, if not the key question of L&E analysis (see the Introduction by Drechsler and Raudla *supra*, with further references), we will first have to ask what the LCANM was actually for, and second, whether establishing Russian NCA is actually a good thing, either for the Estonian Russians or, ostensibly, for the Estonian state. First, however, we will briefly narrate the fate of Russian NCA in Estonia, so as to lay out the scene.

2. The actual fate of Russian National Cultural Autonomy in Estonia

At this stage, let us assume that the purpose of the 1993 Estonian LCANM, as well as of its 1925 predecessor, was to facilitate the establishment of NCA for minorities living in Estonia; that this includes the Estonian Russians¹; and that Russian NCA in Estonia is obviously a good thing for “Estonian Estonians” and Estonian Russians alike. (We will later discuss all those assumptions separately.) But Russian NCA was never established. Why not?

Concerning the 1925 law, leading Estonian Russian historian Isakov gives four explanations:

1. The law was composed to respond to the needs of small and compact minorities like Germans and Jews who lived mainly in cities. The Russian community was too big and dispersed in rural areas.
2. As a result of territorial dispersion, Russians could not easily cooperate to compose the national register required for the establishment of NCA.
3. The law gave no real advantage to Russians (contrary to other minorities) as the state already financed free primary Russian education.
4. Russians were generally poor and would not have wanted to pay any additional tax to maintain NCA, which the Russian NCA authority could indeed have levied. (2001, 44)

¹ According to LCANM § 2, NCA may be established by persons belonging to German, Russian, Swedish and Jewish minorities or by persons belonging to other national minorities with a membership of more than 3,000.

Estonian Russian historian Nikiforov also stresses the importance of wealth but adds another important aspect – level of social activity. He states that “as a result of poorness, Russians were more passive socially than Germans and this hindered the establishment of NCA.” (2008, 45) It should be added, as Isakov stresses, that in fact, Estonian Russians applied for NCA when Estonian minority politics became more nationalist. However, they did this at the wrong time – after the *coup d'état* in Estonia in 1937. So, the government informed Russian representatives that their application could be accepted only in 1938 after the new Constitution came into force. Soon enough, World War II put an end to this initiative. (2001, 45)

After the regaining of Estonian independence in 1991 and the passing of the 1993 LCANM, Russians have tried to establish NCA in Estonia three times. According to Nikiforov, Nikolai Solovey (1920-2006), the founder and former chairman of the “Union of Slavic Charity and Enlightening Organisations”, made the first attempt in 1996. Referring to his personal interview with Solovey, Nikiforov argues that the attempt failed, “not because Solovey’s organisation was not representative enough or the Minister of Culture was against it, but because the procedure of composition of national register had not existed at the moment.” (2008, 50) If this is correct, then Nikiforov must refer to the situation before 1 October 1996, when the Regulation of the Government of the Republic No. 238 (1996) came into force, which regulates the composition of national registers. (Briefly, a cultural society of a national minority or a union of such societies has the right to compose a national register. It should submit an application that it wants to do so to the Minister of Culture who refers the application to a committee composed of representatives of the Ministry, the Ministry of Internal Affairs and of cultural societies of national minorities, which then informs the Minister of the quality of the application.)

Regarding the next applicants, representativeness became the key issue for the Minister of Culture and that commission. After the death of Solovei in 2006, Stanislav Cherepanov, a lawyer, local Russian politician from the “Russian Party in Estonia” and also the head of the NGO “Russian Cultural Autonomy” (NGO RCA), submitted an application to the Ministry on 30 March 2006 to receive permission to compose a national register. Cherepanov used the idea of Russian NCA in his campaign for the Parliament elections of 2007 by arguing that Russian NCA would help to preserve Russian education in Estonia. (Cherepanov 2007)² As Cherepanov received no response to his application from the Ministry by 2008, he lodged a complaint with the Tallinn Administrative Court (2008) and the Tallinn District Court (2008). Both courts obliged the Ministry to take a final decision within 30 days, which the Ministry unsuccessfully tried to protest in the Supreme Court. (See also Chancellor of Justice 2008, 27-28). After the final analysis made by the Ministry’s commission, which contained the opinion of three Russian umbrella organisations³, the Minister of Culture declined the application. The Directive of the Minister of Culture No. 69 (see

² In 2007, the Government launched the language reform of Russian upper secondary schools. According to Regulation No. 235 of the Government of the Republic (2007), Russian upper secondary schools have to teach 60% of subjects in Estonian by the year 2012.

