EDITORIAL

The Unclear Relationship between Territorial and Non-territorial Autonomy and Minority Identity

Territorial autonomy is currently used in international law as the institutional expression of the internal dimension of self-determination. While self-determination in the form of secession or separation (so-called ‘external self-determination’) is traditionally considered to be legally applicable to situations of post-colonial independence, more recently it has been argued by judicial bodies and academic experts that it applies equally to situations in which a government oppresses or exploits a ‘people’ living within its borders. All this engagement with secession and state formation is of course a reflection of the state-centered paradigm of international law. However, constitutionalists have mainly focused on various forms of symmetric federalism, while international lawyers, for their part, have dealt principally with two themes of autonomy research: the division of powers between the autonomous region and the central state, and the nature of the institutions of legislative, judicial and executive power in the autonomous region—issues which are mainly of a constitutional character. Nonetheless, as is often the case, political developments precede the interest of legal scholars. Since the end of the Cold War, autonomy has been widely adopted around the globe, either in practice or as a point of departure for negotiation and discussion: the Kurds in Northern Iraq, the Chittagong Hill Tribes in Bangladesh, Northern Ireland, Aceh, Papua New Guinea/Baugainville, Nicaragua’s Atlantic Coast, Gagauzia, Crimea, Kashmir, Tibet, West Sahara, Sri Lanka, the Northern Territories (Japan) and South Sudan are all examples. Some of these efforts seem to have failed disastrously, at least in the short run.

Territorial autonomy is becoming increasingly justified as a means of internal self-determination—usually of ethnic, linguistic or cultural minorities—within a democratic participation legitimation framework. In other words, territorial autonomy is a system of power allocation and political decision-making that can be domestically and (sometimes) internationally entrenched. Cultural autonomy, for its part, operates in a different legitimation framework—that of the affirmation, preservation and development of the identity, culture and language of minorities, which is driven by the minorities themselves. The conceptual relationship between territorial autonomy and the empowerment and cultural protection of minorities remains underexplored in international law today, as is the conceptual relationship between the components and alternatives of territorial and non-territorial autonomy.

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Social cohesion, integration, inclusion, assimilation, reasonable accommodation, diversity management, multiculturalism (or lately, interculturalism and intercultural dialogue) are concepts fuelling the debate on how to best govern societies that are becoming more and more diverse, in ethnic, religious, cultural and linguistic terms, but also with respect to age, income, etc. In particular, the relationship between multiculturalism and interculturalism seems to be, so far, more cosmetic and terminological than substantial. Meer and Modood (2011) argue that although advocates of interculturalism highlight its positive impact on enhanced communication, the recognition of multiple identities, the promotion of unity and the critique of illiberal cultural practices, these same elements can also be found in multiculturalism. Thus “until interculturalism as a political discourse is able to offer a distinct perspective [...] interculturalism cannot, intellectually at least, eclipse multiculturalism”. Hence, interculturalism is still much more of a political discourse, whereas multiculturalism is—as public policy if not as public discourse—still at use in many European states.

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Banting and Kymlicka (2010) critically observe that in the view of many commentators, “Europe has done Canadians the service of revealing the inherent flaws of multiculturalism”. Critics of multiculturalism often point out segregation, xenophobia and a great polarisation among groups as examples of such flaws. Although Banting and Kymlicka are strong defenders of multiculturalism, they raise several points that deserve serious attention, such as the place religious diversity has within multiculturalism, as well as the relationship between multiculturalism and, in the Canadian context, its ethno-cultural minorities, the French-Canadian and the Aboriginal peoples.

Thus the aim of an initiative between EURAC’s Institute for Minority Rights and the Alberta Civil Liberties Research Centre is to look at diversity management in Europe and Canada from a comparative perspective to assess the strengths and weaknesses on both sides of the ocean: A conference organised in November 2011 in Calgary on the topics of Diversity Management will be followed by a Summer School on Human and Minority Rights in June/July 2012. Canadian multiculturalism recognises the important contribution of immigrants, and diversity is generally viewed as positive for Canada’s identity. However, multiculturalism has come under attack also in Canada. Some critics construe it as a policy that promotes cultural relativism and undermines “Canadian values”. But how true is that? And what exactly are “Canadian values?” Over four days, Canadian and European cultural diversity experts, such as Linda McKay-Panos and Brian Seaman (both from ACLCR), Jocelyn Maclure (from the University of Laval, Québec), Jens Woelk, Giovanni Poggeschi, Roberta Medda-Windischer and Verena Wisthaler (all from EURAC) met at the conference “Multiculturalism or Interculturalism: What are the Implications for Albertans and Canadians?” organised by ACLRC from November 8th to 11th, 2011 at the University of Calgary. Together, they discussed the definition of terms such as multiculturalism and interculturalism, and how people from diverse backgrounds can live and work together peaceably.

