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Power-sharing Options in Complex Societies – Possible Lessons from South Tyrol for Young Democracies on Ways to Protect Ethnic Minorities at a Regional Level

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Abstract

The institutional arrangements aimed at the protection of cultural and linguistic rights in South Tyrol are some of the most unexplored yet thought provoking examples of minority protection in the world. Several aspects of the South Tyrolean experience are notable for young democracies, namely: (a) the asymmetrical nature of the powers and functions of South Tyrol vis-à-vis other Italian regions; (b) the unique power-sharing arrangements between the respective communities; (c) the extensive autonomy that is granted to linguistic communities on a non-territorial basis; and (d) the unique way in which community/group association is determined. This article gives an in-depth analysis of the South Tyrolean institutional arrangements and identifies potential lessons for consideration by young and emerging democracies. South Tyrol demonstrates how regionally-based power-sharing and autonomy arrangements can be pursued without having to replicate similar institutions in other regions or in national institutions. Most importantly, South Tyrol shows how a balance can be struck between power-sharing and community autonomy, and how communities that live intermingled can exercise self-government over their culture, education and language.

Keywords: South Tyrol; asymmetry; protection of minorities; autonomy; non-territorial autonomy; power-sharing; language; cultural and religious rights; state/regional constitutions

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Young democracies with ethnically divided populations often experience the strain of simultaneous centrifugal and centripetal forces tugging at the fabric of society. The centrifugal force demands recognition of diversity, while the centripetal force requires national unity. Governments tend to respond as follows: on the one hand, centripetal policies are pursued, such as nation-building programmes, development of common identity, emphasis on integrative patriotism, and highlighting the importance of national unity; on the other hand, pragmatism often dictates that some policy allowance also be made for centrifugal forces by recognizing regional and local diversity, allowing for asymmetry between regions, pursuing various minority protection arrangements, and accommodating of ethnic diversity at local and regional levels.

In constitutional terms these dynamics can be harnessed by formal and informal power-sharing and autonomy institutions and processes. The experiences of democracies such as Switzerland, Belgium, India, Nigeria, Ethiopia, Malaysia, Indonesia, and South Africa are notable in this regard.

Finding a balance between these seemingly divergent forces is, however, not easy. Experience shows there is often an underlying fault line in ethnically divided societies between recognizing diversity and building national unity. Movements, stresses and fractures of the fault line can erupt and bring uncertainty and instability, sometimes quite unexpectedly. Well established democracies often "manage" rather than "solve" the interface between accommodating diversity.

It is particularly in the area of institutional development[1] at a subnational level in federations and decentralized unitary systems, and the way in which regional ethnic minorities are treated, that young democracies frequently struggle. The experiences of countries such as Ethiopia, South Sudan, Sudan, Nepal, Indonesia, Nigeria, Myanmar, Indonesia, Kenya and several states in the Middle East are notable in this respect. Since minorities frequently experience being disenfranchised, excluded and neglected particularly at a sub-national level, the risk of conflict within regional and local areas is often high. The potential of fault-line disruption is illustrated by the instability and violence that so often accompany the creation and demarcation of local and regional government and demands by local minorities to have their "own" local or regional government so as to look after their own community through institutions of government.[2]

In this article consideration is given particularly to the institutional arrangements that have been implemented in the Italian province of South Tyrol to accommodate the aspirations of the three main linguistic communities (German, Italian and Ladin) within provincial institutions. The South Tyrolean experience is potentially of relevance to other countries with deeply divided societies since South Tyrol shows how regionally-pursued power-sharing and autonomy arrangements can reduce and prevent underlying ethnic tension which, if not properly managed, could have threatened the stability of Italy.

The autonomy[3] and power-sharing arrangements in South Tyrol are particularly important since the settlement has been endorsed by the United Nations, the European institutions, Austria and Italy. The arrangements are credible and legitimate in international law, and the benefits of home-grown solutions based on the needs and circumstances of a particular country are highlighted by the stability that has followed years of unrest and dissatisfaction in South Tyrol.

The South Tyrolean arrangements have been described as the "envy" (Alcock, 2001) of other indigenous groups and ethnic minorities that seek a form of regional autonomy and power-sharing.

In this article, particular attention is focused on the institutional arrangements that have been developed in South Tyrol and an assessment is given of the merits of those from the perspective of comparative law. Leading into the discussion about institutional arrangements of South Tyrol, consideration will be given to various power-sharing techniques within the context of protecting minorities. The discourse between forced and voluntary coalition government and how the issue is approached in South Tyrol are highlighted. Finally, the power-sharing and autonomy institutions of South Tyrol are analysed and an attempt is made to distil lessons that may be of relevance to self-government and power-sharing at a regional level in young and emerging democracies.

1. Protecting minorities

International law recognizes various techniques to protect minorities (De Villiers, 2012: 89)[4] at national, regional and local levels.[5] Examples of widely used techniques are: decentralization to subnational governments; recognition of traditional authorities and customary law; drawing regional and local government boundaries consistent (as far as is practicable) with living patterns of ethnic communities; create administrative sub-regions for administrative and management purposes to coincide with ethnic community living patterns; special seats or

quotas for ethnic minorities in legislative assemblies; bicameral legislatures; human rights instruments that recognize individual and collective rights; and power-sharing arrangements in the executive. While constitutional negotiations in emerging democracies often focus on the composition of national institutions, South Tyrol demonstrates how regional and local institutions may also offer to minorities some form of localized autonomy and power-sharing opportunities.

South Tyrol has "asymmetrical" powers which have allowed the province to embark on a wide range of institutional, administrative and policy measures to devise an advanced system of group rights and minority protection to benefit the German, Italian and Ladin language communities in a manner that is not replicated in other regions of Italy. Asymmetry in South Tyrol presents itself in three facets: firstly, decentralization of expanded legislative and administrative powers and functions to the province on a scale that exceeds the autonomy of other regions and provinces in Italy;[6] secondly, establishment of unique political and institutional arrangements that regulate the relationship between South Tyrol and national authorities in Rome; and, thirdly and most relevant for purposes of this article, development of special institutional arrangements *within* the province that are aimed to accommodate and protect the population diversity of the province through power-sharing and community autonomy.

The essential institutional elements of the South Tyrolean power-sharing and autonomy arrangements for the purposes of this article are:

1) special, asymmetrical autonomy of the province vis-à-vis the other regions and Rome;
2) community (separate) representation for the German, Italian and Ladin communities in the legislative processes of the province;
3) autonomy for the German, Italian and Ladin communities in regard to the management of their education, culture, language, traditions within the province;
4) joint decision-making and power-sharing in government between the three communities in matters of common interest within the province; and
5) language parity in governmental, judicial and public bodies.

The minority-accommodation arrangements in South Tyrol have been described as follows:

> The foundation upon which South Tyrol's institutionalised ethnic governance rests is power-sharing between its main linguistic groups and a set of sophisticated balances between contracting parties. The entire institutional design of the Autonomous Province of Bolzano/Bozen is based on separation and forced cooperation of the two main language groups. (Alber and Zwilling, 2014: 46)

Alcock shares this positive assessment of South Tyrolean institutional arrangements and comments that the balance obtained between self-determination and protection of language identities 'make the history of the South Tyrol Autonomy very illuminating in the search for solutions in other areas of Europe [and beyond] with culturally divided communities' (Alcock, 2001: 1).

Regional-based power-sharing and autonomy arrangements are of course not unique to South Tyrol. In a world where the complexities of the composition of populations have necessitated creative solutions for democratic governance, several countries have implemented regional-based solutions in an effort to retain national unity and to prevent secession. Refer for example in this regard to: the special autonomy of Quebec in Canada; the accommodation of Sharia law in Aceh of Indonesia; the creation of half-cantons in Switzerland; the proposed institutional developments in Bangsomoro in the Philippines; the power-sharing and autonomy arrangements in Brussels; and the accommodation of traditional leaders in Malaysia and some of the South African provinces. These examples point to the potential benefits of pursuing tailor-made solutions at regional level, without necessarily enacting similar institutions at the national level.

2. Constitutional background of South Tyrol

South Tyrol ("Alto Adige" in Italian) is an autonomous province[7] in the north of Italy where it borders Austria and Switzerland. The capital city is Bolzano (Italian) or Bozen (German). The province combines with another province, Trentino, to make up the autonomous region called Trentino/Alto Adige South Tyrol. Constitutionally, the "region" is higher in the governmental hierarchy within Italy than the "province", but practically as a result of the autonomy arrangements, the scope of authority of the region has become reduced to very few areas of decision-making with the emphasis being on the autonomy of the two provinces of South Tyrol and Trentino.[8]

The population of South Tyrol is about 519,000, with the main population groups being German (69.41%), Italian (26.06%) and Ladin (4.53%), with the remainder speaking other languages as a result of mostly recent immigration.[9]

The German speaking community, which is a minority in Italy, is a majority in South Tyrol, while the Italian speaking community is a minority in South Tyrol although it forms part of the majority nationally (Alcock, 1970). According to the 2011 census, 103 of the province's municipalities have a majority German population (mainly rural), 8 are majority Ladin (mainly rural around the two Dolomite valleys), and 5 are a majority Italian (mainly urban).

