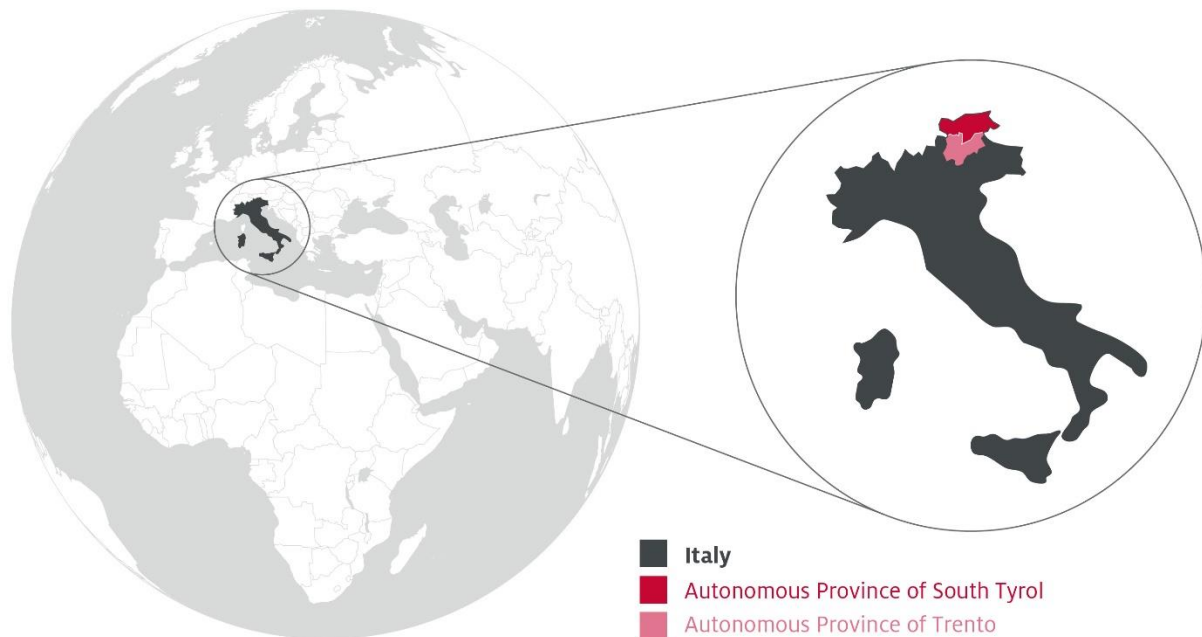




## A Primer on the Autonomy of South Tyrol: History, Law, Politics

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# 1. Essential Facts and Figures

## 1.1. Italy

In 2021, the total resident population of Italy amounted to 59 million (ISTAT 2021). Standard Italian is the official language—though not mentioned in the Italian Constitution (IC)—and the mother tongue of more than 90% of the population.<sup>1</sup> Minority languages (and local dialects) also play a key role in subnational community life. In some parts, they are the basis of language regimes at the regional and local level (as a response to Article 6 IC that prescribes the safeguarding of linguistic minorities by means of specific measures). The degree of protection ranges from a weak protection granted by ordinary legislation through a formal decision at the municipal level (by means of the ordinary national Law no. 482/1999)<sup>2</sup> to a strong protection enshrined in some of the special regions' statutes that, unlike those of ordinary regions, have constitutional rank.<sup>3</sup> Strong protective regimes in part come in the form of a multilingual public sphere that is applied to an entire region or to parts of a region's local government system. So are the special statute regions Valle d'Aosta/Vallée d'Aoste and Trentino-Alto Adige/Südtirol home, respectively, to French- and German-speaking minorities, whose languages are, although based on different models, officially recognized as equivalent to Italian within the respective peculiar political systems.<sup>4</sup> In contrast, the Slovene minority in the region of Friuli Venezia Giulia enjoys a more localized protection within the regional asymmetric system of protection of linguistic minorities (Vidau 2013). Whether or not regional and local governments are sensitive to the issue of linguistic minorities and, more generally, to the valorization of linguistic plurality mainly depends on subnational contextual factors (Alber 2022).

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\* This case study was discussed and written jointly, with Elisabeth Alber responsible for sections 1, 2, 3.1, 7, 8, 9, 10 and 11, and Carolin Zwilling for sections 3.2, 3.3, 3.4, 4, 5 and 6. Whenever used, the term state refers to the central level of government.

<sup>1</sup> In 2015, 90.4% of people aged six years and over was Italian mother tongue. Compared to 2006, the estimate of those who declared a foreign mother tongue increased (from 4.1% to 9.6% in 2015). See ISTAT (2017).

<sup>2</sup> Law no. 482/1999 implements Article 6 IC. The speakers belonging to the languages listed in the law—Albanian, Catalan, German, Greek, Slovene and Croatian as well as French, Franco-Provençal, Friulian, Ladino, Occitan and Sardinian—may be granted linguistic rights in different fields (school, public administration, personal names, and toponymy) and at local level only. It is the local authority that has to activate protection mechanisms (either at the request of at least 15% of residents or one third of councilors in a given municipality or, in absence of such thresholds, by holding a local referendum). Law no. 482/1999 applies in 1,076 municipalities (13% of all municipalities) inhabited by four million persons (7% of the overall population) (Council of Europe 2015, para. 18). For details see Alber (2022).

<sup>3</sup> Palici di Suni Prat (1999) distinguishes between “super-protected minorities” (German speakers in South Tyrol, French speakers in the Aosta Valley and Slovene speakers in Friuli Venezia Giulia), “recognized minorities” (all those recognized in the Italian framework law no. 482 of 1999) and “not recognized minorities” (the remaining groups that include Roma and immigrants).

<sup>4</sup> For the Aosta valley see Louvin and Alessi (2020). For South Tyrol see Alber (2021a) and the several sections in the bibliography on South Tyrol by Zwilling and Parolari (2018).

## 1.2. South Tyrol

South Tyrol borders Austria and Switzerland and as of December 2020 has a population of 533,715 (ASTAT 2021). Almost one third of South Tyroleans live in urban areas—with 107,760 persons inhabiting the predominantly Italian-speaking capital of Bolzano/Bozen (ibid.).<sup>5</sup> According to the linguistic declaration at the last census in 2011, 69.41% are German, 26.06% Italian and 4.53% Ladin<sup>6</sup> speakers (out of 453,272 valid linguistic declarations of affiliation).<sup>7</sup> It is important to highlight that the linguistic declaration (or affiliation with one of the three official language groups in case one decides to declare himself or herself in the category of *Other*)<sup>8</sup> is an institutional tool, and that the actual demography of South Tyrol is different, as demonstrated by the comparison of data from the census and from the most recent Linguistic Barometer conducted by the province's statistical institute (ASTAT 2015).

This is because of immigration. Although a quite recent phenomenon in South Tyrol, immigration is increasing, with indirect repercussions on the autonomy arrangement. The area's flourishing economy has turned South Tyrol from a place where people emigrated from (until the late 1980s) to a place where people immigrate to (Alber and Wisthaler 2020). As of 31 December 2020, around 51,203 people of foreign citizenship reside in South Tyrol, 2.3% more than the previous year and about seven times more than in 1994, when around 7,250 foreigners resided in South Tyrol (ASTAT 2021). The proportion of foreigners in the total population amounts to 9.7 foreigners per 100 inhabitants. This value is slightly higher than that of the neighboring province of Trentino (8.8%), Italy (8.7%) and the EU average (8.1%). In short, regarding the country of origin of immigrants, prior to 1994 a consistent number of German speakers moved to South Tyrol (from Germany and Austria) and a small number of persons from North Africa. In the period 1994-2006, a consistent number of refugees from former Yugoslavia settled in South Tyrol. From 2003 onwards, immigration from Eastern Europe became more relevant and in the last several years the number of immigrants from North Africa and Latin America has also increased (Medda-Windischer and Girardi 2010). Important

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<sup>5</sup> Overall, South Tyrol's surface area amounts to 7,398 km<sup>2</sup>. Almost 5,000 km<sup>2</sup> are over 1,500 meters above sea level, and only 292 km<sup>2</sup> are located less than 500 meters above sea level. Categorized by land use, most of the surface area is forest (2,920 km<sup>2</sup>) or used for agriculture (2,670 km<sup>2</sup>). Agriculture and tourism are two of the major components of the flourishing South Tyrolean economy. For detailed data consult ASTAT (2015).

<sup>6</sup> Ladin is a Rhaeto-Romance language spoken in the Central and Eastern Alpine region. In South Tyrol, it is spoken in the Italian Dolomite Valleys.

<sup>7</sup> The different language groups—except for the Ladins—are heterogeneously distributed. German speakers mainly populate rural areas while all major cities contain substantial numbers of Italian speakers. Italian speakers constitute the majority in the capital city Bolzano/Bozen and in the Southern part of South Tyrol, neighbouring the Italian-speaking autonomous province of Trento. Both autonomous provinces together form the autonomous region Trentino-Alto Adige/South Tyrol.