Lastly, EURAC’s Institute for Minority Rights will focus its yearly International Summer School on Human Rights, Minorities and Diversity Management on comparative issues and challenges in Europe and Canada. Diversity Management will be scrutinised from a legal perspective and leading academic experts (such as Dr. Nasar Meer, Prof. Keith Banting, Dr. Sara Pennicino, Prof. Antonio Bultrini, Prof. Alessandro Ferrara, Prof. Phil Triadafilopoulos) along with practitioners from international organisations will discuss with participants the theoretical aspects of cultural accommodation and the implementation of legal standards, laying the groundwork for further discussion about the social and political implications of society’s increasing diversity.

Further information on the Summer School, the program and application details can be found at: www.eurac.edu/summerschool.

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02 International Migration in South Tyrol: Beyond a NIMBY Approach?

The analysis of how to reconcile claims of diversity and identity with the need to guarantee social cohesion and unity takes a unique feature in traditionally divided societies, such as in South Tyrol (Italy), which is characterised by the presence of autochthonous minorities (German- and Ladin-speaking groups) and where significant international migration flows have recently taken place.

South Tyrol has not (yet) begun a political debate to review its ethno-linguistic identitarian approach nor has it even (at least overtly) considered the possibility of developing a pro-active migration policy, such as Québec’s, which links its co-prosperity politics directly to the politics of immigration. The approach in South Tyrol takes a rather defensive, ‘fortress-type’ attitude, accepting with reluctance multiple or hyphenated identities—a reaction that can be defined as NIMBY (Not-In-My-Back-Yard).

Some claim that the foundations of the ethno-linguistic divide that dominates the public and, to a large extent, private realms in South Tyrol may be destabilised and/or defeated by migrants, for whom the declaration of belonging or affiliation to one of the German, Italian and Ladin groups, the so-called ‘pillars’ of the South Tyrolean system, will become increasingly absurd and illogical.

The relationship between traditional minorities and groups originating from international migration is, however, not inherently conflictual. In fact, many historical minorities today, as in the case of Québec, welcome immigrants, and allow them to maintain and express their identity, while simultaneously encouraging their integration into the minority nation.

For Kymlicka, though, the likelihood that a historical minority will adopt a pluralist, post-ethnic form of minority pro-sovereignty depends largely on the capacity of that historical minority to exert some form of control over immigration in terms of immigration criteria, targets, and levels, based on the ‘absorption capacity’ of their society (Kymlicka, 2001).

Recently, the Province of South Tyrol adopted a new provincial law on the “Integration of Foreign Citizens” (October 28, 2011, No. 12) in which integration is defined as “a process of reciprocal exchange and dialogue”, along the lines of the EU’s ‘The Hague Programme’ (2004), in which integration is referred to as “a continuous, two-way process involving both legally resident third-country nationals and the host society”. South Tyrol’s provincial law on integration states that one of main objectives of the provincial policies vis-à-vis the foreign population is “the reciprocal recognition and valorisation of cultural, religious and linguistic identities” (Art. 2). It can only be hoped that the implementation of the provincial law will be able to bring the South Tyrolean society beyond the current NIMBY approach towards ‘external’ diversity.

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03 Cohesion through Cooperation: The European Grouping of Territorial Cooperation (EGTC) as Instrument to Promote Cohesion

With the Treaty of Lisbon (2007), the promotion of territorial cohesion has been considered, in addition to economic and social cohesion, as one of the key objectives of the European Union (Art. 3 TEU).

According to the Commission’s Green Paper on Territorial Cohesion (2008), there are three approaches to achieving a cohesive and sustainable territorial development: concentration, connection and cooperation. Special importance should be given to the third action, since cross-border cooperation not only links these three branches of action together, but is a precondition to take measures to enhance concentration and connection.

Among the themes studied at the Institute for Minority Rights, researchers examine how cross-border cooperation can enhance territorial cohesion in sensitive pluri-ethnic border regions, where cohesion is important both from an economic and cultural perspective. Special focus is devoted to the European Grouping of Territorial Cooperation (EGTC) as new instrument of the EU to organise territorial cooperation and its practical implementation.