South Tyrol used to be part of an historic area called the County of Tyrol under the Austro-Hungarian Empire, but during the First World War an administrative region was created over the area which today is referred to as South Tyrol. Italy annexed South Tyrol in 1919 pursuant to the Peace Treaty St Germain and by doing so separated it from the remainder of Tyrol, which ultimately became part of Austria.

In the lead up to the Second World War an agreement was reached between Hitler and Mussolini according to which a limited time was given for the German speaking South Tyrolese to relocate to Austria or Germany (and other parts of the Third Reich such as Ukraine), after when the remainder of the German community in South Tyrol would be left to the unhindered control and dominance of Mussolini. The process of relocation of Germans from South Tyrol was interrupted by the outbreak of the Second World War. This meant that the German community became entrapped in fascist Italy in 1922. Although the area of South Tyrol had a predominantly German speaking population, the rise of fascism in Italy saw the German language being outlawed in all but the private spheres, with an emphasis on the complete Italianization of the area and its people. The Italianization included all public spheres, such as education, official language, language of administration, signage of places, roads and towns, names of persons, and the media. Even the use of the name "South Tyrol" was declared an offence and German speaking media was prohibited. Mussolini also supported massive domestic migration programmes to encourage Italians from other parts of Italy to move in large numbers to South Tyrol to speed up the diminution of the German language and identity.

At the conclusion of the Second World War it was agreed by the Allies that South Tyrol would remain part of Italy, but a compromise was reached at the same time that South Tyrol would receive special autonomy. An Austrian-Italian agreement, the De Gasperi-Gruber Agreement, was entered into with the blessing of the United Nations, Italy and Austria.[10] The

Agreement was annexed to the Paris Treaty and hence received binding status in international law. Pursuant to the Paris Treaty, the special Region Trentino-Alto Adige was created in 1948 (the name "South Tyrol" was not used) pursuant to the Autonomy Statute (Caciagli and Zuckerman, 2001).

South Tyrol therefore found itself within the Italian-dominated Region of Trentino Alto Adige/South Tyrol in which Italian was the majority language. During the next 15 years, dissatisfaction with the state of affairs increased in the ranks of the German community due to their ongoing marginalization, lack of autonomy, absence of power-sharing, and continued Italianization of their culture. Eventually, the frustration with this first phase of autonomy boiled over with public protestations, violence, and even the planting of bombs. Most of the 1960s were spent with Austria as the kin-state of South Tyrol attempting to improve the constitutional status of the (German) South Tyrolese, the Italian government conceding that special autonomy for the province was meritorious but with a lack of agreement about the details of how to redress the situation, and the South Tyrolese German community hardening their stance to seek autonomy for the province, amalgamation with Austria, or as a last resort, secession and sovereignty (Magliani, 2000).

Although, with the benefit of hindsight, the first phase of the Autonomy Statute during the 1950s was an important milestone in the process of South Tyrol becoming an autonomous province, the first decade after the enactment of the Statute also saw frustration with the implementation thereof, concern about the lack of resources, and policies primarily directed to the benefit of the Italian community.

Austria, which acted as kin-state for the German community pursuant to the Paris Treaty, approached the United Nations in 1960 with its concern that the autonomy of South Tyrol was not being implemented as had been anticipated under the (first) Autonomy Statute. The United Nations responded with Resolution 1497 (XV)[11] entitled 'Status of the German-speaking element in the Province of Bolzano (Bozen)', in which all parties were encouraged to enter into negotiations to settle autonomy arrangements for the province. The negotiations lasted around 9 years and ultimately concluded with a revised (second) Autonomy Statute being enacted in the early 1970s (Bull and Pasquino, 2007).[12]

The revised Autonomy Statute, in effect, gave to the German community what they had been demanding since the end of the Second World War: autonomy for the province called "South Tyrol" and the right to implement unique power-sharing and self-government

arrangements of relevance to the communities of the province. As a result of the second Autonomy Statute, South Tyrol gained substantial autonomy over a wide range of range of legislative areas. German was restored with Italian as languages of government, education and administration, the province could enact power-sharing arrangements between the German, Italian and Ladin communities, and the province had a direct relationship with Rome in regard to implementing the Autonomy Statute and to raise any other issues of importance to the two governments (Alcock, 2000).

Four essential elements contributed to the creation of the autonomous province of South Tyrol: firstly, the Italian Constitution had already acknowledged the autonomy of the "special" regions of Italy and therefore the principle of asymmetry (see below) had a political and constitutional foundation in Italian constitutional law; secondly, the role of Austria, which derived from the Treaty, as kin-state meant that the German community of South Tyrol received valuable external assistance and support to develop their proposals for autonomy and to put pressure on Rome and the United Nations to reach an agreement; thirdly, the involvement of the United Nations, the European institutions and the International Court in The Hague meant that the autonomy arrangements received credibility and legitimacy in international law; and fourthly, the territorial integrity and sovereignty of Italy were acknowledged by all parties which meant that ultimately the South Tyrolean solution was a domestic matter for Italy and autonomy for the province did not pose a risk of secession.

3. Potential relevance of South Tyrol to young democracies

It is axiomatic that the institutional development of each country is unique and should be assessed within the context of the particular case study. Constitutional comparison nevertheless enables the discerning observer to assess the institutional arrangements of case studies and to distil potential lessons or principles that may bear relevance to other countries that face similar challenges.

The South Tyrolean experience is particularly relevant to young and emerging democracies since the province demonstrates how ethnic diversity can be accommodated at a regional level *even* if similar minority protection-measures are not adopted at the national level. Although the Constitution of Italy recognizes as a general obligation the rights of minorities,[13] the type of institutional arrangements that have been enacted in South Tyrol do not have precedent at the national institutions or in other regional arrangements in Italy.

The experiences of South Tyrol may for three reasons in particular be relevant to young democracies:

Firstly, the special autonomy of South Tyrol is relatively recent in origin (post Second World War, but more particularly since the early 1970s) and has been facilitated by a combination of factors in international law, European efforts to protect minorities, and Italian political dynamics. The United Nations had a direct role to facilitate the minority-protection arrangements of South Tyrol through its encouragement of parties to compromise, and that involvement by the international community adds credibility and legitimacy to the power-sharing and autonomy arrangements of the province in a world where there is often reluctance to pursue formal power-sharing arrangements.

Secondly, the asymmetrical autonomy of South Tyrol bestows special and expanded powers and functions on the province. These special powers have had a twofold impact: firstly, it curtailed demands for secession by South Tyrol, and secondly, it cemented the position of South Tyrol as being part of Italy.[14] The recognition of the special place of South Tyrol *within* Italy has reduced rather than fuelled secessionist demands. The concern that is sometime expressed in literature that asymmetry may encourage secession has not materialized in South Tyrol, where the integrity of the Italian state has been secured as a result of the asymmetry that applies to South Tyrol.

Thirdly, unique constitutional, institutional and policy arrangements have been enacted *within* South Tyrol to provide a range of mechanisms for minority protection between the German, Italian and Ladin communities. Those arrangements (as discussed below) include power-sharing and autonomy measures.

The Tyrolean experience demonstrates that regional autonomy, asymmetry and regionalized power-sharing and cultural autonomy arrangements can potentially assist young democracies to devise institutional systems at the regional level that accommodate and foster local diversity while at the same time building national unity.

4. The dichotomy of "forced" power-sharing

Statutory required power-sharing and coalition arrangements, such as those enacted in South Tyrol, are not without controversy. Scholars in political science, constitutional law and conflict dynamics have long been at loggerheads about the merits and risks of statutory imposed coalition government, be it for the interim or as a permanent feature, in deeply divided societies.

There are, in general, two main schools of thought (with many sub-themes) in response to the question whether power-sharing should be mandated by law or whether power-sharing should rather arise spontaneously from informal coalition agreements (McCulloch, 2014).[15]

The one school of thought contends that in countries with deeply divided societies, a range of constitutional and other statutory guarantees should be considered to secure participation of minorities in decision-making, and in particular for minorities to be represented in the executive as part of a "forced" coalition government (Lijphart, 1977; Lijphart, 1999: 200-215; Lijphart, 2004: 96; Lijphart, 2007). This approach is often referred to as the "consociational" school. Proponents emphasize that in heterogeneous societies individuals are inclined to vote in accordance with ethnic affiliation and as a result, post-election guarantees for power-sharing between groups must be included in a constitution or other legal instrument since individuals are likely to vote for their "own" ethnic dominated party. South Tyrol regards itself as firmly within the category of the consociational school (Larin and Roggla, 2016)[16] since the power-sharing arrangements within the province are mandated by statute and those arrangements probably would not have come into being had it not been for the force of legal prescription.