<sup>8</sup> In the 2011 census, 1.7% of the population declared themselves *Other*, 55.7% of which are affiliated with the German-speaking group, 38.8% with the Italian-speaking group, and 5.5% with the Ladin-speaking group. *Other* refers to non-official languages, most of which are spoken by the population that are foreign migrants. See ASTAT (2015).

to note is the fact that the increasing number of foreigners in South Tyrol today is double the number of Ladin speakers, thus challenging some aspects of the institutionalized ethnic governance system.

## 2. Autonomy in the Context of the State Structure

The very existence of minority groups was significant in 1948 when the Italian Constitution (IC) makers opted for a regional system with special and ordinary regions. After the Second World War, the IC makers faced a complex situation with regard to regional (and local) diversities that had always been very strong in Italy but were repressed by the fascist regime (1922-1943). International obligations, claims for secession and geographical reasons caused the Constituent Assembly to opt for an asymmetric regional system. Regarding the northernmost Italian territory (that is, the autonomous region Trentino-Alto Adige/South Tyrol), international obligations imposed by the Paris Peace Treaty (1946) regarding the protection of the South Tyrolean German speakers had to be taken into account. Secessionist claims had to be circumvented in the case of the small Alpine region Aosta Valley, where local authorities had already elaborated a plan for a strong self-government in 1943, and in the case of Sicily, which had elaborated its own Constitution in 1946 before the IC was drafted. Sardinia was to be given a special status because of its isolated position in geographic terms. All this necessitated the establishment of a regional system. To avoid an overly strong asymmetry between these special territories and the rest of the country, 20 regions were established altogether (Article 131 IC), five of which were endowed with a higher degree of autonomy: Trentino-Alto Adige/South Tyrol, Aosta Valley, Friuli Venezia Giulia, Sicily and Sardinia.<sup>9</sup> Thus, next to Italy's *de facto* asymmetries (socio-economic frameworks and political attitudes), the IC mandates *de jure* differentiation among its 20 constituent units (five special and 15 ordinary regions). In practice, the small Alpine autonomous regions inhabited by linguistic minorities—Aosta Valley and Trentino-Alto Adige/South Tyrol—have for a long time been the only areas where autonomous powers were strongly claimed and systematically implemented.<sup>10</sup> Within this first phase of Italian regionalism, the special regions had their own basic law approved as constitutional law of the state guaranteeing them (contrary to the 15 ordinary regions<sup>11</sup>) far-reaching autonomy

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<sup>9</sup> Article 116 (1) IC. This provision constitutes the legal guarantee of the special rights granted to the autonomous regions.

<sup>10</sup> The autonomous region Friuli Venezia Giulia inhabited by the Slovene-speaking minority was established only in 1963, after the end of the international control over the city of Trieste. Overall, it received a comparatively smaller degree of autonomy.

<sup>11</sup> Out of the 15 ordinary regions, eight are in the North (Piedmont, Emilia-Romagna, Liguria, Lombardy, Marches, Tuscany, Veneto, and Umbria); two are in central Italy (Lazio and Abruzzo), while five are in the South (Apulia, Basilicata, Calabria, Campania, and Molise). Although already laid down in the IC of 1948, a full-fledged regional Italian state started, however, to develop only in 1972, when the 15 so-called ordinary regions were established, and legislative powers were devolved

and a bilateral relationship with the Italian state, bypassing the national government with regard to the implementation of the provisions enshrined in their basic laws. This not only explains the different development concerning regional self-government between ordinary and special regions, but also the fact that special regions themselves developed differently. Regarding South Tyrol, this first phase of Italian regionalism coincided with the period of difficult and strenuous negotiations at the highest level (claims for the recognition of German speakers' rights by means of a strong autonomy model at the provincial instead of the regional level).

Starting from 1972, an increase in the regional powers gradually narrowed the gap between ordinary and special regions, leading to a system of cooperative regionalism.<sup>12</sup> This second phase of Italian regionalism coincided with further institutional negotiations between South Tyrol's political elite, the South Tyrolean People's Party (SVP), and the Italian state, aiming at the implementation of the provisions enshrined in the Autonomy Statute (ASt). Italy's constitutional reform of 2001 profoundly changed the relationship between the different levels of government and reduced the disparities between special and ordinary regions, giving the latter an amount of power analogous to that enjoyed from the very beginning by the special regions.<sup>13</sup>

However, in institutional terms there are still profound differences between the two types of regions. The specialty of Italy's autonomous regions and the two autonomous provinces of Bolzano/Bozen and Trento rests on four elements:

- their basic law has constitutional rank;
- the scope of legislative and administrative autonomy has been broad since 1948;
- the special procedures and arrangements guarantee, among other things, financial autonomy;
- the bilateral relationship and specific cooperation mechanisms with the central government, based on parity.

Moreover, differing interpretations and exercises of the autonomy led to a differentiation in the scope of autonomy powers between special regions. In practice, special regions in the North profited from the legal-institutional framework by continuously enlarging the scope of their autonomous powers, while special regions in the South failed in doing so. The special region

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to them. After the 2001 constitutional reform, Italian regionalism is defined as "devolutionary asymmetric federation in the making" (Palermo 2005). Ordinary regions are entitled to approve their own regional basic law and additional differentiation between ordinary regions is enshrined in Article 116 (3) IC. See also the concept of Italian federal regionalism in Pallaver and Brunazzo (2017).

<sup>12</sup> For a comprehensive analysis of the evolution of various aspects in Italy's asymmetric regionalist state as well as the different phases in Italy's regionalism, see Arban, Martinico and Palermo (2021). With focus on South Tyrol's position in Italian regionalism, see Palermo (2008a) and Woelk (2008a).

<sup>13</sup> Although the special regions were not directly affected by this reform, a preferential clause guarantees them all benefits, which means all features that are *more favourable* regarding their powers and status.

Trentino-South Tyrol is, compared to other special regions, at the forefront when it comes to drafting enactment decrees (that are bylaws implementing the autonomy, see section 3.3). As of early 2018, 189 enactment decrees with most bylaws dealing with the mechanisms of co-habitation of language groups in South Tyrol have been adopted. This corresponds to almost five times those of Sicily and Sardinia (41 and 42) and almost three times those of Aosta Valley (62) (Palermo and Valdesalici 2019, 287). Also, the parallel empowerment of ordinary regions has led to some Northern ordinary regions currently being more developed in terms of autonomous powers than some special regions (though, technically speaking, their regional basic laws lack constitutional rank, and are, as such, weaker).

Regarding South Tyrol, this third ongoing phase of Italian regionalism—the further empowerment and differentiation of ordinary regions—coincides with the quest for a new power-sharing model. The minority conflict has been settled by transforming the initial emphasis on minority protection for just German speakers into a system of complex rules that governs the cohabitation of three linguistic groups (German, Italian and Ladin), and that includes *newcomers* who—for instrumental purposes as to the functioning of the power-sharing system—affiliate with one of the linguistic groups (Alber 2021a). Legally, especially in the last 15 years, several power provisions enshrined in the ASt have been both further extended and considerably altered by means of enactment decrees elaborated within the joint commissions (see section 3.3). Politically, the ruling SVP applies the formula of dynamic/full autonomy. Accordingly, the development of South Tyrol’s autonomous powers is often a consequence of political constellations at the national level, and strenuous negotiations between Rome and Bolzano/Bozen.

### **3. Establishment and Implementation of Autonomy**

#### **3.1. The Road towards Autonomy**

South Tyrol and Trentino, from the 14<sup>th</sup> century on, were part of the crown province of Tyrol within the Habsburg empire. While in South Tyrol there was a clear predominance of German and Ladin speakers, neighboring Trentino was almost entirely Italian-speaking. Although one of US President Woodrow Wilson’s 14 points foresaw the “readjustment of the frontiers of Italy along clearly recognizable lines of nationality”, the territory up to the Brenner Pass was ceded to Italy after the First World War.<sup>14</sup> Both Trentino and South Tyrol were annexed to Italy with the Peace Treaty of St. Germain in 1919. Initially, the German speakers in South Tyrol were promised territorial and cultural autonomy. When the fascist regime came to power, however, any such efforts were stopped. From

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<sup>14</sup> For a detailed analysis of South Tyrolean history, see Grote (2012).



1922 onwards, the German-speaking minority suffered from repressive measures in all aspects of life. This led to the Italianization of the entire public sphere via industrialization and migration from the South, but also to the prohibition of German language courses taught privately, as well as to the artificial introduction of surnames and toponymy. In 1939, Hitler and Mussolini agreed upon the so-called *Option*, the final solution of the South Tyrolean question: accordingly, the German speakers were forced to choose between keeping their identity by moving to the German Reich and thus giving up their home or keeping their home by renouncing the German language and Tyrolean culture and, thus, agreeing to completely Italianize. A large percentage of South Tyroleans decided to leave, although only a small part of them really left due to the outbreak of the war (Lantschner 2008).

