

Adapting Administrative Structures to (Small) Minority Areas: Trentino as a Laboratory rather than a Model

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This article addresses the question of how to reconcile, in institutional form, the (re)organization of administrative structures and the emerging demands of the linguistic groups to be represented in the public administration, while bearing in mind the requirements of efficiency and effectiveness. A legal analysis of the case of the Autonomous Province of Trento suggests that this can be achieved through two different but often complementary mechanisms: by creating new public bodies and/or by encouraging increased participation and representation of linguistic minorities in the existing administration. An examination of the institutional tools developed in Trentino indicates a variety of possible judicial solutions to the problem of efficient management of small linguistic communities, presenting the provincial legal system as a “laboratory” for the evaluation of a broad range of administrative options.

Keywords: Trentino; linguistic minorities; small minorities; administrative law; administrative organizations; public bodies

This article analyses the potential consequences for the protection and promotion of linguistic minorities of different organizational options adopted in public administration bodies, focusing on the legislation relating to the Ladin, Mòcheno and Cimbrian linguistic groups in the Autonomous Province of Trento (also referred to as “Trentino”). In particular, it addresses the question of which kind of modifications to the administrative structures should or needs to be adopted to meet the needs of linguistic minorities.

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Indeed, different models exist to organize the public administration in order to enhance the protection and promotion of minority rights. A legislator can implement two levels of minority-friendly measures within a local administration, by introducing new public bodies and by facilitating better integration of linguistic groups within the existing administration. The aim of the following sections is to analyse the application of these two strategies within the Trentino legal system, highlighting in particular the synergy created by using both levels, and the positive impact on the protection and promotion of the rights of linguistic minorities.

After a brief theoretical introduction devoted to analysing the condition of “small numbers” and its consequences—as an obstacle or an opportunity—on the functioning of public administration bodies (Section 1), the article focuses on the fundamental political decision to develop legislation to protect and promote linguistic groups. It will outline the “minority-friendly” approach of the Autonomous Province of Trento and the territorial delineation of administrative structures inside geographical areas where members of the Ladin, Mòcheno and Cimbrian linguistic communities reside (Section 2).

The article then examines the legal framework, identifying and critically assessing key features and problems of the various institutional and governance structures, ranging from the adaptation of ordinary administrative structures to the creation of specific minority bodies (and to the development of mechanisms that facilitate greater participation of the minority group within the public administration). It divides the examination of Trentino legislation into an analysis of the adaptations of ordinary administrative structures and institutions (Section 3) and the creation of new public bodies specialized in minority protection, such as the Conference on Minorities, the Authority for Linguistic Minorities, cultural institutes and toponymy commissions (Section 4). The two subsequent sections critically describe, first, coordination as a general category of administrative action, highlighting its centrality—even if implemented by a majority initiative—to improved minority self-governance (Section 5), and, second, the importance of ensuring privileged access to public employment for members of minorities (Section 6). The article concludes that provincial legislation in Trentino can be viewed as an “institutional laboratory” involving a wide range of institutional settings; the Trentino approach to the organization of public administration is indeed characterized by empowerment of the community through facilitated self-governance, using a broad variety of tools (Section

7). Nevertheless, it is very difficult to evaluate which tools are dominant, and consequently to predict which elements of the Trentino legal experience can be usefully applied to different political and social contexts (Section 8).

1. Small numbers in the public administration: an obstacle and an opportunity

The form of organization of public administration is closely linked to the issue of minority protection. The question arises as to what kind of modification to the administrative structures should or needs to be adopted to meet the needs of historical linguistic minorities. Indeed, specific organizational structures can be conducive to better minority protection. In particular, the legislator can, with due consideration for the need of efficiency at management level, implement two levels of minority-friendly measures, by introducing new public bodies and by facilitating greater integration of linguistic groups into the existing administration.

A key starting point for the analysis of these two strategies within the Trentino legal system is to define the interests to be protected (Pizzorusso, 1967: 315 ff.; Guella, 2012); individual rights and legitimate interests recognized as belonging to members of linguistic minorities are qualified as “subjective legal situations” (*situazioni giuridiche soggettive*, i.e. categories of rights and interests) that are significant because related to “small” communities that are geographically concentrated. The organization of the administrative systems that are most frequently in direct contact with the minority community thus becomes the fundamental means of ensuring its protection. This, even without considering the functional point of view, implies that the exercise of each new task or policy is influenced by the organizational perspective (i.e. how the administration is structurally related to the community). Thus, the administration’s ordinary functions can be redefined in new ways, through an organizational structure that has been designed from the outset to meet the needs of the minority (Palici di Suni Prat, 1998).¹ In particular, it is essential to ensure differentiated and tailored management that meets the specific needs of the resident linguistic community, while simultaneously ensuring an adequate level of efficiency and effectiveness in the (now redefined) administrative structure.

One of the problems in the protection of small, “historical” minorities (with a traditional presence in a particular territory) is the relationship between the degree of applicability of the “right to diversity” and the size of the group. The more the

community declines demographically, the more it needs a differentiated legal regime to protect its members; however, the requirement of special legal tools for small minorities reaches a point of crisis when the number of community members is so low that the context is no longer sustainable (in terms of reasonable cost and efficiency) for special rights. Indeed, there is a growing need for special regulations for minority groups in numerical decline, in order to protect a cultural context particularly exposed to assimilation (Rinella, 2009; Ruggiu, 2000; Holmes and Sunstein, 2000).

Reorganizing local government to adequately meet the needs of minorities—and providing a differentiated structure of self-governed administration—is a way to raise this (numerical) critical threshold, thereby making the “rights to diversity” sustainable. Within a similar framework of redefinition of the administration, the fundamental problem is posed by the issue of representation. The aim of the minority group is to ensure direct contact with a “dedicated administrative structure”, built upon the needs of the linguistic group and avoiding assimilation with other groups during the exercise of public powers (see Pizzorusso, 1967: 289 ff. on the issue of non-separation of public bodies as leading to assimilation or elimination of linguistic minorities).