The other school of thought, often referred to as the "integrative" school, contends that although power-sharing is important in deeply divided societies, the power-sharing arrangements should not be based on formal, statutory requirements since such formal arrangements may cause deadlock and discourage moderates from cooperating across ethnic lines prior to elections (Horowitz, 2007: 960; Horowitz, 2008: 1215). This school prefers that informal incentives should be built into the constitutional, political and electoral system to encourage coalitions and cooperation *prior* to an election without necessarily enforcing coalitions and/or vetoes by way of legal prescriptions after an election (Horowitz, 1991; Horowitz, 1993: 14). The electoral system, in particular, should according to this school be designed to encourage interethnic cooperation before and during elections rather than to reward interethnic competition, separation and conflict. According to the integrative school, the process of coalition forming already starts in the pre-election phase and rewards must be built into the system to benefit those parties who establish the most effective alliances by way of the electoral system, electoral alliances and the structure of political parties (Horowitz, 1985).

In essence, those who seek formal constitutional or legal guarantees to protect minority groups aim at post-electoral arrangements, whereby the respective groups are brought together *after* they had elected their own representatives, while those who support informal incentives

prefer to facilitate electoral compromise and coalition building *before* the election occurs so as to ensure that a "balanced ticket" is put up for election.

The aim of this article is not to participate in the theoretical discourse of this debate. Suffice to note that if one moves beyond the realm of constitutional law theory to constitutional and political practice, the truth about minority protection and power-sharing is probably nestled in a combination of the two approaches. Both schools of thought support power-sharing in deeply divided societies, albeit that they arrive through different pathways at power-sharing arrangements. Both schools also display shortcomings. Neither school has been able to develop a predictive model to establish in advance what the outcome of their theory would be in any given case study: The consociational-school runs the risk of "freezing ethnic identities" by way of forced arrangements, while on the other hand the "integrative" power-sharing school arguably places too much reliance on the "goodwill" of the majority, which offers little or no long term comfort or security to minorities in a hostile environment. Both schools use their hypotheses to explain in retrospect the reasons for the success or failure of arrangements in a particular country, but ultimately both schools have to concede that the question whether statutory obligated or voluntary power-sharing is applicable to any given society depends on the history, dynamics, political will and general circumstances of each case study.

South Tyrol has opted for a statutory imposed, "forced" coalition arrangement in the manner of the consociational school, whereby the Autonomy Statute of South Tyrol guarantees the autonomy of the respective communities and also sets up power-sharing mechanisms between the three communities. The success of South Tyrol in applying, generally speaking, the consociational principle has been described as follows:

> The main argument is that the "success" of the South Tyrolean model lies in a system of tolerance established by law in the sense of a 'mix' of legal instruments and institutions which preserve the different identities through autonomy, and, on the other hand, enable cooperation through representation and participation. (Pfostl, 2012: 1)

The three language communities, supported by the international community and under strong leadership from Rome, accepted that informal or voluntary arrangements would not provide the province with adequate security or stability and would expose the volatility and uncertainty of the (informal) arrangements.

This was an important acknowledgement by the international community that in the absence of trust and adequate integrative factors in a deeply divided society such as South Tyrol, formal bridge building and coalition forming requirements may have to be established by law

as a temporary[17] or permanent feature of a constitutional settlement. The stability that has been brought by the statutory power-sharing and autonomy arrangements of South Tyrol has been described as follows:

> The overall success of South Tyrol in terms of the accommodation of minority rights, including linguistic rights, shows that law is actually the most effective instrument for guaranteeing peace and stability. Only clear legal guarantees and remedies can create mutual trust when such trust is lacking. (Alber and Palermo, 2012: 308)

5. South Tyrol in the context of Italian "asymmetrical federalization"

The 1948 Constitution of Italy laid a basis for asymmetry of a decentralized system whereby some regions were granted more expanded powers than others (Tarlton, 1965: 861; Watts, 2008: 130).[18] The constitution created 20 regions—15 "ordinary" regions and five "special" regions—of which Trentino-South Tyrol is one.[19] The special regions were, as a result of their unique historic circumstances,[20] given wider autonomy than the ordinary regions. Each of the special regions had a special autonomy statute which had the status of a constitutional instrument (Palermo, 2008: 157).[21] It was anticipated that over time the ordinary regions would catch up with the special regions whereby all regions would have a similar degree of autonomy (Hine, 1996).[22]

The concept of "asymmetry" is therefore not new to Italy and the country has been living with varying "speeds" of regional autonomy for some time, albeit within the framework of a unitary constitution.[23]

Since 1996 Italy has been in a gradual process of federalization[24] and although the country does not yet formally constitute a "federation",[25] it has substantially moved away from its Napoleonic centralized background, with the regions now being granted extensive autonomy (Keating and Wilson, 2010). The federalization process is evidenced in the way that the powers of the respective governments are guaranteed by the constitution. The legislative powers of the national government and the concurrent powers shared by the national and regional governments are defined in the constitution, with all residual powers belonging to the regions (and in effect the provinces of Bolzano and Trentino).[26] The constitutional court continues to play a major role in clarifying which competencies are within the sphere of which level of government.[27] In many respects the constitutional court, as a platform for conflict management, has given guidance in regard to the allocation of competencies since the constitution is so vague (Alber and Zwilling, 2014: 43).

Regions have not been equally enthusiastic about taking up the new competencies, albeit that South Tyrol has played a leading role to expand its powers. It has been observed that while some regions 'remained passive about asserting their new competences, others tried to test the new limits of their jurisdiction' (Palermo and Wilson, 2013: 16), while the autonomous powers of South Tyrol 'are quite outstanding…' (Alber and Zwilling, 2016: 15). Some of the most pertinent powers of South Tyrol are: provincial administration, bilingual language policy, town and country planning, environment and natural resource management, provincial transport, provincial economy, education, place names, provincial police, and public works.

The gradual expansion of autonomy of South Tyrol and the recognition that the province should be given the right to develop its own institutional arrangements to suit its population composition must therefore be seen firstly within the context of a federalizing Italy and secondly in the context of developments within the European region where substantial acknowledgement is given to the protection of minority languages and cultures.[28]

It is therefore notable that a variety of domestic, European and international factors contributed to the uniqueness of the South Tyrolean outcome.

6. The Autonomy Statute—a basic law for autonomy and power-sharing

The special Autonomy Statute for South Tyrol in its current form has been years in the making. Ultimately the Autonomy Statute 'gave the South Tyrolese much, if not all, of that they had always wanted', but it only came about after several decades (Alcock, 2001: 11). Although the original Paris Treaty anticipated autonomy of some sort for South Tyrol, the practical roll-out of the autonomy to its current scope took close to 50 years and it was only in 1992 that Austria and Italy declared that the conflict had been successfully resolved. This highlights, according to Alcock, how the protection of minorities is not a static occurrence, but how institutions and processes must be dynamic in order to allow for growth and adaptation (2001: 18).[29]

The Autonomy Statute has been described as the basis of 'institutionalized ethnic governance' which comprises 'power-sharing between the main linguistic groups and a set of sophisticated balances between contrasting principles' (Alber and Zwilling, 2016: 18). Alber and Palermo summarizes the South Tyrolean arrangements are follows:

> The whole institutional setting in South Tyrol is a power-sharing system based on strict separation and forced cooperation of the two main linguistic groups, German speakers and Italians. (2012: 293)

Three important psychological achievements were embodied in the Autonomy Statute: firstly that it signified a fundamental new approach by the Italian State towards accommodating linguistic minorities; secondly it accepted that the Province of South Tyrol is the primary institution for governance rather than the Region of Trentino-South Tyrol; and thirdly the laws of South Tyrol no longer require approval by Rome to become effective.

As far as the powers of the province are concerned the provincial parliament became the repository of all residual powers, meaning that whatever powers and functions do not fall within the scope of powers of the centre or within the concurrent powers are within the exclusive range of powers of the province. This included powers that are of importance to the economic, social and cultural identity of South Tyrol, such as tourism, agriculture, education, public health, public works, vocational training, sports and mining.

The role of the province in the administration of national legislation has also been enhanced, with the province becoming responsible to implement and administer national policies in regard to health, hospital care, and other central government capacities.

Importantly, from the perspective of this article, is the right of South Tyrol to determine its own institutional governmental arrangements, thereby giving the South Tyrolese the power to opt for an electoral system and a system of governance that best suits their needs.[30] An outcome of this autonomy to design institutional structures is a system that is based on 'separation and forced cooperation' which complies with a 'consociational democratic model' with the core principles being 'cultural autonomy, language parity and ethnic proportionality' (Alber and Zwilling, 2016: 18).