After Second World War, the Paris Peace Treaty (1946) confirmed South Tyrol as part of Italy, but it provided for an international anchoring of minority rights, ensuring for the German speakers special provisions to guarantee their “complete equality of rights with the Italian speaking inhabitants” and to safeguard “the ethnic character and the cultural and economic development of the German speaking element”.<sup>15</sup> During the peace negotiations, the Allied powers were motivated to appease Italy because of larger geopolitical reasons. Therefore, the Brenner Pass, which borders Austrian Tyrol, was accepted as an irrevocable border line. The reintegration of South Tyrol into Austria was no longer possible in the emerging Cold War context of post-war settlements. According to the Gruber – De Gasperi Agreement, annex to the Paris Peace Treaty, the German speakers of South Tyrol were to be guaranteed a substantial autonomy. The agreement also acknowledged Austria’s official role as protecting power. Austria, the kin-state of the German-speaking South Tyroleans,<sup>16</sup> played a crucial role in the settlement of the conflict, both with regard to the implementation of the autonomous legislative and executive powers, and to the functioning of the special mechanisms meant to safeguard the ethnic character of German speakers (e.g., the ethnic quota system; see section 9.1).

Italy considered the obligations arising from the international treaty to be fulfilled by its having established the autonomous region Trentino-Alto Adige/South Tyrol. However, the Autonomy Statute (ASt) of 1948 ensured far-reaching autonomy at the regional level, where Italians were the majority (71.5%). For example, primary legislative powers in the economic sector were vested with the region. Moreover, the region was not obliged to delegate its administrative powers to the provinces of Trento and Bolzano. The interests of German-speaking South Tyroleans were therefore

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<sup>15</sup> Article 1 of Gruber – De Gasperi Agreement which became Annex IV of the Paris Peace Treaty. The smallest (and oldest) linguistic group, the Ladins, are technically not covered by the Gruber – De Gasperi Agreement. The claims of the Ladin minority group have been traditionally put forward by the German-speaking group and by its most representative party, the South Tyrolean People’s Party.

<sup>16</sup> On minorities and the role of kin-states including the case of South Tyrol see Hafner et al. (2015) and Sabanadze (2006).

easily outvoted. Dissatisfaction and tensions grew steadily. In 1960, Austria urged the United Nations to take a position on the South Tyrolean question. The UN General Assembly recommended in two resolutions that a solution should be found through further negotiations.<sup>17</sup> Strenuous negotiations at different political levels brought forward by political elites within special commissions characterized the settlement of the South Tyrolean conflict. In practice, such negotiations translated to a detailed and sophisticated autonomy system that essentially grants a peaceful and legally safeguarded parallel coexistence of the main linguistic groups. It balances ethno-linguistic claims and efficiency by power-sharing. If Austria as a kin-state played a fundamental international role in settling the conflict, nationally it was the provincial-based South Tyrolean People's Party (SVP), which since its foundation in 1945 fought for the rights of the German and Ladin speakers in South Tyrol. One of the first initiatives undertaken by the SVP was the collection of 158,000 signatures for self-determination. While negotiating the amendment of the ASt of 1948 (most importantly, the transfer of legislative and administrative powers from the regional to the provincial level) the SVP played a crucial role: in 1969 it voted for internal self-determination, paving the way for the package of legislative measures which led to the ASt of 1972. Aside from the Italian and Austrian parliaments, it was the only actor voting, as neither the regional nor provincial parliament voted. By voting for the package of legislative measures, reunification with Austria was declared an unrealistic claim and internal self-determination the only practicable way forward.

### 3.2. Trust-building and Bilateral Negotiations

As previously outlined, a main characteristic of both South Tyrol's conflict settlement and the implementation process of its ASt is mutual trust-building by means of negotiation in special commissions (Alber 2017). The process that led to today's autonomy system has its foundation in international law and, most importantly, was the result of negotiated compromises reached at the domestic level. The two abovementioned UN resolutions clearly pledged for a friendly solution to be found through bilateral negotiations. Italy and Austria, as signatories of the Gruber – De Gasperi Agreement, were to agree on how to successfully settle the conflict.

In 1961, the Italian Minister of the Interior established the so-called *Commission of Nineteen*. Its mandate was to elaborate concrete proposals concerning technical and legal measures aimed at definitively settling the conflict. The commission was composed of 19 members: 11 Italian speakers (representing the national, regional, and provincial governments and parliaments), seven German

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<sup>17</sup> UN General Assembly Resolution 1497 (XV) of 31 October 1960, "The Status of the German-Speaking Element in the Province of Bolzano, Implementation of Paris Agreement of 5 September 1946"; and UN General Assembly Resolution 1661 (XVI) of 28 November 1961, "The Status of the German-Speaking Element in the Province of Bolzano (Bozen)".

speakers (appointed by the regional and provincial authorities), and one Ladin (appointed by the province of Bolzano/Bozen). The dominant position of Italian speakers within the commission notwithstanding, an agreement was reached. The resulting arrangement ended Italian domination and established the current power-sharing system. Throughout the negotiations, the SVP was officially recognized as the legitimate representative of all German and Ladin speakers in South Tyrol.

Therefore, in 1969, the final acceptance of the 137 legislative measures meant to reform the ASt of 1948 by transferring powers to the provincial level was not voted for via referendum by all South Tyroleans, but solely by the delegates of the SVP.<sup>18</sup> After heated discussions, a slim majority of 52.8% supported the 137 measures, the so-called *Package*. The opponents of the Package rejected it, as its approval in their opinion would have meant renouncing their goal of reunifying South Tyrol with Austria. The supporters of the Package opted for internal self-determination, claiming a far-reaching autonomy for South Tyrol. Only three years later, on 20 January 1972, the ASt entered into force. In 1992, the conflict was formally closed by the handover to the UN General Assembly of the so-called *deed of discharge* by the Austrian government. In theory, however, Austria could still take Italy to the International Court of Justice in case of severe violations of the provisions enshrined in the Gruber – De Gasperi Agreement or in the Package.

### 3.3. Implementation through Special Bodies and Procedures

The most important functional elements for the implementation of the special ASt of the autonomous region Trentino-Alto Adige/South Tyrol (and thus also for the provisions concerning the autonomous province of Bolzano/Bozen) are two joint commissions. They were created to enable both parties, the state and the autonomous region/autonomous provinces, to jointly develop the contents of the enactment decrees. Theoretically, the Package foresaw that both technical tools, enactment decrees and joint commissions, would cease to exist once the ASt is implemented. This was not the case however, as the enactment decrees have since evolved from an instrument for the implementation of the ASt into an ordinary instrument of government.<sup>19</sup> Also, the abolishment of the joint commissions would have frozen all enactment decrees since they can be modified only by the same legal source.<sup>20</sup>

The legal basis of the joint commissions is Article 107 ASt. According to this provision “the executive measures implementing the [...] statute shall be issued by legislative decrees, following consultation

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<sup>18</sup> The referendum would most likely have split up the population, and even created cleavages within each linguistic group. In remembrance of the long-lasting negative consequences after the *Option* (1939), the possibility of a referendum was rejected.

<sup>19</sup> According to Article 108 ASt all enactment decrees should have been adopted within two years, but the Constitutional Court (Judgment no. 160/1985) declared it just an indicative time frame. See further Palermo (2008b, 146).

<sup>20</sup> See Constitutional Court (Judgments no. 160/1985 and 37/1989) and Council of State (Opinion no. 3302/1995).

of a joint commission [...]”. This article forms the basis for two so-called joint commissions. The first, the *Commission of Twelve*, deals with issues regarding the entire region of Trentino-Alto Adige/South Tyrol, and is composed of an equal number of representatives of the state on the one hand (six members), and of the region and the two provinces (two members each) on the other. The second, the *Commission of Six*, is part of the former and is composed of three representatives of the state and three of the autonomous province of Bolzano/Bozen. This Commission deals exclusively with issues regarding the autonomous province of Bolzano/Bozen. Both commissions reflect the parity principle as the core of special autonomy.

However, whereas in the Commission of Twelve the state and the region have equal footing with six members each, the Commission of Six is characterized by double parity, meaning parity between territories (the state and South Tyrol) and parity between the main linguistic groups (three Italian-speaking members and three German-speaking members). As to the appointment procedure, one of the state representatives must be from the German speakers and one of South Tyrol’s representatives must belong to the Italian-speaking group. This is one of the factors for success, as the even number of representatives makes it impossible to reach an agreement without the consent of both of the institutional parties, the state and province, and the linguistic groups.

Since 2017, the principle of double parity (that is the linguistic parity between representatives from the Italian and German language groups) has been watered-down to the benefit of including a representative from the Ladin language group. Already in 2014, the state for the first time appointed a Ladin speaker to the Commission of Six and this resulted in a *de facto* representation of the Ladin language group in the Commission of Six. In 2017, the ASt was amended on this very point by the Constitutional Law no. 1/2017 which stipulates that one of the members representing the state must belong to the German or Ladin language group.

Precisely because of its appointment procedures and composition, the Commission of Six is not only a successful trust-building instrument, but also justifies the fact that its decisions prevail over laws democratically adopted by the Italian parliament. Although formally of the same rank in the hierarchy of legal sources, subsequent ordinary laws adopted by the Italian parliament cannot abolish, amend, or overrule enactment decrees. They are by-laws of the ASt and can be modified only by the same special procedure.

As an outcome of the negotiations between the state and the province within the joint commissions, the drafts of enactment decrees are submitted to the national government, which approves them in the form of legislative decrees.<sup>21</sup> Consequently, these enactment decrees constitute legislative acts that are part of ordinary law. They are not debated in or adopted by the national parliament.

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<sup>21</sup> According to Article 76 IC, these are legislative acts adopted by the government through delegation by the parliament.