Possible interventions may consist, on the one hand, of tailoring the administrative structures to the minority territories and, on the other hand, of leveraging administrative resources at the level closest to the minority community. The purpose of the organization is therefore to make the exercise of administrative functions fully representative of the resident minority group. Using subsidiarity, the legal system corrects the normal distribution of functions towards a lower administrative level, while still maintaining efficiency and uniformity thanks to *ad hoc* organizational solutions.

The context of the Autonomous Province of Trento is particularly problematic, since the Ladin, Mòcheno and Cimbrian linguistic groups are all territorially concentrated and particularly small.² The solutions developed by Provincial Law 6/2008 modified various features of the public apparatus; in particular, the Trentino legal system has intervened both to change the structure and operation of existing offices (in the minorities’ territories), and to establish *ad hoc* administrative bodies.³

2. A “minority-friendly” territorial delimitation

As a first step, it is essential to identify the territorial boundaries in which new public bodies will be created and adjustments introduced to existing institutions. A “minority-friendly” territorial delineation is a precondition for effective coordination between local authorities and authorities responsible for managing linguistic minorities’ issues, subject to various institutional competences involving all levels of government. The non-material nature of minority protection is not included in the responsibilities enshrined in Title V of the constitution (the Title concerning the regional system) by virtue of the reference to the ‘Republic’ (comprising regions and the state) contained in Article 6: on these bases, minority protection concerns both state and local governments (Albo, 2010; Toniatti, 2009; Stradella, 2009).⁴ Against this background, Legislative Decree 592/1993 identified Ladin, Mòcheno and Cimbrian geographical areas according to the demographic concentration of those language groups within the existing municipalities where the Trentino minorities have a traditional presence.⁵

Following this institutional reform (under Article 19 of Provincial Law 3/2006) an additional institution was established for the Ladin minority, with a territorial competence that coincides with the territory where the minority resides: this is the *Comunità di valle* (Community of the Valley), a representative local authority which overlaps exactly with the area of minority settlement (thereby providing another opportunity for protection at the organizational level). Subsequently, a Community of the Valley called *Comun general* was created as an associative body consisting of municipalities; it is similar to the other Community of the Valley in the Province, but it was established through a special regulation and its status was approved by Provincial Law 1/2010. By contrast, for Mòcheno and Cimbrian linguistic groups the territorial administration corresponds to regular municipalities where the groups reside (effectively homogeneous areas); for Cimbrians, in particular, the small numbers of speakers means that the settlement area is a single municipality, while for Mòcheni three local authorities are needed for a supra-municipal level of cooperation outside the framework of the Community of the Valley (Postal, 2011: 218).

Article 3 of Provincial Law 6/2008 defines “territorial determinations” on the basis of municipal districts. Thus, the geographical area is the point of departure for

an examination of the role of the administration in protecting minority rights, linking the public sector to the linguistic community. However, the same Article 3, paragraph 4, specifies that actions carried out in “horizontal subsidiarity” should ignore the territorial dimension, so that municipal boundaries do not limit private activities (capable of safeguarding and promoting the rights of people belonging to non-autochthonous groups). In other words, the actions carried out by individuals or groups are classified as pro-minority on a personal basis and not on a territorial one (Pizzorusso, 1967: 355 ff.; Palermo and Woelk, 2011: 65); thus, initiatives involving beneficiaries or applicants geographically outside the areas of historical settlement fall under the protection of Trentino’s historical minorities, despite the fact that normally the Trentino model of protection is based on territoriality.⁶

3. “One size does not fit all”: adaptations of ordinary administrative structures and institutions

The first of the two types of intervention foreseen by Provincial Law 6/2008 is the introduction of changes to the existing system of government. Such reforms modify the institutions that ordinarily operate inside the territories of historical settlement of minorities; the law applies to the administrative structures already responsible for the community they represent, coinciding here with the linguistic community (see Nocco, 1991, on the concept of “exponentiality” in local government—that is to say the public administration’s level of representativeness of the community—and on the relationship between public bodies and the community concerned).

Provincial legislation relates primarily to existing local systems, and aims to optimize minority rights protection in the context of small linguistic groups. The organizational and institutional autonomy of municipal structures is enhanced in order to safeguard minorities, for the purpose of better representation of Ladins, Mòcheni and Cimbrians. Therefore, municipalities and communities already operating in the area are tasked with implementing—within the framework of their existing responsibilities—all possible measures for the practical realization of the principles set out in Article 1 (i.e. for the protection and promotion of the rights of minorities).⁷

The purpose of this arrangement is to avoid duplication within the system, and at the same time to allow for vertical and horizontal subsidiarity, adequacy, differentiation, democracy and participation, by vesting the existing apparatus with additional functions that add to its tasks, without compromising efficiency and

representativeness. These functions are in line with “optimum size” allocation, which coincides with the geographical area in which the linguistic groups reside, to the benefit of minorities (by minimizing the part of the resident population that does not speak the minority language).

If subsidiarity is the general rule, it is nevertheless the Province that is responsible for increasing general awareness within the Trentino community of the importance of preserving minority cultures, a function that can only be realized by an entity with a wider scope than the minority-specific institutions. Moreover, Article 7 implies that the Province—as an entity which mainly represents the majority—is not able to meet the self-government needs of the minority group. Consequently, its role is limited to indirect action, and the provisions of Law 6/2008 tend towards institutional and organizational forms of autonomy and administrative decentralization rather than direct intervention. Provincial interventions are therefore, first of all, measures of support and coordination for the existing local system and, second, transfers of new functions to public bodies which are closer to the minority populations (see Toniatti, 2011: 333 ff. and 360 ff. for the classification of the role of the Province in promoting minorities, acting as a central hub in a plural management system, asymmetrically arranged to cover various other territorial units).

