

PRAVNI VJESNIK

*Časopis za pravne i društveno-humanističke znanosti
Pravnoga fakulteta Sveučilišta Josipa Jurja Strossmayera u Osijeku*

*Zeitschrift für Rechts - und Sozialwissenschaften der Fakultät
für Rechtswissenschaften der Universität Josip Juraj Strossmayer in Osijek*

*Journal des sciences juridiques et sociales de la Faculté de droit
Josip Juraj Strossmayer Université à Osijek*

*Journal of Law and Social Sciences of the Faculty of Law
Josip Juraj Strossmayer University of Osijek*

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Pravni vjesnik Pravnog fakulteta
Sveučilišta Josipa Jurja Strossmayera u Osijeku

Izdavač/Publisher

Pravni fakultet u Osijeku, Stjepana Radića 13, Osijek

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Časopis izlazi u 4 broja godišnje (cijena četverbroja 120,00 kn)

Narudžbe slati na adresu uredništva, a novac uplatiti na žiro račun broj 2340009-110063962

Naklada 500 primjeraka

Izdano uz financijsku potporu Ministarstva znanosti, obrazovanja i športa Republike Hrvatske

Tekstovi objavljeni u časopisu referiraju se u: Current Legal Theory, Tilburg, The Netherlands, ProQuest Research Library, Ann Arbor, Michigan, USA i Sociological Abstracts, San Diego, California, USA.

Tisak

MIT, Osijek.

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Original scientific paper
UDK 341.234-054.7=112.2(450)

LEGAL STATUS OF THE GERMAN LANGUAGE GROUP IN THE ITALIAN PROVINCE OF SOUTH TYROL

Abstract: The Italian Province of South Tyrol is often presented as a successful model of the legal regulation of interethnic relations between the majority and minority population in ethnically heterogeneous regions in Europe. South Tyrol has been a place of coexistence of three ethnic groups for centuries, viz. the Italian, the Ladin, and the German. However, the German ethnic group has always outnumbered the other two and such an ethnic structure had led to the establishment of a territorial autonomy within unitary Italy. In this article the author analyses the legal underpinnings of the autonomy concerned, its repercussions on the position of the German language group and on the interethnic relations in South Tyrol. The author focuses in particular on the positive effects of the established autonomy, namely on its role in preserving the distinctive identities of the three ethnic groups and in ensuring peace and stability in the Province and the region at large.

Key words: South Tyrol, German language group, ethnic identity, autonomy, minority rights

INTRODUCTORY REMARKS

The Province of South Tyrol and the Province of Trentino form the part of the Italian Region Trentino – South Tyrol/Alto Adige which was granted special autonomy by the Italian Constitution of 27 December 1947¹. Both Provinces have shared a common history for centuries; however,

1 The official name of the Province of South Tyrol is 'the Province of South Tyrol/Alto Adige/Bolzano'. According to the Italian Constitution, Italian Republic is divided into regions, provinces and municipalities (Art. 114 of the Constitution). Particular forms and conditions of autonomy are enjoyed by Friuli-Venezia Giulia, Sardinia, Sicily, Southern Trentino, and the Aosta Valley, based on the special statutes adopted by constitutional law (Art. 116 of the Constitution). There are two factors that serve as the basis for granting the status of autonomy: ethnic structure of the population in certain areas characterised by the presence of a certain number of ethnic and language minorities (Trentino-South Tyrol/Alto Adige, Friuli-Venezia Giulia and Aosta Valley) and specific geographical position (the islands of Sicily and Sardinia). Cf: Flanz, G. H. (1987) 'Italy', in Blaustein, A. P. and Flanz, G. H. (eds) *Constitutions of the Countries of the World – IX*, Dobbs Ferry, New York: Oceana Publications, Inc., p. 75; Wolff, S. (2004) 'Settling an Ethnic Conflict through Power-sharing: South Tyrol', in Schneckener, U. and Wolff, S. (eds) *Managing and Settling Ethnic Conflicts*. London: Hurst & Company, p. 57; Wolff, S. (2003) *Disputed Territories: The Transnational Dynamics of Ethnic Conflict Settlement*. Oxford: Berghahn Books Ltd., p. 116; Kaplan, D. H. (2001) 'Political Accommodation and Functional Interaction Along the Northern Italian Borderlands', *Geografiska Annaler – Series B*, 83(3), p. 134.

each of them has preserved its distinctive identity. The modern-day Region of Trentino – South Tyrol/Alto Adige is a mountainous, trilingual area which stretches over the northernmost part of Italy, immediately along the Austrian border. Its unique character is shaped by the distinctive ethnic structure of South Tyrol in which three language groups prevail: the German, the Italian and the Ladin. Moreover, German and Italian are both official languages in the Province, while Ladin is official in several eastern municipalities where Ladins make up the majority of the population. The German-speaking population is clearly predominant; it constitutes slightly over 69 per cent of the total population of the Province². This structure is a result of a mixture of historical circumstances related to the frequent changes of dominance over the border-areas between Italian and German/Austrian rulers, most notably to the last change which resulted in the seizing of South Tyrol (at the time known as *Mitteltirol*) from the Austro-Hungarian Empire after its defeat in the First World War and its annexation by Italy³.

South Tyrol has over time undergone a transformation from a region infamously encumbered with ethnic conflicts into an exemplary model of the legal regulation of coexistence of the minority and majority population⁴. South Tyrolean autonomy is now often presented as a desirable model for resolving existing or potential conflicts in ethnically heterogeneous regions in Europe and an evidence that, as Porter says, 'the realisation of minority rights benefits the majority and the minority'⁵. Generally speaking, autonomy has always been established 'in order to alleviate tensions resulting from heterogeneity, mainly of an ethnic nature, but also of other origins'⁶.

Since the Italian Constitution of 27 December 1947 only makes explicit mention of the protection of 'language' minorities, we will continue to refer to the German ethnic minority as 'the German language group' in our further analysis of South Tyrolean autonomy. However, one should not erroneously assume that it is a group determined solely by its own language; it is also characterised by a distinct cultural identity which developed under a centuries-long influence of the Austrian, German and Italian cultures. 'The German language group' is also a term that was most commonly used in the earlier autonomy statutes, albeit inconsistently. Thus, in addition to this term (Ger. *deutsche Sprachgruppe*) the term 'German language minority' (Ger. *deutsche sprachliche Minderheit*) is also used when the group is referred to from the perspective of the state or the Region of Trentino-South Tyrol/Alto Adige. Admittedly, in the scope of the last two entities, the German language group is indeed a minority in comparison with the prevailing Italian population; however, their ratio is reversed in the Province of South Tyrol, which renders the term 'language group' more appropriate. In addition to the above designation, there is a third one: 'South Tyroleans', which is not entirely incorrect since the majority of the German language group perceive themselves as such. Nevertheless, we should not overlook the results of a study carried out in 1994, which demonstrate that in addition to 80 per cent of the German language group, the same percentage of the Ladin and about 18 per cent of the Italian-speaking group also identify themselves with South Tyrol and not with the Region as a whole or with Austria or Italy. Therefore, if one wished to refer explicitly to members of the German language group, it would be more correct to identify them as 'South Tyroleans, Italian citizens whose mother tongue is

2 Cf. South Tyrol in figures (2008), Bozen/Bolzano: Autonomous Province of South Tyrol, Provincial Statistics Institute – ASTAT, p. 15.

3 Cf. Cole, J. W. and Wolf, E. R. (1999) *The Hidden Frontier: Ecology and Ethnicity in an Alpine Valley*. Berkeley and Los Angeles, California: University of California Press, pp. 1-3; Stacul, J. (2003) *The Bounded Field: Localism and Local Identity in an Italian Alpine Valley*. Oxford: Berghahn Books Ltd., p. 28.

4 Cf. Pentassuglia, G. (2005) *Minorities in International Law: An Introductory Study*. Strasbourg: Council of Europe Publishing, pp. 232-233.