Therefore, their deliberation is kept separate from normal political processes. Experts from both sides are involved in the elaboration process of the decrees.

### 3.4. The Role of the Italian Constitutional Court

The Constitutional Court is significant with respect to the development of Italy's regionalism.<sup>22</sup> According to the case law, minority protection through the application of the negotiation and parity principles has been a red line for decades.<sup>23</sup> Particularly after the 2001 constitutional reform, the Court has evolved into a platform for conflict management, as the enactment provisions of fundamental parts of the modified IC of 2001 are completely or at least largely still missing. For the time being, the Court has taken over the role of conflict manager, solving all state-region conflicts.<sup>24</sup> As to the autonomy of South Tyrol, the Court recently played a crucial role in defining the scope (and procedures) regarding its financial autonomy regime. This has occurred against the backdrop of fiscal austerity measures after the financial crisis 2007–2008.<sup>25</sup>

## 4. Legal Basis of Autonomy

On 20 January 1972, the Second Autonomy Statute (ASt)<sup>26</sup> entered into force, transferring all legislative and administrative powers from the autonomous region Trentino-Alto Adige/South Tyrol to the autonomous province of Trento and the autonomous province of Bolzano/Bozen, respectively. Within Italy, these two provinces are the only ones vested with autonomous powers. The autonomous region retained an insignificant number of competences which over the years had been largely devolved to the two provinces.<sup>27</sup>

Being of constitutional rank and as part of the regional basic law of Trentino-Alto Adige/South Tyrol, the ASt has a double guarantee: interferences by ordinary laws of lower rank are excluded, as are unilateral amendments. Implementation and amendments to the ASt depend on a complex legal approval procedure, based on a continuous institutional dialogue between the state and the autonomous provinces. The relationship between the central government and South Tyrol is essentially bilateral. Bilateralism is also inherent to the nature of South Tyrol's special institutions

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<sup>22</sup> In general, for already more than three decades, the Constitutional Court has been the main actor of Italy's federation in the making. See Palermo and Wilson (2013, 17): "In practice, the Court determined (and largely re-wrote) the division of legislative and administrative powers laid down by the [2001 constitutional] reform."

<sup>23</sup> For details, see Constitutional Court (Judgments no. 232/1991 and no. 213/1998).

<sup>24</sup> This is because the new constitutional framework is not workable, and the Court seems to be the only institution that could fill it with life. While in 1998 litigation between the state and regions made up only 2.76% of the Court's workload, in 2006 it became 29.16%.

<sup>25</sup> For details see Constitutional Court (Judgments no. 323/ 2011 and no. 2/2012).

<sup>26</sup> ASt was adopted under Constitutional Law no. 1 of 10 November 1971. For the unified text see the Presidential Decree no. 670 of 31 August 1972.

<sup>27</sup> Therefore, the existence of the region as a *roof-structure* is questioned, and its possible abrogation is regularly discussed at the political level. The two autonomous provinces would then be upgraded into two autonomous regions.

in charge of both the implementation and development of its autonomy: the joint commissions. This principle of bilateralism is legally guaranteed by the principle of special treatment that is based on Article 116 of the Italian Constitution (IC). All reforms to the ASt must be bilaterally negotiated, in political as well as legal terms by means of strict procedures (Zwilling 2007; Palermo 2008b).

As to the amendment procedure, in 2001 a reform was introduced in order to provide the regional parliament with the right to initiate amendments to the ASt. Furthermore, in case of initiatives by the national government or parliament, the regional parliament will express its opinion, this—even if not binding—being of political importance. Moreover, no national referendum can be held on the amendments of the ASt. Even when endowed with such far-reaching guarantees, until today no sound reform proposals to the ASt have been brought forward.

Noteworthy is the fact that in 2016–2017 the provincial council led an Autonomy Convention, a consultative participatory process meant to involve the larger public in the elaboration of a proposal as to how to revise the ASt, though the idea to originate it was already outlined in the program of the government coalition South Tyrolean People’s Party (SVP) – Democratic Party (PD) following the 2013 provincial elections. This subnational participatory constitution-making process was concluded in September 2017 with the handover of all results to the provincial council. No further institutional steps have, however, been taken since then to work with the results at political level and to initiate the revision of the ASt (Alber, Röggl and Ohnewein 2018; Alber and Woelk 2018; Trettel 2021).

Regarding the financial relations between the state and the autonomous province of Bolzano/Bozen (see section 7), a more flexible procedure allows for maneuvering space regulates South Tyrol’s financial autonomy. In fact, this forms an exception to the above-mentioned amendment procedure of the ASt, thus allowing for faster modifications<sup>28</sup> while still guaranteeing the parity and bilateral cooperation principles in the relationship with the state. As a rule, regarding finances, each special region has a different agreement with the state, regulated in the respective ASt (Valdesalici 2018; Valdesalici 2021; Alber and Valdesalici 2022).

## 5. Autonomous Institutions

### 5.1. The Provincial Council

According to the Autonomy Statute (ASt), the organs of the region and of the provinces respectively are the council, the government, and the president (Articles 24 and 47 ASt). The provincial council is the legislative body, the highest-ranking body of each autonomous province. Within the

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<sup>28</sup> Article 104 ASt stipulates that the part on financial relations “may be amended by ordinary State law at the joint request of the Government and, as regards their respective competence, the Region or the two Provinces”.

framework of powers granted to it, the council's duties comprise the election of the provincial government (the president and the ministers), the supervision of the provincial government, public debates on problems of public concern, and, if within its legislative competences, making the necessary decisions. Therefore, the most important function of the provincial council is the legislation in the above-mentioned competence fields (Avolio 2008, 63).

The provincial council consists of 35 deputies, elected every five years by the population, based on proportional representation. The deputies of the provincial council are simultaneously deputies of the regional council. As such, they—together with the deputies of the council of Trento—exercise the few legislative functions vested with the region Trentino-Alto Adige/South Tyrol. Following the strict application of parity between both territories, the province of Trento and the province of Bolzano/Bozen, the regional organ is also called the condominium organ of the two provinces (ibid., 56). Its sessions must be held alternately in Trento and in Bolzano/Bozen (Article 27 ASt) and its president must be elected for the first half of the legislature from amongst the Italian-speaking group and for the second half from amongst the German-speaking group, with their two vice-presidents belonging to the other linguistic group, respectively (Article 30 ASt). Moreover, the right of representation of the Ladin-speaking group in the presidency of the regional and provincial councils has been enforced since 2001.<sup>29</sup>

In some cases, language groups may also cast votes in the provincial council (Article 56 ASt). This occurs whenever a draft law is judged to be in breach of the equality between the groups, or perceived to be violating the cultural characteristics of one group. It is a type of *alarm-bell procedure* that can ultimately end in front of the Constitutional Court. This same right also extends to administrative acts (Article 92 ASt).

## 5.2. The Provincial Government

The provincial government is the executive body of the autonomous province of Bolzano/Bozen. It implements laws passed by the provincial council and administers the province. The provincial government consists of the president, one vice-president for the German-speaking group and one for the Italian-speaking group, and the ministers. The provincial council elects the government by absolute majority<sup>30</sup> from amongst its members, via a secret ballot. Article 50 (2) of the ASt foresees that the composition of the provincial government must reflect the ratio of the groups as represented in the council. A representative of the smallest group, the Ladins, can also become a

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<sup>29</sup> Article 30 (3) ASt specifies that Ladins have the right of representation not only in the councils, but also in the presidencies. Within the province of Trento, an own constituency has been introduced.

<sup>30</sup> Article 50 ASt. As a consequence, in South Tyrol it is necessary to form a coalition with members of parties belonging to the other linguistic group, even if the South Tyrolean People's Party (SVP) reaches absolute majority. There is no analogous provision for the province of Trento. However, in 2003, a law introduced the direct election of the president in Trentino.

member of the provincial government by means of by-election, independently of the proportional principle.<sup>31</sup> The same principles also apply to local bodies (Article 61 and 62 ASt).

As to the functioning of the government, the constitutional reform of 2001 entailed some changes. First, South Tyrol was granted free choice concerning its form of government (Zwilling 2010). Secondly, the reform also assigned to Ladin speakers the right to become members of the provincial government. The tasks of the provincial government are manifold (Avolio 2008, 69):

- it implements laws passed by the provincial council;
- it is the highest authority with regard to the provincial administration;
- it gives instructions on its own responsibility to subordinate provincial authorities;
- it participates in the legislative process, e.g., it can submit bills to the provincial council;
- it is the legal representative of the province vis-à-vis the state and the national government;
- it controls the municipalities and public bodies of the province. In other words, the government carries out the political-administrative guidance of the province

### 5.3. The President

The president is the representative of the province (Article 52 ASt). His/her main responsibilities are passing laws and regulations (Article 23 ASt), participating in meetings of the Italian government if questions concerning South Tyrol are on its agenda, deciding upon provincial policies regarding such decisions, assigning departments to the ministers, convoking the government, and acting as chair in its meetings. Therefore, his/her role within the provincial constitutional framework is quite significant. On the other hand, the region's president leads the less important regional government. He/she is elected by the regional council by its members via secret ballot and participates in meetings of the Italian government if questions concerning the Region Trentino-Alto Adige/South Tyrol are on its agenda. Since legislative competences have been almost completely transferred to the provincial level, his/her function in passing regional laws and regulations has become insignificant.