In its promotional activities, the Province acts by identifying and supporting stakeholder units of autochthonous groups. In particular, the broadest minority institutions are the *Comun general*, the *Consiglio Mòcheno* and the municipality of Luserna; however, depending on the case, other public bodies are considered to be representative (i.e. “exponential”) of the linguistic groups.

The general rule to guarantee representation of minority groups in all public bodies in the minority territories is contained in Article 8 of Provincial Law 6/2008, which requires that all collegiate bodies in the territories of linguistic minorities be representatives of those minorities, thereby turning all such bodies into active agents for the promotion and protection of minority rights. In order to ensure that all subjects at the local level in areas of historic settlement are truly representative of minorities, it requires that all entities (both public or private, where public law is applicable) ensure the presence of Ladins, Mòcheni and Cimbrians on their respective boards.⁸

Two important bodies that represent minority interests within the provincial system of minority protection are educational institutions and the *Consiglio delle Autonomie Locali* (Council of Local Governments). As far as the former is concerned,

the Trentino legal system provides for *ad hoc* educational institution for the *Val di Fassa* (the Fassa Valley, where Ladins are settled), equipping school management with special representative organs (general and executive, monocratic and collegiate councils) and with a particular level of functional autonomy (Palermo and Woelk, 2011: 207 ff.; Sandri, 2011).⁹ Schools for Mòcheno and Cimbrian populations guarantee representation, but this is restricted to cases in which the central bodies have to discuss topics relating to these minorities; in such situations, the provincial education council system is supplemented by a representative designated by the Mòcheno and Cimbrian component of the Conference on Minorities. At the same time, individual schools need to be attentive to minority issues; in particular, the statutes of educational institutions located in the minority territories (or whose study programmes are targeted at Mòcheni and Cimbrians) provide for guaranteed representation on the school board.¹⁰

According to the terms of Provincial Law 7/2005, the Council of Local Governments also acts to ensure the participation of minorities (D'Orlando, 2009; Girotto, 2008; Castelli, 2006; Bin, 2004; Gentilini, 2003; Rescigno, 2003; Violini, 2002; Groppi, 2001). Minorities are represented by appointment of their members to the positions of President of the *Comun general*, President of the *Consiglio Mòcheno* and Mayor of the municipality of Luserna.¹¹ The Council has a specific representative function and qualifies, for the purposes of Law 6/2008, as a provincial institution and a (partial) representative of the linguistic groups—both features of the Trentino model that makes use of ordinary administrative structures for the protection and promotion of the rights of minority groups. Besides the above-mentioned changes to local authorities in the Trentino system, the provincial government itself has redefined its specific organizational structure, providing for the creation of a special “service for the promotion of local linguistic minorities” through a joint provincial dedicated bureau located in the department for institutional relations.¹²

The concentration of different functions within a single structure was clearly aimed at harmonizing minority protection policies, with one institution overseeing all provincial responsibilities (and monitoring results). In addition to a direct management role, the “service for the promotion of local linguistic minorities” plays a coordinating role, dealing with a plurality of institutions. Its functions range from boosting the activity of the central administrative bodies (responsible for different areas of intervention that may affect minority communities), to managing the

relationships with the *istituti culturali* (cultural institutes), to providing assistance to all public bodies responsible for implementing local language laws, to maintaining relations with external institutions dealing with linguistic minorities at the governmental and supra-national levels (state and regional governments, European Union, Council of Europe, as well as third parties, e.g. the Autonomous Province of Bolzano).¹³ Finally, the provincial service plays a general monitoring role on minority language issues, ensuring the systematic collection of legislation and case-law on the subject, as well as receiving petitions and reports from the minority communities.¹⁴

4. “Taylor-made solutions”: specific needs require special adjustments

As noted above, in addition to the use of (enhanced or modified) existing administrative institutions, the organizational system of Provincial Law 6/2008 foresees minority protection through the establishment of *ad hoc* public bodies, namely, the Conference on Minorities (hereinafter ‘the Conference’), the Authority for Linguistic Minorities, cultural institutes and toponymy commissions.¹⁵

The Conference is the main institution responsible for the development of minority linguistic policies, with a general coordination function.¹⁶ It brings together all administrative bodies which exercise governance functions relating to minority communities, providing them with representation and gathering them in a single venue. Pursuant to the legislation, the entire *Giunta* (provincial government) is part of the Conference,¹⁷ as is the Ladin member of the Provincial Council (Bartole, 1994; Toniatti, 1995; Cerri, 1997; Frosini, 1998; Rossi, 1999; Toniatti, 1999; Cosulich, 2001; Pucci, 2003).¹⁸ Moreover, the three linguistic communities are represented in the Conference by the President of the Community of the Valley and all the mayors of municipalities of historical settlement. Cultural interests are represented through the cultural institutes, and educational interests through the *sorastant* (i.e. the Ladin school system’s general director) and the managers of educational institutions that operate in the Mòcheno and Cimbrian territories. Private associations are further represented, through the Presidents of the Union of Ladins of Fassa Valley (*Union di ladins de Fascia*) and of the General Union of Ladins of the Dolomites (*Union generela di ladins dla Dolomites*), private associations working towards the protection and promotion of the rights of the Ladin community.¹⁹