5 Cf. Porter, K. (2003) 'The Realisation of National Minority Rights', *Macquarie Law Journal*, 3, p. 52.

6 Cf. Lapidoth, R. (1994) 'Autonomy: Potential and Limitations', *International Journal on Group Rights*, 1(4), p. 270.

German⁷. Nowadays, they are considered to be one of the national minorities of autochthonous status in Europe⁸.

ETHNIC STRUCTURE OF SOUTH TYROL

Today's South Tyrol covers an area of 7 400.43 km² and has a population of 462 999 according to the latest census from 2001⁹.

An analysis of the official censuses carried out between 1880 and 2001 reveals that the German language group in South Tyrol has significantly outnumbered the Italian and the Ladin in the last 120 years. Consequently, there are only 14 out of 116 municipalities of the Province in which Italians or Ladins make up the majority¹⁰. According to the first official census carried out in South Tyrol in 1880, as much as 90.6 per cent of the population in the area were members of the German language group, followed by the Ladin language group (4.3 per cent), and finally by Italians, who accounted for a modest 3.4 per cent of the population¹¹. The data on the ethnic structure of South Tyrolean population gathered in the last official census in 2001 show that the portion of the German language group in the total population of South Tyrol (64 per cent) slightly decreased relative to the 1991 census, when it accounted for 65.3 per cent of the population. A similar decrease was noted with respect to the Italian and Ladin language groups. In 1991 the Italian language group constituted 26.5 per cent of the total population of South Tyrol, and decreased to 24.5 per cent in 2001, whereas the number of Ladins, who made up 4.2 per cent of the population in 1991, dropped to 4 per cent in 2001. In the same period the number of other language groups increased from 4 per cent to 7.4 per cent. However, these percentages do not actually mean that the sizes of the particular language groups decreased; on the contrary, this period also marked an increase in the number of members of the German and of the Ladin language groups (the German from 287 503 in 1991 to the present figure of 296 461 and the Ladin from 18 434 to 18 736). The above percentages merely reflect the fact that the number of the Italian-speaking group decreased (from 116 914 in 1991 to the present figure of 113 494) and that there came to an appreciable increase in the number of members of other language groups. Data collected in the earlier censuses demonstrate a steady increase in the size of the German language group, except in the period between 1910 and 1920, when it decreased from 223 913 (89 per cent) to 193 271 (75.9 per cent) as a result of the First World War. In the same period the size of the Italian language group increased significantly, from 7 339 (2.9 per cent) to 27 048 (10.6 per cent). The number of Ladins grew only slightly, i.e. from 9 429 (3.8 per cent) to 9 910 (3.9 per cent). Still,

7 Cf. Alcock, A. (2001) *The South Tyrol Autonomy – A Short Introduction*. Bozen/Bolzano: County Londonderry, p. 20.

8 Cf. Malloy, T. H. (2005) *National Minority Rights in Europe*. New York: Oxford University Press Inc., p. 22.

9 The entire Region of Trentino-South Tyrol/Alto Adige has a population of 974 613, which means that the German language group constitutes around 30 per cent of the total population in the Region. In comparison with the total population of Italy (58 751 711) this percentage amounts to slightly less than 0.5 per cent. Cf. South Tyrol in figures (2006), Bozen/Bolzano: Autonomous Province of South Tyrol, Provincial Statistics Institute – ASTAT, pp. 6, 12; Rapporto Annuale – La situazione del Paese nel 2005 (2005), Roma: Sistema Statistico Nazionale, Istituto Nazionale di Statistica – ISTAT, p. 2; Report Submitted by Italy Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as: Italy State Report I), ACFC/SR(1999)007, 3 May 1999, pp. 31-34.

10 Cf. South Tyrol in figures, *ibid.*, pp. 8, 16-18.

11 *Ibid.*, p. 19.

this trend of progressive increase lasted until the 1991 census, which made the Ladins one of the three language groups whose population had marked a constant growth¹².

A comparison of the numerical ratios of the three language groups clearly demonstrates that only the Ladins constitute a minority at all three territorial levels: national, regional and provincial. The Italian language group constitutes a minority only at the provincial level and the German both at the national and the regional levels.

Although South Tyrol has for centuries been a place of coexistence of all three language groups, they have mostly occupied geographically distinct areas, each settling in particular parts of the Province. Consequently, the Italian language group is still largely concentrated in the urban areas along the rivers of Eisack and Etsch, while the German and the Ladin language groups mainly live in mountainous rural areas. According to Stacul, the fact that these ethnic groups speak different languages and occupy distinct territorial units has remained a significant element of their differentiation¹³. A more robust contact between the German and the Italian language groups, and thus more pronounced bilingualism, has been documented in the southernmost parts of the Province, along the border with the remainder of Italy and in the areas surrounding main inland waterways¹⁴.

HISTORICAL OVERVIEW OF THE CONSTRUCTION OF SOUTH TYROLEAN ETHNIC IDENTITY

The great proportion of the German language group in the total population of South Tyrol is a result of centuries-long German and Austrian influences in the region. Conflicts with Italy date back to the Middle Ages and they have generally revolved around the domination over the Brenner Pass, the lowest mountain pass in the Alps and an important traffic route at the intersection between northern and southern Europe¹⁵. In the period between the eighth and the fourteenth century South Tyrol was part of the Frankish Empire and the Bavarian Dukedom. For a short period in the thirteenth century it was under the rule of Count Meinhard II of Tyrol who succeeded in uniting the former dioceses of Trident and Brixen into the County of Tyrol. This earned him the credit of being the creator of independent Tyrol. The effects of the centuries-long Bavarian influence on South Tyrol are evident to the present day; namely, a South-Bavarian dialect of German can be heard throughout its territory. In the fourteenth century Tyrol became a part of the Habsburg Monarchy only to come under the Bavarian rule again after Napoleon's conquests and the defeat of Austria at the beginning of the nineteenth century. After the Congress of Vienna in 1815 it was returned to Austria (the then Austrian Empire) and from 1867 on it was the Austrian Crown Land of Austria-Hungary¹⁶.

¹² Cf. South Tyrol in figures (2008), op. cit., p. 19.

¹³ Cf. Stacul, J., op. cit., p. 30.

¹⁴ Cf. Eichinger, L. (2002) 'South Tyrol: German and Italian in a Changing World', *Journal of Multilingual and Multicultural Development*, 23(1-2), p. 137; Casonato, C. (2002) 'Trentino-Alto Adige', in Domini, M. (ed) *Manjine i prekogranična suradnja u alpsko-jadranskom prostoru*. Zagreb: Radna zajednica Alpe-Jadran, pp. 323, 326; Fischer, E. (1949) 'On Boundaries', *World Politics*, 1(2), pp. 198-199; Dominian, L. (1915) 'Linguistic Areas in Europe: Their Boundaries and Political Significance', *Bulletin of the American Geographical Society*, 47(6), p. 416.

¹⁵ Cf. Triffterer, O. (1992) 'The Rights of the German Speaking Population of the South Tyrol', in Dinstein, Y. and Tabory, M. (eds) *The Protection of Minorities and Human Rights*. Dordrecht/Boston/London: Martinus Nijhoff Publishers, p. 465.

¹⁶ Cf. Eichinger, L., op. cit., p. 139; Peterlini, O. (1995) *South Tyrol Autonomy*. Bozen: Government of the Autonomous Province of Trentino-South Tyrol, p. 2; Flanz, G. H., op. cit., p. 2.

The twentieth century history of South Tyrol was initially marked by the struggle of the German language group for the right to self-determination and annexation to their mother country Austria. This was followed by more moderate requests for autonomy, which would allow for the development and preservation of the group's ethnic identity in the territory it had been occupying densely for centuries.