³ Union of Russian National-Cultural Organizations “Sadko“, Tallinn Society of Slavic Culture, Union of Slavic Charity and Enlightening Organisations in Estonia. These are three umbrella organisations representing the vast majority of Russian cultural NGOs (around 150 of them). (See www.etnoweb.ee)

Ministry of Culture 2009) explains that neither Cherepanov nor the NGO RCA actually do represent the Russian community in Estonia. As the Tallinn Administrative Court (2009) did not satisfy Cherepanov's complaint against the directive, he applied to the Supreme Court (2010), where the case is currently pending.

Subsequently, and finally so far, Sergei Churkin, another lawyer and member of the "Foundation Endowment for Russian Culture" (FERC), requested authorisation to compose the national register on 21 December 2009. The Minister replied that two applications cannot be simultaneously accepted. (Ministry of Culture 2010) Churkin disagreed with the Minister by pointing out that the law does not prohibit several applications (Churkin 2010), but unlike Cherepanov, he has not made further steps to challenge the decision of the Ministry of Culture.

Altogether, the above-mentioned three attempts to initiate a national register opened up the debate about who represents the Estonian Russian community, if there can be said to exist one, not only for policy-makers but for the Estonian Russian leaders themselves.

3. The Estonian Law on Cultural Autonomy for National Minorities

But perhaps the purpose of the LCANM never was to further Russian NCA in Estonia? While this would sound disingenuous, mean-spirited or even outright seditious regarding a fully-democratic, liberal, and tolerant European Union member state like Estonia within many discourses, in the L&E context this is a perfectly legitimate question, because here, to hold that a law is supposed to accomplish what it says or even implies that it wants to accomplish is a rather bold assumption, as much as it would be bold to assume that a law actually does accomplish what it says it wants to accomplish.

3.1. Looking as if

The first, and rather simple and typical, explanation for a law could be that it was not meant to accomplish what it says it wants to accomplish, but rather, that it was supposed to look as if something should be accomplished, while this was never a priority or even not desired at all – in other words, a purely performative law. Again, in several discourses, this suggestion seems unfriendly, but the economic assumptions behind L&E suggest that such laws must not be terribly rare. In this case, what this would mean is that the LCANM was meant to look democratic, tolerant, liberal etc., especially towards friends and foes of Estonia alike who were interested in this matter and potentially important (European Union, Russia, the OSCE and so on).

In some sense, the scholarly literature on LCANM and Russian NCA points in this direction. Osipov, who wrote a monograph on the theory and practice of NCA in the Russian Federation and European countries including Estonia, has argued that while NCA has been realised in different places and under different names (personal autonomy, non-territorial autonomy, cultural autonomy, cultural self-government), it is in essence always a liberal declaration of minority rights protection, but rarely more. (2004, 408, 411)

It is not the purpose of this essay to discuss, let alone find out, whether this really was the case. Even if one argued so, naturally, this would be a simplistic and mono-causal and very likely wrong analysis. However, to assume this as part of the impetus for the law, and to investigate further into that direction, does not seem *prima facie* illegitimate from an L&E perspective. A similar thing has been argued by one of us about the famous Estonian e-Governance and especially e-voting (see Drechsler and Madise 2004; Drechsler 2004), after all. What is interesting regarding the L&E analysis, however, is that the consequence of this would be that the success of the LCANM would already lie in its passing, not in its implementation. Performative laws are by definition always successful if passed (ignoring public-relations problems if this fact becomes too glaring), and in this case, especially when looking at the literature, the fact that there is no Russian NCA does not touch upon the success of the LCANM at all.