Its pluralist composition enables the Conference to exercise, on the one side, functions of a political nature, by addressing and coordinating actions aimed at

promoting minority communities and, on the other, an advisory role. As a political body, the Conference sets administrative guidelines, developing new regulatory measures and meeting twice a year to set out its policy guidelines in an official programmatic document. In this way, it has primary responsibility for the formulation of a uniform policy to support and promote minorities in Trentino. Along with this political role, the Conference also has an advisory and supportive function. It provides a compulsory opinion on the financial support scheme for the publishing and information sector, adopts a compulsory and binding opinion concerning the allocation of the provincial funds for minorities, and it is the forum where agreement is reached on the criteria to be used to compile statistics on minorities.²⁰

In addition to the Conference, an Authority for Linguistic Minorities (hereinafter ‘the Authority’) is responsible for minority language issues; it is established at central provincial level, but enjoys independence from politicians.²¹ It is composed of three members, whose chairman is appointed by the President of the Provincial Council, after consultation with the President of the Conference. In order to protect its independence from the political majority, its structure follows the regulative patterns of independent administrative authorities (Merusi and Passaro, 1999). With regard to relations with third parties, the law provides that the Authority ‘operates in full autonomy and independence’. It is established within the Provincial Council and its members are appointed by the Council by qualified majority vote (two thirds). Members are persons of high professional standing and legal, social and cultural competence; the term of office is fixed at seven years and members cannot be re-elected. There are regulations for conflicts of interest, preventing members from simultaneously holding other offices or positions within entities that may deal with minority issues in Trentino. Finally, an annual allowance is granted to the president and the other two members, for the former not exceeding 40% of the allowance of the chairman of the provincial Collective Bargaining office, and for the latter amounting to half of the president’s allowance.

The Authority operates as both a monitoring organization and an advisory body. In its advisory role, it exercises powers of assessment, supervision and inspection, both on the proper implementation of the legislation and on the allocation of resources for minority protection, including evaluation of the effectiveness and adequacy of measures implemented.²² To this end, the Authority submits a report to

the Provincial Council on the overall evaluation of the policies, highlighting problems and proposing adjustments.

As an advisory body, the Authority acts on behalf of the provincial government, the *Comun general* (and the other communities of the valleys), as well as the municipalities of minority settlement. In carrying out this role, it also monitors and points out necessary measures for the transposition and implementation of international, European, national, regional and provincial legislation on minorities.²³ Finally, the Authority is responsible for delivering opinions to the Ombudsperson on acts or proceedings affecting the legal position of linguistic minorities.

The Authority's scope of action was altered following the amendment of Provincial Law 12/2012, to prevent interference with the activities of the Ombudsperson—although this was not very significant, as advisory activity was directed against acts by provincial authorities or other bodies established by provincial law, as well as public service providers. The main modification of the role of the Authority was to allow it to become involved with individual legal cases relating to members of linguistic minorities—and not only on a territorial basis, but for all cases heard by the Ombudsperson inside an area of historical settlement. However, its scope was reduced through a provision that it could deliver its opinion at the request of the Ombudsperson: if requested to do so, the Authority has an obligation to render its opinion within a period of 15 days; if not requested, the Ombudsperson's decision is taken without intervention by the Authority, even if the dispute concerns minority protection.²⁴

Cultural institutes are additional *ad hoc* bodies, referred to in Chapter IV of Law 6/2008. They were first established under Provincial Law 29/1975 (concerning the Ladin community), and Provincial Law 18/1987 (concerning the Cimbrian and Mòcheno communities), which mandated them with the responsibility to protect and promote minority languages and cultures.²⁵ The law gives cultural institutes a monopoly over linguistic standardization. By concentrating this technical power in a single public body, the law aims to deliver the high level of neutrality and discretion needed to set minority language rules relating to semantics and syntax—often a particularly sensitive issue (see Bernat, 2002, for a comparative analysis of the role of linguistic standardization in the processes of national identification).

From an organizational point of view, pursuant to Article 33 of Provincial Law 3/2006, these institutions are now classified as auxiliary provincial bodies, which

may affect their autonomy (see Massera, 2009, on the subject of auxiliary organizations meant to act as semi-governmental bodies). In particular, Article 13 of Provincial Law 6/2008 states that the statutes of cultural institutes must be adopted by a resolution of the respective board of directors, by absolute majority and in consultation with the representative bodies of the three minority populations; these statutes must then be approved by the provincial government.

When performing their functions, the cultural institutes must coordinate their actions with those of the Province. The provincial government has the power to issue guidance documents and directives, but within certain limits, i.e. ‘taking into account the specific purposes of protection of linguistic minorities’. In order to ensure the autonomy of cultural institutes, the provincial guidelines only come into effect 30 days after their adoption, in order to allow the institutes to present counter-proposals or introduce adjustments.²⁶ This approach is in line with the spirit of Provincial Law 6/2008, envisaging the Province as an organizer of minority policies, which are, in turn, implemented by the organizational structures closest to the minority communities.

Against this background, the auxiliary nature of the cultural institutes encourages efficiency, by facilitating the implementation of relevant activities within an effective apparatus and providing appropriate financial resources. The level of autonomy of cultural institutes is dependent on stakeholder activism and political will, since the existing framework allows for both loose participation and strict coordination.

Finally, toponymy commissions are established with the specific aim of addressing the needs of linguistic minorities,²⁷ and are used to manage the delicate issue of local names (de Vergottini and Pierigli, 2011). These commissions have the administrative task of drawing up a full list of place names, as well as serving an advisory role, giving their opinions on the names of towns, streets, squares and public buildings. As to their composition, the commissions represent both the interests of the linguistic communities and provide technical expertise, through the participation of a provincial manager.