The Autonomy Statute has gone through various phases; originally the aim was to comply with the international obligations of Italy after the Second World War, but later the aim of the Statute was to build confidence and gain legitimacy with the people of South Tyrol. According to Palermo, the success of the Statute to build confidence amongst and between the communities in South Tyrol was 'enormous' (Palermo, 2008: 158). He contends that the Statute has contributed to substantial trust being developed between the respective communities, particularly since the Statute had to balance majority and minority aspirations. Palermo observes as follows about what he sees as the success of South Tyrol:

> The more secure the linguistic groups and self-government, the less important are procedures based on institutionalized suspicion; the more confidence between the groups, the more democratic cooperation gradually substitutes diplomatic elite-driven decision-making; the less tense the relationship between the groups, the more

> the focus can shift from pure minority protection to the complex management of territorial self-government. (2008: 158-9)

7. Essential power-sharing and autonomy arrangements of South Tyrol

The essential power-sharing and autonomy arrangements in South Tyrol of relevance to this article are described below.

7.1 Mechanism to implement the Autonomy Statute

Two joint commissions are responsible to implement the Autonomy Statute.[31] The one commission deals with the entire decentralization process of the Region Trentino-Alto Adige/South Tyrol, while the other commission is responsible for the decentralization to the province of South Tyrol. The South Tyrolean Commission is based on parity between the national and South Tyrolean governments, and until 2014 parity between the three language communities of South Tyrol. Since 2014, one person from the Ladin community has also been appointed to the commission. The effect is that the state is represented by one person from each community, German, Italian and Ladin, while the province is represented by two Germans and one Italian. The commission functions on the basis of consensus, which means all major governments and communities must approve measures to be implemented. It has been said that these commissions have been the "operative" part of South Tyrolean autonomy and have been essential "trust building" mechanisms (Palermo and Marko (eds.), 2008). The recognition given in the commissions to the equality of the language communities has set the stage for the entire process of decentralization and self-government in South Tyrol. The commissions are, in effect, the engine room of the decentralization process and the equality of the German and Italian representatives underscores the consociational principle upon which the power-sharing arrangements are founded.

7.2 Regional legislative institution

The parliaments of the two provinces, Trentino and South Tyrol, sit together to form the Parliament of the Region Trentino-South Tyrol. Provisions are therefore made for a single legislative institution for the Region of Trentino-South Tyrol and one legislative institution for each of the provinces. The regional parliament comprises the representatives of the two provincial parliaments joining in a single session. Thirty-five representatives are elected for each provincial parliament. Both provinces use proportional representation as the electoral system for electing their own parliament, which enhances the likelihood of minorities being

represented at provincial and regional parliaments. The two provinces are therefore equally represented in the regional parliament regardless of the size of the respective provincial populations. The regional parliament elects a president and two vice presidents. The presidency rotates between the German and Italian language communities, while the vice-presidency also includes the Ladin community.[32]

The regional parliament functions by way of standing and ad hoc committees. The committees must reflect the ethnic composition of parliament, and as far as is practical, also the political representation of the respective parties. In this way, the two dominant language communities of the two provinces, German and Italian, are equally represented within the regional parliament and its committees. If the representatives of one of the language communities are of the view that a bill before the regional or provincial parliament is to the prejudice of the community, it can call for separate voting in regard to the bill.[33] If a conflict arises about the question whether a bill may be prejudicial to the interests of a community, the question may be referred to the constitutional court for a determination.[34] Each community therefore in effect has a veto over legislation that it perceives as potentially being to its detriment.

7.3 The Provincial Council

The Provincial Council is the legislative institution for South Tyrol. The council elects the provincial president and minsters. The council comprises 35 members who are elected for 5 years by way of proportional representation. The Ladin community is guaranteed at least one seat in the council. A person must be resident within South Tyrol for at least 4 continuous years before they may cast a vote in provincial elections.[35] Although the provincial legislature votes by way of an ordinary majority, any of the communities may request a vote on a community basis if there is a concern that the matter upon which a vote is cast may affect the language or culture of a community.[36] This "alarm bell" procedure is similar to what is found in Brussels where similar power-sharing arrangements exist at a regional level between the Dutch and French speaking communities.

7.4 Provincial executive

The government (executive) of South Tyrol is required to reflect the language composition of the provincial parliament. Even if a single political party or a single language group forms the majority of the provincial parliament, a statutory prescribed coalition must be formed with the minority parties or language group. The executive must reflect the proportionally of the

communities that have been elected to the provincial legislature.[37] The same requirement applies to local governments.[38]

The provincial government is headed by the president.[39] The president and members of the executive are elected by the legislative council. The president is supported by two deputies, one from the German and Italian communities respectively, but a member of the Ladin community may also be elected. In this way, the voice of all three the language communities is heard within the provincial government. Although the executive must reflect the proportionality of the language groups in the legislature, the exception is that a representative of the Ladin community may be included in the executive and the council even if the proportionality of the community does not justify such an inclusion.

The president is ultimately responsible for the administration of policies in South Tyrol, assignment of ministers to specific departments, and is accountable in the final instance for the governance of the province. The executive functions on the basis of solidarity, which requires consensus between the members.

This arrangement is particularly important and closely associated with the "consociational" school of thought since it provides a statutory basis for a "grand coalition" whereby the language communities elect their own representatives to government where after those representatives are obligated by law to govern in coalition. According to Alber and Zwilling

> consociationalism in South Tyrol translates into four main elements: the participation of all language groups in the joint exercise of governmental power, a system of veto rights to defend each group's vital interests, the principle of cultural autonomy for groups and an ethnic quota system based on a linguistic declaration (or affiliation). (2016: 19)

7.5 Local government

Municipal executives must also reflect proportionally the language composition of the municipal legislatures (councils). In larger councils where there is a deputy mayor, the deputy must be from another language community as the mayor.

7.6 Identification with a language community

The election of community members by the respective language groups inevitably means that candidates for election must declare their language association prior to an election.

Self-identification with one of the language communities in South Tyrol is not limited to elections, but is also required for purposes in other areas, such as public housing and

employment in the civil service. Community membership therefore permeates the entire South Tyrolean population since it affects, for all practical purposes, all aspects of public life. The declaration of language in essence sets the basis for an 'ethnic [language based] quota system' (Alber and Zwilling, 2016: 19).

Language identification, which started formally in 1981, takes place at each census when every resident of South Tyrol is required to declare to which language group he/she belongs or associates. If a person fails to declare their community affiliation, such a person does not qualify for appointment in public positions, public housing and various other social contributions (Alber and Palermo, 2012: 292). The arrangements underwent a review in 2005, after which only an anonymous declaration is used for purposes of determining the size of a language group is attached to the census.

This principle of self-identification is not without controversy since not all South Tyrolese necessarily associate exclusively to one of the three language communities. Many persons originate from mixed families where more than one language identity is maintained, and some individuals do not wish to declare their language association at all.

Language identification has been the subject of considerable debate, with opponents of such self-identification saying the requirement violated section 3 of the Constitution of Italy, which guarantees equality of all individuals. In 1984, the Council of State ruled that the requirement of self-identification was unconstitutional, but at the same time the Council of State recognized the unique status and arrangements for South Tyrol, which require some form of community identification. Following the decision, an agreement was reached in South Tyrol between the parties whereby adults complete a form at each census in which they indicate to which of the language communities they (and their children) "prefer" to affiliate[40] and another form for statistical purposes where no group identity is declared. The "language" list is then submitted to the respective local authorities and used for purposes of calculating the size of the respective language communities without disclosing the identity of the individual who completed the form.

It is acknowledged, however, that since there may be individuals who cannot or do not wish to declare that they belong to one of the three communities, an additional category, namely "other", had to be introduced. This arrangement applied for the first time in the 1991 census. Only a very small percentage has so far opted for the "other" category since it became available, with 1.68% choosing it in the most recent census in 2011.

The mechanics of maintaining a system of group identification are, however, becoming increasingly complex in a society where: a growing portion of the population comes from new immigrant communities (Larin and Roggla, 2016);[41] substantial numbers of individuals from traditionally Italian and German communities are truly bilingual (more so in the German community than the Italian community); and many children are born in families with mixed language background. The "politicization" of ethnic preference is further enhanced by the social benefits that accompany the numerical size of the respective groups. In essence, government grants are paid to local municipalities in proportion to the language group in the area of the local government, which means there is a financial incentive for communities to increase their numerical size, particularly by the addition of foreign nationalities. At the same time, however, it is also arguable that the system encourages the three official language communities to make non-ethnic language speakers welcome, to assist newcomers to learn the local languages, and thereby to contribute to integration and nation-building (Katics, 2013).