3.2. Continuity

However, if we look at the specifics of the Estonian case, another, less usual reason for the LCANM beyond performativity presents itself, and this is the issue of state continuity. A basis of the Estonian state today is that the Estonian Republic did never cease to exist after Soviet occupation, but that it rather stayed intact and real and that national independence was just regained, not established again, in 1991. There is a large literature on that (see only Mälksoo 2003, but also Drechsler 1999 regarding a possible differentiation) but no matter what the outcome is (the consensus does point towards actual continuity), it cannot be doubted that in 1993, it was crucial for the majority of law makers in the Estonian Parliament, the Riigikogu, to establish and emphasise such a continuity. This could even go against the best interests of Estonia as perceived and against the ideological convictions of the politicians involved, as Raudla has recently argued comprehensively, also via an L&E approach, for the Financial Constitution of Estonia. (2010) How does this look regarding the LCANM?

As has been stated, the LCANM is the direct successor of a 1925 law from the then-independent Estonian Republic, and this law has always been highly regarded as proof for the liberality and tolerance of that state. Isakov and another leading Estonian Russian historian, Shor, maintain that the law of 1925 was passed to celebrate democracy, tolerance and non-discrimination of minorities. Isakov argues that “the law demonstrated to the world the high level of democratic thinking Estonian politics had.” (2001, 44) Shor suggests that “Estonia wanted to support ethnic minorities according to the best democratic traditions.” (2005, 1) Finnish historian Alenius (2007, 458) and Isakov (2001, 34) explain such progressiveness in national issues by the ability of Estonians to understand the problems of minorities, as Estonians themselves had been a minority under foreign power. (To what extent these statements serve a tactical purpose as well is, of course, another matter; L&E analysis would suggest that there easily might be some.)

Concerning today’s situation, scholarly and political treatments seem to generally agree that the law of 1993 is a legacy of the “first Estonian Republic” and of the law of 1925 (e.g., Smith 2000, 12; Ministry of Foreign Affairs 2004, 6), and that the

point of the re-enactment was national continuity. (e.g., Feldman 2000; Ruutsoo 2000; Smith 2000; Aalto and Berg 2003; Smith et al. 2002; Kalmus 2003; Lauristin and Vihalemm 2009) In fact, pre-echoing Raudla, Smith reports precisely that the restitution discourse was so strong that the law was passed in spite of strong radical nationalist opposition in the *Riigikogu*. (2000, 31-43)

The answer regarding this point, then, is somewhat similar to the one *supra* regarding performativity. If the point of the establishment of the LCNM was to emphasise Estonian state continuity, the purpose was not to facilitate anyone's NCA. In that sense, looking at the literature, the LCNM was definitely successful.

4. National Cultural Autonomy as such and per se

Let us assume now that the LCNM was actually designed to further NCA in general, and thus also Russian NCA, in Estonia after the regaining of independence. If so, then L&E-wise, we should assume that this would have to be either to the mutual benefit of "Estonian Estonians" and Estonian Russians or only in the interest of the former, because otherwise, it would make no sense. In order to be able to judge this, let us look at the concept of NCA and see what it is intended for, i.e. to which question it is an answer – one of the key perspectives for legal analysis generally. (See Drechsler 1998, 55)

4.1. Renner's concept

NCA is one of those concepts that conveniently go back, or can be argued to go back, to one specific author. Thus, it is very easy to ascertain what it was designed for. Karl Renner (1870-1950) was a prominent Austrian political and academic figure: Social Democratic statesman, chancellor (1918-1920, 1945) and president (1945-1950) of Austria as well as an eminent constitutional lawyer. (*Encyclopaedia Britannica*; Osipov 2004, 35) For a long time, his context was the Austro-Hungarian Empire (1868-1918), which united about 53 million people representing 15 nationalities: Germans, Hungarians, Poles, Croats, Czechs, Ukrainians and so on. Depending on the specific territory, most of these groups were simultaneously majority and minority within one state. Growing nationalism fostered political conflict between many nationally mobilised groups who wanted to take over the state power to ensure official and public status of their language and culture within the Empire. (Osipov 2004, 35) In order to save the Empire, but also to ensure the preservation of all national cultures and languages, Renner developed the model of NCA in his essay "Nation and State" (2005).