5. Coordination: minority (self-)governance and provincial (majority) support

From the situation described above, it is clear that, on the one hand, it is necessary to enhance existing administrative structures (representative—i.e. “exponential”—of the

settled communities) using the principle of subsidiarity to ensure better representation, while, on the other hand, there is also a need for specialization and coordination, to preserve efficiency despite the small size of the community. Indeed, increasing subsidiarity means abandoning the most profitable economies of scale in favour of policies that concentrate minority protection functions in those bodies closest to the linguistic communities—which forcefully implies higher costs.

If a solution lies in the establishment of *ad hoc* administrative bodies specialized in supporting the lower levels of government, a further possible intervention could consist of promoting collaboration, both by means of agreements between institutions²⁸ as well as through a unified institutional representation of the communities speaking Germanic languages (Cimbrians and Mòcheni).²⁹ Firstly, Law 6/2008 recognizes the need for assistance from larger institutions and mutual exchange between administrative structures, and provides general support for coordination activities. It further guarantees the local authorities (municipalities and communities of the valley) with the power to enter into arrangements and agreements in matters within their competence, in order to pursue common interests (Tubertini, 2000; Trimarchi, 2009). Such an instrument is an atypical and flexible collaborative tool; the law prescribes nothing in terms of content or models of coordination, but simply states that the establishment of organizations and other common bodies, both public or private, is possible.

Secondly, at a higher level, the Province is recognized as the main body charged with coordination, and with promoting agreements between various relevant entities. More specifically, Article 4 of Provincial Law 3/2006 enables it to promote such agreements for the purpose of protecting a linguistic minority. Within this framework, the Province qualifies once again as a subject of non-direct active administration—as a facilitator that supports the linguistic communities in promoting themselves. This is achieved through the conclusion of agreements or arrangements with local authorities, the state and supranational bodies.³⁰

A different theme, related to this atypical coordination function, is that of unified institutional representation of the Germanic-speaking populations (as a link to the ordinary representative authority in Mòcheno and Cimbrian territories). While the institutional representation of the Cimbrian population does not present particular problems, as it coincides with the municipal assembly of Luserna, the institutional representation of the Mòcheno population has suffered from a problem of

coordination, with its three municipalities advocating for a unitary approach.³¹ To address this, a Mòcheno Assembly was established, comprising all three municipal assemblies. It meets at least once a year, under the rotating presidency of each mayor, and is tasked with establishing general guidelines and discussing the needs of the linguistic community, considered as a single unit. In addition, another institution, the Mòcheno Council, has an executive function; it is composed of all mayors of the three municipalities and is chaired by the President of the Assembly.³²

The unitary representation of the Germanic-speaking communities consists of specific supervising organs. They assume the functions of orientation and coordination, establish its general guidelines, with which municipalities and communities must comply, and assess their degree of implementation. They are also responsible for drafting compulsory and binding opinions concerning all provisions and resolutions adopted by the Community of the Valley which affect, mostly or exclusively, the linguistic community (for this purpose, administrative acts can be divided into parts, to allow minority participation only with reference to the sections that affect minorities).³³

6. Competence and representation: privileged access to public employment for minority members

With regard to minority-friendly administrative structures, it is important to note the issue of access to public employment by members of minority groups (Carrozza, 1983; Pizzorusso, 1967: 418 ff.; Palermo and Woelk, 2011: 155 ff.). Provincial law not only prescribes (guaranteed) representation in collegiate bodies, but also aims to foster participation of language groups in the administrative apparatus inside the territories of historical settlement.³⁴

As a minimum level of protection, the law provides for the compulsory presence of appropriate personnel to perform services in accordance with the right of minorities to use their own language (see Poggeschi, 2010; see also Haider, 2002, on the case of Alto Adige/Südtirol cf. Telchini, 1999; and Bonamore, 1996, on access to documents).³⁵ In other words, institutions that perform functions in the areas concerned need to ensure, at the level of internal organization, that the staff in contact with citizens are able to communicate in the minority language, in order to guarantee (upon request) a bilingual service.³⁶

More radically, the law also provides for a system of “privileged recruitment”, to pursue the more general interest of establishing an administration that is accessible to the minority group at all levels, not merely that of the collegiate bodies. Pursuant to Article 3 of Legislative Decree 592/1993, the Trentino legal system adopted a preferential mechanism to enhance access to public employment for members of the Ladin linguistic minority. This system mandates the recruitment of candidates from a minority group providing, first, that they meet the requirements of selection and, second, that they can prove their knowledge of the Ladin language.³⁷ It is important to note that it is knowledge of the language that is an advantage rather than ethnicity; thus, the purpose of this regulation has not been to privilege particular applicants per se, but to develop an administration that is accessible to members of linguistic minorities (even though the latter may well result in the former).

The system is thus one of preferential access rather than guaranteed quotas;³⁸ therefore, in the absence of suitable candidates from minority backgrounds, positions in question are offered to candidates without minority language skills. This is a middle-way solution which aims to meet the requirement of efficiency and good administration, while also protecting the principle of competition in access to public employment. These two interests are both constitutionally pre-eminent in the protection of minority groups.³⁹ Despite the absence of guaranteed representation, privileged access to public employment is still quite extensive—and, as noted, persons belonging to minorities benefit from a stronger system of “guaranteed”, rather than “preferential”, access in the case of collegiate bodies. The types of contract available span across all rankings of public competitions for personnel selection, including those for temporary assignments and mobility procedures published by the local authorities.