In our survey of the historical events which directly impacted on the destiny of South Tyrol and the German language group, we must put special emphasis on the end of the First World War as well as on its repercussions on the territorial integrity of the defeated Austro-Hungarian Empire. The Treaty of Saint-Germain-en-Laye signed on 10 September 1919 officially declared the dissolution of the Austro-Hungarian Empire, and sovereignty over its former constituent parts was delegated to a whole range of other states, including Italy¹⁷. As a part of this territorial redrawing, Italy acquired Trento, an area with a strongly represented Italian minority, and South Tyrol, the Austrian Crown Land south of the Brenner Pass, whose population was dominated by the German language group (89 per cent). The expansion of the Italian sovereignty to areas stretching further than its actual 'ethnic' borders antagonised the Austrians and the German language group in South Tyrol, who sought readjustment of the state borders as stipulated in point IX of the so-called Woodrow Wilson's Fourteen Points. In his speech delivered on 8 January 1918 Wilson requested that the frontiers of Italy should be redrawn along clearly recognizable nationality lines, i.e. those separating the Italian and German ethnicities. In Austrian view, that frontier stretched along the Salurn Pass south of Bozen/Bolzano. However, the readjustment never became a reality. Firstly, the Italian side did not consider itself bound by the provisions of Woodrow Wilson's Fourteen Points. Furthermore, in their opinion, Trento and South Tyrol constituted a geographically indivisible area with the Brenner Pass acting as a natural frontier along the Alpine chain, in which the Italian language group was a majority and as such had more right to decide on the destiny of the area concerned. It also referred to the questionable theory by Ettore Tolomei, an ethnographer and one of the most extremist Italian nationalists, who claimed that the German language group were not descendants of Germans who had immigrated to South Tyrol in the fifth century after the fall of the Roman Empire, but were domicile population germanised over time by the dominant German clergy, administration and educational system. An attempt of the German language group in 1921 to attain unification with Austria on the basis of an independently organised referendum also ended in failure because Italy and the Allies refused to recognise the results of a referendum they had not previously authorised¹⁸.

After annexation of South Tyrol to Italy negotiations were launched between the Italian Government and political representatives of South Tyrol on the future legal status of and government over the area. However, they were terminated abruptly in 1922 when Fascists, led by Benito Mussolini, came into power¹⁹. The Fascist era was characterised by the policy of assimilation of all ethnic minorities in Italy, which, as far as the German ethnic group was concerned, meant

17 Cf. Pentassuglia, G., loc. cit. (note 4); Steininger, R. (2004) *South Tyrol – A Minority Conflict of the Twentieth Century*. New Brunswick (USA) and London (UK): Transaction Publishers, pp. 4-13; Sanford, W. E. (1995) 'Government – Minority Dialogue in Austria', *International Journal on Group Rights*, 3(4), p. 262; Hannum, H. (1993) 'Rethinking Self-Determination', *Virginia Journal of International Law*, 34(1), p. 4.

18 Cf. Steininger, R., ibid., pp. 14-20; Wolff, S., op. cit., p. 58; Tatalović, S. (2003) *Etnički sukobi i europska sigurnost*. Zagreb: Politička kultura, p. 84; Alcock, A., op. cit., pp. 1-2; Marinelli, O. (1919) 'The Regions of Mixed Populations in Northern Italy', *Geographical Review*, 7(3), pp. 139-140.

19 Cf. Flanz, G. H., op. cit., pp. 8-13. All until 1995 a neofascist party, Italian Social Movement (Ita. *Movimento Sociale Italiano – MSI*), was present on the Italian political scene, one of the rare opponents of South Tyrolean autonomy. Cf. Wolff, S., ibid., pp. 69-70.

absolute prohibition of the use of the German language in public, especially of the term *Südtirol* or any other derivative based on the word Tyrol²⁰. Despite repressive measures, the assimilation policy of the Fascist regime did not produce the eradication of the identity of the German language group. Consequently, Mussolini resorted to even more dramatic measures of forced relocation. In October 1939 he signed an Agreement with Hitler according to which the German language group were given two options: either to leave the area they had been occupying for more than 1300 years and move to the *Reich* or to stay on condition that they fully assimilate to the Italian population. Although more than 200 000 inhabitants (approx. 80 per cent) decided to relocate, eventually around 75 000 left South Tyrol due to the war, but many returned after the Second World War had ended. It is perhaps odd that Hitler never showed any territorial aspirations towards South Tyrol, but this could be interpreted as a token of gratitude to Mussolini's Fascists for their support to his Nazi movement. Furthermore, he presented some elements of this ideology in his pamphlet entitled 'The Question of South Tyrol and the Problem of German Allies', published in February 1926²¹. The discrimination policies of the Fascist and Nazi regimes seriously affected the economic, social and cultural position of the German language group. Therefore, it came as no surprise when after the Second World War a vast majority of the group demanded that South Tyrol be returned to Austria²². This request, as well as many others made by South Tyroleans of German origin, was expressed in the political programmes of the South Tyrolean People's Party (Ger. *Südtiroler Volkspartei* – SVP), which was formed only a few days after the end of the Second World War. In the following several decades SVP represented the interests of a vast majority of South Tyroleans, which regularly earned them votes from at least 85 per cent of the German language group, and, curiously enough, from more than 60 per cent of the Ladin language group²³.

THE GRUBER-DE GASPERI AGREEMENT (1946)

The final outcome of the Second World War was a disappointment for both Italian and South Tyrolean nationalists. For the second time in history South Tyroleans were denied their right of accession to their kin-state. In addition, pressured by the Allies, Italy was forced to change its minority policy and ensure an appropriate level of autonomy for the German language group. The legal foundation for the protection of the German language group in South Tyrol after the war was provided by the bilateral agreement between Italy and Austria signed on 5 September 1946 in Paris, which was dubbed Gruber-De Gasperi Agreement after its signatories, the Austrian Foreign Minister Karl Gruber and the Italian Prime Minister Alcide De Gasperi²⁴. The Agreement consisted of three sections, and guaranteed the residents of the Bolzano Province who be-

20 Prohibition of the use of German extended to all state services, the judicial and education system, even to the selection of first names. Moreover, all political parties belonging to the German language group were prohibited. Due to the repressive national policy, the German language group went underground and taught German in secret schools, so called 'catacombs'. Cf: Steininger, R., op. cit., pp. 21-44; Alcock, A., op. cit., pp. 2-3.

21 Cf: Latour, C. F. (1965) 'Germany, Italy and South Tyrol, 1938-45', *Historical Journal*, 8(1), p. 95.

22 Cf: Steininger, R., op. cit., pp. 46-63; Wolff, S., loc. cit. (note 18); Eichinger, L., op. cit., p. 138; Alcock, A., op. cit., p. 3; Weigend, G. G. (1950) 'Effects of Boundary Changes in the South Tyrol', *Geographical Review*, 40(3), pp. 367-369.

23 Cf: Wolff, S., *ibid.*, pp. 68-69; Alcock, A., *ibid.*, p. 4.

24 Cf: Das neue Autonomiestatut (2003), Elfte, ergänzte Auflage, Bozen: Autonome Provinz Bozen-Südtirol, pp. 12-13; Steininger, R., op. cit., pp. 97-111.

longed to the German language group and the residents of neighbouring bilingual municipalities in the Trentino Province full equality with residents belonging to the Italian language group. The objective was to preserve their specific ethnic characteristics and to ensure their cultural and economic development.

The first section of the Agreement specified the rights that Italy guaranteed to the German language group in accordance with the existing or planned legislation, or to be more precise, the right to primary and secondary education in their mother tongue, the right to equal use of German and Italian in public services, official documents and to bilingual place name signs; the right to re-establish their German last names that had over time been Italianised and the right of equal access to public services so as to attain equal employment opportunities in accordance with the respective proportions of the German and Italian ethnic groups in the total population of South Tyrol. The second section of the Agreement guaranteed residents of the above mentioned provinces legislative autonomy and the autonomy of the executive branches of regional government. Moreover, it stipulated that members of the German language group must be consulted when formulating and adopting any future acts concerning autonomy. The final, third, section of the Act provided for a number of measures whose aim was to normalise the relations between neighbouring Italy and Austria.