The study has revealed that most of the EGTCs in ethnically-diverse border regions inhabited by different linguistic groups or national minorities dedicate their resources and activities in some part to cultural and linguistic issues. Examples include action plans to increase the teaching of the neighbouring language(s) at each level of education (primary, secondary and higher education), the establishment of a common, cross-border secondary school (with teachers and pupils from all the countries/regions involved) in the EGTC Eurométropole Lille-Kortrijk-Tournai or the development of a common news agency in order to produce bilingual broadcasts and press releases in the EGTC Ister-Granum.

The EGTC Euregio Tyrol-South Tyrolo-Trentino facilitated, in cooperation with the Institute for Minority Rights, the adoption of an agreement to ensure the exchange of information and cooperation in the fields of integration of migrants and cross-border intercultural dialogue.

This shows that cohesion is not only limited to economic and social affairs but should be assessed from a broader perspective that also includes issues of cultural diversity.

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After the adoption in 1989 of the International Labour Organization’s (ILO) Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries, signed by Chile on September 15th, 2008 and brought into force one year later, one of the strongest debates vis-à-vis indigenous issues in the Southern Cone country in the last two years has been Indigenous Peoples’ (IPs) right to be consulted. Initially, this right was ignored, as it was considered too specific, or difficult to be applied or realised. Instead, much attention was focused on provisions of Convention No. 169 on land rights and the working conditions of IPs. However, (fair) consultations have recently become one of the core claims of IPs, especially in Latin America. In the eastern Colombian departments, the U’wa people have been fighting for the full recognition and application of this right since the mid-1990s. Most importantly, this right has been object of a recent ad hoc national law in Peru (Law No. 29.785 on the Prior Consultation to Indigenous or Native Peoples, adopted on August 31st, 2011), partly as a consequence of the Bagua fire of 2009.

Enshrined in Articles 6.1a and 6.2, and to some extent in Article 7 on the bilateral cooperation between the state and the IPs, as well as in Article 16 on their free and informed consent in case of relocation, the right requires the Convention’s government parties to consult with IPs whenever a legislative or administrative measure may directly affect the latter. The Convention gives some guidance as well on the modalities of the consultation, which must be carried out thorough indigenous representative institutions, in good faith, and in a form appropriate to the circumstances. A successful consultation will conclude with an agreement or (free, prior and informed) consent. In the two decades since the adoption of Convention No. 169, the Inter-American Court of Human Rights (case Saramaka People v. Suriname) and ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) have contributed significantly with their observations in the cases of convention violations under Article 24 of the ILO Constitution. In particular, the two bodies have envisioned the fundamental characteristics of fair and appropriate consultations with IPs. In addition to what the same convention provides, the consultations shall also take place prior to the application of the planned measure (e.g., oil exploration in IPs territories); shall not be reduced to information meetings only; shall be transparent, systematic and based on mutual trust; and, last but not least, shall be accessible and understandable, especially in terms of linguistic comprehension.

Nevertheless, this praxis is far from the reality. In the specific case of Chile, where the Institute for Minority Rights runs training and research projects with indigenous leaders, the frustration engendered by the mis-application of this right is fuelling ongoing social conflict between IPs and the state. In particular, during the years 2009 and 2010, only a few consultations were carried out by the state, ranging on topics such as the persisting lack of constitutional recognition for IPs, to the repatriation of human remains belonging to the Kawésqar-Yagán people (which had been transported to Zurich, Switzerland during the 19th century). Apart from the ineffective modalities of some consultations (for example, consultation via post office or limited to only a few days), the results of many of consultations have yet to be made available on the official website of the Chilean Corporation of Indigenous Development CONADI. Another large-scale consultation was launched in 2011 to ask the IPs (once again) about their constitutional recognition, using the very same draft paper previously discussed during a 2009 consultation. Although the government’s official announcement of the consultation’s results was published in September 2011, the survey between the IPs is ongoing, and the outcome is still unknown. In addition, the contested Decree No. 124/2009 which shall govern the right to consultation for IPs in Chile (but does not meet the Convention No. 169 requirements) and the relevant jurisprudence of the Court of Appeals of Santiago, Temuco, Valdivia, Puerto Montt, and Concepción (which has ruled on the application of the right to consultation in only a few cases since November 2009) are fuelling discontent among IPs. Despite the recognition of its ‘auto-applicability’ in 2000 by the Chilean Constitutional Court (Sentence-Rol No. 309 of August 4th, 2000), the right to consultation still seems far from being fairly applied in the country.

