

Tolerance through Law

Self Governance and Group Rights
in South Tyrol

Edited by

Jens Woelk, Francesco Palermo and Joseph Marko
European Academy Bozen/Bolzano

MARTINUS
NIJHOFF
PUBLISHERS

LEIDEN • BOSTON
2008

CONTENTS

Editors' preface	
Tolerance through Law	xi

PART ONE

FRAMEWORK

Chapter 1 History of the South Tyrol Conflict and its Settlement	3
<i>Emma Lantschner</i>	
I. Introduction	3
II. (South) Tyrol: A Land of Transit	4
III. Fascist Oppression in South Tyrol	6
IV. The First Autonomy Statute: An Unsatisfactory Solution	9
V. The Second Autonomy Statute: The Powers to the Provinces	13
VI. Conclusions	15
Chapter 2 Protection of Minorities under International Law and the Case of South Tyrol	17
<i>Roberta Medda-Windischer</i>	
I. Introduction	17
II. The International Anchoring of the South Tyrol Issue	19
III. The International Settlement of the South Tyrol Dispute	28
IV. Concluding Remarks	30
Chapter 3 South Tyrol's Special Status within the Italian Constitution	33
<i>Francesco Palermo</i>	
I. Italian Asymmetric Regionalism and its Evolution	33
II. The 'Peripheral' Position of South Tyrol	45

PART TWO

SELF-GOVERNANCE

Chapter 4 Institutions of Self-Government	53
<i>Giuseppe Avolio</i>	
I. Introduction	53
II. Institutions	54

ISBN 978 90 04 16302 7

Copyright 2008 by Koninklijke Brill NV, Leiden, The Netherlands.
Koninklijke Brill NV incorporates the imprints Brill, Hotei Publishing,
DC Publishers, Martinus Nijhoff Publishers and VSP.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

Authorization to photocopy items for internal or personal use is granted by
Koninklijke Brill NV provided that the appropriate fees are paid directly to
The Copyright Clearance Center, 222 Rosewood Drive, Suite 910,
Danvers, MA 01923, USA.
Fees are subject to change.

III. Legislative Procedure	71
IV. Concluding Remarks	76
Chapter 5 Legislative and Administrative Autonomy	77
<i>Sara Parolari and Leonhard Voltmer</i>	
I. Legislative Powers	78
II. Administrative Powers	94
Chapter 6 The Financial System of the Autonomous Province of Bolzano/Bozen	105
<i>Thomas Benedikter</i>	
I. The General Framework of Financing Italy's Regions with a Special Statute	105
II. The Financial System of the Province of Bolzano/Bozen Today	108
III. The Development of Provincial Revenues 1990–2005	114
IV. Some Concluding Remarks	117
Chapter 7 What it Means to be Special in Relations with the Central State: Institutions and Procedures	121
<i>Jens Woelk</i>	
I. Introduction	121
II. Italy's Cooperative Regionalism: Procedures and Institutions	124
III. South Tyrol's Special Position in Italy's Regional System	127
IV. Relations with the State in European Affairs	136
V. Perspectives: After the Constitutional Reform of 2001	140
Chapter 8 Implementation and Amendment of the Autonomy Statute	143
<i>Francesco Palermo</i>	
I. Introduction	143
II. Implementation of the Autonomy Statute	143
III. The Amendment Process of the Autonomy Statute	153
IV. Looking for the Core of the South Tyrolean Autonomy	156
Chapter 9 Cross-border Cooperation between Historical Legacies and New Horizons	161
<i>Alice Engl and Carolin Zwilling</i>	
I. Introduction	161
II. A Look Back on the Development of Cross-border Cooperation between Tyrol, South Tyrol and Trentino	162
III. The Legal Bases for Cross-border Cooperation between Tyrol, South Tyrol and Trentino	169
IV. Soft-Law Cooperation as Best Functioning Solution	175

Chapter 10 Regional Autonomies Providing Minority Rights and the Law of European Integration: Experiences from South Tyrol	177
<i>Gabriel N. Toggenburg</i>	
I. Introduction: Regional Autonomies and Minority Groups as Shadows Within the EU System	177
II. Concrete Experiences of the South Tyrolean Autonomy	181
III. Conclusion: Regional Autonomies and Minority Groups as Increasingly Important Entities within the EU System	197