A distinction should be made with regard to the institutions charged with selecting employees. For the Ladin community, the preferential scheme applies to competition notices published by the state, the region, the province, and all provincial authorities (or bodies established by provincial law), as well as public service providers, but only for vacancies in offices situated within Ladin territory. On the contrary, for the Mòcheno and Cimbrian communities, the exact scope of application is harder to define, as for all non-local bodies (i.e. provincial authorities or bodies established by provincial law, as well as public service providers) it is not possible to rely on the criterion of geographical location alone; rather, notices should be tailored

to the types of activities carried out in the minority municipalities and the relevant tasks and assignments.⁴⁰

Enhanced access to public employment certainly provides a favourable regime for minority populations. However, its main aim remains the promotion of a collective interest, and not the protection of individual legitimate expectations (although these can also be pursued). The primary purpose of the mechanism is to ensure coherence between administrative structures and minority cultures. As a consequence of this approach, those who have benefited from policies aimed at enhancing access to public employment are required to use the minority language effectively at work.⁴¹

7. The Trentino approach to the organization of public administration: empowerment through facilitated self-governance

The overall aim of the system outlined above is to create an administration that is not only sensitive to the needs of minorities, but is also culturally reflective of the community it serves. Policies to enhance access to the administration for members of the minority groups are implemented with a view to maximizing administrative efficiency despite the relatively small number of community members.

The basic problem is that of minority representation within public authorities. This problem can be solved, on the one hand, through the identification of discrete territories in which linguistic communities are settled and, on the other hand, by ensuring that administrative staff and collegiate board members are made up of individuals who belong to (or are culturally assimilated with) the minority groups. It is important to ensure access to existing local administrations for members of linguistic communities, and to invest these with additional minority protection functions. Specific changes can be introduced to existing administrative structures, and additional bodies created with responsibility for ensuring optimal management of minority protection functions.

Minority legislation thus corrects the negative effects of a small minority population on administrative efficiency. Local authorities, which are usually less powerful than those at the central level, must ensure that small minority communities receive adequate protection. However, this increases their costs, and can jeopardize the quality of public administration outputs. The provincial law on minorities seeks to correct this by: repurposing existing administrative structures (as in the case of the Community of the Ladin Valley or educational institutions in minority areas);

increasing coordination among public bodies (as in the case of unified institutional representation); focusing the direction of boards and bureaus (as in the role of the Conference and provincial service, as well as the cultural institutes) or their control (the Authority); and, finally, by providing support to all public administrations (cultural institutes and instrumental provincial bodies).⁴²

Provincial legislation provides for a complex system of organization and support that enables activities to take place at the local level (although in small areas), both in the specific area of minority protection and in relation to general administrative functions that are not directly related to minorities, but are instrumental to effective community self-government.⁴³

The minority interest is not only linked to linguistic and cultural matters. A high level of autonomy in all sectors is essential to the protection of linguistic identity and to the management of public functions in self-determined ways. As far as the issue of competency is concerned, the Trentino system not only considers minority-specific issues to be important (e.g. toponymy and language use), but it approaches them in a holistic way, promoting self-government generally, including through the establishment of a specialized administration.⁴⁴

This policy is realized through administrative structures, seeking on the one hand to correct the distribution of subsidiarity while sustaining and supporting the lower levels (including through new public bodies), and on the other hand to promote a cultural sensitization of the administrative structures, both through training opportunities and privileged access to public employment for speakers of minority languages.

8. Conclusion: does a Trentino model of linguistic minorities (self)-administration exist?

From a critical perspective, Trentino legislation provides a very rich model for strengthening the administrative apparatus to the benefit of minorities. It is possible to find within its legal system all kinds of organizational solutions, from coordination to territorial separation of bodies or establishment of *ad hoc* organs, to enhancement of existing institutions. Nevertheless, the co-existence of these various tools—which is surely its core strength—also presents some difficulties; in particular, there is the possibility of overlap between the various instruments and of an increase in the management costs of the entire organizational structure.

The increase in cost is undeniable, since it is linked to the broader issue of economies of scale. However, for the purpose of managing small communities, it should be seen in the Trentino context, where small numbers are a distinguishing feature of the system of local government. Against this background, the problem is not only a minority issue, but more generally it has become a question of “sustainable autonomy”, that has to be based (also) on the efficiency of the administrative solutions (Postal and Guella, 2011).

With regard to the potential overlap between different administrative structures, it should be noted that the very small size of the community—which is, on the one hand, a problem—can also be a positive factor. The community representatives who work in the institutions or sit on the different boards tend in practice to be the same persons. The central coordination bodies are structured in a participatory way and are composed of representatives of the lower levels of government. Thus, coordination tends to be effective, and the *ad hoc* administrations take the form of advisory or control boards; in the rare cases where new organs are assigned active tasks, the central agencies merely provide them with direction. As a result, overlap is relatively rare.⁴⁵

The question then is whether the provincial legislation sets out a specific “model” of minority protection. As noted above, at least in terms of organization, the protection framework analysed here is a complex system of various heterogeneous tools, in which it is hard to identify new organizational solutions. However, the very fact that Trentino has applied such a wide range of options in the protection and promotion of linguistic minorities suggests the need to evaluate, in practice, which tools assume a dominant role. In other words, while the Trentino model is certainly exportable (as its wealth of tools can offer solutions to problems arising in different contexts), in order to predict performance, it is important to evaluate the contextual impact. However, there is as yet no clear definition as to which organizational instruments direct minority policies at the highest level and in the most effective way. Nor is it clear where the substance of the policies is defined, e.g. whether this is during the development of programmes, through the binding opinion on the allocation of funds, through the role of unitary representations, or a mix of these.

From its richness, it is clear that provincial legislation has an important symbolic function—illustrating the attention paid by the Trentino population to its minority groups. Moreover, the wealth of institutional solutions offered by Provincial

Law 6/2008 confirms the role of the Autonomous Province of Trento as an “institutional laboratory”. In this sense, the main strength of the minority protection framework can be seen as the qualitative (cultural) improvement in the administration of the territories of linguistic minorities. The specialization of those local government institutions, and the organizational solutions they apply to increase their sustainability and efficiency, could be regarded as the autonomous answer to the problem of small numbers.