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<sup>31</sup> Article 50 (3) ASt. Overall, the interests of the Ladin group are represented by the German ethnic catch-all party SVP, also against the background that the Ladin group was not explicitly mentioned in the international Gruber – De Gasperi Agreement of 1946. Only the ASt of 1948 gave official recognition to the Ladin group (Article 87). Today, Ladins can use their mother tongue, both orally and in writing, in their relations with the public authorities in the Ladin municipalities. Moreover, the right to use Ladin with the help of interpreters is also provided in court proceedings. However, Ladins are not represented in the Administrative Tribunal.



## 6. Autonomous Powers

To run one's own affairs independently and effectively is the primary concern of every quest for autonomy and is a key element of successful conflict transformation (Parolari and Voltmer 2008). South Tyrol's autonomous powers are quite outstanding, not only when compared to other minority-situations, but even with regard to its northern neighbor, the Land Tyrol, a member state of federal Austria (for the most recent analysis of South Tyrol's "competence catalogue" see Obwexer and Happacher 2015).

Generally, the provincial powers relate to economic, cultural, and social matters. They include:

- the regulation for provincial offices and their personnel;
- the bilingual display of toponyms in the province, as per the bilingual language policy;
- the preservation and safeguarding of historic sites and local customs, as well as usage;
- town and country planning;
- environmental and natural resource issues;
- handicrafts, fairs and markets;
- local transport; local communications;
- local economy (e.g., agriculture, forestry, hunting and fishing, alpine pasturage, tourism);
- public and water works; public welfare;
- nursery school as well as professional education and vocational training.

Exclusive competences are freely exercised in conformity with the Italian Constitution (IC), international obligations and the basic principles of the Italian legal system, as well as in conformity with the fundamental principles of socio-economic reforms. In addition, provincial secondary legislation has also to respect ordinary Italian laws. Secondary legislative powers include local police issues, elementary and secondary education, commerce, apprenticeships and vocational training, employment issues, public performances concerning public order and concessions for establishments open to the public, industrial protection, water supplies, hygiene, public health (including hospital services), and sport and recreation.

## 7. Financial Arrangements

Financial autonomy has been crucial for conflict settlement in the autonomous province of Bolzano/Bozen. It was a milestone for implementing the Autonomy Statute (ASt) and regulating the coexistence of the three linguistic groups. The province is effectively entitled to receive nearly all the tax revenue collected by the central state within the provincial territory. On average, the province's participation share determined by law was 90% of the revenue from state taxes collected

on the territory of the province, including indirect income tax. In recent years it is a bit less. The modifications in the financial relations between Rome and Bolzano/Bozen are, however, always negotiated bilaterally as the financial system of the autonomous province of Bolzano/Bozen cannot be altered without the agreement of the province (Valdesalici 2018).

In the field of expenditure, the province has budgetary autonomy, while the responsibility for collecting taxes continues—for the time being—to lie with the central administration. The financial system of the autonomous province of Bolzano/Bozen has always provided sufficient funds to cover the expenditure requirements of the autonomy. Therefore, the ruling party did not see any urgency in claiming legislative powers over taxation. In more recent times, however, calls for increased clarity concerning financial and fiscal autonomy have arisen, as a consequence of the austerity measures the national governments imposed after the 2007–2008 financial crisis, and as a consequence of the national fiscal federalism reform<sup>32</sup> that puts forward new rules in intergovernmental financial relations (Valdesalici 2021). The latter reform finally implements Article 119 of the Italian Constitution (IC), as amended in 2001. In accordance with its principles, both ordinary and special regions are required to review their financial relationships with the central government. Put simply, the reform intends to provide all regions with increased autonomy over both revenue and expenditure (Alber and Valdesalici 2022). In 2001, subnational entities were provided with a myriad of new functions which required the financial means to properly performing the functions. To this end, Article 119 IC provides for a re-arrangement of financial relations, as well as the introduction of financial autonomy at the subnational level. It guarantees all territorial entities financial autonomy with regard to revenues and expenditure. A series of by-laws, or governmental decrees, outline the details of the reform that, with ongoing discussions and reform implementation delays concerning the abolition of concurrent powers at the expense of the regions as well as the re-organization and partial abolition of municipalities and provinces, were partially obsolete when they entered into force. Also, most of them have not yet been properly implemented. Special regions have conducted bilateral negotiations on how to participate in the new financial framework (Valdesalici 2018).

## **8. Relations with the Government**

When it comes to intergovernmental relations in the Italian regional system (Alessi and Palermo 2021), a crucial differentiation must be made between bilateral and multilateral mechanisms. Bilateralism is epitomized by the joint commissions, namely the Commission of Twelve for issues

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<sup>32</sup> For details, see Law no. 42 of 2009 on fiscal federalism.

regarding the region of Trentino-Alto Adige/South Tyrol and the Commission of Six for matters concerning the autonomous province of Bolzano/Bozen (see section 3.3). Even though these commissions were initially planned to be abolished after the implementation of the Autonomy Statute (ASt), they have been left in place beyond this process and have over time evolved into an ordinary instrument of refining the autonomy system. It is true that similar joint commissions exist in all five autonomous regions of Italy,<sup>33</sup> but especially in Trentino-Alto Adige/South Tyrol they have assumed an outstanding role for intergovernmental relations.

As far as multilateral cooperation is concerned, the only noteworthy channel is representation in the Standing Conference for Cooperation between the State, the Regions, and the Autonomous Provinces. This conference, which was established in 1983 and formalized by Law no. 400/1988, is vested with consultative powers and meets in three different settings: the so-called State – Regions – Autonomous Provinces Conference, the State – Cities and Local Autonomies Conference and the Joint Conference, which brings together the three levels of government (state – regions/autonomous provinces – local autonomies).<sup>34</sup> Even though the conference system serves in the first place as a forum of debate for the executives of the government levels regarding political and administrative issues, its opinion has in certain cases actually become compulsory. However, the impact of this multilateral mechanism is limited by the diversity of interests among the regions. Put differently, in the conference system it has proven to be difficult to define common positions due to cleavages stemming from different political views and socio-economic differences along the North-South line. Due to these inherent limits for the effectiveness of the conference system and the joint commission as powerful alternatives, multilateral cooperation is for South Tyrol on no account as important as bilateralism.

## **9. Inter-group Relations within the Autonomous Entity**

The foundation upon which South Tyrol's institutionalized ethnic governance rests is power-sharing between its main linguistic groups and a set of sophisticated balances between contrasting principles. The entire institutional design of the autonomous province of Bolzano/Bozen is based on separation and forced cooperation of the two main language groups. The broad spectrum of special provisions which regulate relations between the linguistic groups establishes a consociational

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<sup>33</sup> See the specific provisions included in the Autonomy Statutes of the other special autonomous regions: Sicily (Article 43), Sardinia (Article 56), Friuli-Venezia Giulia (Article 65), Aosta Valley (Article 48 bis).

<sup>34</sup> For an evaluation of these forms of cooperation from the different perspectives of "mature federations" on the one side, and of "emerging federations" on the other side, and for a detailed analysis of the evolution of the Italian system of conferences, see Bifulco (2006).

democracy model, a form of government of consensual ethnic power-sharing. Its core principles are cultural autonomy, language parity and ethnic proportionality.

The ethnically divided governance system applies to everyday life in South Tyrol, ranging from the field of public employment to the educational system and establishes a detailed regime of linguistic rights. The system of group rights within the autonomous province of Bolzano/Bozen is based on the declaration of belonging to, or the declaration of affiliation with, a language group, which is instrumental for the ethnic quota system. The preconditions for the success of such a consociational democracy model are reciprocal recognition and dialogue. This best permits all segments of society to contribute to the development of a system that is separated in its essence but in practice permeated by forced cooperation. As Woelk (2008b, 212) points out

[p]arity or equality of both the institutionally recognized groups and of the individuals is balanced by the proportional principle (representation according to numbers in population), and the personal principle (protection as group members) is balanced by the territorial principle (special status of the Region and the Provinces).

In sum, consociationalism in South Tyrol translates into four main elements: the participation of all language groups in the joint exercise of governmental power, a system of veto rights to defend each group's vital interests, the principle of cultural autonomy for groups and an ethnic quota system based on a linguistic declaration (or affiliation).

### 9.1. Employment in Public Administration

The provincial government carries out its functions through an extensive bi-/trilingual administrative structure. In 2019, the local administration counted a total of 41,949 employees (ASTAT 2020, 45). This includes, amongst others, the regional administration and regional parliament (224 persons), the provincial administration/school system (8,029 persons), the provincial parliament (74 persons), local health authorities (9,443 persons) and teachers including headmasters (9,222 persons). Posts must be assigned according to ethnic proportions, calculated on the basis of the most recent census (or, until 1988, according to the ethnic composition of the provincial assembly). The ethnic quota system is based on the Gruber – De Gasperi Agreement of 1946, and according to Article 89 (3) of the Autonomy Statute (ASt) it foresees the distribution of jobs in the civil service, “in proportion to the size of the [language] groups themselves, as they appear in the declarations of the official census”.<sup>35</sup>

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<sup>35</sup> The enactment decree no. 752 of 1976 sets forth the details of the ethnic quota system as well as a time limit of 30 years for applying the ethnic quota system to state bodies of public administration.

