

OXFORD PUBLIC INTERNATIONAL LAW

Max Planck Encyclopedia of Public International Law



South Tyrol

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Content type:

Encyclopedia Entries

Article last updated:

January 2008

Product: Max Planck

Encyclopedia of Public
International Law [MPEIL]

Subject(s):

Self-determination — Democracy — Minorities — Peace treaties

Published under the auspices of the Max Planck Foundation for International Peace and the Rule of Law under the direction of Rüdiger Wolfrum.

A. Introduction

1 South Tyrol is an autonomous province in the North of Italy, forming, together with the province of Trento, the autonomous region of Trentino-South Tyrol. It is composed of 116 municipalities; it has a population of over 487,000 people and stretches over 7,400 square kilometres. The capital is Bolzano-Bozen. At the last census 69.15% of the South Tyrolean population declared themselves to belong to the German-speaking group, 26.47% to the Italian-speaking group, and 4.37% to the Ladin-speaking group.

2 As a geographical-political entity South Tyrol in its present form is the result of World War I. It has to be kept in mind, however, that the term 'South Tyrol' is much older, referring to a partly different area, comprising the Trentino down to Ala.

B. History

3 Since 1363 Tyrol has been a Habsburg-Austrian possession. As a consequence of the Napoleonic Wars in 1805 South Tyrol was ceded to Bavaria. Against the Bavarian and French occupiers, insurgencies were led by Andreas Hofer. Although unsuccessful in the end, this freedom fight gave Tyroleans broad notoriety in Europe. In 1809–10 Tyrol was divided into three parts, whereby the southern part came to the newly created Kingdom of Italy, the northern part up to Meran and Klausen to Bavaria, and the valley of Pustertal east of Innichen to the Illyric Provinces of the French Empire. At this time the Italian name for South Tyrol, Alto Adige, was coined. In 1813 Tyrol was liberated from the occupiers. On the basis of the Convention entre sa Majesté l'Empereur d'Autriche et sa Majesté le Roi de Bavière of 3 June 1814 Tyrol was again legally reunited with Austria.

4 With the uprising of Italian nationalism, Austria was confronted with both direct and indirect territorial claims to South Tyrol. Initially, there was a call for the liberation of the 'unredeemed' territories, among which was the mostly Italian speaking Trentino and furthermore, some Italian nationalists asked for the Brenner frontier, the watershed, as a natural boundary.

5 In a secret treaty, the Agreement between Great Britain, France, Russia, and Italy providing for Italian Naval and Military co-operation with the Allied Powers in the European War and Making Certain Territorial and other Arrangements of 26 April 1915, Italy was promised by the Allies, inter alia, the Brenner frontier for its entry into World War I against the Central Powers. After the defeat of the Central Powers the South Tyrolean population asked for the right to self-determination, relying on general proclamations by US President Woodrow Wilson as to the role this principle should play for the re-ordering of post-war Europe. In the St Germain Peace Treaty (1919) South Tyrol was ceded, however, to Italy, although this territory had, according to the last pre-war census, an Italian population of only 3%. South Tyrol was annexed by Italy in 1920. No minority protection obligations were imposed on Italy (see also Minority Protection System between World War I and World War II). After the fascist regime came to power in 1922 a rigid Italianization policy set in. The German language was banned from schools, administration, judiciary, and public life. Italian migration to South Tyrol was incentivized by the creation of industrial parks and by public housing projects. On this basis, the percentage of the Italian-speaking population rose to 25% in 1939.

6 On 23 June 1939, Germany and Italy concluded a population transfer agreement on the basis of which the South Tyrolean and other German speaking populations in Northern Italy could opt for German citizenship and emigrate to Germany. As a consequence, more than 80% of eligible individuals opted for Germany. However, due to administrative difficulties and the beginning of World War II, only a third of these persons (about 75,000) actually left South Tyrol, many of them returned after the war.

C. Gruber-De Gasperi Agreement

7 In 1945 both in North and South Tyrol broad parts of the population asked for the re-unification of South Tyrol with Austria. In South Tyrol 163,777 signatures were collected asking for a return to Austria. Nonetheless, the Allied Powers decided against this. But Italy and Austria were invited, however, to enter into bilateral negotiations for a minority protection regulation. The respective agreement named provisions agreed upon by the Austrian and Italian governments, and was signed on 5 September 1946 (the so-called 'Gruber-De Gasperi Agreement'). It was afterwards annexed to the Treaty of Peace with Italy of 10 February 1947 (Peace Treaties (1947)). According to this agreement the:

German speaking inhabitants of the Bolzano Province and of the neighbouring bilingual townships of the Trento Province will be assured a complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element (Art. 1 Gruber-De Gasperi Agreement).

In particular, according to the agreement, to the members of this minority the following were assured: elementary and secondary teaching in the mother-tongue; the use of the minority language before public offices, as well as in topographic naming; and equal access to public offices 'with a view to reaching a more appropriate proportion of employment between the two ethnical groups' (see Art. 1 Gruber-De Gasperi Agreement).