The Italian Government took upon itself to review the options foreseen in the Hitler-Mussolini Agreement of 1939 within one year after signing the Agreement and in continuous consultation with the Austrian Government. Furthermore, it took on the regulation of mutual recognition of university diplomas, free transport of passengers and goods between northern and eastern Tyrol (both road and railway transport) as well as border traffic and the exchange of goods at local levels²⁵.

The importance of legal protection of the German language group stipulated by the Gruber-De Gasperi Agreement gained international legal recognition in the Paris Peace Treaties signed on 10 February 1947²⁶. Namely, the Agreement was integrated into the Peace Treaties in its entirety as their Annex IV. This ensured post-war protection to the German language group in South Tyrol. Austria, on the other hand, received only small satisfaction from the Agreement for the historical injustice of being denied even as little as the part of South Tyrol between the Brenner Pass and railway route Pusterthal when borders were redrawn, which would have made it possible to establish a direct link between northern and eastern Tyrol. The Allies, especially the USA and Russia, did not support annexation of South Tyrol to Austria, and although they advocated its territorial unity with Italy, they failed to incorporate fundamental regulations on the protection of minority rights of the German language group in the initial drafts of the Peace Treaties. Unlike the Allies, Italy and Austria recognised in this failure a possible source of further conflicts, which is why they decided to sit down and jointly forestall them. This eventually resulted in the signing of the Gruber-De Gasperi Agreement and its consequent integration into the text of the Paris Peace Treaties²⁷. This document became the basis for the future statu-

25 As expected, initial steps towards the normalisation of Italian-Austrian relations was made in the framework of economic co-operation. Its legal basis was the Bilateral Preferential Agreement signed on 12 May 1949. It facilitated the exchange of goods between the Region of Trentino-Alto Adige and the Austrian Provinces of Tyrol and Vorarlberg. Cf: Casonato, C., op. cit., p. 324.

26 Cf: *Gazzetta Ufficiale della Repubblica Italiana* n. 295 del 24 Dicembre 1947. The objectives of negotiations held at the time of signing the said Peace Treaty with Italy included the regulation of the three existing territorial conflicts over South Tyrol, Venezia-Giulia and Aosta Valley. This only confirmed the acute nature of the South Tyrolean conflict, since it was included, next to Venezia-Giulia, on the agenda of the Versailles Peace Conference in 1919. Cf: Burgwyn, H. J. (1997) *Italian Foreign Policy in the Interwar Period, 1918-1940*. Westport: Praeger Publishers, pp. 1-4.

27 Cf: Steininger, R., op. cit., pp. 77-96.

tory protection of the German language group; however, as far as elimination of ethnic conflicts is concerned, its stipulations on autonomy did not bring about the expected results in the first few decades.

AUTONOMY STATUTE (1948, 1972, 2001)

The general and in some parts imprecisely phrased provisions of the Gruber-De Gasperi Agreement were elaborated on in the first Autonomy Statute of 26 February 1948, a controversial document which produced divided public reactions. On the one hand, in adopting the Statute, the Italian Government displayed commendable willingness to ensure the German language group appropriate rights and freedoms in the framework of a defined cultural autonomy and to do so in a relatively short period following the Second World War. In the period when South Tyrol was faced with a high probability of escalating conflicts, such a step was only acceptable from a political point of view. However, even if we disregard personal interests of the Italian Government, the fact remains that the adoption of the Statute marked the beginning of a process of creating a model of autonomy in which the German language group gradually became an integral and equal part of the Italian society. Still, the Statute granted the German language group a significantly lesser degree of autonomy than expected. Two Provinces, Bozen/Bolzano and Trento, were united into the Region Trentino-Alto Adige, which entailed avoidance of an explicit mention of the place name 'South Tyrol' both in the name of the Province and of the Region. Trento, which now stretched over a larger area, was predominantly Italian (99 per cent of the population), so that Italians constituted two-thirds of the population in the Region. This had a direct impact on the Region's administration, which was granted considerably more power under the Statute than the Provinces. The Region was competent for all the vital economic sectors and had no obligation to delegate part of its authority to Provinces. In addition to having no economic power, the German language group was also seriously affected by the fact that German was not recognised as an official language in South Tyrol, despite the fact that the foundations for the equality of Italian and German had already been laid by the Gruber-De Gasperi Agreement. Because of the range of other provisions discriminating against the German language group in relation to the Italian, members of the German language group requested that the Statute be revised. The economic and social crisis gradually evolved into a serious political one²⁸. When it became obvious that the requested revision would not take place, in 1956 the German language group resorted to bombing to draw attention of the global public and in 1957 they staged a large protest in Sigmundskron Castle, demanding separation of South Tyrol from Trento and a higher degree of autonomy. In 1959, after Austria had publicly supported the German language group and called on Italy to ensure their minority rights guaranteed under the Gruber-De Gasperi Agreement, conflicts escalated to international proportions. Italy rejected their demands, defending its position by the fact that the South Tyrolean issue was exclusively an internal one. Further escalation of the conflict prompted Austria to present its conflict with Italy before the UN General Assembly, which, in response, adopted two resolutions of historic importance²⁹. In Resolution 1497(XV) of 31 October 1960 it called on the opposing parties to resume negotiations on the implementation of the Gruber-De Gasperi Agreement and advised them, if negotiations

²⁸ Cf: Triffterer, O., op. cit., pp. 477-478.

²⁹ Cf: Steininger, R., op. cit., pp. 114-116, 121-129.

failed, to resolve the dispute by applying one of the methods of peaceful settlement of disputes provided under the UN Charter, including the submission of the case to the International Court of Justice. The parties were advised, however, to refrain from any actions that would jeopardise their good neighbourly relations³⁰. In a separate Resolution 1661 (XVI) of 28 November 1961 the General Assembly called for compliance with the demands of the first mentioned Resolution³¹. Both documents confirmed Austria's earlier standpoint that the South Tyrolean conflict was more than just an internal Italian affair, and required the involvement of Austria as the natural protector of the German language group³².

Under the pressure of international community, Italy initiated negotiations with Austria and the SVP, which were successfully concluded in 1969 with the adoption of the so called 'Package' of 137 measures aimed at reviewing Autonomy Statute and improvement of the overall position of both the German and Ladin language group in South Tyrol³³. The most important part of the implementation of the 'Package' was the adoption of a new Autonomy Statute, which was ratified by the Constitutional Act No 1 of 10 November 1971. The Constitutional Act entered into force on 20 January 1972, whereas the consolidated text of the provisions of the 1948 Statute which remained in force and of the new Statute was published as the new Autonomy Statute in the Italian official gazette on 31 August 1972. The above Statute was revised on several occasions; however, crucial amendments that paved the way to the third Autonomy Statute were adopted by the Constitutional Act of 2001³⁴. For purposes of a comprehensive review of the legal foundations of today's South Tyrolean autonomy, we present below a short overview of the consolidated version of the 1972 Statute and the 2001 constitutional acts.

It is beyond dispute that the 1972 Statute guaranteed to the German language group many of the rights for which it had fought fiercely for three decades. Although it has never come to the dissolution of the Region Trentino-Alto Adige and to the proclamation of an independent Province of Bozen/Bolzano, this territorial structure ceased to be a stumbling block to the achievement of equality of the German and Italian language groups because many rights that had been under the Region's exclusive competence were delegated to the Provinces. The Region retained

30 The status of the German-speaking element in the Province of Bolzano (Bozen); implementation of the Paris agreement of 5 September 1946, A/RES/1497(XV), 31 October 1960.

31 The status of the German-speaking element in the Province of Bolzano (Bozen), A/RES/1661(XVI), 28 November 1961.

32 Cf: Cusack, D. (2002) 'The Sovereignty Continuum and Conflict Resolution', *Hastings International and Comparative Law Review*, 25(3), p. 301.