It is notable that in Brussels, capital of Belgium, where a similar arrangement exists to that in South Tyrol for coalition government and autonomy of the French, Dutch and German communities, all individuals regardless of ethnic background are also required to identify for electoral purposes with one of the three language communities. The choice in Brussels is, however, not recorded by local authorities in a census as in the case of South Tyrol, an individual in Brussels may "change" identity from one election to another, and an individual may attend the services of another language group provided that the person accepts the language in which the service is offered. In South Tyrol, children of one community may also attend teaching offered by another community provided that the language of education is accepted. Similarly to South Tyrol, positions of civil service employment in Brussels are filled on a quota basis.

7.7 Administration

The ethnic composition of the provincial administration of South Tyrol had, after the Second World War, for historical reasons, been almost entirely Italian. German as language of administration and German speakers as civil servants had been actively eradicated from all parts of the administration.

One objective of the autonomy reform was to achieve a greater balance between the Italian and German communities in public administration. It also aimed to include the Ladin speakers into the bureaucracy and to improve in general the ability of all civil servants to

communicate in the two principal languages of the province (and three languages in the Ladin valleys).

The general aim of South Tyrol is to achieve proportional representation in civil service positions,[42] and to also achieve proportional representation within government departments, thereby assuring that the German community is also represented in senior positions in government from which they had been previously excluded. This is a particularly important measure for three reasons: firstly, the administrative scope of the province had been radically increased as part of the Autonomy Statute; secondly, the bureaucrats that administer legislation can often make inputs in the policy process in regard to a review of the legislation; and thirdly, the practical and symbolic impact and importance of policies being administered in the language of the recipient population cannot be overestimated. If for some reason appropriate candidates from a particular language community are not available to fill a position, informal arrangements have been made so that, in order for proper administration to continue, a position may be temporarily filled by a candidate from another community.

Parity between the language communities in administration has to a large extent been achieved and nowadays strict compliance, particularly if suitable candidates cannot be found, is not enforced.

7.8 Language proficiency and employment

In addition to accommodating the German language within the institutions of government, German has also been elevated to an official language of the province, thereby putting it on equal footing with Italian. The entire civil service of the province is organized on the basis of bilingualism (and trilingualism in the Ladin valleys).[43] All public servants are required to be bilingual (and trilingual in the Lain valleys)[44] and higher standards of bilingualism are required from senior officials. Bilingualism is also expected from judges and court officials (Alber and Palermo, 2012: 297).[45] Public service positions are filled on the basis of proportionality of the two largest language communities based on the most recent census results.[46] The quota system does mean, however, that candidates cannot apply for any position but can only apply for those positions that are available to their language group.

These standards of proportionality not only apply to formal government departments, but also to public corporations and former state companies that provide a public service, such as postage and railways.[47] Similar arrangements are in place for the filling of positions at municipal levels. This means that in some local communities where the sole language spoken

might be Italian, German and Ladin, officials would still be required to comply with bilingual requirements (and trilingual for the Ladin valleys). If the bureaucracy commenced correspondence, they must attempt to do so in the language of the recipient.[48]

The requirements for language proficiency do not extend to the Ladin language for the entire province, but in the Ladin valleys proficiency in Ladin is a requirement as well as in other provincial offices where specifically Ladin issues are dealt with, for example Ladin schools in Bolzano. Provision is also made that the Ladin have the right to use their mother before justices of the peace with jurisdiction over Ladin valleys. In local areas where Ladin are in a majority their language is used for official purposes and in public signage.

This means that in administration there is a mix between territoriality and personal autonomy: in the case of Ladin the principle of territoriality is pursued since Ladin must be spoken within the local areas where the community resides, while in the case of the other two languages the individual who seeks a service can chose the language in which they want to be served.

7.9 Education and culture

The autonomy of the communities in regard to education, language and culture is set out in Article 2 of the Autonomy Statute. The jurisdiction of the autonomy arrangements is, in effect, non-territorial since the decisions are administered to individuals by way of the services and activities they attend, rather than to a specific geographic locality. This means that even where the communities live intermingled, aspects of education and culture are administrated by the respective individuals through the services they attend, such as schools and cultural events, rather than being limited to the area where they reside.

Each community has, in effect, developed services around the language identity of the respective communities, for example in all aspects of education (particularly kindergarten to secondary education), political formations, trade unions, libraries, cultural events, media, and churches.

The scope of autonomy includes the setting up and management of unilingual schools and cultural offices, which receive state funding. Although South Tyrol has a single education department, three autonomous school boards have been established for each of the three language communities—Italian, German and Ladin. The respective boards take full responsibility for the control and management of the schools within their jurisdiction.[49] Each school has a primary language in which it teaches, but the other language of the province must

also be taught as a subject. Ladin is not an obligatory second language. In Ladin schools, all subjects are taught in German or Italian, while Ladin is taught as a separate subject. The boards also have autonomy in regard to the recruiting and training of teachers.

Access to a school is determined by parents on behalf of their child, subject to the condition that the child must have sufficient knowledge of the language of the school in which he/she is enrolled. If a dispute arises about the legitimacy of a child's enrolment, the dispute is referred to a joint commission of the education boards. Although schools are classified in accordance with the primary language in which they function, all schools must be bilingual in the sense that the other non-teaching language is offered as a subject (Alber and Zwilling, 2014: 58).[50] Tertiary education is offered on the basis of trilingualism, which entails Italian, German and English.

The concept of separate educational facilities for the language communities has been criticized, on the one hand, as a form of language based *apartheid*, but, on the other hand, proponents of particularly the German speaking community have emphasized that without a language and culture based educational system, the German (and Ladin) identity would be subsumed by Italian (Alcock, 2007: 17).

The organizational structure of each community's education is that each community is responsible for the management and control of their educational system and schools from kindergarten to secondary levels. The language of teaching is monolingual, but the second language is taught as a subject for at least 6 hours per week (Alber and Zwilling, 2016: 29).[51] Teachers at community schools must speak the language of the school as a native (first language).[52] Each education system falls under a ministry for the community, which is responsible for the curriculum of the schools within its responsibility.

7.10 Finance and budget

During the initial three decades of the Autonomy Statute, South Tyrol was for all practical reasons totally dependent on grants from the national or regional government. This situation changed fundamentally with the reforms to the Autonomy Statute in 1972 (Palermo in Woelk, Palermo and Marko (eds.), 2008: 157).[53] The province now receives a fixed quote from taxes raised within the territory of South Tyrol and various other guarantees are in place to secure the funding basis of the province (Alber and Zwilling, 2016: 16).[54] Those budgetary guarantees cannot be altered without the consent of South Tyrol. Although the budget for the province is voted upon by the entire provincial parliament, any of the community groups can ask for the

entire budget or specific parts to be voted upon separately. If the measure is not approved by such separate voting, the matter is referred to a joint committee and if agreement is not reached in the joint committee the measure can be referred to the Regional Administrative Court for a final decision.

7.11 Place names

Following the years of fascism where German names had been replaced with Italian names, the autonomy arrangements entail that place names may be bilingual, that original place names can be restored, and that signage to places can be in one or more language. The naming of places remained one of the issues that took longest to resolve and it continues to be a sensitive matter.[55] A joint commission was established in 2012 to advise the legislature on matters regarding place names, consistency of terms and matter related thereto.

8. Lessons of the South Tyrolean power-sharing and autonomous institutions

The aim of the article was to give an overview of the institutional developments in South Tyrol in regard to power-sharing and autonomy for the respective language communities and to identify possible lessons for young and emerging democracies.

The following observations can be made to identify lessons from South Tyrol that may bear relevance to emerging and young democracies:

1) The South Tyrolean case study must be assessed within the historical background: arising out of the ashes of the Second World War; previous efforts by Mussolini to ethnically "cleanse" the area of the German identity; kin-state support rendered by Austria after the Second World War; ongoing commitment of the international community to encourage a stable and lasting settlement for the province; and a long history of German residence in the area.

2) The unique institutional development of South Tyrol, which is based on consociational principles of power-sharing, community autonomy and community identification, and commitment to bilingualism, illustrate how regardless of the scepticism that is often expressed in contemporary literature about statutory imposed power-sharing and non-territorial autonomy arrangements, there remains room for countries and regions within countries to negotiate and develop constitutional resolutions to their unique circumstances. The confidence building that has arisen from the obligatory nature of the autonomy

arrangements cannot be overestimated. Although these arrangements may be unique to South Tyrol, it shows how pragmatism can give rise to unique constitutional settlements.

3) An aspect of the South Tyrolean experience that arguably offers the most insight into constitutional design is how asymmetry could be used to enable a region to develop institutional structures and policy processes that suit local needs. Although Italy has traditionally been regarded as a unitary system, the South Tyrolean experience has had a federal character for many years as a result of the scope of autonomy in legislative powers and the right to regional constitutional design. Although the principle of asymmetry has given rise to complexity, it has also created the basis for flexibility, stability and enhancement of national integrity.