PART THREE

MINORITY RIGHTS

Chapter 11 Individual and Group Rights in South Tyrol: Article 2 as ' <i>Grundnorm</i> ' of the Autonomy Statute	203
<i>Jens Woelk</i>	
I. Introduction	203
II. The Basic Compromise: the Gruber-Degasperi Agreement	204
III. The ' <i>Grundnorm</i> ': Establishing Balances	206
IV. From the Agreement to the Autonomy Statute: Dual Nature and Gaps	208
V. Balances as Essential Core and Substance	217
Chapter 12 Quota System, Census and Declaration of Affiliation to a Linguistic Group	219
<i>Emma Lantschner and Giovanni Poggeschi</i>	
I. Introduction	219
II. The Quota System	220
III. The Normative Background to the Census and the Declaration of Linguistic Affiliation	226
IV. Conclusions	232
Chapter 13 The Educational System in South Tyrol	235
<i>Siegfried Baur and Roberta Medda-Windischer</i>	
I. Introduction	235
II. Historic and Socio-linguistic Conditions of School Policy in South Tyrol	238
III. Important Aspects of Education Policy since 1972	241
IV. Foreign Pupils and the Educational System in South Tyrol	250
V. Conclusions	258

Chapter 14 Linguistic Rights and the Use of Language	259
<i>Cristina Fraenkel-Haeblerle</i>	
I. Origins of the Problem	259
II. Separation as the Instrument for Stabilization	261
III. The Public Administration	262
IV. Trials and Proceedings	266
V. Toponymy	271
VI. Forms of Protection	274
VII. Future Prospects: the Value of Multilingualism	276

Chapter 15 A 'Minority within a Minority': the Special Status of the Ladin Valleys	279
--	-----

Günther Rautz

I. Introduction	279
II. Historical and Geographical Background of the Ladins in Italy ...	280
III. The Status of the Ladins in Italy	281
IV. The Ladins as a 'Minority within a Minority'	289

Chapter 16 South Tyrol's Special Status in Private Law: the 'Entailed Farm' and the 'Grundbuch' Systems	291
---	-----

Giovanni Poggesi

I. Introduction	291
II. The System of the 'Entailed Farm', the Austrian Law of 1900 and the Act of the Province of Bolzano/Bozen of November 2001	291
III. The Legitimacy of the System of the 'Entailed Farm' According to the Constitutional Court	295
IV. The 'Grundbuch' System of Registration of Real Properties	298
V. Conclusions	299

PART FOUR

LESSONS TO BE LEARNED

Chapter 17 South Tyrol's Consociational Democracy: Between Political Claim and Social Reality	303
---	-----

Günther Pallaver

I. Consociational Democracy	303
II. The Principle of Ethnic Division	308
III. The Breaches in the Model	313
IV. The Erosion of the Logic in the System of Ethnic Separation	321
V. The Tense Relationship between the Collective Rights of Minorities and Individual Rights	324

Chapter 18 Complex Power Sharing as Conflict Resolution: South Tyrol in Comparative Perspective	329
<i>Stefan Wolff</i>	
I. Introduction	329
II. Complex Power Sharing and Existing Theories of Conflict Resolution	331
III. Complex Power Sharing beyond South Tyrol: an Empirical Analysis	339
IV. Conclusion: Complex Power Sharing Lessons from South Tyrol and Beyond	362

Chapter 19 Is there a South Tyrolean 'Model' of Conflict Resolution to be Exported?	371
---	-----

Joseph Marko

I. Segregation or Integration? The Main Issues Surrounding the Regulation of Conflict in the Balkans	371
II. The Complementary Functions of Segregation and Integration in the South Tyrolean Model	377
III. South Tyrol on the Way to a Multi-ethnic European Region: Problems Related to the Transfer from Territorial to Functional Autonomy	386

Appendix	389
----------------	-----

Alice Engl and Alexandra Tomaselli

Editors	409
---------------	-----

Authors	410
---------------	-----

Index	415
-------------	-----