

# **Tolerance Established by Law: the Autonomy of South Tyrol in Italy**

**By**

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For a long time an intensive debate has divided the theory and practice of ethnic conflict resolution between advocates of consociationalism and their opponents. The debate has primarily been an internal one within the broader school of power sharing. On the one side in this debate were those who subscribed to the idea that conflict settlements were most stable and durable if they rested on relatively rigid institutional structures as originally described by Arend Lijphart in 1977: grand coalition of political parties representing all major segments in a divided society; proportionality of legislative and executive representation and more generally in public service employment and the allocation of public funding; minority veto rights on all essential decisions; and segmental autonomy. Their opponents, mainly among them Donald Horowitz, held that such arrangements were morally unacceptable and practically prone to collapse. They instead suggested mainly electoral mechanisms to induce moderation and conflict reduction, primarily the use of the Alternative Vote, a majoritarian preferential electoral system. The disagreements between consociationalists and integrationists have not subsided over the years.

This paper examines the model of autonomy, by the application of a consociational strategy, in Trentino-South Tyrol. Most peace accords fail. More precisely if less dramatically, of the hundreds of agreements, ceasefires and declarations which have concluded between hostile parties since the Second World War, relatively few of them have led to durable settlements. There is some notable success: South Tyrol in Italy did succeed in completely avoiding an escalation of violence in the 1960s through an autonomy package by the application of a consociational strategy. The main argument is that the "success" of the South Tyrolean model lies in - a system of tolerance established by law- in the sense of a „mix“ of legal instruments and institutions which preserve the different identities through autonomy and, on the other hand, enable co-operation through representation and participation.

## **Minorities in Italy**

Within the Italian territory approximately 2.5 million people (4.5% of the population) belong to (at least) 12 minority groups. This fact makes Italy the EU country in which most minorities live.

It is important to stress that the Italian Constitution takes only the language as a distinctive feature to identify minorities, because of the basic assumption, based on the French model of "citizenship approach", and avoiding the concept of ethnicity, the Italian nation is built on many linguistic groups. The concept of nation is to be understood as *demos* and not as *ethnos*.

This fact does not mean that other minority features other than the linguistic are not recognized, but only that the protectional mechanisms are different. For the "other" minorities (racial, sexual, religious, and so on) the general provision of the equality clause in art. 3 of the Constitution is issued, while linguistic minorities are protected on the basis of the special measures announced in art. 6 of the Constitution.

In addition, not all the linguistic minorities are officially recognized, so that, under the Italian constitutional law's point of view, it is correct to speak about "protected" linguistic minorities. The third preliminary element for the comprehension of the Italian "minority Constitution" is the difference in the minority safeguard system not only between protected and unprotected minorities, but also between the different protected minorities. It is also (not only possible, but also necessary)

to distinguish the diverse protection systems within the constitutional law. The criterion for the identification of protected minorities is basically the territory. The affirmative minority rights are connected primarily to a territory rather than to its inhabitants, so that in the Italian constitutional system, personal-related minority rights are rarely recognized. Person belonging to a linguistic minority can use their rights only within a certain territory.

The constitution establish 20 regions, to 5 regions have been granted special autonomous status, Sicily and Sardinia for the geographical status – both are islands, and Valle d'Aosta/Valle d'Aoste for their French-speaking minority, to Friuli Venezia Giulia for the Slovenian speaking minority and Trentino Alto Adige/Südtirol for their German speaking minority. The special autonomy grant wide ranging legislative and administrative power to the regions/province, and the influence of the central government has been reduced.

### **The case of South Tyrol**

South Tyrol, situated in the very north of Italy on the border of Austria, covers only 2.5 % of the Italian territory. The population of 450.000 inhabitants (corresponding to 0.8 % of Italy's population) consists of 3 language groups: two-thirds German speakers, less than one-third Italian speakers and some 20.000 Ladin speakers (their language is also called Rhaeto-Romance).

The majority of German speakers live in the valleys and rural areas, whereas due to the immigration policies of the past and the attempts at industrialization, the Italian group is concentrated in the three major cities (Bozen/Bolzano, Meran/Merano and Brixen/Bressanone) and in the southern parts of the Province, bordering on the Province of Trento (Trentino) which is almost entirely Italian.

In some way, the conflict in South Tyrol reflects the main historical developments of the 20th century: it dates back to the annexation of the former Austrian territory by Italy in 1919, which was done in spite of Woodrow Wilson's declarations of self-determination as guiding-principle for the Post-War-order. The 1920s saw the a aggressive policy of Italianisation of the native German speaking group by a totalitarian regime, the Italian fascists, forcing Germans to change their names, rewriting place names, prohibiting Germans from speaking their language, restricting Germans to countryside and promoting Italian immigration into the cities.