To briefly sum up Renner's argument, he declares the nation state to not be the only context within which national groups can interact with each other and even to be a particularly ill-suited one for his Imperial context. The nation state gives legitimate opportunities to only one national group to protect its own culture and language in the public sphere and on public expense. This creates conflict between the national majority and minorities who want to attain and exploit state power as well – arguably, the only guarantee of cultural and linguistic regeneration. A law which would stipulate as a rule the equality of all citizens according to liberal standards could not

solve this conflict either, as it would just be declarative in essence and would not provide public support to preserving the minorities' culture and language. In order to reconsider the context and legal practice, Renner approaches state and nation separately as different phenomena. The state is denoted by territory, sovereignty, law and population (a classical definition of the state) with common interests like social welfare, security and economy. The nation, in contrast, is a cultural phenomenon, an association of individuals who share common sentiments, myths, history, emotions, comparable to religion. (Renner 2005, 17)

For this purpose, Renner develops NCA as a concept which generally rests upon legally defined principles of non-territoriality, personality, autonomy and multilingualism, to be realised through the public-administration system. Non-territoriality means that national cultures should be understood and supported as such, independent from a specific geographical area. Otherwise, territorial autonomy (TA) remains the only alternative, and TA threatens the territorial unity of the state, which is a key aspect of the latter. The personality principle refers to the idea that only a person himself or herself can define his or her nationality. Renner believes that this should create national communities naturally without state intervention. The state, however, should establish special registers in and by which all individuals can freely affiliate with their chosen nationality. After the individuals have so affiliated themselves, the state will grant them subjective public rights so that they can constitute a national community as a legal public body. This body should have financial, asset, administrative, cultural and representative autonomy to establish specific institutions and organisations, e.g. a tax-collection system, property, schools and universities with the national language as the language of instruction, elections and representative organs. (Renner 2005, 20-23, 27) Thus, the national community receives full control over its own culture and is responsible for both the failure and the success of its own development. Finally, as "national life is manifested mainly through the linguistic community" (Renner 2005, 21), one language should be official to ensure that everyone understands the state actions, but minorities' languages should have official status as the local or regional language.

4.2. Problems with National Cultural Autonomy

NCA was never actually implemented in the Austro-Hungarian Empire, and there are very few cases, e.g. Cyprus, where it could be argued that it has been. (Osipov 2004, 348) There are at least two groups of arguments related to peculiarities of modern society and community which point out what the problems with NCA would be today, conveniently represented, for instance, in a standard volume on the topic by Nimni. (2005)

First, it is argued that the nation state remains the dominating framework for majority-minority relationships, and the liberal approach is used to correct its failures in doing so. NCA can thus be seen as too challenging for the nation state and/or not far-reaching enough. Kemp claims that NCA may not be relevant because today, ethnic minorities are protected from discrimination via both international and national legislation and human rights organisations (2005, 209); Levey, that NCA is impossible when "jurisdiction over national identity is concerned" and that "national

identification, language and identity” are actually related to territory. (2005, 151) Kymlicka argues that, for example, nationally mobilised minorities in post-communist countries would simply not accept NCA as a substitute for TA because minorities would demand TA as the “Western” standard to solve minorities’ issues. (2005, 146) So, at best, as McGarry and Moore assume, NCA may suit dispersed, intermixed but not nationally mobilised groups. (2005, 88) In this case, as with any form of autonomy, NCA should be balanced with the state interests. (Kelly 2005, 215)