4) The time it took for the South Tyrolean power-sharing and autonomy arrangements to come to fruition emphasizes the importance of constitutional growth, development and adaptation. In the case of South Tyrol, the ultimate objective took nearly half a century to materialize, but the general direction was set through the Paris Treaty and the subsequent UN resolutions. It takes time to negotiate and time to implement complex constitutional arrangements and the South Tyrolean arrangements continue to adapt to changes in circumstances. Currently, as mentioned above, the province is involved in discussions about how to respond to challenges brought about by the integration of immigrants and dealing with those persons who do not wish to identify with any of the language communities. This highlights what has been observed earlier in this article, namely that democracies often "manage" rather than "solve" the interface between accommodating diversity and facilitating power-sharing.

5) The power-sharing and autonomy arrangements of South Tyrol have been facilitated by the European context where high level recognition is given to the rights of minorities (Benedikter, 2006). The specific arrangements of South Tyrol are not found elsewhere in Europe, but the foundation of power-sharing and autonomy is viewed as credible and legitimate within the European context. Supra-national, regional cooperation agreements within the African, Asian and Middle Eastern contexts may in future be inclusive of supra-national standards for the protection of minorities and thereby establish a basis for more appropriate country-specific solutions to the challenges that are brought by ethnic diversity.

6) The process in South Tyrol of developing an integrative identity within the context of an institutional system that is based on ethnic separation is ongoing. The stability that has been

brought by the institutional arrangements has served South Tyrol well, but at a societal level the *de facto* separation and monolingualism remains relatively high. This in itself does not indicate failure of institutional arrangements, since social integration is challenging in most if not all ethnically divided societies. In terms of European institutional development, the South Tyrolean institutions are in their infancy. Critics of the South Tyrolean consociational approach may say that ethnic "freezing" has occurred as a result of the model of community identification, while proponents would say that had it not been for the power-sharing and autonomy arrangements, the fault line of separation, secession and disunity would have torn the province apart.

7) The South Tyrolese have established that their political institutions, administration and governance are based on the notion of equality of communities (consociational), rather than simple majoritarian arrangements.[56] The judiciary has accepted that special arrangements are required in the area due to the special make-up of South Tyrol. As a result, a balance is sought to be struck between individual rights and collective, community rights. While the South Tyrolean example may not be applicable to many other societies, the principle that is notable is the right of a polity to devise institutional structures that best suit their needs. The outcome may be unconventional, but the key question if whether the needs of a particular society are addressed through the institutional mechanisms.

8) The language based institutions of South Tyrol leave little room, if any, for integrative political institutions at the local level. The genus of institutions and political mobilization is language-affiliation, which limits opportunities for cross-cutting loyalties to develop at the local level. It is therefore not surprising that social integration has been relatively slow, particular outside of the main urban areas. An option to consider for South Tyrol in the future may be to devise a bicameral legislature whereby one house comprises the language communities and a second house is elected by way of popular vote. This may also be a way to deal with unfinished business, such as accommodation of immigrants and responding to those individuals who prefer not to associate exclusively with one of the three language communities.

9) Non-territorial autonomy and power-sharing along consociational principles are not suited for each of the ethnic minority groupings in the world. It is a unique system that can only cater for unique circumstances and conditions. Generally speaking, non-territorial and consociational arrangements are often frowned upon by constitutional theorists, but, as South Tyrol shows, the practice of institutional development sometimes demands that

constitutional theorists who oppose non-territorial autonomy and power-sharing adjust to accommodate the realities of contemporary society.

Conclusion

This article has shown how regional-based design of governmental institutions may strike a balance between the centrifugal and centripetal forces that often threaten the stability of young and emerging democracies. The institutional arrangements of South Tyrol are unique, but those institutions have been developed over many decades and have received the blessing of the international community.

South Tyrol demonstrates how regionally-based power-sharing and autonomy arrangements can be pursued without having to replicate similar institutions in other regions or in national institutions. Most importantly, South Tyrol shows how a balance can be struck between power-sharing and community autonomy, and how communities that live intermingled can exercise self-government over their culture, education and language.

Notes

[1] By "institutional development" reference is made to institutions of governance, namely legislative, executive and judicial organs of state.

[2] Refer for example in this regard to the violence that accompanied efforts in South Africa to adjust provincial boundaries, the growing demand by language minorities for more states to be created in India, and the inflationary growth of states in Nigeria from 3 to 36 with demands for at least 10 more states to be created. See De Villiers, 2012. See also the demands in Ethiopia for additional states to be created to accommodate nationalities who do not have an "own" state (Megersa, 2016).

[3] Generally speaking, autonomy can be territorial, whereby powers and functions are decentralized to jurisdictions, such as local governments which have territorial functions, or autonomy can be non-territorial, where powers and functions are decentralized to legal persona created by communities with jurisdictions over the language, culture, and customs of a community. See De Villiers (2016) and De Villiers (2014).

[4] For the purposes of this article, the author used the following definition for "minority": A minority group is regarded as a group of individuals that shares ethnic, religious, language and/or cultural characteristics, is generally a numerical minority in the entire state or in a region of the state, is in a non-dominant position via-a-vis the rest of the population, and is recognized objectively to be a minority and of which the members demand subjectively that they constitute a minority.

[5] Refer, for example, to United Nations. *Minority Rights: International Standards and Guidance for Implementation*. Geneva: United Nations Geneva, 2010.

[6] The province of Trento (Trentino) has similar powers.

[7] Although South Tyrol is constitutionally a "province", which in Italy is of a lower order government than a "region", the South Tyrolese refer to the province as a "*land*", which is similar to the federal-state governments in the Austrian and German federations where the constituent units of the federations are called "*land*" (singular) or "*laender*" (plural). South Tyrol, arguably, has more extensive autonomy that its *laender* counterparts in the Austrian federation.

[8] See Art. 116 of the Constitution of Italy.
[9] In 2014, about 42,500 persons of foreign citizenship resided in South Tyrol. 'Statistis*ches Jahrbuch für Südtirol 2014*/Annuario statistico della Provincia di Bolzano 2014*'*, Table 3.18, 118. For updated information refer to ASTAT at http://en.istat.it/.
[10] http://www.worldlibrary.org/articles/gruber-de_gasperi_agreement. The Agreement provided in short that bilingualism would be accommodated in the region, that mother-tongue education may be offered in German, that place names may be in German, and that the two languages would be equally treated in public affairs and public office. Importantly, as far as political rights were concerned, the Agreement provided that autonomous legislative and executive regional powers would be exercised by the region.
[11] https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/71/IMG/NR015271.pdf?OpenElement.
[12] The second phase of the Autonomy Statute took effect on January 20, 1972. See Constitutional Law No. 1 of 10 November 1971 and the Presidential Decree No. 670 of 31 August 1972.
[13] See sec. 6 of the Constitution of Italy and Law No. 482 of 1999, which affords protection of the different languages at the regional level.
[14] The preferential position of South Tyrol in Italy is described by Alber and Palermo (2012: 294) as 'the top of the inverted pyramid', since the autonomy of the province is so far reaching.
[15] McCulloch observes that '[u]nder conditions of insecurity, groups and their representatives are unlikely to settle for anything other than a strong guarantee of their share in power, regardless of electoral prospects. That is, negotiated transitions from war to democracy, or from majority control to shared power, are more likely to produce corporate consociational pacts.'
[16] Larin and Roggla refer to the South Tyrolean arrangements as 'one of the most successful cases of consociational conflict regulation in the world'.
[17] The use of short term power-sharing arrangements as part of a transition is not uncommon. See for example the transitional arrangements under the 1993 Interim Constitution of South Africa whereby power-sharing arrangements with a sunset-clause were built into the constitution for purposes of the composition of the presidency and cabinet.
[18] In his seminal work on symmetry and asymmetry, Tarlton referred to "political" asymmetry and "constitutional" asymmetry. Watts observes that the unique circumstances of some regions has meant that the 'only way to accommodate the varying pressures for regional government has been to incorporate asymmetry in the constitutional distribution of powers'.
[19] See Art. 116 and Art. 131 of the Constitution of Italy. The other special regions are Val d'Aosta, Fruili-Venezia Giulia, Sicily and Sardinia.
[20] Two of the special regions are islands, and three are unique in regard to their linguistic composition.
[21] Since Italy remained a highly centralized unitary system under the 1948 constitution, the special regions did not have their own "constitutions" as is often found in federations. The practical effect of the special autonomy statutes were, however, very similar to the constitutional instruments of federal states. The relationship between South Tyrol and Rome has been described as on "equal footing".
[22] The concept of gradual expansion of autonomy was followed by Spain after 1978 when it created historic and ordinary regions with different powers, but with the ideal that in due course there would be symmetry between all regions.
[23] The unitary nature of the 1948 constitution was also reflected in the absence of a second house wherein the regions were represented as is found in federations. The constitution therefore created autonomous regional entities without providing for those entities to be represented in a bicameral parliament. See Ziblatt (2006).
[24] The process of federalization comprised two main elements: statutory instruments and interpretations of the constitution by the constitutional court. In many respects the constitutional court became the main initiating forum for decentralization since it had to interpret the constitution and as a result of ambiguities the court could fill out the details. For a general discussion, see Palermo in Burgess and Tarr (eds.), (2012).
[25] One area where a classical federal approach has not yet been adopted is in the composition and functions of the senate, as second house of the national legislature. The second house does not function as a house of the states/regions and does not represent or reflect the interest of the sub-national units. The senate is in essence a house to "slow down" the legislative process through checks and balances, but without representing the interests of the regions, provinces or municipalities. Efforts to reform the senate in 2016 failed after a referendum was unsuccessful.
[26] See Art. 117 of the Constitution of Italy, as amended in 2001.
[27] Refer for example to the landmark decisions of the constitutional court in Judgement 282/2002, Judgement 303/2003, and Judgement 2/2004. In the latter, the court handed down a decision about the discretion of the regions to develop their own institutional structures, in this case the election and powers of the regional president. This decision established the basis for other regional basic laws (constitutions) to be enacted.