After the end of World War II, Italy established a first autonomy regime in order to fulfil its international obligations taken 1946 in the De Gasperi-Gruber agreement (an international treaty between Italy and Austria which became part of Italy's Peace Treaty, annex IV). The Autonomy Statute drafted by Rome was deliberately designed to ensure that the cultural, economic, and social development of the South Tyrolean lay in Italian hands. Italy achieved this by putting South Tyrol and the Province of Trentino together in one region, named Trentino-Alto Adige, with an Italian majority. Immigration into the province was promoted through subsidized public housing programmes. This increased the share of Italian speakers in the originally almost exclusively German speaking population to 34% in 1971. As a result, the post-war years were characterized by disputes and clashing interests of the South Tyrolean and Italian governments. South Tyrolean activists organized bomb attacks to which Italian authorities answered with harsh measures in South Tyrol. From 1955 onward, Austria played an increasingly larger role in South Tyrolean efforts to gain greater autonomy. At the same time, Austria brought the case to the attention of the UN. This marked the beginning of the internationalization of the conflict. On 31 October 1960, the UN General Assembly adopted a resolution on behalf of the South Tyrol question which confirmed that the Paris Treaty committed Italy to establish an autonomy for the protection of the ethnic South Tyrolean population and that Austria had the right to a say in the matter. A new agreement was reached in 1969 (known as the "Package"), consisting of a set of measures with an aim to establish effective autonomy in South Tyrol. The Package consisted of 137 implementation-measures.

Special joint commissions, in which the representatives of the State and of the Province had equal number and standing, were formed for the negotiations on the implementation mechanism. Although formally part of ordinary law, the enactment decrees, which were the results of the

negotiations within these joint commissions, did not need to be discussed (or even adopted) in the national parliament. Therefore their deliberation could be kept outside of normal political business; and experts from both sides could be involved in their elaboration.

It took 20 years to have all of its enactment laws adopted and implemented, so that formally the conflict was settled in 1992. Thanks to a procedure of consensus and collaboration between the various actors - representatives of the minority, the majority and of Austria, a foreign state - upon which the autonomy is based, as well as the resultant possibilities for control, ensured that the process of minority protection with its long-term orientation was not destroyed in the last link of the chain, i.e. in its concrete implementation.

In 1995 Austria joined the European Union and in 1997 the Schengen-Treaty was adopted, an event which transformed the border between Italy and Austria, formerly a strict line of division separating cultures, languages and peoples, into a mere administrative boundary.

The actual autonomy system maintains the region as a “roof” structure above the two provinces (Trentino almost 100 per cent Italian speaking and South Tyrol with the majority German speaking), but all substantive legislative and administrative powers are vested with the provinces. Nowadays the German linguistic minority in South Tyrol is the largest and best protected minority in Italy and probably the most well handled minority in the whole world. The autonomy in Trentino-South Tyrol is often seen as a model for conflict resolution. Of course, each demand for self-determination and each case of autonomy is different. It is influenced by a unique mix of various factors such as history, geography, tradition, economics, strategic considerations, the nature of the group desires autonomy, and the reasons for the establishment of an autonomous regime. Therefore, precedents cannot (and should not) be followed automatically. A simple “export” of models, their transfer and application to other situations should be generally ruled out. Autonomy covers a wide range of possibilities, from cultural autonomy and mere administrative decentralization to near-independence: there is no “one size fits all”-modell. In this sense it seems possible – and useful – to identify some lessons to be learned from the “history” of other conflicts, by studying them thoroughly and by analyzing the influence of differences and parallels with respect to one’s own situation. In this context, a case which exemplifies a mutually beneficial solution of minority conflict via self-governance rather than secession is of great importance.

### *Organization of the South Tyrolean society*

The desire to conduct one’s own affairs on the basis of independent responsibilities and through independent representatives can generally be regarded as a basic goal of minorities. South Tyrol’s autonomy satisfies these aims through its key features: autonomy of legislation and administrations, proportional ethnic representation and a commitment to bilinguality. Finally, but certainly fundamental, is the generous financial basis provided for the implementation of these provisions.

The whole institutional complex of the Province of Bolzano (and of the Region Trentino-South Tyrol, where relevant) is based on the strict separation of the two main linguistic groups, the German one and the Italian one, given to the third one the Ladins, numerically less consistent, the right to be represented as such in the provincial parliament. This principle of coexistence imposed by law and based on an ethnic divided governance provides for a large spectrum of affirmative minority rights especially in the fields of public jobs, education, and linguistic rights. Positions in public offices are reserved for citizens belonging to each of the three language groups, in proportion to the size of the group themselves as they appear in the official census. Since 1981, every resident must make a formal declaration as to his or her language group, which is the basis for the right to stand for public office, to be employed in the public administration or as a teacher, and to be given social housing. In addition preference was given to citizens who have resided in the region the last two years. This quota system called proportional representation is conceived as a form of reparation for Italianization during the fascist period.