Second, it is pointed out that NCA rests upon the assumption that individuals of one nationality will cooperate with each other thanks to a common language and culture. However, Kemp highlights that in reality national groups are not as homogeneous as Renner seems to think. (2005, 214) Osipov also stresses that NCA is an example of essentialism or “group centrism” – the belief that communities are coherent social groups with a precise structure, organisation and leadership. (2004, 11, 424) Kemp’s and Osipov’s arguments are close to Brubaker’s (2002) well-known concept of “groupism” which stresses the “imagined” nature of national and ethnic groups.⁴ As a result, Kelly (2005, 176) and Nootens (2005, 58) conclude that if a community is heterogeneous, it may be difficult to find common representatives and ensure cooperation. But even if this were possible, NCA may create inequality among different ethnic groups. For example, Kelly states that individuals from quantitatively bigger national communities will pay lower marginal costs for goods deriving from NCA such as education than individuals from smaller ones. (2005, 176) In sum, NCA may be risky for socially passive or disconnected communities.

Finally, it may be argued that Renner’s concept of NCA simply assumes that denying minority rights to the minorities is not in the long- or at least mid-term interest of the national majority. This may well be the case, and it is quite certainly the more ethical position to take, but from an L&E perspective, a quick and tentative L&E analysis summation of Renner’s concept of NCA would show that NCA can be understood as a set of market-like mechanisms in cultural policy in order to address the problem of different groups within a nation state which is systemically homogenising:

- rationality – both majority and minority accept NCA as the most rational alternative to TA and the politicisation of culture;
- creating a “win-win” situation – NCA makes all national groups better off by ensuring power and resources to all of them, and the majority is spared ethnic strife and conflict without having to give up its dominating role within the state;
- individual choice of group adherence.

However, such an analysis reveals the weak points of NCA in the context of the modern state and community life as well:

⁴ Brubaker defines groupism as a tendency to see groups as internally bonded with common purposes, interests, agency and leaders. In practice, such homogeneity exists rather as image, stereotype or rhetoric that “ethnic entrepreneurs” create and support. Ethnic entrepreneurs claim to represent the interests of their ethnic group. In practice, these interests tend to be their own or at best their organisations’, though. (2002)

- the majority holding the state power actually has no rational incentives to welcome NCA if the chance for genuine conflict is low enough;
- NCA has a normative background and objectives that can be understood to challenge the idea of the nation state;
- the “imagined” communities themselves, with a possible lack of inner solidarity, connectedness and cooperation, may not be able or willing to create or exploit NCA to begin with.

5. Russian NCA in Estonia

We will not address here the widely discussed question of how exactly the LCNM works, both as a law compared to other laws and international standards, and as regards those minorities which were actually able to establish NCA in Estonia, interesting though that would be. (See Kabanen 2006; Olle 2008; 2009; Osipov 2004, 364; 2008)⁵ Rather, as declared previously, we will now quickly look at how those problems would play out regarding Russian NCA in Estonia, first as pertains to the Estonian state, second, to the Estonian Russians.

5.1. Russian NCA in Estonia: Problems for Estonia

Estonia is sometimes characterised as a “nationalizing state” (Brubaker 1996, 105), “ethnic democracy” (Järve 2000, 1; Smootha 2001, 71) or even “ethnocracy.” (Yiftachel 2006: 32) The current preamble of the Constitution of the Republic of Estonia⁶ is referred to as the official indicator of an ethnic nation state. (Ruutsoo 2000, 52) Therefore, one may assume that Russian NCA challenges Estonia if it is indeed an ethnic nation state, efforts towards transformation towards a “civic nation state” (see Lauristin and Vihalemm 2008) notwithstanding. The institutionalisation of Russian language and culture via NCA would then, subjectively at least, endanger Estonian culture and language.⁷ That means that Estonia is – or is perceived by a substantial part of “Estonian Estonians” and their leadership to be – a state in which not citizenship determines belonging but ethnic origin, and the purpose of which, clearly

⁵ The debate might be summed up as follows: Official rhetoric has accepted Finnish and Swedish NCA (which are certainly seen as non-threatening to anything), and Estonian Finns and Swedes have composed their own national registers and conducted elections to their representative body – the Cultural Council – in 2004 and 2007 respectively. (See only Council of Europe 2004, 7; 2010, 8) It should be stressed that the LCNM actually does not define NCA and its juridical status. It regulates the organisation of cultural self-government, elections to representative organs, composition of national registers, etc. The state annually allocates money to the two private organisations representing Estonian Finns and Swedes, the Foundation of Estonian Swedish Culture and the Union of Estonian Fins. (See only State Chancellery 2009a; 2009b). As a result, the legal status of cultural self-government (public or private) is an important issue in possible amendments to the LCNM.