[28] For an overview of minority protection instruments in Europe refer to http://sznt.sic.hu/en/index.php?option=com_content&view=article&id=194:legal-instruments-of-minority-protection-in-europe-an-overview&catid=18:cikkek-tanulmanyok&Itemid=24 and http://pjp-eu.coe.int/en/web/minority-rights/documents.
[29] South Tyrol is, at the time of research in 2016/7, involved in a public consultation process to further review the autonomy arrangements.
[30] Refer, for example, to the Autonomy Convention that was launched in 2016 to revisit the Autonomy Statute and to explore ways to improve and enhance participation by citizens in the policy process. For a brief overview refer to Larin and Roggla (2016) and J Woelk (2016).
[31] See Art. 107 of the Autonomy Statute.
[32] Art. 30 of the Autonomy Statute.
[33] Art. 92 of the Autonomy Statute.
[34] Art. 56 of the Autonomy Statute.
[35] Art. 25(2) of the Autonomy Statute. This arrangement, in effect, restricts the political rights of citizens of Italy who relocate to South Tyrol, but it has been upheld by the constitutional court since it has as its objective the protection of minorities. See Constitutional Court Judgement 240/1975.
[36] Art. 56 of the Autonomy Statute.
[37] Art. 50 of the Autonomy Statute.
[38] Arts. 61-62 of the Autonomy Statute.
[39] Art. 52 of the Autonomy Statute.
[40] It is important to note that "preference to affiliate" does not equate to actual "belonging" to a specific language group.
[41] The number of immigrants who reside in South Tyrol is estimated to be at least double the number of Ladin speakers. It is estimated that approximately 9% of population of South Tyrol is foreign born. This change of population composition has caused Larin and Roggla (2016) to propose that the "others" category also be included in the proportions for forming government.
[42] Art. 89 of the Autonomy Statute.
[43] Refer to the equality clause of the Autonomy Statute, Arts. 99-100.
[44] A certificate of language proficiency is required to be appointed into any position in the public service.
[45] Since the legal system of Italy differs from other German speaking countries, a Joint Terminology Commission has been established for South Tyrol to develop and clarify legal terminology to be used by the civil service and courts.
[46] Art. 89(3) of the Autonomy Statute. The origin of this arrangement can be traced back to the Gruber-De Gasperi Agreement of 1946. Although it was foreshadowed in 1976 that the proportionality arrangement in the civil service would expire after thirty years, the ethnic quota basis is now ongoing albeit that basic parity of language groups was reached in the 1980s. See the discussion by Gudauner (2013: 191).
[47] Presidential Decree No. 574 of 1988.
[48] Art. 100(3) of the Autonomy Statute.
[49] Art. 19 of the Autonomy Act.
[50] Regardless of the formal requirement for bilingual teaching, at a societal level there remains a "rather limited proficiency" of the second language.
[51] A surprisingly large percentage of persons remain essentially monolingual, particularly in regard to immigrant communities.
[52] If access to a school is refused on the basis of language proficiency, the decision can be reviewed. Art. 19 of the Autonomy Statute.
[53] The reforms of 1972 have been described as the "Magna Carta of special autonomy".
[54] Around 90% of all taxes collection within South Tyrol are retained by the province.
[55] The current situation, in short, is that although legally speaking place names must be bilingual (or trilingual in the Ladin valleys), currently the only official place names are Italian because agreement has not been possible within the provincial parliament about enacting a law to deal with place names.
[56] South Tyrolese have learnt that 'the preservation of culture is a collective enterprise; that the individual flourishes better, is better able to preserve his culture and identity within the framework of a group; that rigid law is no answer to economic, social or cultural development; and that a living multicultural society requires techniques that induce on-going cooperation rather than confrontation'. (Alcock, 2001: 22)

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Chasing "Statistical Roma": Ethnic Data Collection in Czech Primary Schools

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Abstract

This article deals with the collection of ethnic statistics focused on the number of Roma pupils in various types of Czech elementary schools that has been undertaken since 2009. Since then, this collection has grown into a large annual monitoring process that is conducted in every elementary school in the country. Simultaneously, this development is attracting growing attention from opponents of such ethnic monitoring. The most provocative element is the method of the counting, which employs for the first time in the Czech democratic era attribution of ethnicity from the outside instead of the usual method of self-identification. I argue that this method is both legal and legitimate considering, on the one hand, the inadequacy of the national census and, on the other hand, the objective to lift discriminatory barriers to the inclusion of the Roma pupils into mainstream education. However, I insist that the main shortcoming of this kind of ethnic monitoring is the lack of an appropriate terminology. Thus, it is difficult to "place" the Roma in "their" statistics as there are no unambiguous definitions and criteria for how to identify them. Together with the important (and often negatively perceived) role that ethnicity plays in Central and Eastern Europe, this is the major factor generating criticism for the counting of Roma pupils.

Keywords: ethnic statistics; census; Roma; Czech Republic; ethnicity; race

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Ethnic statistics is a highly-debated phenomenon in Central and Eastern Europe, especially when it comes to the Roma minority. Is it legal to collect ethnic data? How and for what purpose should it be collected? And most importantly for this article, how should one name and define the person whose data is collected? These are some of the persistent questions accompanying the debates first and foremost related to the Roma. This article will look closely at a recent shift in the praxis of ethnic data collecting with regard to Roma in the Czech Republic—from strictly subjective self-identifying of an individual to ascribing "Romaness" from the outside. Although it is rather a continuous change (being significant for the first time some decade ago) and limited so far to a single area (education), it is nonetheless an unprecedented step among the group of post-Communist EU member states,[1] perceived by many as a contradiction to democratic constitutional liberties and a reversal back to the ways of a totalitarian regime in which ethnic identity was coercively imposed on individuals and abused by authorities.

In this article, I will not concentrate on the results of the statistical surveys, but just on the process, i.e. methods, terminology, and objectives. I will argue that while there should not be any doubts about securing protection of the personal data, the new praxis challenges the right to freely choose one's ethnic identity if the current legal terminology is maintained. To be more specific, the currently used terms "ethnicity" or "ethnic identity" (*národnost, národní identita, etnicita*) are all referring to social phenomena that arise from group interactions (Eriksen, 2001: 46) and thus are by no means anything into which a person is born and or which is genetically ingrained in a person's mind. It means that these terms are not suitable for labelling someone from the outside according to alleged "objective" criteria. However, the more external and "objective" terms like "race" are not accepted since they are perceived as highly inappropriate and incompatible with a wider terminological tradition of the Czech Republic or wider Central and Eastern Europe. However, I will argue that the external "ethnic labelling" from outside is inevitable in order to effectively address discrimination in Czech schools as the traditional methods of self-identification (used in general census) actually cement the unequal position of the Roma minority in the Czech society. Thus, the above-mentioned shift in ethnic data collection could be understood as a reflection of a gradual improvement of attitudes of the state authorities to the Roma minority.

I will also present arguments showing that criticism of this type of ethnic data collection is inevitable given the historically and culturally grounded role of ethnic identity in Central and Eastern Europe. Finally, I will insist that the organizers of such ethnic statistics cannot profess "political neutrality" and should rather accept more openly their responsibility in contributing

to creating the social reality. Whereas ethnic statistics were traditionally seen as a neutral administrative procedure to which Roma should be submitted and adjusted, ethnic monitoring in schools as the new praxis is a rather active tool of a positive change in the direction of Roma integration.