33 The official name of the 'Package' is 'Measures in favour of South Tyrol population', (Ger. *Maßnahmen zugunsten der Bevölkerung Südtirols*, Ita. *Misure a favore delle popolazioni altoatesine*). It did not have a status of an agreement, and could not be deemed equivalent to an autonomy statute. It was a document which primarily represented a political obligation which had to be observed and used as the basis for the adoption of the autonomy statute; it only represented a part of the implementation of the 'Package'. Out of the total of 137 measures, 97 were supposed to be implemented through amendments to the Statute on Autonomy by means of constitutional acts, 8 measures through the adoption of the existing implementing regulations of the Statute, 15 by means of corresponding national acts, 9 by means of administrative decrees, and the remaining 8 by means of administrative acts. Cf: Steininger, R., op. cit., pp. 129-135; Wolff, S., op. cit., pp. 62-63; Das neue Autonomiestatut, op. cit., p. 4; Alcock, A., op. cit., pp. 6-9; Hannum, H. (1988) 'The Foreign Affairs Powers of Autonomous Regions', *Nordic Journal of International Law*, 57(3), p. 28; Peterlini, O., op. cit., pp. 7-10.

34 Cf: Italy State Report I, op. cit., pp. 19, 28-29, 42-43, 46-48, 50, 52-54, 62, 64, 66-67, 70, 72-73; Second Report Submitted by Italy Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (hereinafter referred to as: Italy State Report II), ACFC/SR/II(2004)006, 14 May 2004, pp. 6, 9-10, 15-19; Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Italy (hereinafter referred to as: Opinion on Italy II), Adopted on 24 February 2005, ACFC/INF/OP/II(2005)003, Strassbourg, 25 October 2005, pp. 4, 6, 13; Advisory Committee on the Framework Convention for the Protection of National Minorities, Comments of the Government of Italy on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Italy, GVT/COM/INF/OP/II(2005)003, Strassbourg, 25 October 2005, pp. 3-5.

its primary legislative powers, but the Provinces were entitled to make independent decisions on many economic and social issues of vital importance (e.g. in agriculture, tourism, transport, etc.). In addition, they were granted the right to collect several types of taxes, along with secondary legislative powers in the fields of education, commerce, health care, industry and sports. In addition to the territorial decentralisation and more equitable distribution of power, Italy made an important turn in its minority policy by recognising the right of the German language group to officially use the term 'South Tyrol' after the fifty-year long prohibition. Besides, considerable progress was made by integrating into the Statute a provision stipulating that the protection of language minorities was one of Italy's national interests. The rigid and static concept of autonomy as promoted by the first Autonomy Statute from 1948 was abandoned in favour of the new concept of 'dynamic autonomy' which was integrated into the 1972 Statute. This new concept was capable of adjusting itself to the constant social and economic changes. The new approach to the distribution of power resulted in the so called 'double autonomy', which signified the existence of a formerly neglected provincial autonomy side by side with the broad regional autonomy³⁵.

The 1972 Autonomy Statute consists of 115 Articles divided into twelve sections. It is a document of a twofold character: it is primarily an instrument regulating the decentralised South Tyrolean self-government but it is also an instrument for the protection of the German and Ladin language groups³⁶. Although the rights of the German language group are an integral part of a series of statutory provisions, it is above all necessary to draw attention to Section XI, which is entirely devoted to regulating the use of the German and Ladin languages. In the Region of Trentino-Alto Adige German was recognised as equal to the official Italian (Article 99). Furthermore, members of the German language group in South Tyrol were granted the right to use their mother tongue before judicial bodies and public authorities and at sessions of joint regional, and local provincial bodies (Art. 100, para. 1 and 2)³⁷. However, when it comes to bilingual normative acts or in other cases where a bilingual text is provided for by the Statute, the Italian version is deemed authoritative (Art. 99). Italian remained the sole language option in military organisations (Art. 100 para. 4) but even with such restrictions, German is still used as the official language before more than 90 per cent of South Tyrolean bodies of public authority. In their communication with members of the German language group these bodies must use German place names, if they are used as such in provincial laws (Art. 101). There is no doubt that throughout history all place names in South Tyrol have carried implicit or explicit political connotations³⁸. Mandatory use of German is not only a peculiarity of South Tyrol; in fact, according to the Statute, the teaching of German language and culture must be provided for in the schools situated in those municipalities of the Trento Province in which the Ladin, Moken or Cimbrian languages are spoken (Art 102, para. 2)³⁹.

35 Cf: Lacaita, F. (2005) 'What Europe for Northern Ireland? European Approaches and Conflict Resolution', *Culture 18-2004, Annali del Dipartimento di Lingue e Culture Contemporanee della Facoltà di Scienze Politiche dell'Università degli Studi di Milano*, p. 309; Schnec-
kener, U. (2002) 'Making Power-Sharing Work: Lessons from Successes and Failures in Ethnic Conflict Regulation', *Journal of Peace
Research*, 39(2), p. 212; Alcock, A., op. cit., pp. 11, 15, 18.

36 Cf: Wolff, S., op. cit., pp. 64-65.

37 Although the original right to use German in court proceedings in South Tyrol was reserved exclusively for members of the Ger-
man language group of this Province, the Italian Government subsequently granted that right to German and Austrian citizens in
accordance with the decision of the European Court of Justice in the case of criminal proceedings instituted in South Tyrol against
an Austrian citizen Horst Otto Bickel and a German Ulrich Franz. Criminal proceedings against Horst Otto Bickel and Ulrich Franz,
Case 274/96, ECR1998, I-07637, 24 November 1998.

38 Cf: Cole, J. W. and Wolf, E. R., op. cit., p. 17.

39 Cf: Das neue Autonomiestatut, op. cit., pp. 109-111.

The Statute confirms the Region's special legal status as an autonomous area within the political structure of unitary Italy (Art 1, para.1), but autonomy is also expressly granted to the Region's territorial constituents, viz. the Provinces of Trento and South Tyrol (Art. 3, para. 3). The Region guarantees equality to all its residents and the protection of their distinctive ethnic and cultural characteristics, irrespective of their affiliation to a certain language group (Art. 2). Moreover, the protection of local language minorities has been listed among 'national interests' that both the Region and the Provinces must take into account when adopting legal acts within competences granted to them under the Statute (Art. 4, para. 1 and Art. 8, para. 1). Among the fields within the legislative authority of the Provinces, which are particularly important for the protection of the German language group, are the legal acts regulating bilingual place names in South Tyrol as well as acts regulating the protection of historical heritage, local customs, traditions, cultural institutions, primary and secondary education and employment (Art. 8 para. 1, Art. 9, para. 1 and Art. 10, para. 1).

The Statute pays special attention to the right of minority language groups to have nurseries, primary and secondary schools where instruction and other activities are carried out in their mother tongue. Such instruction has been ensured in South Tyrol in Italian and German, on condition that these languages are the mother tongues of both students and teachers (Art. 19, para. 1). The Statute also provides for strict measures of monitoring the work of language minority schools. German minority schools are subject to monitoring by a special supervisor appointed by the Italian Ministry of Education on the basis of prior consultations with the Provincial Government of South Tyrol (Art. 19, para. 4). The institution of the school inspector has been introduced for the management of German nurseries and schools. The inspectors are selected from a list prepared by the School Council of the German language group and are appointed by the Provincial Government upon prior consultations with the Ministry of Education (Art. 19, para. 5). The Ministry of Education appoints, in agreement with the Provincial Government, the chairperson and members of the Committee for state exams in the schools of the German minority (Art 19, para. 7). In order to ensure the equivalence of diplomas, the Province must consult the Higher Education Committee (Art. 19, para. 8) on curricula and examinations. The establishment of separate educational institutions for children of the German language group has met with opposition from a part of the Italian public. Namely, they compared the separation of children in South Tyrol to apartheid and considered that there should only be integrated schools in which both official languages would be taught. Such a proposal was unacceptable to the German language minority because it held that only separate schools would guarantee the protection of the German standard language, which had been considered a fundamental part of South Tyrolean identity for centuries. In the eyes of the German language group, integrated schools posed a threat of contamination of the German standard language, of weakening the collective identity and of inevitable assimilation. However, in time an attitude prevailed according to which the system of separate schools should be perceived as a measure *in favorem* of the protection of the identity of the German language group, which has nothing in common with apartheid or any other form of segregation carrying negative connotations. Parents or other legal guardians now have the right to freely decide which school their children would attend and that decision could not be disputed or questioned at first. However, in accordance with a precedent decision of the Permanent Court of International Justice on schools attended by the German minority in Upper Silesia from 1922⁴⁰, a new rule was introduced in 1988, according to which a

40 Cf: Moucheboeuf, A. (2006) *Minority rights jurisprudence digest*. Strasbourg: Council of Europe Publishing, pp. 256-258.

special committee consisting of the members of German and Italian language groups is entitled to examine whether a child can actually attend the selected school if the child proves to have insufficient proficiency in the official language of instruction⁴¹.