⁶ “... the state ... shall guarantee the Estonian nation, language and culture through the ages ...” (Preamble, Constitution)

⁷ Smith shows such argumentation in the speeches of some Estonian members of parliament arguing against the concept of NCA in 1993. (2000, 32)

stated in the Constitution, is not the happiness of its citizens (let alone inhabitants) but rather the perpetuation of the Estonian nation and its cultural characteristics. This, of course, very much lowers the chances for minority NCA to succeed.

The second – not unique, but still highly important – feature of Estonia is that Russia is the old and recent colonial power that had occupied Estonia for centuries, most recently in the particularly anti-Estonian form of the USSR. The regaining of independence in 1991, singing or not, was not easy, and Russian rhetoric, sometimes more, sometimes less, certainly presents an atmosphere of threat that Russia might want to “reclaim” its *irridenta*.

Russian NCA may therefore simply be, and indeed is perceived as, a vehicle for Russians in Estonia to organise, to form a more cohesive group (as was stated and will be further explicated *infra*, it is remarkably incohesive so far), and, seeing that they are not infrequently perceived to be the “national enemy” (see only Mertelsmann 2005, 43), thus to turn more easily against the integrity of Estonia. In other words, Russians may mobilise themselves politically via culture – and that would be too high a price to pay for the advantages of Russian NCA. The fact that the Russian Embassy in Tallinn does cooperate closely with the Estonian Russian NGO’s on the cultural level (Russian Embassy in Estonia, see the Embassy’s website at <http://www.rusemb.ee/relations/culture/>), and Russia’s use of the Estonian Russians and their situation for various political purposes, most recently analysed by Schulze (2010), are well-known (if, for the impact it could theoretically have, astoundingly ineffective).

On the one hand, therefore, Russian NCA may appear as a “soft version” of Russian territorial autonomy (TA), which may be considered a direct threat to Estonian territorial integrity. (See only Miall et al. 2004, 99). On the other, as Russian NCA would not apply (just) to the specific territories where the majority of Estonian Russians live, but generally to Russian culture and language, it might be considered a possible solution exactly in the Rennerian sense to preserve simultaneously the integrity of the Estonian state territory and the Estonian Russian culture and language. Nonetheless, regardless of the differences between NCA and TA, the underlying issue is not what type of autonomy Estonia might give to Estonian Russians, but whether to give any autonomy at all, and so NCA can easily be seen, and obviously is, as a slippery slope towards TA or worse.

In sum, it may be argued that Russian NCA is not suited for Estonia from the majority and state perspective because it challenges the state model chosen in the form of the Estonian Republic and because of the specific *irridenta* issue. It may well be that in the mid- or long run, everyone would be better off if the state model was changed, including lowering the possibilities of Russia to utilise the Estonian Russians for their own purpose; however, from an L&E perspective, it is certainly easy to see why NCA in the Rennerian sense would not seem fully attractive to the “Estonian Estonian” side well beyond the unattractiveness NCA generally has for a majority.

5.2. Russian NCA in Estonia: Problems for Estonian Russians

Regarding the Estonian Russian side, the general problems with NCA mentioned above apply as well: The issue of “imagined community” and the one regarding the comparative apparent needlessness of NCA if the state already provides for minority protection and for cultural activities of the minority in question to a sufficient extent (which of course ignores Renner’s special impetus but may still be highly relevant psychologically).

