

The 'Autonomy Convention': Debating South Tyrol's prospects of self-governance

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1 Introduction

There are two reasons that make 2017 an important year for the Italian Autonomous Province of Bolzano/Bozen (South Tyrol). Firstly, it marks the twenty-fifth anniversary of the formal settlement of South Tyrol's conflict at an international level. Secondly, and most importantly, in September 2017, the two consultative bodies of the 'Autonomy Convention', the 'Convention of 33' and the 'Forum of 100', will officially present their proposals regarding the revision of the Second Autonomy Statute of 1972 (Second ASt) to South Tyrol's provincial parliament. Regardless of the extent to which the provincial parliament decides to take them into account, any revision of the Second ASt has to be coordinated with the Autonomous Province of Trento. Art. 103 of the Second ASt vests the right to initiate amendments to it in the parliament of the region of Trentino-South Tyrol, following the proposals put forward by the parliaments of the two autonomous provinces.

2 Twenty-five years of formal conflict settlement at an international level

As to the first reason, 2017 marks the twenty-fifth anniversary of the formal

settlement of South Tyrol's conflict by the handover to the UN Secretary General of the 'deed of discharge' by the Austrian and Italian governments¹. Its submission acknowledged the closure of the Austro-Italian dispute over South Tyrol, the northernmost Italian territory inhabited by a German-speaking majority².

In 1992, it was demonstrated that the provisions enshrined in the Second ASt of 1972 had been successfully implemented by the establishment of a detailed regime of territorial autonomy that recognises and protects the rights of German speakers within South Tyrol. Under constitutional law no. 1 of 10 November 1971, both administrative and legislative competences were transferred from the regional to the provincial level (thus to the predominantly Italian-speaking Autonomous Province of Trento and the trilingual Autonomous Province of Bolzano/Bozen; please note that together they form the Autonomous Region Trentino-South Tyrol). Prior to the Second ASt coming into effect on 20 January 1972, South Tyrol was unable to properly address its own political and cultural affairs because the First Autonomy Statute (1948) vested the relevant competences at the regional level. It took 20 years to satisfactorily implement all of the provisions and to formally close the conflict over South Tyrol, an Alpine area that, in 1919, was forcibly annexed to the Kingdom of Italy, and whose German – and Ladin³– speakers suffered from harsh assimilation policies until 1943. After World War II, the Brenner Pass was confirmed as the border. However, Annex IV to the Paris Treaty of 1946, the 'Gruber-Degasperi Agreement' between Italy and Austria, urged Italy to establish autonomy arrangements that 'safeguard the ethnic character and the cultural and economic development of the German-speaking element'. Among other things, it urged for the German language to be set on a par with the Italian and to establish an ethnic quota system ranging from the field of public employment to education and finances.

1. UN Doc A/46/939 and 940 of 17 June 1992.

2. South Tyrol's population amounts to 524,256 (31/12/2016). See <http://astat.provinz.bz.it/de/bevoelkerung.asp> (all Internet sources in this article were last accessed on 07/04/2017).

3. Ladin is a Rhaeto-Romance language spoken in the Central and Eastern Alpine region. In Italy, it is spoken in the valleys of the Dolomite mountains situated in the provinces of South Tyrol, Trento and Belluno

Today, the Autonomous Province of Bolzano/Bozen enjoys a far-reaching autonomy within Italy's asymmetric regionalism. Indeed, South Tyrol enjoys a very broad legislative and administrative autonomy, which includes nearly all competences except the army, the police and a few minor issues. Its institutional set-up is based on the principle of power-sharing among its two major language groups, German and Italian speakers (respectively 69.41 and 26.06 per cent), and a series of rules applying to the third language group, the Ladins (4.53 per cent)⁴. Most importantly, all stipulations on the use of language are enforced through strict legal remedies, available to individuals and groups as a means to strengthen mutual trust.⁵ The system of group rights functions according to the declaration of belonging to or affiliation to a language group and establishes a system that follows principles of consociational democracy: the participation of all language groups in the joint exercise of governmental power⁶, language parity between the two major language groups⁷ (with an administration and judiciary running in two languages), a system of veto rights to defend each group's vital interests⁸, the principle of cultural autonomy⁹ for groups and an ethnic quota system based on a linguistic declaration or affiliation¹⁰.