The educational system is based on separation. A fundamental principle of today's autonomy is that elementary and secondary education be provided in the mother tongue of the child. Consequently, instruction in South Tyrol is given in separate German and Italian schools and language instruction in the second language of the province is mandatory. In the Ladin valleys lessons are conducted in equal number of hours in German and Italian, and Ladin is taught as well. Furthermore, all teachers must be native speakers of the language they teach. In principle, parents are able to choose the school system which they would like their children to attend; a child can be refused only because of insufficient knowledge of the language of instruction in order to guarantee the character of the school and the efficiency of the lessons.

Concerning the language rights, in South Tyrol the German language has parity with the Italian language, which is the official language of the state. Everybody can use either German or Italian (in limited areas also Ladin) in their dealing with public administration based in the province, the judiciary, as well as concessionaires of public services based in the province. The public employers must be bilingual (trilingual in the Ladin valleys) which has to be proved by a public examination. Since 1993 every judicial trial can be instituted also in German (previously German could be used but all minutes had to be written in Italian). Place names must be bilingual (trilingual in the Ladin valleys) and the province has also created a public media board with the duty to transmit German speaking radio and TV programs,

As might be expected, measures such as safeguarding linguistic rights and the double-triple educational system are very expensive. For the most part neither the province nor the region has the right to levy taxes. To cover the cost of autonomy the majority of the taxes and duties collected in the province goes to the province (around 90%) and a small part flows to the region (5%). The remaining 5 % is used by the state for tasks at local level.

### ***Autonomous powers***

South Tyrol's autonomous powers are quite outstanding. South Tyrol's legislative powers are primarily concerned with economic, social, and cultural matters, e.g. place names, local customs and usages, town and country planning powers, environment, mining, agriculture, tourism, communications, and transport (areas in which the province has primary competence) and elementary and secondary education, commerce and public health (the Province only has secondary competencies).

The Assembly (Provincial Council) is the law-making body and elects the Provincial Government which carries out the executive functions. According to the power-sharing model, the composition of the South Tyrolean Government must be proportional to the ethnic groups in the Council; the presidency of the Council rotates between members of the different groups.

The dominant cleavage within the society remains ethnicity; other cleavages, such as class, are subordinated to ethnic polarization. Both the German/Ladin and the Italian groups have built up their own organizational structures and societal subsystems: kindergartens, schools, political parties, trade unions, public libraries, youth clubs, sports clubs, media, and churches are mono-ethnic. There is not much contact between the groups, for structural reasons (urban-rural antagonism and divided economic structure) and due to linguistic difficulties (fluency in both languages is still not reached, especially with the elder generations). The reality is therefore characterized by "parallel societies".

This segregation is, at least in part, counterbalanced by the territoriality-principle, which adds a functional dimension, related to the territory as such, and to the application of law in the autonomous entity. Participation, integration and co-responsibility are achieved through the equality and equal standing of all citizens. The territorial dimension also offers the chance of a frequent exchange between majority- and minority-positions: a German-speaking resident of Bozen/Bolzano, for instance, is a member of a minority in Italy, at the same time a member of the majority on provincial level, and again part of a minority in the city of Bozen/Bolzano. This should also help to understand the positions of others.

### ***Tolerance established by law***

In South Tyrol, a complex and highly differentiated legal system has been created which calls for a mix of rotation, parity and proportional representation, and which might be characterized as "tolerance established by law". As a result of this system, the conflict was to a certain extent civilized and institutionalized and transformed into one between politicians over the interpretation of the Autonomy Statute. The main ingredient of the system is power sharing or "consociationalism", which includes the diffusion of power from the center to the periphery, and comprises four main elements, all of which are present in South Tyrol:

1. Participation of the representatives of all significant groups in the government, through jointly exercising governmental (and particularly executive) power, e.g. grand coalition cabinet: According to the power-sharing model, the composition of the South Tyrolean Government must be proportional to the ethnic groups in the Council, the presidency of the Council rotates between members of the different groups.
2. A high degree of autonomy for the groups (especially for issues which are not of common concern): The principle of cultural autonomy is established by art. 2 Autonomy Statute, which states that the parity of rights of citizens of all language groups is recognized, and "their ethnic and cultural characteristics are protected". In other words, the differences between the three cultures are recognized and the "value" of this diversity highlighted. The cultural autonomy and the provisions for the protection and promotion of cultural characteristics, including the system of separated schools, are typical expressions of group protection. All decisions in these fields require a wide consensus within the respective group.
3. Proportionality as the basic standard of political representation, public service, appointments, and allocation of public funds: The Autonomy Statute provides for a system of proportional representation of the language groups for public employment and for the allocation of funds for cultural activities of the group, as well as for social welfare and services (i.e. housing).
4. Minority veto was the ultimate weapon for the protection of vital interests, however only on issues of fundamental importance: The principle of equality of all residents, regardless of their group affiliation and the quasi group personality of the language groups counterbalance the provisions on proportional representation. This is particularly true for the right to request separate voting by the language groups in the Regional or provincial Council, whenever a draft-law is judged to be in violation of the parity of rights or the cultural characteristics of one group. The ultimate means available to the language groups in an action before the Constitutional Court, founded on the same motivation. These are emergency-mechanism in case the normal means of consultation in the organs should not work.

### **Conclusion**

In order to determine which of the institutions could potentially be applied or transferred to other situations, the specific framework conditions of an ethnic conflict must be considered, as they differ from country to country. In particular, the social segregation of ethnic groups, the level of democratization and the elite's willingness to compromise are important criteria when selecting a suitable model of comparison.

Among the most important factors requiring analysis in a given situation, is the historical development of the conflict. Traumatic historical experiences and antagonistic interpretations of historical events block the understanding between the different ethnic groups. This is also true, at least to some extent, for South Tyrol, where the actual separated school system is still justified through historical experiences, namely the prohibition of the use of German in public, and the consequent secret under-ground schools set up during the period of forced assimilation by the Italian fascist regime.

The importance of language, which becomes the criterion for establishing ethnic identity and the line of demarcation determining the socio-cultural identity of the individual must also be acknowledged. Language is held to be both a sign of desire of the individual who speaks it to identify himself or herself with a particular culture and a means of determining individual membership of a specific social group. Although the Autonomy Statute refers to the ethnic and cultural characteristics of the various sections of the South Tyrolean population, it also refers to “language groups” in order to indicate the Italian-speaking, German-speaking and Ladin groups living in South Tyrol.

The geographical and demographic situation also needs to be taken into account, especially the question of compact-settlement areas of a minority, as decisive criteria for determining which form of autonomy to apply. In the case of South Tyrol both factors certainly favoured the establishment of a territorial autonomy.

What lessons can be learned from the South Tyrolean case?

Of fundamental importance is certainly the basic compromise achieved through the negotiations leading to the “Package”: the explicit recognition of (cultural) diversity and the renouncement of incompatible positions by both sides.

What is particularly relevant for other minority-conflicts is the successful process of internationalized conflict de-escalation, and the conjoint transformation of a conflict, whose course was by and large negative, into a positive process with peace and stability as direct and sustainable results. The single procedures can also offer interesting examples for other conflicts: the operational calendar with its detailed, preestablished time-frame, the institutionalized negotiations in special joint commissions of the State and of the Province, a special procedure for the enactment decrees, which cannot be changed unilaterally by the State and, finally the guarantees, in particular the possibility of bringing disputes to the Italian Constitutional Court.

Of course, the possibility of applying single provisions regarding the autonomous powers and the relations between the different groups depends on the existence of the same or at least similar prerequisites, in particular on the presence of a self-contained settlement area and on the distinct language of the minority. Important seems to be the “mix” of (sometimes even contrasting) principles which, in the case of South Tyrol, do not only guarantee the protection of a minority, but, by means of stressing functional criteria (such as bilingualism of the single public servant in order to create a bilingual administration), serve the governance to the territory as a whole.

But there are also certain dangers which are to some extent inherent consequences of the compromise between the minority and the State: statutes of territorial autonomy anchor ethnic differences in the State, they tend to weaken the principle of democratic equality and can, at worst, further aggravate a conflict by stressing ethnic cleavages. As a result, the future development of the South-Tyrolean solution can also be questioned.

There is no doubt, that the settlement of the conflict by the 2nd Autonomy Statute was a first and necessary step. Italy’s German and Ladin minorities were no longer threatened by assimilation. Achieving a compromise solution accepted by the majority of all those concerned- Italy, Austria and the South Tyroleans – was certainly due to tolerance and goodwill on all sides. The same should be true for the preservation of the achieved results and their gradual development towards a society more characterized by interethnic interaction and cooperation.

Hence, instead of territorial and institutional separation based on the belief in ethnic homogeneity and the identification of ethnicity and territory, only pluri-ethnic autonomy and integration based on multiple identities and loyalties and the de-coupling of territory and ethnicity can serve as a “model” for state- and nation building in post-conflict societies.

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