At the time of the census, every resident makes a formal declaration, based on free choice, of his or her language group (or language group affiliation): this declaration is the basis for the right to stand for public office, to be employed in the public administration or school system, and to be given social housing. The declaration is revealed only if necessary. The declaration also ascertains the numerical strength of the linguistic groups, which then forms the legal foundation of public life (including the allocation of financial means). In practical terms, this means that candidates compete for the posts reserved for their respective group only and not for the totality of the posts. Those who do not make the declaration cannot apply for public posts, offices, public housing and various other social contributions (Lantschner and Poggeschi 2008). The ethnic quota system applies to all state and semi-state bodies operating in the province, as well as to the provincial and municipal administrations. At the municipal level, the quota is based on the strength of the linguistic groups in that specific municipality. For instance, the municipal administration of the capital city Bolzano/Bozen has a majority of Italian civil servants whereas other municipalities have a majority of German civil servants (up to 100% in some villages). The ethnic quota system also applies to privatized institutions such as railroads and the postal service. It aims to guarantee both the representation of the groups and the provision of bilingual services throughout the territory of South Tyrol, and trilingual ones in the Ladin-speaking valleys. The quota system was introduced to gradually balance Italian dominance in the public state service,<sup>36</sup> thus acting as a mechanism of reparation for the Italianization of public posts during the fascist oppression. With regard to provincial and local administration, the ASt of 1948 and respective regional laws already foresaw the ethnic quota system (Gudauner 2013, 199–200). It was applied according to the ethnic composition of the respective assemblies.

The representation of language groups in local and provincial administration according to their respective proportions was basically already achieved in the 1980s, facilitated by the creation of public posts due to the transfer of competences, but was not achieved as quickly with regard to posts within public state administration (ibid., 191).<sup>37</sup> Since the late 1990s onwards, the ethnic quota system has been handled more flexibly for two reasons. First, because the representation of language groups in the civil service according to their respective proportions has been achieved. Second, because of certain needs of occupational profiles linked to the job market, thus out of necessity. In practice, this means that in cases where it is not possible to find a qualified candidate,

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<sup>36</sup> According to the data of the 1971 census, there were 62.9% German, 33.3% Italian and 3.7% Ladin speakers. However, in public state administration only 13.9% of the German speakers (a small number of Ladins) were employed, in contrast to the 86.1% of the Italian speakers (data from the year 1975).

<sup>37</sup> If one compares data regarding civil servants in state administration bodies of 1975 to data with regard to public employees in state administration bodies of the years 2002 and 2010, the results show that the ethnic quota system—together with the requirement of bilingualism—was overall also successfully applied in state bodies. Regarding 2012, public state posts are less in numbers as competences were transferred to the provincial levels throughout the years.

a candidate of the other language group can occupy the post. Such off-quota job grants are to be returned during one of the subsequent selection procedures.<sup>38</sup> In some specific cases, executive positions and highly specialized occupational profiles, the meritocratic principle may prevail. Though segments of South Tyrolean society have begun to question the limitation in time of such an affirmative action, the majority still views the ethnic quota system as a valid instrument.<sup>39</sup> However, different options as to a reform of the ethnic quota system are regularly discussed. One discussed option is to temporarily suspend such regulations for branches where the representation of language groups in their respective proportions is balanced (Palermo 2011). Another is to further strengthen the meritocratic component by the linguistic criteria. Reforms to the regulations regarding the public examination<sup>40</sup> for the certification of bi-/trilingualism are also regularly discussed, in particular in the context of new methodologies to certify language proficiency. All civil servants (and persons working for companies charged with the provision of public utility services) must be bilingual (and trilingual in the Ladin valleys), thus in possession of that exam, which, once passed, is valid for their lifetime.

## 9.2. Language Use in Administration and Judiciary

Administration must be bilingual in the whole territory of South Tyrol, and trilingual in the two Ladin valleys (and issues regarding Ladin interests outside the Ladin valleys too). This means that the use of the two official languages in South Tyrol, German and Italian, is based on the personal principle, while for the use of Ladin the territorial principle is applied. The individual makes his/her choice of language. In other words, the whole administration (broadly interpreted) has the obligation to “use the language of the applicant and [to] reply in the language in which documents have been started” (Article 100 (3) ASt). When documents are “started by the offices themselves, the correspondence must be carried on in the language presumed to be the mother tongue of the citizen to whom it is directed” (Article 100 (3) ASt), and documents directed to the public must be bilingual. As previously

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<sup>38</sup> The Department for Labor of the Provincial Administration oversees all calculations.

<sup>39</sup> The fact that at the last census in 2011, from 458,641 linguistic declarations only 4,934 were invalid and 435 were turned in blank, indirectly reinforces this argument. However, only 458,641 declarations were handed in (and not 505,067, the amount of the resident population as to the census data of 2011). The difference (46,426) comprises citizens with foreign citizenship residing in South Tyrol (holders of non-EU citizenship are not entitled to deliver the linguistic declaration), South Tyroleans outside of the province at the time of data collection, and persons who deliberately did not want to hand in such a declaration.

<sup>40</sup> In *Roman Angonese v. Cassa di Risparmio di Bolzano*, the European Court of Justice held that the EC Treaty precludes an employer from requiring persons applying for employment to provide evidence of their linguistic knowledge exclusively by means of one particular diploma issued only in one particular province of a member state. In May 2010, this principle was implemented by means of the legislative decree no. 86 of 2010 that indicates all other accepted evidence of proficiency in both Italian and German (including, for example, exams taken at the internationally recognized Goethe Institute).

mentioned, public employees must be bilingual and trilingual in the Ladin areas, and language proficiency must be proven through a public exam.<sup>41</sup>

Overall, the provisions on the use of language best elucidate the dual nature of the ASt framework (individual and collective rights):<sup>42</sup> language rights are framed as individual rights, formally reserved to the members of the minority group. Article 100 ASt guarantees German speakers the right to speak German in relations “with judiciary offices and with the organs and offices of public administration located in the Province and with regional powers, as well as with concessionaires of public services in the Province itself.” Article 99 defines the territorial dimension of the language provisions, prescribing the equal standing of both languages in the province. It sets German on par with the Italian language, which is the official state language (regarding bilingual drafting of legislative texts, for example). Articles 99 and 100 are both based on a provision of the Gruber – De Gasperi Agreement (parity of German and Italian languages).

In practice, the 1988 enactment decree<sup>43</sup> on the use of languages does not distinguish between members of the national minority and other residents; everyone can choose their linguistic affiliation, regardless of ethnic identity. The statutory principles on the use of languages, setting the rules for the use of German and Ladin languages by the public administration (bi-/trilingualism) and during legal actions (the right to undertake legal proceedings in the mother-tongue), were defined only 16 years after the ASt was approved. The reason for the delay is twofold: technical difficulties and a lack of political will to accept a fully bilingual judiciary regime, and that the administration of the judiciary was viewed as a state competence. Providing for a bilingual judicial system is a complex exercise, requiring extensive human resources. It took several years before a numerically sufficient bilingual staff was able to guarantee an effective service. Moreover, legal terminology had to be developed. A bilingual regime can only function if the legal terminology in the minority languages is reliable. While this is not a problem regarding German in everyday life, it becomes more complicated in fields where precise technical language is required (Chiocchetti 2021). The legal terminology, concepts and terms in the South Tyrolean legal system differ from those used in Austria or Germany, due to the differences in their legal systems. Therefore, the decree on the use of languages has set up a special joint commission consisting of six experts, three Italian-speaking and three German-speaking. However, no standard concerning Ladin legal terminology exists. A

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<sup>41</sup> See the webpage of the office in charge of administrating the bi-/trilingualism exams, available online (in German and Italian) at [www.provinz.bz.it/kulturabteilung/weiterbildung/zwei-und-dreisprachigkeitspruefung.asp](http://www.provinz.bz.it/kulturabteilung/weiterbildung/zwei-und-dreisprachigkeitspruefung.asp) (accessed June 10, 2022).

<sup>42</sup> For an in-depth analysis of the individual as well as collective right to use languages and the specific remedies for the use of language, see Alber and Palermo (2012, 291–97).

<sup>43</sup> Presidential Decree no. 574 of 1988. All institutions affected by the decree are listed in Articles 1 and 2. Only the private sector is excluded, if not in charge of services with public utility.

trilingual glossary of the most used terms in administrative law has, however, been developed as well as a Ladin version of the ASt).