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Governance of Diversity in Urban Areas
One of the Institute for Minority Rights’ Fields of Research

For the last two decades migration has become an increasingly important issue, and South Tyrol has been no exception, especially in the city of Bolzano. Some of the questions that arise are rather specific to South Tyrol, such as how migration affects the power relations between German, Italian and Ladin speakers. Many of the resulting questions are also posed in other regions or cities that receive considerable numbers of immigrants. It was thus natural for the Institute for Minority Rights to begin comparative studies of different cities and their various attempts to govern diversity and foster integration, along with social cohesion.

The debate on integration revolves mainly around two topics: the first encompasses integration measures that are targeted specifically at persons with a migration background; such measures, commonly referred to as ‘positive action measures’ or ‘affirmative action’, might be language programmes or training courses for migrants. The second is centred strongly upon citizenship regimes; the underlying assumption is that for what one might call ‘successful integration’ to occur, either special integration policies and/or citizenship regimes will play a significant role.

The empirical evidence supporting this assumption is scant. The question remains: What makes a difference for ‘integration’, and respectively for ‘social cohesion’? In deciding where to search for answers, we concur with Alba and Waters (2011), who write: “Our reasoning is that incorporation is fundamentally a matter of integration experiences in a variety of domains, such as residence, education, and the labor market, each of which has its own institutional logic, often the result of arrangements, that were established long before the new waves of immigrants”. Accordingly, we focus on structures, institutions and dynamics with the city as our field of observation.

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Consultation Seminar on the First Draft Thematic Commentary on Linguistic Rights of Persons Belonging to National Minorities

On 21 and 22 February 2012, high-level experts on minority issues met at EURAC to discuss legal issues related to minority languages and the current situation in the 39 signatory countries of the Framework Convention for the Protection of National Minorities. The basis for discussion was the draft thematic commentary on linguistic rights of persons belonging to national minorities presented by Francesco Palermo (Head of the Institute for Studies on Federalism and Regionalism and Professor at the University of Verona), and Brigitta Busch (Professor of Applied Linguistics at the University of Vienna) as members of the FCNM Advisory Committee. The purpose of the meeting was to consult civil society, minority associations and representatives of minorities on the Advisory Committee’s opinion. The task of the Advisory Committee is to ensure the compliance of signatories to the agreement. Renowned experts and representatives of international organisations and NGOs from all over Europe and the Caucasus took part in the revision of the report. The key issues of “Identification through Language”, “Language and Equal Treatment” and “Language and Education” were analysed in small working groups. The final document will be officially adopted in May.
European Autonomy and Diversity Papers (EDAP) is a high-quality online series of working papers that contribute to the theoretical development and empirical exploration of various approaches to the growing reality of diversity embedded within the European Union.

Law in Eastern Europe
The aims and scope of Law in Eastern Europe (LEE) encompass a critical examination of issues of legal doctrine and practice in the CIS and CEE regions.

European Yearbook of Minority Issues (EYMI)
is a critical and timely review of contemporary developments in minority-majority relations in Europe.

Review of Central and East European Law (RCEEL)
The Review critically examines issues of legal doctrine and practice in the CIS and CEE regions.

Oleh Protsyk and Benedikt Harzl (eds.), *Managing Ethnic Diversity in Russia* (Routledge Contemporary Russia and Eastern Europe Series, forthcoming June 2012)

The Study Group on Ethnic Minorities in Russia was jointly established by ECMI Flensburg and EURAC Bolzano/Bozen and consists of an internationally recognised team of scholars and experts in various fields of minority issues in Russia. After two intensive workshops in 2010, and the subsequent phase of research and compilation of articles, the first result of our efforts within the Study Group will be a book entitled “Managing Ethnic Diversity in Russia” (Routledge Contemporary Russia and Eastern Europe Series, forthcoming in 2012).

All chapters in this volume are based on papers presented, discussed and further developed by our participating scholars in the joint workshop series mentioned above. The book examines the evolution of the legal framework, institutional architecture, and policies intended to address numerous challenges posed by Russia’s immense ethno-cultural heterogeneity. The convincing asset of this publication is that it adopts an interdisciplinary perspective in order to give a wide-ranging assessment of how minority issues evolved in Russia after 1989/91 and where they stand today in terms of diversity accommodation after two decades of tumultuous post-communist transition with different kinds of setbacks and reasons to hope.