Notes

1. Regarding the relationship between public administration and minorities, and the use of administration as a tool for minority protection (personal or territorial, as well as individual or political), it should be underlined that, since formal modalities of protection pass through the administration, the role of public institutions here is fundamental.
2. With regard to the size of the population, the entire Autonomous Province of Trento population has about 530,000 inhabitants. In the 2001 census, 7,553 residents declared themselves Ladins, 2,276 Mòcheni, and 882 Cimbrians. The Province is part of the Italian Special Region of *Trentino-Alto Adige/Südtirol*, which is divided into the Autonomous Province of Trento (composed entirely of Italian-speakers except for the three small groups mentioned) and the Autonomous Province of Bolzano (with a large German-speaking group, and an advanced bilingual regime). To better understand this context, from both a judicial and an institutional perspective, see Reggio D’Aci (1994).
3. The regulatory policies of the Autonomous Province of Trento analysed in this article were adopted on the basis of special statutory provisions, as amended by Constitutional Law 2/2001. That law introduced a provision which obliged the provincial administration to allocate resources to historical linguistic minorities residing on its territory (Article 15(3)). At the regional level there is also the option to elect a President of the Regional Council from the Ladin linguistic group, notwithstanding the regular division of the period of office into two parts, for a member of the German language group and the Italian one respectively (Article 30(3)). With regard to the Autonomous Province of Trento, representation of the Ladin minority in the Council is now entrenched in statute, following failed attempts through ordinary legislation: judgment of the Constitutional Court 233/1994 (Pizzorusso, 1994). The electoral law ensures election of a representative from the territory of the Ladin linguistic group, thereby establishing an “electoral quota”, albeit on a territorial basis rather than an ethnic one (Article 48(3)). Furthermore, constitutional reform extends the applicability of judicial protection to the Province of Trento, in cases where administrative acts are considered discriminatory to linguistic groups (Article 92(2)). Finally, the protection of cultural prerogatives, and the right of minorities to teach their own language, are extended to the Mòcheno and Cimbrian communities, which were excluded from the protection of Article 102 (it applied only to the Ladin linguistic group).
4. C.f., in particular, judgment 159/2009 of the Constitutional Court.
5. Municipalities (*Comuni*) of: Canazei, Mazzin, Moena, Pozza di Fassa, Moena and Vigo di Fassa (Ladin population, Val di Fassa part of the Dolomites Ladin community); Fierozzo, Frassilongo and Palù (Mòcheno population); Luserna (Cimbrian population).
6. On the topic of horizontal subsidiarity in support of linguistic minorities, the provisions of Article 3(4) can be interpreted as being addressed to recipients or minority protection associations located outside the minority territories. This would legitimize interventions

to promote and protect private initiatives for the benefit of the Ladin, Mòcheno and Cimbrian communities, even in cases where these are implemented outside the relevant territorial areas (such a hypothesis would legitimize, for example, initiatives targeting the Dolomite Ladin communities who reside outside the territory of the Val di Fassa).

- 7. In particular, Article 1 of Law 6/2008 defines this as promoting respect for ‘the preservation, enhancement and development of identity in terms of ethnic, cultural and linguistic diversity of the Ladin, Mòcheno and Cimbrian populations, which are indispensable assets of the entire provincial community’.
- 8. On the types of representation of minorities in public bodies, as a model of protection in the frame of government, cf. Pizzorusso (1967), as part of the general problems of minority influence on the organization of the state and public bodies, analysed as a technique for protection applicable, even within political assemblies, 401 ff. (in this sense, the legislation of the Autonomous Province of Trento is particularly protective, as it extends this guarantee to non-political boards).
- 9. See Provincial Law on the system of education and training, 5/2006, articles 45-50.
- 10. See again Provincial Law 5/2006, Articles 51 and 52.
- 11. See Provincial Law 7/2005, Article 2(1)(f).
- 12. See Provincial Law 6/2008, Article 11.
- 13. In the field of coordination of governance structures, pro-minority policies are characterized by their transversality. Indeed, the portfolios that affect minority languages are numerous, involving a large cross-section of administrative structures. On the subject of the links between minorities and regional administrative structures, in particular regarding the powers of ordinary regions, see Panzeri (2009: 979 ff.) and also § 3.2 on direct participation in regional administration.
- 14. With regard to the role of “observation”, it is possible to report cases of overlap with activities carried out by the Authority (Article 10 of Provincial Law 6/2008; also see below).
- 15. See Provincial Law 6/2008, Articles 9-14 and, for the toponymy commission, Articles 28, 33 and 34.
- 16. See Provincial Law 6/2008, Article 9.
- 17. The provincial service responsible for minorities performs the role of Conference secretariat.
- 18. See Article 72(1)(g) of Provincial Law 2/2003. On the issue of guaranteed representation for the Ladin minority at the political level (in municipal and provincial councils), and not only at the administrative level, one can refer to the judgments of the Constitutional Court 233/94, 261/95, 356/98.
- 19. The provincial law provision for representation of private associations in an institutional body, involving specific private entities (identified by name), regardless of evaluation of opportunities, has a specific precedent in the situation of National Association of Italian Municipalities (*Associazione Nazionale Comuni Italiani* – ANCI) and of Italian Union of Provinces (*Unione delle Province d’Italia* – UPI), based in the Government Decree (DPCM) 2 July 1996 (establishment of the state-cities and local governments’ conference), Article 2(1).
- 20. On the functions of the Conference, see Provincial Law 6/2008, Article 9(2).
- 21. See Provincial Law 6/2008, Article 10 (as amended by Article 1 of Provincial Law 12/2012).
- 22. With particular reference to the provisions of Article 15(3), the Special Statute for Trentino-Alto Adige/Südtirol (amended by Constitutional Law 2/2001): ‘The Province of Trento ensures the allocation of funds in a way appropriate to promote the protection and cultural, social and economic development of Ladin, Mòcheno and Cimbrian populations residing in its territory, taking into account their size and their specific needs’.