The Estonian state does support Russian culture and language in both private and public spheres. Around 120-150 Russian cultural NGOs are registered in Estonia (www.etnoweb.ee). All of them have the opportunity to receive monetary support via various foundations such as the “Integration and Migration Foundation Our People”. Private Russian schools and Sunday schools can be established as well. Concerning public mechanisms, a Russian preschool, primary, secondary and upper secondary system of education has been publicly financed since Estonian independence. The state supports Russian-language media as well. (See Council of Europe 2004; 2010) In addition, legislation does exist which formally protects all individuals, including Russians, from ethnic discrimination, e.g. the Equal Treatment Act. (2009)

The transition of Russian upper secondary schools towards Estonian as the language of instruction to foster the integration of Russians has generated concerns about the future of public Russian education. The Estonian Ministry of Education and Research commissioned a study that analysed the attitude of Estonian Russians towards the transition, and generally, respondents thought that the transition will have a positive effect on Estonian society, e.g. via better language skills, easier access to academic education and the labour market for Estonians Russians. Most respondents, however, thought that the transition would threaten Russian language and culture (Emor 2008⁸), i.e. they interpreted the Estonian minority policy as assimilative. (See Vetik 2008, 178; but see Lauristin and Vihalemm 2009; cf. also Kāosaar 2007) The transition might be understood as another tool of assimilation, which could feasibly be countered by NCA. On the other hand, the language transition clearly tallies with recent initiatives in “Western” Europe to cope with migration problems and the “failure of *Multi-Kulti*” as well (see just Kleine-Brockhoff 2010 on Germany), and Renner himself explicitly mentioned the need for one language in one country that is understood by everyone as a *conditio sine qua non* for an NCA setup. (Renner 2005, 21) So this very topic may be perceived as threatening Russian culture in Estonia, but NCA would not be a concept to solve this particular problem.

The second large issue here is that even if the Estonian Russians might need NCA, they are not so structured and led that they could easily attain it – well beyond any design on the state and majority part to prevent it for their own purposes. That is of course an especially tricky business, but we have some sociological data here to get a first idea about it anyway.

For example, over the years, some leading Estonian sociologists (Lauristin and

⁸ The question was phrased as “How much do you agree that teaching subjects in Estonian threatens the preservation of Russian culture in Estonia?” Answers were as follows: totally agreed 19%, rather agreed 34%, rather disagreed 29%, disagreed 17% and absolutely disagreed 10%. (Emor 2008)

Heidments 2000; Pettai 2002; Lauristin 2008) have discerned three socio-economic categories of Estonian Russians according to the level of their adaptation to Estonian society: Estonian citizens, citizens of the Russian Federation and persons with undetermined citizenship. Briefly, Estonian citizens or so-called “integrated Russians” (around 50% of all Estonian Russians) have succeeded in the new situation after the collapse of the USSR. Unlike Russians citizens and persons with undetermined citizenship, integrated Russians are wealthier, socially more active, more educated, speak Estonian and have close contacts with Estonians. If Nikiforov’s argument mentioned *supra* is correct that Russian NCA was not established during the first period of Estonian independence because Estonian Russians were poor and socially passive (2008, 45), then integrated Russians might be interested in Russian NCA. (Of course, they might also be the least interested precisely because of their integratedness).

But up to today, Estonian Russian political and civic activity has been very low. Remarkably, none of the “purely” Russian parties (Russian Party in Estonia, Russian Constitutional Party) have won seats in any recent *Riigikogu* elections. (See <http://www.vvk.ee/index.php?id=11162>, the website of the Estonian National Electoral Committee, listing “Elections and Referendums in 1992-2009”) And while it is true that many Estonian Russians cannot vote or be elected because they are not Estonian citizens⁹, Estonian Russians with Estonian citizenship prefer to vote for Estonian mainstream parties (with some emphasis on the Centre Party which explicitly but by far not exclusively caters to the Estonian Russian clientele). And, according to Lauristin, only 2% of the Russians as compared to 12% of the Estonians belong to any NGO. (2008, 160)