In recent decades, state institutions and their doctrines on all five continents have afforded more attention to language rights than ever before. Language rights are a highly specific and characteristic expression of general minority rights, which in turn form part of the category of human rights.

In Europe in particular, language rights have been connected to the evolution of the nation-state, and in general are only nominally tolerated when the presence of minority language groups comes into potential conflict with the majority. Nowadays, a new dimension has been added to the experience, related to the phenomenon of migration and the resulting presence of new language groups in the territories of various European states.

This book explores these phenomena, along with the evolution of language rights in the rest of the world. It takes particular note of constitutional experiences, such as those of India, which has paid great attention to linguistic diversity.

The proposal to classify linguistic rights as a three step process—the integration of citizens, the recognition and integration of national minorities, and, partly, the recognition of foreigners and second generation immigrants—is the common thread connecting the analysis of the book’s subject matter, along with an examination of the corresponding impact on contemporary forms of state.

Over the past several decades most Western countries have seen a significant increase in immigration: an increasing number of individuals with different cultures, languages, and religions are settling in foreign countries, brought there out of political, humanitarian and economic necessity, and by the growing mobility afforded by European integration.

To fight against discrimination, racism, and xenophobia, and to deal openly with the challenges and benefits of diversity, it is crucial to raise awareness in young people. For this reason, the Institute for Minority Rights has developed “Space Migrants 2513”, a role-playing game on anti-discrimination and diversity. The game gives young people the opportunity to put themselves in ‘other people’s shoes’ and to experience discriminatory situations from different points of view. It also offers teachers and educators additional tools to address the issues of the game. Participants are encouraged to see that prejudice, false assumptions and stereotypical attitudes are everywhere, even among those who consider themselves immune to it.

The instruction manual contains a summary of the role-playing game, some explanations of the methodology used, a detailed description of the game and how to play it, along with supplementary tips and exercises to go further into the game’s themes. The manual also includes cards to guide the game’s facilitators. All the tools and documentation can be downloaded from the website: www.spacemigrants2513.eu.

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Call for Papers:  
*European Diversity and Autonomy Papers*

EDAP is a high quality online paper series produced by the Institute for Minority Rights and the Institute for Studies on Federalism and Regionalism that contributes to approaching diversity in Europe. Diversity is understood in a broad sense as encompassing diversity of ethnic identities, cultures, regions and institutions. Regionalism, federalism, minority protection, multiculturalism and more generally, ‘constitutional flexibility’, are core topics of EDAP. The papers concentrate on diversity, especially from the perspective of comparative constitutional law and EU law. Contributions from other disciplines, such as political science, international relations and economics, are also welcome.

Papers and a biographical note outlining the author’s professional affiliations and publications can be submitted to edap@eurac.edu. For more details and guidelines see: www.eurac.edu/edap
Upcoming Events of the Institute for Minority Rights

20 April 2012
Expert Workshop on the European Grouping of Territorial Cooperation (EGTC)
EURAC, Seminar Room 2-3
To ensure social, economic and social cohesion by applying multi-level governance approaches is one of the core objectives of EU cohesion policy. With the EGTC, the EU has created a legal instrument to institutionalise crossborder cooperation in Europe. The purpose of the Workshop is to assess four different EGTC-case studies along the two main thematic blocks ‘legitimacy’ and ‘policy-oriented projects’. The presented case studies are:
EGTC Eurométropole Lille-Kortrijk-Tournai
EGTC Euroregion Pyrénées-Méditerannée
EGTC Ister-Granum
EGTC Europaregion Tirol-Südtirol-Trentino

25 June – 6 July 2012
International Summer School
Human Rights, Minorities and Diversity Management in Europe and Canada: Comparative Issues and Challenges
EURAC, Seminar Room 2-3
This two-week course takes stock of the Canadian tradition of multiculturalism and the core issues of the European minority rights’ protection system, such as whether European states (e.g., the U.K., the Netherlands, France, and Germany) have turned their backs on multiculturalism, and if the apparent European backlash against multiculturalism might have any impact on Canada, particularly from a legal perspective. The Summer School’s teaching approach will provide for interactive thought-provoking academic lectures and the opportunity to engage in case studies and role-playing exercises.
For more information and application details: www.eurac.edu/summerschool.