3 The Autonomy Convention

As to the second reason, 2017 will go down in South Tyrol's history as the year when its first large-scale participatory process, the 'Autonomy Convention', presents its interpretation of

4. See online Elisabeth Alber and Carolin Zwilling, *Continuity and Change in South Tyrol's Ethnic Governance*, in: *Autonomy Arrangements in the World*. Website: www.world-autonomies.info/tas/styrol/Pages/default.aspx. See also the volume Jens Woelk et al. (eds.), *Tolerance through Law. Self Governance and Group rights in South Tyrol*, Martinus Nijhoff, Leiden-Boston, 2008.

5. Elisabeth Alber and Francesco Palermo, 'Creating, Studying and Experimenting with Bilingual Law in South Tyrol: Lost in Interpretation?', in: Xabier Arzoz (ed.), *Bilingual Higher Education in the Legal Context*. Martinus Nijhoff, Leiden-Boston, 2012, 287–309.

6. Art. 50 of the Second ASt.

7. Art. 99 of the Second ASt.

8. Art. 56 of the Second ASt

9. Art. 2 of the Second ASt.

10. Art. 89 of the Second ASt.



the status quo of South Tyrol's autonomy, and, most importantly, it advances its proposals as to the revision of the Second ASt.

In 45 years of its history, the Second ASt has never been formally reformed, even though the autonomy has been considerably enhanced by other legal tools such as enactment decrees¹¹, constitutional reforms affecting the distribution of competences¹², European jurisprudence¹³ and the institutionalisation of cross-border cooperation¹⁴. Politically, in South Tyrol, the formulas of 'provincial autonomy' (until 1972), 'dynamic autonomy'

11. Enactment decrees were used to implement all provisions enshrined in the Second ASt. After 1992, enactment decrees continued to be the legal instrument for enhancing South Tyrol's autonomy. A special commission ('Commission of Six') whose members are representatives of both the two major language groups and the State and Autonomous Province of Bolzano/Bozen ('double parity principle') draws up the enactment decrees. They are submitted to the national government, which approves them in the form of a legislative decree. Thus, they are not debated in the national parliament. The 'Commission of Six' evolved from an instrument for the implementation of the Second ASt into an ordinary instrument of government.

12. Constitutional reform no. 2/2001 as well as significant changes in the financial relations. See various articles in Francesco Palermo, Sara Parolari and Alice Valdesalici (eds.), *Federalismo Fiscale e Autonomie Territoriali*, Cedam, Padova, 2013.

13. See the cases *Bickel and Franz* (C-274/96), *Angonese* (C-281/98) and *Kamberaj* (C-571/10).

14. In 2011, the European Grouping for Territorial Cooperation (EGTC) 'European Region Tyrol-South Tyrol-Trentino' became functional.



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(especially from 1992 onwards) and, more recently, ‘full autonomy’ and ‘participatory autonomy’ are endorsed. By ‘participatory autonomy’ the ‘Autonomy Convention’ is meant, a consultative process officially initiated by the South Tyrolean provincial parliament on 16 January 2016. Before the two bodies of the ‘Autonomy Convention’, the ‘Forum of 100’ and the ‘Convention of 33’, started to meet regularly from April 2016 onwards, in winter and spring 2016 a series of events were initiated under the slogan ‘Thinking out South Tyrol together’ (author’s translation of the trilingual slogan Südtirol mitdenken - Immaginare l’Alto Adige - Pensé I Südtirol)

In eight ‘Open Space’ events, one ‘Future Lab’ and four ‘Thematic Workshops for Associations’¹⁵, South Tyrol’s population and its civil society organisations were asked to put forward proposals as to the revision of the Second ASt, which were then handed over to the ‘Convention of 33’ and the ‘Forum of 100’. Between 23 January and 5 March 2016, nearly 2,000 people participated in 258 rounds of discussion carried out according to the ‘Open Space’ method¹⁶. In each city or

15. Unlike for the ‘Open Space’ events, pre-registration was required at the ‘Thematic Workshops for Associations’ that took place on 3, 4, 5 and 6 May 2016. The outcomes of the workshops are available in German and Italian language at www.konvent.bz.it/de/files.