The German language minority now effectively participates in regional and provincial bodies of public administration, in proportion to its share in the ethnic structure of the population⁴². An Italian representative is appointed president of the Regional Parliament for the first thirty months of the term and a German for the second part of the term. The same procedure has been foreseen for the Parliament of the Province of South Tyrol, but the order of presidency is reverse, with the first part of the term belonging to the German and the second to the Italian representative. A representative of the Ladin language group may also be appointed to this office in both parliaments if (s)he receives a majority vote from both the German and Italian language groups. Vice-Presidents of the Regional and Provincial Parliament can only be representatives of the language groups other than the one to which the President belongs (Art. 30, para. 3 and Art. 48c para. 2 and 3). Members of the Regional Government, appointed by the Regional Parliament among their own members, must also in part be selected from among members of the German language group. The entire Government structure must correspond to the structure of the Parliament (Art. 36, para. 1 and 2) as far as the relative proportions of the individual language groups is concerned.

One of the main characteristics of the Autonomy Statute is the 'principle of proportionality'. This principle serves as the basis for the majority of provisions regulating the proportion of individual language groups in various bodies and institutions of the Region Trentino-Alto Adige and the Province of South Tyrol. There must be a proportional representation of the German language group in the structure of local public bodies (Art. 61, para. 1), state administration offices in the Province (Art. 89, para. 3 and 4), courts (Art. 89, para. 7), the School Committee and Teacher Discipline Committee (Art. 19, para. 12 and 13) and when allocating jobs and various forms of financial aid (Art. 15, para. 2). Moreover, a special Autonomous section of the Regional Administrative Court of South Tyrol has been established, where there is an equal number of members from the two main language groups, and where Italian and German judges take turns as presidents of the Section for equal terms of office (Art. 90, Art. 91, para. 1 and 3). Representatives of the German language group are also members of specialised committees responsible for the implementation of the Statute at regional and provincial levels (Art. 107, para. 1 and 2)⁴³. National laws and decrees concerning the Region of Trentino-Alto Adige are also published in German in the official gazette (Art. 58).

The autonomy of the two provinces, which is guaranteed under the carefully formulated Statute of 1972, was further expanded by the latest reforms in 2001 and the revised version of the 1972 Statute is referred to as the third Autonomy Statute⁴⁴. Constitutional Act No 2 of 31 January 2001 reorganised the Region substantially. Namely, it brought about a significant improvement

41 Cf. Eichinger, L., *op. cit.*, p. 141; Alcock, A., *op. cit.*, p. 17.

42 Das neue Autonomiestatut, *op. cit.*, p. 87.

43 Cf. Italy State Report I, *op. cit.*, p. 9. In case that a quota intended for a certain language group on bodies of public authority is not met, a new rule introduced in 1997 provides that a member of another language group may be appointed to that post, subject to the limits concerning the number of jobs reserved for his/her language group. However, that limit can be exceeded by a maximum of 30 per cent of the number of vacancies in cases of emergency. Another peculiarity of employment in South Tyrol is giving advantage to citizens who have resided in the Province for at least two years, irrespective of their linguistic affiliation (Art. 10, para. 3). Das neue Autonomiestatut, *ibid.*, p. 73; Alcock, A., *op. cit.*, pp. 15-16.

44 Cf. Wolff, S., *op. cit.*, p. 70.

in the status of the two Provinces, which thus became the Region's equal constituents. As much as two-thirds of the 1972 Statute was revised in the section pertaining to the legal prerequisites of South Tyrolean autonomy. Some of the innovations include the right of the Provinces to adopt their election laws independently, to select the form of government structure and their exclusive right to request and initiate revisions of the Statute. Furthermore, since Ladins have regularly been underrepresented in the highest bodies of public authority (or have not been represented at all) due to their small proportion in the Region's total population structure, Constitutional Act No 2 provided for their representation in the provincial Parliament and Government by excluding them from the rule of proportional representation in accordance with the ethnic structure of the population. Further redistribution of authorities among the state, Region, Provinces and municipalities occurred with the adoption of Constitutional Act No 3 of 18 October 2001. This reform introduced a historical novelty with regard to the official name of the Region. For the first time, the term 'South Tyrol' was incorporated into the German version of the Italian Constitution, and the full name today is Trentino-South Tyrol/Alto Adige (Ger. *Trentino-Südtirol/Alto Adige*). The international character of the guarantees of South Tyrolean autonomy was acknowledged and the autonomy was substantially expanded with the provision stipulating that the adoption of provincial acts no longer required prior approval of the Italian Parliament⁴⁵.

Even before the extension of South Tyrolean autonomy through the 2001 constitutional acts, most measures contained in the so-called 1969 'Package' had been effectively implemented via the provisions of the Autonomy Statute and the latter's consistent practical implementation. On 22 April 1992 the Italian Government officially notified Vienna of the successful implementation of these measures. Since the Austrian Government concurred with the Italian statement that the 'Package' had been successfully implemented, both states submitted identical declarations to the UN Secretary General on 11 June 1992, stating that their long-term conflict over the implementation of the Gruber-De Gasperi Agreement was officially over. Despite this historic resolution of the complex conflict between Italy and Austria, Austria remained the protector state of South Tyrol and continues to monitor the implementation of the Autonomy Statute and of other documents important for the German language group. Central Italian authorities also invested effort in the promotion of a constructive dialogue with South Tyrol and in the establishment of an effective mechanism for monitoring the implementation of the Statute. Namely, in the same year (1992), immediately after the official termination of the conflict between Italy and Austria, a Joint Standing Committee was formed, consisting of representatives of the three main South Tyrolean language groups. This Committee is responsible for reporting to the Italian Council of Ministers on the position and problems of the language groups concerned as well as on their cultural, economic and social development. The successful implementation of the 'Package' was reflected in the economic surge of South Tyrol, which turned from one of the poorest Italian provinces in the 1960s into a highly developed economic region with one of the lowest unemployment rates in Europe today. With the Austrian accession into the European Union on 1 January 1995 strict state borders with Italy were erased and the more flexible border regime turned South Tyrol into a bridge of Austrian-Italian co-operation. Finally, in 1998 Austria and Italy confirmed their good neighbourly relations and intensive cross-border co-operation by integrating the his-

⁴⁵ The official use of the name 'South Tyrol' in the German version of the Italian Constitution has been provided by the Constitutional Law on Federalism adopted in March 2001. Cf: Official Site of the Province of Bozen-South Tyrol, http://www.provinz.bz.it/english/overview/autonomy_statute.htm.

torical region of Tyrol into the Euroregion of Tyrol-South Tyrol/Alto Adige-Trentino⁴⁶. Austria's and Italy's long-lasting endeavours to ensure the appropriate protection of their respective language groups in South Tyrol based on the territorial, political and cultural autonomy contributed greatly to the establishment of links between the two states. For this reason, the people of South Tyrol are symbolically designated the forerunners of European integration⁴⁷. Stacul argues that some forms of European integration may pose the problem of the relationships between local societies and global processes, but that is very unlikely that a European identity will replace a national or regional one⁴⁸.