8 Furthermore, in Art. 2 of the Gruber-De Gasperi Agreement the basis was laid for the granting of autonomy:

The populations of the above mentioned zones will be granted the exercise of an autonomous legislative and executive regional power. The frame, within which the said provisions of autonomy will apply, will be drafted in consultation also with local representatives of German-speaking elements.

9 The implementation of the Gruber-De Gasperi Agreement was widely unsatisfactory for the German-speaking group. The autonomous region named Trentino-Alto Adige comprised not only the province of Bolzano and the neighbouring bilingual townships but also the whole of Trentino (province of Trento). As a consequence, in this region, the Italian-speaking population was in the majority. As the most important legislative competences were in the hands of the region and not in the hands of the provinces this autonomous order was not suited to implement the spirit of the Gruber-De Gasperi Agreement. When Austria regained full capacity to act on the international level after the conclusion of the State Treaty for the Re-establishment of an Independent and Democratic Austria in 1955, it tried to obtain an improvement by direct diplomatic contacts with Rome. As these attempts remained unsuccessful, in 1960 Austria requested and obtained the discussion of this issue before the General Assembly of the United Nations. (United Nations, General Assembly). The General Assembly adopted Resolution 1497 (XV) of 31 October 1960 urging Austria and Italy 'to resume negotiations with a view to finding a solution for all differences relating to the implementation of the Gruber-De Gasperi Agreement of 5 September 1946'. A similar resolution was adopted the following year (Resolution 1661 (XVI) of 28 November 1961).

D. Autonomy Statute of 1972

10 Soon after, bomb attacks against electric power lines and against symbols of Italian domination in South Tyrol set in. In September 1961 the Italian government set up the 'Commission of the 19', a body of politicians in which representatives of the South Tyrolese were present. This body adopted a number of measures designed to strengthen the autonomy of the province of Bolzano and the minority protection system. In 1964 this commission presented its final report which constituted the basis for further talks between Austria and Italy. Afterwards, negotiations were conducted between the Italian government and representatives of the Südtiroler Volkspartei ('SVP') (South Tyrol

People's Party), the party representing large parts of the local German-speaking and Ladin-speaking population. In 1969 negotiations came to a formal close when the results were approved by the SVP and afterwards reconfirmed by the Foreign Ministers of Austria and Italy: Kurt Waldheim and Aldo Moro, without, however, concluding a new agreement. The results were contained in two documents: the so-called 'package' and the so-called 'operations calendar'. While the first document consisted of 137 measures by which the autonomous order of South Tyrol should be greatly enlarged and enriched, the operations calendar contained indications on the logical order according to which these rules should be put into practice.

11 The first goal was to revise the autonomy statute of the region of Trentino-Alto Adige. In 1972 a new statute (Decreto del presidente della repubblica n 670: Approvazione del testo unico delle leggi costituzionali concernenti lo statuto speciale per il Trentino-Alto Adige; '1972 Autonomy Statute') was issued. This statute enjoys the formal status of constitutional law, and can therefore be amended only by a difficult procedure. In contrast to the previous situation, the revised autonomy statute attributes priority to the two provinces of Bozen-Bolzano and Trento to which most legislative and administrative competences were transferred. The region, which is composed of the two provinces, has competences only in marginal areas.

12 South Tyrol (the province of Bozen-Bolzano) now receives primary legislative power in many areas of relevance for minority protection, and also beyond these areas, such as place naming, protection of objects of artistic and ethnic value, local uses and customs, planning and building, protection of the countryside, crafts and handicrafts, public housing, agriculture and forestry, tourism, transport of provincial interest, mines, nursery schools, school buildings and school welfare, public works, and vocational training. Secondary (or concurring) legislative power was attributed in regard to teaching in primary and secondary schools, trade and commerce, apprenticeships, promotion of industrial production, hygiene and healthcare, sport, and leisure (Arts 8 and 9 1972 Autonomy Statute).

13 As a consequence of the principle of parallelism between the legislative and the administrative powers, the extension of the former competence has led to a considerable enlargement of the provincial administrative apparatus. Thereby, the local government has become the largest employer in the province.

14 Employees have to demonstrate their language competence both in German and Italian and the distribution of posts takes place according to the consistency of the various linguistic groups (German, Italian, Ladin). The principle of proportional employment finds application for all forms of public administration: state, province, municipalities, and semi-State. Language knowledge has to be demonstrated through a public examination, differentiated in various levels according to the requirements of the job in question. As a consequence of a judgment by the European Court of Justice ('ECJ'), certificates obtained abroad can be accepted as equivalent (Case C-281/98 *Roman Angonese and Cassa di Risparmio di Bolzano SpA* (2000) ECR I-4139; see para. 21 below).