16. In an ‘Open Space’ there is a clear, pre-defined structure of workflows, but there is neither an agenda nor a guest list. Every participant is invited to be an agenda-setter. The outcomes of the ‘Open Space’ events are summarised in German, Italian and Ladin language and available at www.konvent.bz.it/de/files.

village, the participants differed in their demographic composition and political affiliation. Italian-speakers, women and young adults were under-represented¹⁷. At the 'Future Lab', specially designed for young people, approximately 150 people participated, while at the 'Thematic Workshop for Associations' from 3 to 6 May 2016, 128¹⁸ associations participated.

In sum, the most recurrent and controversially discussed topics were aspects regarding the enhancement of the 'competence-catalogue' of South Tyrol; the institutional relationships with Austria, Italy and the neighbouring province Trento; the role and function of the regional level of government, the EGTC 'European Region Tyrol-South Tyrol-Trentino'; (im)migration; the interests of the Ladin minority; multilingualism; the ethnic quota system; the separated school system; external self-determination; toponymy; and the coexistence of the language groups.

During the period of the 'Open Space' events, 1,829 people registered as potential members of the 'Forum of 100'¹⁹, whose members were selected by means of a stratified random sampling taking into account the 2011 census data on language, age and gender proportions²⁰. The 'Forum of 100' met six times at regular intervals between April 2016 and April 2017. It organised its work into eight working groups, each covering a different issue: (1) the development of autonomy, the role and future of the region, the institutional relationships with Rome and Vienna, and dual citizenship; (2) self-determination, the European region, the institutional relationships with Austria and Italy, and South Tyrol activists; (3) culture, education and toponymy; (4) declaration of linguistic affiliation, multilingualism, the ethnic quota system, the Ladins, and bi- and trilingualism in public administration; (5) sustainability, economy, research and labour; (6) social affairs, healthcare and sports; (7) people with a migrant

17. The minor representation of the Italian language group was widely discussed in the media. See press releases at www.konvent.bz.it.

18. Some associations participated in more than one workshop. 128 is the sum of the numbers of registered associations counting each day and each workshop.

19. Prerequisites for putting forward one's own application were residency in South Tyrol and a minimum age of 16 years.

20. See at <http://astat.provinz.bz.it/de/volkszaehlung-wohnungszaehlung-2011.asp>.

background and coexistence, and multilingualism; (8) forms of participation (representative, direct and participatory democracy). Alongside the elaboration of its own proposals, the 'Forum of 100' gave input to the main body of the 'Autonomy Convention', the 'Convention of 33'. It did so by handing over its content on 12 May 2017, and by having nominated eight of its members to represent its interests within the 'Convention of 33'.

The composition of the 'Convention of 33' is as follows: eight people elected by the 'Forum of 100', four people suggested by the council of the municipalities, two people suggested by trade associations, two people suggested by trade unions, five legal experts nominated by the provincial parliament, and twelve people nominated by the provincial parliament representing both the political majority and minority. The 'Convention of 33' first met on 30 April 2016, and its last meeting is scheduled for 30 June 2017. On average, it meets twice a month in the late afternoon for work sessions lasting three hours.

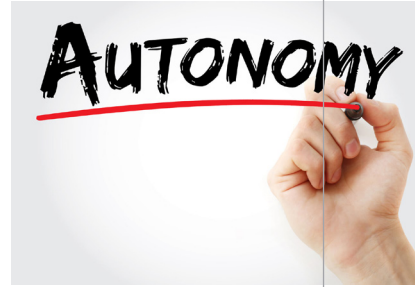
Both bodies are required to work according to the consensus principle, which was a big challenge for them both. Moreover, the members of both bodies work on a voluntary basis, without remuneration, their work sessions are publicly accessible and, in the case of the 'Convention of 33', are broadcast by live streaming.

Although a comprehensive content analysis is not yet possible due to the ongoing work of the 'Convention of 33', the following trends are emerging: in general, the members of both bodies underline the importance of the international anchoring of South Tyrol's autonomy and the necessity of upholding key instruments of minority protection. Their opinions, however, differ with regard to if and how the details of key instruments of minority protection could be regulated differently: for example on (1) the possibility to temporarily suspend the ethnic quota system or to apply it ever more flexibly; (2) the introduction of a multilingual school model alongside the German and Italian school systems that are based on the principle of mother tongue education; (3) the option to completely abolish the region as opposed to the one favouring a newly conceived region as a body coordinating strategies between the autonomous provinces if they so wish; (4)

the opening up of secessionist discourses seeking a different status of a multilingual South Tyrol within Europe.