After the chronological survey of the establishment and development of South Tyrolean autonomy we should look into the most important provisions of the Italian legislation guaranteeing the protection of minorities.

PROVISIONS OF ITALIAN LEGISLATION ON MINORITY RIGHTS PROTECTION

The Constitution of the Italian Republic of 27 December 1947 is one of the documents which expressly protect minorities. It stipulates in its Art. 6 that: 'the Republic shall protect *language minorities* by special regulations'⁴⁹. Next to gender, race, religion, political views and personal and social conditions, language has been listed as one of the elements that should not stand in the way of implementing the principle of equality of all before the law (Art. 3, para. 1). The state has taken upon itself to remove all economic and social obstacles which limit the freedom and equality of citizens and so prevent their full development and the efficient participation of all entities in the political, economic and social organisation of the state (Art. 3, para. 2). Furthermore, it recognises and guarantees inalienable rights of man, both those belonging to him as an individual and those to which he is entitled within the social communities within which he develops (Art. 2). All citizens are granted the right of free confession (Art. 19), the right to a peaceful gathering (Art. 17, para. 1), the right to free association (Art. 18, para. 1), the right to freedom of expression (Art. 21, para. 1), the right to turn to court for the protection of their rights and legitimate interests (Art. 24, para. 1), the right to education (Art. 34, para. 1), the right to vote (Art. 48, para. 1), the right to establish political parties (Art. 49), the right to submit petitions to the Italian Parliament (Art. 50) and the right to equal access to public services (Art. 51, para. 1). Italy is a unitary state, single and indivisible, but as such it recognises and promotes local autonomies, the decentralisation of state-dependent administrative services, and adjusts its legislation with the requirements of autonomy and decentralisation (Art. 5). Head V of the Constitution regu-

46 Euroregion Tyrol-South Tyrol/Alto Adige-Trentino consists of the Austrian state of Tyrol (North and East) and the Italian Provinces of South Tyrol and Trento. The establishment of the Euroregion redefined the Trentine regional identity, having stressed cultural continuity and unbroken history with South Tyrol. Cf: Lacaita, F., loc. cit. (note 35); Steininger, R., op. cit., pp. 143-144; Stacul, J., op. cit., pp. 30-31; Casonato, C., op. cit., pp. 340-344; Alcock, A., p. 21.

47 Cf: Tatalović, S., op. cit., p. 88.

48 Cf: Stacul, J., op. cit., p. 6.

49 Flanz, G. H., op. cit., p. 48. Italian Report on the position of minorities, submitted to the Committee of Ministers of the Council of Europe in 1999 underlines that the creators of Article 6 of the Italian Constitution intended to ensure that each language minority in Italy should be perceived as a cultural and historical constituent of society and as such should be offered protection from any kind of assimilation. It is defined in such a way so as to protect the language minorities as a whole and not their members individually. The Italian legislation does not define the term 'national minority', so that affiliation to such a group is determined on a case by case basis. Cf: Italy State Report I, op. cit., pp. 4-5, 12, 17, 31; Opinion on Italy II, op. cit., pp. 13-14.

lates in detail the functioning of the three entities of state and regional decentralisation: the region, the province and the municipality. As previously emphasised, the Region of Trentino-Alto Adige has been granted a special autonomy. Regions are established as autonomous territorial units having special powers and functions in accordance with the principles set out in the Constitution (Art. 115). For instance, they have the right to adopt their own legislation on condition that it does not conflict with national laws, national interests and interests of the region concerned, but they can also delegate some of their administrative functions to provinces and municipalities (Arts. 117 and 118). Their financial autonomy has also been recognised (Art. 119, para. 1). Finally, the provision of the Italian Constitution which paved the way to further expansion of the autonomy of certain regions is the one contained in Art. 123; namely, the provision stating that each region has the right to its own Statute which regulates its internal structure in accordance with the Constitution and national laws⁵⁰.

The decision of the Italian Constitutional Court No. 15 from 1996 declared the Constitution and the regional autonomy statutes the legal bases and starting points for establishing the minimum requirements concerning the protection of minorities in Italy. In order to establish an effective system of general legal protection of 'all' minorities in its territory, in 1999 Italy drew up a consolidated text of all internal legal provisions concerning the protection of language minorities, which was entitled 'Rules for protection of historical language minorities'. On 15 December 1999 it adopted a special Act No. 482 on the protection of historical language minorities. This Act regulates the rights of Albanian, German, Catalan, Croatian, Greek, French, Franco-Provençal, Furlan, Ladin, Occitan, Sardinian and Slovenian language groups, and has also made them subjects of the protection provided for under the Framework Convention for the Protection of National Minorities⁵¹. Pursuant to the provision of the Act which calls for the establishment of a body for institutional association of the groups of people belonging to the same language group but residing in different Italian regions, a Committee was established in June 2002 for the historical German linguistic islands in Italy. This Committee brings together representatives of the German language groups from the Regions of Aosta Valley, Piedmont, Friuli-Venezia Giulia and the Province of Trento⁵².

In addition to its national legislation, Italy is also bound by international legal provisions in the treatment of its minorities. This obligation is based on Art. 10, para. 1 of the Italian Constitution which stipulates that: 'The legal system of Italy conforms to the generally recognized principles of international law'⁵³. Valuable analyses of internal legal provisions relevant for the protection of minority rights may be found in two exhaustive reports which Italy drafted in 1999 and 2000, in compliance with its obligation as a signatory of the Framework Convention for the Protection of National Minorities⁵⁴. On the basis of the facts presented, the Committee of Ministers of the Council of Europe assessed the position of the German language minority in Italy

⁵⁰ Flanz, G. H., *ibid.*, pp. 1-116.

⁵¹ Cf. Italy State Report I, *op. cit.*, pp. 12, 17, 35, 37.

⁵² Cf. Opinion on Italy II, *op. cit.*, p. 17.

⁵³ *Ibid.*, p. 49.

⁵⁴ Framework Convention for the Protection of National Minorities entered into force in Italy on 3 March 1998 after the adoption of the Act No. 302 of 28 August 1997 which approved its ratification. Since Italy did not limit the territorial application of the Convention by a special declaration, it is valid on the entire territory of the state. Cf. Italy State Report I, *op. cit.*, pp. 3, 25-26, 79.

as exceptionally favourable, emphasising the value of South Tyrolean autonomy and of the wide range of rights granted in the economic, social, political and cultural spheres of life⁵⁵.

Today South Tyrol has its university in Bozen/Bolzano, a whole range of various schools and academies, four daily newspapers (two in German and two in Italian) and a large number of local publications, their own radio and television programmes in the framework of the national radio and television, their own ombudsman and the office of statistics. Especially prominent are attempts by the language groups to present to the public an image of a modern South Tyrol which fosters mutual co-operation and friendly coexistence of the different language groups and which preserves traditional values and a distinct national identity⁵⁶.

Over time the autonomy has *de facto* become larger than expected, since it came to include many territories which were not included in the provisions of the Autonomy Statute or any other legal texts. Even though it failed to achieve a *de iure* status of a region despite the many reviews of the former Autonomy Statutes, South Tyrol has *de facto* become a region because of the great competences it enjoys in the key economic, cultural, educational and social domains of life⁵⁷.