15 The South Tyrolean autonomy is characterized by several elements which make it unique. The Italian and the German language enjoy the same status in the province. Ladin plays a somewhat minor, but still relevant, role. Penal, civil, and administrative proceedings are held either in German or in Italian, or, subsidiarily, in both languages. It is possible to make declarations in Ladin before all Courts in South Tyrol. All the relevant provisions are characterized by the attempt to attribute a maximum degree of protection to the linguistic rights of the parties. In order to avoid a slow assimilation by the dominant language, the school system has been separated. There are two school systems, the German and the Italian one, where the first language is the general language of instruction, while the second one is a subject of specific teaching. There is, furthermore, a Ladin school system. In this school system German and Italian are used equally as a language of instruction, while Ladin is taught as a subject and, to a far lesser extent, used as a language of instruction.

16 South Tyrol enjoys fiscal autonomy. A large proportion of the taxes collected in South Tyrol remain in the province. South Tyrol has its own administrative court whose members are nominated by mutual agreement between the central and the provincial government. This court has important functions in the implementation of South Tyrolean autonomy. According to a special guarantee mechanism no legislative measure can be deliberated in the provincial or in the regional assembly against the will of the majority of a single linguistic group (see Art. 56 1972 Autonomy Statute). Budget proposals that are rejected by a single linguistic group are finally fixed by a conciliatory commission formed within the provincial or the regional assembly or by the Administrative Court.

17 For a long time, there was much debate as to whether this autonomous order was internationally protected. On the one hand, the Gruber-De Gasperi Agreement lies at the basis of this order. On the other hand, however, the South Tyrolean autonomy goes far beyond what the agreement requires. Furthermore, Italy has always refused to sign a new agreement or to consider the 'package' as a treaty. In 1992, however, at the time Austria issued the declaration that the controversy of 1960–61 had been terminated, a procedure was found that should anchor the whole package (and, therefore, also the 1972 Autonomy Statute) in international law. In particular, in both notes reference has been made to the statute which can, therefore, be seen as an implementation measure with respect to the Gruber-De Gasperi Agreement. Thus, it can be assumed that Austria could sue Italy if the latter State should withdraw, totally or in part, the concessions made.

18 In 2001, the 1972 Autonomy Statute was amended and further strengthened by two constitutional laws (constitutional laws no 2/2001 of 31 January 2001 and no 3/2001 of 18 October 2001). The role of the two provinces Bozen-Bolzano and Trento was further strengthened within the autonomous region. Before an amendment can be made to the statute, the provinces must be consulted (Art. 103 (3) 1972 Autonomy Statute). While in the past the exercise of legislative competences was subject to restrictions, the reform has now reduced these.

E. Evaluation

19 South Tyrol is often considered as a role model for successful minority protection, an example of a well-functioning social democracy. Nonetheless, several problems lie ahead. There is, first of all, the development of the Italian constitutional order to be closely followed. In fact, there is a strong desire in Italy to transform the State into a federal entity. Accordingly, the South Tyrolean autonomy has to be adapted and appropriate mechanisms have to be found by which the special status of the province can be defended.

20 Further challenges are coming at the international and the European level. (Minorities, European Protection). The far-reaching protective measures of the South Tyrolean autonomy statute have been interpreted (and, in part, misinterpreted) as being discriminatory. While the need for minority protection has been recognized in the meantime on a universal level, there are few examples of such far-reaching minority protection regimes as the South Tyrolean one. Although this whole autonomous order is based on the principle of equality of all linguistic groups, it is also clear that the far-reaching positive measures this system implies could be interpreted, at first sight, as leading to an infringement of fundamental liberal rights since the autonomous rights apply only on a certain territory and they require the determination of the linguistic group to which the individual wants to aggregate himself. Public posts and funds are allocated according to the strength of the various groups. These mechanisms are generally held to be necessary to achieve the goals the autonomous order has been created for. At the same time, however, it is legitimate to continue the discussion about the appropriate balancing of these goals and, in particular, about the instruments that may be used in this context.

21 With regard to the law of the European Union it has been argued that conflicts between fundamental freedoms and the autonomous order of South Tyrol could arise. While the fundamental freedoms are essentially based on an individualistic view of rights and these rights are,

furthermore, to be implemented on a transboundary level, the autonomous rights have, partly, a collective character and in their essence they do not favour free movement, but the stable settlement of the various linguistic groups on a certain territory. The most famous example so far is case C-281/98 *Roman Angonese and Cassa di Risparmio di Bolzano SpA* (2000) ECR I-4139. In this case the ECJ declared an Italian provision forming part of the South Tyrolean autonomy law as differing from EC law. This provision allowed for the determination of linguistic abilities only through a special procedure exclusively available in the province of Bolzano. For the ECJ, other certificates acquired outside this province should also be taken into consideration. On the other hand, in case C-274/96 *Criminal proceedings against Horst Otto Bickel and Ulrich Franz* (1998) ECR I-7637, the ECJ argued that minority protection is a goal of EU law. It is hoped that this statement will be further clarified over the next few years.

22 With regard to the autonomy of South Tyrol, it is said that this autonomy is becoming a 'flexible' or 'dynamic' one. In fact, as the national constitutional order is changing, as international and European elements are becoming more and more important, and expectations of human rights protection and minority rights protection in particular are rising. South Tyrol will have to show sufficient adaptability to meet all these challenges.

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