An interesting additional perspective is brought by Estonian scholars who approach this issue by means of the originally social-psychological “individualism-collectivism” dichotomy. Lauristin and Heidmets (2000, 22) as well as Vihalemm and Kalmus (2009, 111) find that values of individualism, pragmatism, hedonism and consumerism influence the formation of identities among “Estonian Estonians” and Estonian Russians. Vihalemm and Kalmus specify that Russian identity is shaped by values of passiveness (global orientation, emancipation, consumerism, desire for capital) not activeness (adoptability, re-creation, social capital, reinforcement of success). (2008, 922-924) Vihalemm and Kalmus find that the above-mentioned values do not support the reproduction of network identity and social capital among Russians. As a result, they conclude, Estonian Russians have not been mobilised after the collapse of the USSR, and this would hardly be possible today. (2008; cf. also Vihalemm and Masso 2007; Pettai 2002)

And regarding leadership, the general perception, surely, is that Estonian Russians have no (overall, generally accepted) leaders, and the classic argument to explain this phenomenon is that the Russians who came to Estonia after World War II were mainly workers in state enterprises and that the layer of their intelligentsia, which was basically a technical one, was small. (See Sidelnikov 2000, 162; Lauristin and Heidmets 2000, 21; Heidmets and Lauristin 2000, 320; Järvi 2008 in a *Riigikogu*

⁹ In May 2010, 98,522 individuals residing legally in Estonia held the citizenship of the Russian Federation and 103,047 had an undetermined citizenship. (Statistics Estonia) Non-citizens with a permanent residence permit may vote, but cannot be elected, in local elections.

debate) The famous (by the 20th century) indigenous Russian minority of the Old Believers, loyal to Estonia, is by far too small and almost systemically without leadership (at least effectively; of course there are leaders on the micro-level, who, however, conflict with each other) to make a difference here. (See Aidarov 2006) And while there is the activity of the Russian Orthodox Church in Estonia (35 % of ethnic Russians affiliated themselves as Orthodox Christians in 2000, according to Statistics Estonia), and while the rich cultural activity of Russians in Estonia has been amply documented, most recently by Isakov (2008), the fact remains that all this is in the end not dominant within the Estonian Russian population.

To sum up, the analysis shows that while speaking one language and representing one culture, Estonian Russians have identities that rather sustain and develop social and political passiveness and individualism than activeness and solidarity. Local Russian parties are unpopular, and while some leaders who claim to represent Russian community interests exist, there are no real leadership figures to be seen who could make a difference and push NCA. The ambiguity related to the cultural-political representation of Russians and their ethnic-national nature further complicates the formation of common grounds that might unite all Russians in Estonia. Altogether, the Estonian Russian community can be said to be to a large extent “imagined” (as a *community*) in Brubaker’s sense. (2002) Chances for a successful push for Russian NCA in Estonia thus are fairly low even as regards the impetus from the Estonian Russian side.

6. Conclusion

L&E analysis has brought forth some interesting results regarding the LCANM and Russian NCA in Estonia. First, it is not clear that the purpose of the LCANM has been to further (Russian or any) NCA in Estonia to begin with – if it was designed to be purely performative or to emphasise Estonian state continuity, then it was successful and accomplished its goal regardless of NCA at all. If it was designed to further NCA, then the question remains whether it is a bad thing that this never worked – NCA is not an unproblematic concept, and it may be a “good thing” both for “Estonian Estonians” and Estonian Russians, or at least not surprising, even imagining optimal framework conditions, that it was never established in Estonia. For all inhabitants of Estonia, the counter-argument against NCA is that it undermines the nation state which Estonia still is and, if some reification is allowed, seems to be set and intent to remain for any foreseeable future; for Estonian Russians, it is that NCA is an inappropriate concept for what can be argued is a heterogeneous and passive community, if community even is the right word. These results are very likely to be unpopular with representatives of “Estonian Estonians” and Estonian Russians alike, which would mean by L&E standards, of course, that there might be something to them.

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