CONCLUSION

South Tyrolean autonomy has several specific properties which make it a successful model of the protection of national minorities. Firstly, its success was largely helped by the internationalisation of the conflict through the Gasperi-De Gruber Agreement of 1948. It was also assisted by two resolutions adopted by the UN General Assembly in 1960 and 1961, which granted Austria the right to officially become the protector state of the German language group. In addition to enjoying protection from their motherland, members of the German language group preserved their ethnic identity as a result of mutual solidarity and a powerful sense of affiliation to their language group. These feelings were largely boosted and materialised through the activities of the SVP. Finally, credit also goes to Italian authorities, who did not resort to assimilation or repression as methods for resolving the complex situation in the ethnically diverse South Tyrol, but instead adjusted their legislation to the needs of the German and Ladin language groups, consistently applied provisions supporting their autonomy, territorial decentralisation, and granted these groups such powers as to have a direct bearing on their existence and develop-

55 Cf: Resolution ResCMN(2002)10 on the implementation of the Framework Convention for the Protection of National Minorities by Italy (Adopted by the Committee of Ministers on 3 July 2002 at the 802nd meeting of the Ministers' Deputies); Opinion on Italy ACFC/INF/OP/I(2002)007 (2001) (hereinafter referred to as: Opinion on Italy I), Strasbourg: Advisory Committee on the Framework Convention for the Protection of National Minorities, 14 September 2001, pp. 8-10, 17.

56 Cf: Eichinger, L., op. cit., p. 143.

57 Cf: Italy State Report I, op. cit., p. 8.

ment. This distribution of power, the so-called 'power-sharing', was referred to by Schneckener as *conditio sine qua non* for the success of the South Tyrolean autonomy⁵⁸.

The example of the protection of language minorities in South Tyrol can be used to draw several valuable conclusions concerning the protection of minorities in general. The most important conclusion is that the protection of any culture calls for participation of the whole group (i.e. individuals can best preserve their own culture and identity within their respective groups). Further, laws regulating the protection of minorities have to follow the overall dynamic of economic, social and cultural changes. Also it is very important that the state involving multicultural communities promotes co-operation instead of confrontation of various ethnic groups.

The autonomy of South Tyrol made it possible for the three language groups to live in harmony, to foster their cultural distinctiveness without any one of them threatening the other or Italy as a whole. Besides the fact that the autonomy ensured the exercise of collective and individual rights by members of different language groups, all residents of the Province benefited substantially from the provisions concerning the territorial autonomy, irrespective of their linguistic affiliation. The high degree of cultural and political autonomy of the German language group certainly proves that it has managed to realise its right to (internal) self-determination. This autonomy gave the German language group possibility to freely participate in the creation of the legislative and administrative structure of the Region and the Provinces and to have a direct impact on the scope of its own authorities in the economic, social and cultural spheres of life. As the degree of South Tyrolean autonomy increased, so did the original demands by the German language group for the exercise of their right to self-determination including secession, wane. This clearly shows that a state can preserve its territorial integrity if it ensures its minorities the rights necessary for the maintenance of their cultural identity and so creates an atmosphere in which these minorities would perceive their cultural autonomy as a true realisation of their right to (internal) self-determination. Without doubt, the self-determination of minorities is 'the most significant challenge that the right poses to international law or more precisely the states that underpin it'⁵⁹, i.e., 'to the formal structures of statehood'⁶⁰. Autonomy seems to be one of the most appropriate solutions in such cases because it has the capability to satisfy the aspirations of ethnic minorities for a degree of political power while preserving the territorial integrity and sovereignty of the state⁶¹. Although the struggle for South Tyrolean autonomy occasionally involved violence, its final outcome may still serve as a lesson in how to preserve the identity of

58 The concept of the so-called 'power-sharing' implies division of authority between two or more ethnic groups that jointly coordinate their activities and make decisions through a consensus. All groups are equally entitled to political power but none can make an important decision without consent of the other(s). This concept was principally shaped during the 1970s in the works of Gerhard Lehmbruch, Arend Lijphart, Eric Nordlinger and others, and it is also known as consociational democracy, consensus democracy, corporativism and proportional democracy. These terms, however, are not synonymous. In the case of South Tyrol, the four basic principles of a consociation are: a) grand coalition between German and Italian parties forming the provincial and regional governments; b) segmental autonomy in the cultural sphere; c) proportionality and d) minority veto. Cf. Wolff, S., loc. cit. (note 1); Schneckener, U., op. cit., p. 203; Heintze, H.-J. (2002) 'Implementation of Minority Rights through the Devolution of Powers – The Concept of Autonomy Reconsidered', *International Journal on Minority and Group Rights*, 9(4), pp. 333-334; Welhengama, G. (1999) 'The Legitimacy of Minorities' Claim for Autonomy through the Right to Self-Determination', *Nordic Journal of International Law*, 68(4), pp. 436-437; Markusse, J. (1997) 'Power-sharing and consociational democracy in South Tyrol', *GeoJournal*, 43(1), pp. 77-88; Schöpflin, G. (1997) 'Culling Sacred Cows? State Frontiers and Stability', *Brown Journal of World Affairs*, 4(1), p. 203.

59 Cf. Summers, J. (2007) *Peoples and International Law: How Nationalism and Self-Determination Shape a Contemporary Law of Nations*, Leiden/Boston: Martinus Nijhoff Publishers, p. 332.

60 Cf. Koskeniemi, M. (1994) 'National Self-Determination Today: Problems of Theory and Practice', *International and Comparative Law Quarterly*, 46(2), p. 246.

61 Cf. Heintze, H.-J., op. cit., 334.

ethnic groups (especially their language), the territorial stability of states and peoples' right of self-determination. This makes South Tyrolean autonomy a desirable model for the resolution of comparable problems in other multicultural and ethnically divided societies all around Europe.

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PRAVNI STATUS NJEMAČKE GOVORNE SKUPINE U TALIJANSKOJ PROVINCIJI JUŽNI TIROL

Sažetak

Talijanska provincija Južni Tirol nerijetko se ističe kao eklatantni primjer uspješnog pravnog uređenja međuodnosa manjinskog i većinskog stanovništva u etnički heterogenim sredinama Europe. Ovo područje stoljećima je bilo mjesto suživota triju etničkih skupina: talijanske, ladinke i njemačke, među kojima je potonja uvijek brojčano vidno dominirala. Specifična etnička struktura stanovništva potakla je uspostavu teritorijalne autonomije unutar unitarne Italije, a autorica u članku analizira pravne značajke odnosne autonomije, njene reperkusije po položaj njemačke jezične skupine te međuodnos skupina. Naglasak je stavljen na pozitivne dosege uspostave autonomnog statusa koji je trima etničkim skupinama omogućio očuvanje osebnih sastavnica njihovog etničkog identiteta, a Provinciji i cjelokupnoj regiji mir i stabilnost.

Ključne riječi: Južni Tirol, njemačka jezična skupina, etnički identitet, autonomija, prava manjina

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RECHTSSTATUS DER DEUTSCHSPRACHIGEN EINWOHNERGRUPPE IN DER ITALIENISCHEN PROVINZ SÜDTIROL

Zusammenfassung

Italienische Provinz Südtirol wird häufig als eklatantes Beispiel einer erfolgreichen rechtlichen Regulierung gegenseitiger Beziehungen der Minderheits- und Mehrheitseinwohner in ethnisch heterogenen Gemeinschaften Europas angeführt. Diese Gegend war jahrhundertlang ein Ort des Zusammenlebens dreier ethnischen Gruppen: der Italiener, der Ladinern und der Deutschen. Die Letzteren machten immer eine dominierende Gruppe mit der größten Anzahl der Angehörigen. Jene eigentümliche ethnische Struktur der Einwohner war eine Anstiftung für Herstellung einer territorialen Authonomie im unitären Italien. In diesem Beitrag analysiert die Autorin rechtliche Merkmale dieser Authonomie, ihre Auswirkungen auf die Lage der deutschsprachigen Minderheit und gegenseitige Beziehungen von Minderheitsgruppen. Besonderer Akzent wird auf positive Auswirkungen der Herstellung von Authonomie gesetzt, die für die drei ethnischen Gruppen eine Möglichkeit für die Aufbewahrung von eigentümlichen integrativen Elementen ihrer ethnischen Identität eröffnete, und der Provinz und ganzer Umgebung Frieden und Stabilität ermöglichte.

Schlüsselwörter: Südtirol, deutschsprachige Einwohnergruppe, Minderheit, territoriale Authonomie