23. A possible overlap should be noted here with the observation of the provincial service for minorities. On the issue of a multi-level system of minority protection that requires constant monitoring, cf., for further reference, Pierigli (2006), who describes the different levels of government, from local to international, that contribute to the protection of minorities.
24. In the first formulation of Article 10, the role of the Authority in the area of ombudsperson functions was markedly different. In fact, it provided that the Authority would exercise directly, by itself, the functions of the Ombudsperson required by Provincial Law 28/1982 on a territorial basis. In this way, the Authority replaced the Ombudsperson, reducing its powers; jurisdiction was extended to all acts or proceedings of the Province and other provincial authorities as well as public service providers concerning, mainly or exclusively, the territories of minority settlement, or directed at people residing in these territories.
25. See Provincial Law 6/2008, Articles 12-14.
26. With a mechanism that reproduces the protection schemes of Legislative Decree 266/1992.
27. See Provincial Law 6/2008, Articles 28, 33 and 34.
28. See Provincial Law 6/2008, Article 15.
29. See Provincial Law 6/2008, Articles 30 and 31.
30. In this way, international and supranational bodies also play a role in the Trentino system of minority protection. See Provincial Law 3/2006, Article 4(3-4): 'The Province promotes agreements or arrangements with the Italian State or third States, with the European Union, with regions or local authorities when they are necessary to ensure the most efficient and effective performance of the duties within its competence or the unity of the interests it shares with institutions and territory other than provincial and local governments' ones. Agreements or arrangements defined in accordance with the principles laid down by the laws of the State and the constraints of the Constitution, the special statute or its implementing rules are approved by provincial law when they involve modification of the existing legislation or costs not provided by the budget or the provincial laws. The Province, the municipalities and the communities implement the principle of subsidiarity by promoting the autonomous initiative of citizens acting individually or in group, to carry out activities of general interest, in accordance with the powers of the institutions of a functional autonomy.'
31. By contrast, for the Ladins there exists the specific *Comunità di valle*, which resolves the problem of representativeness.
32. From a structural point of view, if compared to the ordinary Union of Municipalities (Article 32 of Legislative Decree 267/2000) unitary representation is characterized by necessary and legal nature (the Provincial Law opted for participation in new bodies of all councillors and all mayors).
33. The two communities in question are the *Comunità Alta Valsugana e Bersntol* for Mòcheni and the *Magnifica Comunità degli Altipiani cimbri* for Cimbrians. Particularly interesting in this context is the practice of dividing the acts into sections, according to whether or not they affect minority communities (in order to ensure differentiated participation).
34. See Provincial Law 6/2008, Articles 29 and 32.
35. On the issue of the use of minority languages in the public administration cf. Article 16 of Provincial Law 6/2008.
36. See Provincial Law 6/2008, in particular Article 29(2) ('The *Comun general de Fascia* and other entities referred to in paragraph 1 shall ensure for the offices established in the Province of Trento Ladin territories the presence of staff able to give effect to the rights provided for in Article 16'). The same is true for the authorities in the Cimbrian and Mòcheno territories (see Article 32(3)).

37. For the certificate of language proficiency, see Article 18 of Provincial Law 6/2008 (Assessment of knowledge of the minority language). Note that in the (different) Tyrolean context, certification of knowledge of the German language has been liberalized by Legislative Decree 86/2010, in order to comply with European Union provisions (however, due to the limited number of speakers, it seems reasonable to require a more restrictive certification regime for the Ladin, Mòcheno and Cimbrian communities).
38. An alternative protection model is used for more sensitive situations, such as disability. About the system of quotas, cf. Law 68/1999.
39. On this issue, note the particular sensitivity of privileged access regimes within a European perspective. Free movement of workers is a value that must be balanced against protection of minorities, and in a context where the relationship between European and national frameworks for the protection of ethnic and linguistic minorities is not yet clear, and where the intention to create an administration which is culturally orientated towards a particular minority group is reduced to the need to provide bilingual services. See in particular (also for a comparison with the case of South Tyrol) the judgment of the Court of Justice of 6 June 2000 in Case C-281/98 (Palermo, 2000).
40. On this topic, see Provincial Law 6/2008, Article 32(2).
41. See Provincial Law 6/2008, Article 29(3) and 32(4).
42. For further information on historical Trentino linguistic minorities, in addition to the above-mentioned works, the main references are Toniatti (2011); and Penasa (2009). To analyse the context before the reforms following Constitutional Law 2/2001, see Reggio D'Aci (1994: 72 ff).
43. In this sense, the current conditions of self-rule (as a prerequisite for effective preservation of cultural groups and an opportunity for economic development) are crucial—even more so than the specific language issues (place names, access to documents and services in the minority languages, etc.).
44. See Provincial Law 6/2008, Articles 6-8 for ordinary bodies, 29 and 32 for preferential access to the public sector, and 9-14, 28, 33 and 34 for the regulation of *ad hoc* bodies.
45. In this way, the model used (in this case, in line with Italian regionalism more generally) avoids overlaps between different organs and functions—all responsible for implementing minority protection policies—through coordination at different levels. In this sense, the Italian model itself is an example of a collaborative approach to autonomy. As an alternative (for example with reference to Spanish regionalism), see Rodriguez-Arana (1994), which notes that the Spanish constitution identifies as a basic criterion for autonomous government the principle of a ‘single administration in each territory’; in other words, it is assumed that the competent authority in a given territory must be the only one to carry out certain functions (its own or those delegated or transferred), assuming full responsibility for them.

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