As a rule, the principle of the separate use of languages applies not only to administration but also to the judiciary (Fraenkel-Haeberle 2008). Understandably, the principle of individual choice of the language is crucial in criminal proceedings, in order to guarantee the best chances for the defense, while it is partly attenuated in civil proceedings, where it is balanced against the interest of a speedy procedure. Generally, trials are conducted in one language only. There are, however, several exceptions to this rule. Both languages, German and Italian, are at times used in a trial, which is possible because human resources are bilingual. Regarding higher legal education, the Austrian University of Innsbruck began offering a series of specialization courses in the 1970s, counteracting educational arrears. Moreover, a cooperation agreement between Austria and Italy concerning tertiary education entered into force in 1983.<sup>44</sup> This agreement paved the way for the integrated curriculum on Italian Law at the University of Innsbruck, in cooperation with the University of Padua.<sup>45</sup> Since 1985, the integrated curriculum allows for the study of Italian law, partly through the medium of German and partly through the medium of Italian. This has contributed to the establishment of bilingual lawyers and to an increase in German-speaking legal experts employed in public administration, as mandated by the ethnic quota system (Woelk and Zwilling 2019). The strong cooperation between South Tyrol and the University of Innsbruck is one of the cornerstones of the identity of the greater area of Tyrol.<sup>46</sup>

In practice, German is today the dominant language in public administration, while Italian prevails in the judicial system. At the political level, the regulations on language use also envisage the alternative use of Italian and German in the meetings of the regional councils, of the province of Bolzano/Bozen and of the municipalities, and therefore the use of simultaneous interpretation at said meetings if requested. As to the Ladins and the use of Ladin language, they do not enjoy the same legal status as German speakers in South Tyrol. Article 32 of the enactment decree of 1988 determines that Ladin citizens can use Ladin only with public administration if the offices are situated in the Ladin municipalities or if the provincial/regional offices located throughout the territory oversee Ladin interests.

### 9.3. Education

The autonomy of the groups enshrined in Article 2 of the ASt regarding all culture-related issues and provisions for the protection and promotion of their cultural characteristics, including the

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<sup>44</sup> See Federal Law Gazette for the Republic of Austria (BGIBI) no. 423 of 1983.

<sup>45</sup> On the establishment, development and current status of the integrated curriculum on Italian law at the University of Innsbruck (Austria), see Alber and Palermo (2012, 303–08).

<sup>46</sup> For details regarding the relevance of cross-border cooperation in (higher) education, see Alber (2021b).



proportional allocation of financial resources, are typical expressions of group protection. This includes the system of separated schools, based on monolingual instruction, as well as separated cultural offices. In the plurilingual Ladin school system however, the principle of teaching language parity is applied (hours are given in German and Italian language in an equal amount, and Ladin itself is also taught and used as a back-up language while teaching). Tertiary education has also been established and is based on trilingualism (German, Italian and English).<sup>47</sup>

The status quo of the threefold provincial schooling system must be considered through the lens of South Tyrol's history. After the annexation to Italy in 1919, the fascist occupation (1922–1943) prohibited the German language. Instruction in German was slowly re-introduced after 1943. However, the ASt of 1948 vested the autonomous province of Bolzano/Bozen with primary powers only in relation to specialized courses in agriculture and commerce. For primary, secondary and upper-secondary education the province was only granted secondary legislative powers (Alber 2012).

The ASt of 1972 attributes to South Tyrol primary and secondary legislative powers with regard to the school system.<sup>48</sup> According to Article 8 of the ASt, South Tyrol enjoys exclusive legislative power over nursery schools, school welfare, school buildings and vocational training. Furthermore, the province is entitled to issue laws concerning primary and secondary education (and teacher training) in conformity with the principles established by state legislation.<sup>49</sup> Article 19 of the ASt provides for regulation on the language of instruction, in accordance with the principle of monolingual instruction; it reads: "instruction in the nursery, elementary and secondary schools is indeed given in the Italian or German mother tongue of the pupils by instructors for whom that language is also their mother tongue". In practice, teachers must be native speakers of the language they teach. These group rights are, however, balanced by the individual right of the parents to choose the school system that they wish their children to attend (according to the principle of free choice over whether to enroll the pupil in a German- or Italian-speaking school).<sup>50</sup> The teaching of the second language is compulsory. Article 19 of the ASt also provides for special measures in the educational curriculum, as well as for the structure and administration of the provincial school system, which

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<sup>47</sup> Tertiary education follows the path of linguistic integration. In 1992, Eurac Research was established as a non-profit private entity aimed at the promotion of applied research and the creation of expertise in sectors of special relevance for South Tyrol. Furthermore, the trilingual (Italian, German, English) Free University of Bolzano/Bozen was founded in 1997, breaking for the first time with the principle of segregated education.

<sup>48</sup> Articles 8, 9 and 19 ASt.

<sup>49</sup> Articles 30, 33 and 34 IC refer to the general principles applicable to education, state schools and the right to free education within the cycle of compulsory education.

<sup>50</sup> The school authority has the right to refuse enrolment if the pupil's linguistic ability is insufficient to attend classes in the language of the school, and the parents can challenge the school's decision in front of the administrative court. As a matter of fact, during the first years after the enactment of the ASt, in the early 1970s, in several cases pupils were denied enrolment (especially in the German-speaking schools), whereas in more recent times this safeguard provision has been handled in a much more flexible way by the school authorities.

are exempt from the principles established by state law but functional for the needs of South Tyrol. This results in three independent school authorities (the Italian, the German, the Ladin) and the obligatory teaching of a second language.

Each of the school departments, under the control of its respective ministry in the provincial government, is responsible for the administration of its own school system, for the management and partial design of the curricula, and for teachers' salaries. Diplomas obtained in German language secondary schools are equivalent to those earned in schools having Italian as their language of instruction. To guarantee this equivalence, the National Higher Education Council must be consulted regarding the teaching programs and examinations. As to the administration of South Tyrol's school system, since 1996 the provincial government appoints both the superintendent (in agreement with the National Ministry of Education) as well as the German and Ladin school inspectors (upon prior consultation with the National Ministry of Education).

In the rest of Italy, the regional level is responsible for the implementation of the overall national education and schooling offer, while provincial offices fulfill some administrative tasks.<sup>51</sup> As already mentioned, special arrangements are in force for the schools situated in the Ladin valleys: the principle of teaching language parity applies. The Ladin population has always opted for the elaboration of a trilingual primary school system, while the ruling South Tyrolean People's Party (SVP), led by its demands for full autonomy in the school system, was demanding either a German- or Italian-speaking school in the Ladin valleys (in conformity with the right of education in the mother tongue throughout all subjects during obligatory education). The dispute culminated in an appeal against Article 7 of the enactment decree no. 116/1973, concerning the principle of teaching language parity and the use of Ladin as a vehicular language. The Constitutional Court (Judgment no. 101/1976) dismissed the appeal, and the parity model of Ladin schools became the official one in the Ladin municipalities. In practice, the judgment excludes the possibility to choose an Italian or German language school and confirms the *de facto* discrimination of German- or Italian speaking-children in the Ladin valleys with regard to mother-tongue instruction. According to the Constitutional Court, the right to attend German or Italian language schools (as guaranteed in Article 19 of the ASt for the rest of the province) is precluded in the Ladin municipalities. As to the teachers in Ladin schools, they must have knowledge of Ladin, German, and Italian to be employed in Ladin language schools, while employment in nursery and primary schools is preconditioned by teachers' declaration of affiliation with the Ladin language group.

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<sup>51</sup> For an analysis of the Italian education system and its regional variations, see Alber and Trettel (2018).

## 10. “Quasi-citizenship” through Special Rights

As far as special rights are concerned, reference must be made to the rules concerning the active right to vote. For both elections to the provincial council and at the municipal level, Article 25 (2) of the Autonomy Statute (ASt) foresees a particular requirement for the exercise of this right: continued residence in the region for at least four years. On the one hand, insofar as the clause is intended to serve as an instrument of minority protection, a function that was also recognized by the Italian Constitutional Court,<sup>52</sup> this provision pursues the goal of preventing immediate effects from changes in proportions of linguistic groups. On the other hand, Article 25 (2) of the ASt is for Italian citizens, both members of other minorities and the majority population, a temporary restriction of an essential political right.

## 11. General Assessment and Outlook

Since few autonomy arrangements in the world have functioned well for more than five decades, some important lessons can be drawn from South Tyrol’s experience. It is worth mentioning that although the implementation process has been predominantly domestic, Austria’s continuous and constructive role as South Tyrol’s kin-state has been crucial in enhancing Italy’s interest in fully implementing the Autonomy Statute (ASt). As shown in this introductory study, the foundation upon which South Tyrol’s autonomy rests is reciprocal recognition and compromise. The tools to achieve it were bilateral negotiations at the highest institutional level, with the South Tyrolean People’s Party (SVP) and its indisputable stability being the main actor that was and still is in continuous exchange with Austria regarding the status quo and development of South Tyrol’s autonomy. Bilateral negotiations and the intricate web of political relations with Vienna and Rome have led to the establishment of a peculiar system whose basic rules today are unilaterally unchangeable against the will of South Tyrol, and ultimately of its dominant population, the German speakers. The international Gruber – De Gasperi Agreement—more precisely the envisaged equality of the rights of German speakers with Italian citizens, and the set of special provisions which safeguard them—can be seen as the very essence of the compromise which led to the South Tyrolean system of detailed legal guarantees, in accordance with the principles of consociational democracy. The 1992 deed of discharge formally ended the conflict between Austria and Italy. South Tyrol’s autonomy, however, continued to develop by means of its special procedures, based on parity and bilateralism, though originally put into place only for implementing the ASt. As of June 2022, South

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<sup>52</sup> See Constitutional Court (Judgment no. 240/1975).