4 Concluding Remarks: Placing the 'Autonomy Convention' in a Broader Picture

Participatory democracy has become a trend, worldwide and in Europe. At various governmental levels, participatory practices are complementing traditional decision-making processes. Scholars of political and legal science, albeit at a different pace, have begun to pay increasing attention to the proliferation of practices of participatory democracy. Depending on the geographical context in which forms of participatory practices have developed and that in which they are put into practice, they are named and classified very differently. As a general rule, they are: (1) neither instruments of representative nor of direct democracy; (2) complementary to the mentioned forms of democracy; (3) the expression of (institutionalised) debates involving the citizenry and (political) decision-makers; and (4) as regards their outcomes, result-oriented but open-ended.



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21. Scholars talk about participatory, deliberative or associative democracy when referring to democratic practices. See various articles in Cristina Fraenkel-Haeberle et al. (eds.), *Citizen Participation in Multi-Level Democracies*, Martinus Nijhoff, Leiden-Boston, 2015. See also Elisabeth Alber and Martina Trettel (eds.), *Partecipazione e democrazia partecipativa nell'Euregio Tirolo-Alto Adige-Trentino*, Eurac book, 2015.



The 'Autonomy Convention' responds to these criteria: provincial law no. 3/2015²² provided for its establishment as an auxiliary instrument to the South Tyrolean provincial parliament. Its design consists of different discussion fora in which to freely reflect on and debate South Tyrol's autonomy. Its uniqueness lies in its contextualisation in a minority area characterised by a power-sharing system that combines legally guaranteed separation of groups with institutionalised forms of cooperation between their political elites. Both in its scope (revision of the Second ASt) and method (opened debates across language groups and political ideologies involving both the citizenry and the institutions), the 'Autonomy Convention' is certainly a novum to South Tyrol's self-governance. Up until now, all processes linked with the creation, implementation and development of South Tyrol's autonomy were exclusively elite-driven with the South Tyrolean Peoples' Party (Südtiroler Volkspartei, SVP) as the chief negotiator²³.

22. Published in the Official Gazette of the Autonomous Region of Trentino-South Tyrol no. 17 of 28 April 2015 at http://lexbrowser.provinz.bz.it/doc/de/201949/landesgesetz_vom_23_april_2015_nr_3.aspx?view=1.

23. The SVP was established in 1945 as the legitimate representative of all German and Ladin speakers in South Tyrol. Until 2008, the SVP always gained the absolute majority of votes and seats in the provincial parliament; in 2008, the SVP for the first time received less than 50 per cent of the votes, but managed to obtain 18 seats out of 35 in the provincial parliament. In 2013, the SVP again won the elections, but it managed to obtain only 17 seats out of 35 and, thus, it needed to enter a coalition with an Italian-speaking party not only because it is one of the specific requirements laid out in the Second ASt, but through the necessity to form a government.

The future will show if the ‘Autonomy Convention’ is groundbreaking in terms of the enhancement of a political concept of ‘participatory autonomy’ across language groups, if those who deliberately provided for its setup will simply sweep its results under the carpet or if it is the harbinger of a renewed flaring-up of ethnic tensions. Three issues are undoubtedly true. First, the institutionalisation of the ‘Autonomy Convention’ was only possible against the backdrop of South Tyrol’s successful conflict settlement by power-sharing mechanisms. Second, regardless of how the results of the ‘Autonomy Convention’ are processed by South Tyrol’s ethnically demarcated (political) arenas, data from a recently concluded project shows that although separation is still the (institutional) rule in South Tyrol, this rule is becoming increasingly less rigid among the majority of South Tyroleans; they view cultural diversity and multilingualism positively²⁴. Third, the ‘Autonomy Convention’ is South Tyrol’s first-ever institutionalised platform where its citizenry debates autonomy across language groups in a controversial but fair manner, far away from political arenas (at least officially). From this point of view, it is definitely a breakthrough in South Tyrol’s self-governance. ■

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24. See Günther Pallaver, Max Haller and Hermann Atz, ‘Ethnische Differenzierung und soziale Schichtung in der Südtiroler Gesellschaft heute. Resümee und Ausblick’, in: Hermann Atz, Max Haller and Günther Pallaver (eds.), *Ethnische Differenzierung und soziale Schichtung in der Südtiroler Gesellschaft*, Nomos, Baden-Baden, 2016, 383-405, 400.