Tyrol's autonomy arrangements continue to be a work in progress. Firmly based in values of European integration (Obwexer, Happacher and Zwilling 2019) and cross-border cooperation (Engl and Zwilling 2014; Alber 2021b), they need to be constantly revised against changing political, linguistic, and socio-economic landscapes.

Politically, the 2013 provincial elections marked a turning point in South Tyrol's political history. Back then, the SVP, for the first time since the Second World War, lost its absolute majority, and the Italian-speaking Democratic Party (PD) entered the provincial government not only to fulfill the required joint exercise of power, but for the purpose of procuring a political majority in the provincial council. Prior to 2013, the Italian-speaking coalition partner was never decisive in reaching a majority but only in ensuring additional channels for voicing South Tyrolean interests beyond the provincial level at the national one. The last elections in 2018 again led to a change in the party spectrum. Support for the German-speaking semi-autonomy parties has been more than halved, and a flash party, the civic list Team Köllensperger (now Team K), calling for factual politics based on the associative (and not dissociative) model of conflict resolution (Pallaver 2014), has become the second strongest party in the provincial council (6 out of 35 members). The SVP totaled its worst result ever with 41.9% (15 seats compared to the 17 seats in 2013; see Atz and Pallaver 2019), and the formation of a coalition became ever more difficult because of three reasons. First, the SVP was unable to re-consider the center-left Italian-speaking PD as the sole coalition partner because in the Italian-speaking election arena the extreme right-wing party Lega had outstripped all the other parties (11.1%; 4 seats), with the PD totaling only 3.8% of the voters' consent (1 seat). Second, in neighboring Trentino the Lega took over the leadership with a landslide victory. Third, from June 2018 to September 2019, the Lega also governed at national level (in coalition with the Five Star Movement). The SVP in 2018 thus entered a coalition with the Lega arguing that such a coalition would represent the maximum involvement of the Italian-speaking electorate, and because of strategic reasons. Entering a coalition with the PD and the Greens—the only party that explicitly declares itself as interethnic—would have meant to make concessions regarding the trend from a dissociative model of conflict resolution to an associative one (by watering down the ethnic separation in schooling, for example). Hence, the 2018 elections marked a turning point in South Tyrol's political history because for the first time an Italian right-wing party entered the provincial government, while the SVP's ability to represent the German speakers continued to decrease (Zwilling and Klotz 2020).

In everyday life, German with its South Tyrolean dialect variations continues to be a determining factor for truly understanding and experiencing South Tyrol's socio-political landscape and its Tyrolean alpine traditions. German is the decisive language for societal inclusion and professional

opportunities. However, a good knowledge of Italian is also necessary to fully benefit from South Tyrol's (separated) public spheres and the possibilities the job market offers. Although interactions between language groups have been increasing considerably in the last years, for many cohabitation in the sense of "living apart in the same room" (Carlà 2007)<sup>53</sup> continues to be the rule. Surveys regarding the attitudes towards languages serve as an example in this regard. They confirm that the second language is, unlike English, not yet perceived as an enrichment for one's own culture but rather as a foreign language one must study because it is part of the system.<sup>54</sup> In economic terms, South Tyrol is, however, in a strategic geographic position at the edge of strong European alpine regions. Hence, knowledge of additional languages is a determining factor not only in the public sector (according to the ethnic quota system) but also in the private one. Calls for an integrated model of language teaching have thus been growing.<sup>55</sup> While all political parties agree on the accretion of additional platforms and means of second language apprehension as the lowest common denominator for achieving socio-cultural success, new methods of language learning, as for example the Content Language Integrated Learning (CLIL) system, continue to be discussed controversially, and so is multilingual schooling.

The Autonomy Convention, a two-year participatory process (2016–2017) that aimed at the elaboration of proposals as to the revision of the ASt exemplifies how citizens, stakeholders and politicians differently view the development of South Tyrol's autonomy and provincial policymaking (Alber, Röggl and Ohnewein 2018).<sup>56</sup> For example, multilingualism in teaching was discussed controversially in the main two bodies of the Autonomy Convention, the Forum of 100<sup>57</sup> and the

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<sup>53</sup> For a discussion on the limits of corporate consociationalism in fostering positive peace in South Tyrol, see also Carlà (2018).

<sup>54</sup> Baur and Larcher (2011) interviewed 70 young South Tyroleans from all geographic areas of South Tyrol (more precisely, 70 young high school graduates of the school year 2009/2010, two thirds German speakers, one third Italian speakers and an equal number of women and men). Even if the qualitative study is not representative due to the low number of interviews, it exemplarily shows that the second language is perceived as something mandatory and not part of one's own identity as a South Tyrolean. Even though institutions but also private associations employ many resources in enhancing bilingualism, the output is rather negative, in deficit. Only in presence of real intercultural relations (friendships, mixed families), is the second language perceived as part of one's own culture. Not even in urban areas where both linguistic groups live closely together, does contact between the linguistic groups seem to be regular. Young people apparently prefer to stick to their own language group.

<sup>55</sup> For example, already in 2008, the results of the survey conducted by the research institute Apollis on behalf of the weekly German-language journal *FF* show that 81% of South Tyroleans would welcome a bilingual school policy (16% are against it); this is the opinion not only of 98% Italian speakers, but also of 73% German speakers and even of 74% of sympathizers of the SVP. For details, see *FF – Das Südtiroler Wochenmagazin* (2008).

<sup>56</sup> The provincial council of South Tyrol passed Law no. 3/2015 to establish the Convention for the Revision of the Autonomy Statute.

<sup>57</sup> The Forum of 100 was a kind of citizens' assembly meant to be a connection between the people of South Tyrol and the Convention of 33 (see footnote 59). Any resident of South Tyrol who aged at least 16 years could register for the Forum of 100 and 1,829 people in the end did: 1,518 (83%) German speakers, 245 (13%) Italian speakers, and 66 (4%) Ladin speakers. The 100 members were chosen by a stratified random sampling reflecting South Tyrol's population by age, gender, and language group (calculations based on data of the 2011 census).

Convention of 33<sup>58</sup>, but also in the Open Spaces<sup>59</sup> and in the thematic workshops<sup>60</sup> that preceded the works of the main two bodies. So, too, was the role of the regional level of government.

In short, society and politics are still searching for answers on how to better integrate the increasing diversity as a result of migratory flows on the one hand, and as a result of those parts of South Tyrol's society that favor an ever more associative model of conflict resolution on the other hand—that is, a society that aims to break down ethnic cleavages regardless of the institutional frame. Although today everybody agrees that the question is not over whether or not South Tyrol is multilingual, but how its evolving socio-linguistic landscapes and legal uniqueness will be governed in the future, how discussions within the Autonomy Convention and in everyday politics show the persistent delicacy of institutionalized ethnic governance, and how much daily maintenance it requires not to upset certain balances. Issues such as the majoritarization of minority rights, where a locally dominant minority abuses its majority position by not being sensitive to the consequences, (whether German speakers at the provincial level or Italian speakers in the capital city of Bolzano/Bozen), still easily lead to tensions.<sup>61</sup> Both the results of Autonomy Convention and the observance of political discourses show that there are unresolved resentments. As of June 2022, South Tyrol is clearly in a state of flux, attempting to look towards a new era of governance based on continuity and change, with the (consequences of the) Covid-19 pandemic posing additional challenges (Alber, Engl, Pallaver 2021).

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<sup>58</sup> The Convention of 33, formally nominated by the provincial council, was composed of: four persons suggested by the council of the municipalities, two persons suggested by trade associations, two persons suggested by trade unions, five legal experts nominated by the provincial council, 12 persons nominated by the provincial council representing both the political majority and minority, and eight persons elected by the Forum of 100. The Convention of 33 was required to adopt the principle of consensus as a working method. However, minority reports in the end were also allowed. Five dissenting reports were added to the final document by Italian-speaking members.

<sup>59</sup> They followed the question “South Tyrol: what future for our territory?”, predefined by the presidency of the provincial council. Consciously, the guiding question was formulated in general terms. The minutes of every Open Space have been forwarded to the Forum of 100 and the Convention of 33. The nine Open Spaces were held from 23 January to 5 March 2016 in all major cities of South Tyrol. Around 2,000 people participated in 257 discussion rounds.

<sup>60</sup> The workshops had the purpose of deepening the results of the Open Spaces, to get the feedback of associations working on specific topics, and to collect further proposals as to how the ASt should be revised. Unlike the Open Spaces, the thematic workshops required pre-registration. In the period 3–6 May 2016, 66 associations participated at the workshops. The results of the workshops have also been forwarded to the Forum of the 100 and the Convention of 33.

<sup>61</sup> For example, when symbols such as toponomy are at stake. The official denomination of place names is one of the currently discussed open wounds of the South Tyrolean conflict and is still extremely sensitive. During the fascist regime, Italian place names (often artificially created) were made official, banning the use of German traditional names. Article 8 of the ASt attributes to the province the exclusive legislative power on “place names, without prejudice to the requirement for bilingualism”.

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## List of abbreviations

ASt – Autonomy Statute

IC – Italian Constitution

PD – Democratic Party (*Partito Democratico*)

SVP – South Tyrolean People’s Party (*Südtiroler Volkspartei*)

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