Roma have survived and escaped coercive policies in Europe both in distant and recent history when they were often physically "chased" to be punished and expelled. One may say that they continue escaping the effort to "catch" them symbolically (in statistical categories and scientific terminology) in these *bona fide* state policies.

1. Counting of Roma pupils

When, in September 2013, the Czech School Inspectorate sent a letter to directors of all "special schools"[2] in the Czech Republic, it caused a real shock. It demanded that all directors fill in a form asking how many Roma pupils they have in every class. If the director refused to do that, a school inspector would be sent to the school to count the Roma. The method of data collection was to asses who was Roma from outside rather than to ask the pupils directly. The assessment would be primarily derived from 'the opinion of the significant part of their surrounding on the basis of real or perceived anthropological, cultural or social indicators' (Tematická zpráva, 2015: 4). Quick reaction came from the Association of Special Pedagogues, which includes most of the above-mentioned directors of the special schools.

Although it was probably the most debated and visible ethnic data collection beyond the national census, it was not the first. In 2006, the Ministry of Labour and Social Security undertook such a narrowly focused statistical measure, driven clearly by the integration objection, in which the Roma "excluded locations" (commonly called ghettoes) were counted and the number of their inhabitants was estimated. In this research the "blended" definition of Roma, based both on self-definition and on "opinion of the majority", was first used. According to this definition, a Roma is 'such an individual who defines himself as Roma, no matter whether he claims this ethnicity on every opportunity (e.g. in a census form), or who is regarded to be Roma by a significant part of his surrounding which is based on real or perceived (anthropological, cultural or social) indicators' (Gabal, 2006: 10).

The next important step triggering the need for a specialized ethnic data collection was a judgment of the European Court for Human Rights in the case of *D.H. and others* vs. *the Czech Republic*. The case proved that a group of Roma pupils were unjustly sent to special schools,

which irrevocably harmed their future career prospects. As a sanction, the Czech Republic had to pay compensation and was asked to replace discriminatory treatment of the Roma in education. In order to measure the impact of (future) inclusive measures, the Czech Republic decided to introduce ethnic monitoring. Two such surveys were carried out by Ministry of Education as early as 2009. However, it was focused on a small sample mostly of "special schools" only (50 and 31, respectively). The surveys were dependent on the willingness of their directors who were responsible for providing the ethnic data, so there was low return rate of the survey questionnaires. The same applies for another survey that took place in 2009. It was organized by the Office for Information in Education and addressed all primary schools in the country (4,189), but only 2,797 cooperated with the Office. In the following year, a sample of "special schools" (171) was visited by employees of the Czech School Inspectorate. The employees counted the Roma pupils directly in classrooms, so the results were not dependent on the willingness of the school directors. In the school year 2011/2012, the organization of ethnic statistics was taken over by the Czech Ombudsman Pavel Varvařovský. He was the first one that elaborated a detailed and well-argued methodology (see below). He used the sample from the Czech School Inspectorate, but considered only 67 of the schools, which he selected on a random-choice basis. In his monitoring, he employed two sources of data simultaneously. The teachers were asked for their estimates and ombudsman employees were sent to these schools to complete the counting at the same time (Popis metody, 2012: 9-10). In the year 2013 the initiative was returned to the Czech School Inspectorate, which again used its original sample with the above-mentioned letter to directors of all the schools informing them about their obligation to provide the Inspectorate with demanded data. The survey was repeated in the following 2014/2015 school year, but it was addressed to all schools that educated at least one pupil on the basis of lower standard curricula designed for pupils with "light mental handicap", so the sample had risen to 1,325 schools. Thus many "normal" schools were included in the sample too. Another milestone in counting of Roma pupils was the school year 2015/2016 when again (as in 2009) all Czech primary schools (4,098) were addressed with the demand (obligatory, unlike in 2009) for ethnic data concerning Roma pupils (Tematická zpráva, 2015). The same was repeated in the latest school year (2016/2017), when responsibility for the monitoring was regained by the Ministry of Education. This was an important step as it increased the enforceability of the request for data since the school staff is directly subordinated to the Ministry.

Analysing the development of this kind of narrow focus ethnic statistics, it could be perceived that there is a clear (though not linear) tendency to broaden the sample and to secure

its validity (use of sanctions in response to ignoring the request and sending of own officials to count the pupils). Important incentive was given also through the Action Plan of Implementation of the "DH" Judgment, which was finally adopted in 2011. One of the measures included into the Action Plan was to carry out regular annual surveys on the number of Roma in special schools in order to find out whether they are overrepresented in them. If that was the case, it would indicate discriminatory treatment of the pupils. Since then, the Ministry of Education has been provided every year with more valid data concerning the share of Roma in the Czech educational system, which has significantly influenced public debate and policy actions aimed at replacing indirect discriminatory practices.[3]

2. Is it legal?

The criticism by Jiří Pilař, former chairman[4] of the above-mentioned Association of Special Pedagogues and the author of the letter addressed to the Minister of Education (Pilař, 2013), could be divided into three main lines. First, he claims that the demand of the inspection breaches the right to freely choose one's own ethnicity, which is a constitutional right anchored in the Charter on Basic Rights and Fundamental Freedoms. In this argument, he emphasizes that the primary method recommended by the inspectors is to ethnically "label" the pupils with no regards to their own will. Another argument is that this kind of personal data, which might be regarded as "sensitive data", are not sufficiently protected from abuse. The last argument that is important from the perspective of this article is the lack of exact criteria according to which "Roma pupils" could be identified. As he put it, even if there are standard scientific criteria of what indicates the "Romaness" in any of the above-mentioned areas (anthropological, cultural, social), the school masters are not experts in this subject so 'they lack information where to find such indicators'. He goes on saying that it is also not clear what is the sufficient extent of the 'important part of pupil's surrounding' that should—according to the inspection's methodology—be used to decide on "Romaness" of the pupil (Pilař, 2013). In his most recent reaction to the latest counting of Roma pupils, Pilař argues that it is unjust if, for instance, one child of mixed Roma and non-Roma parents is identified as Roma by a counting person, whereas his blond brother drops out of the statistics. He also brings an example of children of Hungarian descent who could be wrongfully labelled as Roma because they have darker skin, black hair, and "typically Roma" surnames.[5]

The most thorough "answer" to these arguments could be found in a report[6] of the ombudsman for the Czech government from 2012 after he completed the first survey with the

elaborated methodology and process description in the school year 2011/2012, when only 67 randomly chosen "special schools" were approached. The ombudsman's report dealt with similar problems, although not in a way of replies to someone's else inquiry. The report—submitted as an internal document for the government—was not known to the Association of Special Pedagogues (or they pretended that they had not known it).

The least complicated issue is probably the protection of sensitive data. According to the Czech Data Protection Law from the year 2000, personal data are under a strict legal protection. Even stronger protection is granted to "sensitive data", to which one's ethnicity belongs. It is impossible to process sensitive data unless the explicit consent of the person whose data are processed is given or it is collected for health or security reasons. But there are specific exceptions.[7] Among them is the processing of personal data for statistical and archival purposes that are regulated by specific laws. The ombudsman states that the aggregated anonymous way of data collection, which is the case of both of the surveys, fits exactly into this exception since no names or other personal identifiers are accompanied with the data on ethnicity (Výzkum, 2012: 7).[8]

To be more flexible and less conservative in a personal data protection is recommended also by the legal analyses of the Open Society Institute. In its book 'No Data–No Progress', the authors state that 'the Council of Europe notes that statistical results are not personal data because they are not linked to an identifiable person' (No Data–No Progress, 2010: 14). Based on their wide international comparison, they found out that the data protection laws are often overinterpreted and that 'overbroad interpretation of data protection standards goes beyond the intent of those very standards' (No Data–No Progress, 2010: 28, 16). They conclude that 'it is simply a myth that the collection of ethnic data in countries is forbidden' (No Data–No Progress, 2010: 28).[9]

When it comes to the right to freely choose one's own ethnicity, it may be at the first issue that is regarded as breaching Article 3 point (2) of the Charter on Basic Rights and Fundamental Freedoms, which stipulates that '[e]verybody has the right freely to choose his nationality'.[10] It is prohibited to influence this choice in any way, just as is 'any form of pressure aimed at suppressing a person's national identity'. The ombudsman uses the same argument. 'Free choice of belonging to national minority […] is not violated by anonymous data collection' (Výzkum, 2012: 8). In my opinion, this is not a solid argumentation, however. The question is not what happens with the data after they are collected, but the very fact that the person (pupil) may be ascribed to another ethnicity than he/she freely wishes. But if we look closer at the

methods of the ombudsman's survey we find out that he simply did not ask the pupils at all. Even though he uses the definition of the Ministry of Labour and Social Affairs containing also self-assessment, he claims that he in fact used only 'observation (external assessment) by the third person' together with 'identification according to indirect criteria' (Popis metody, 2012: 14). Thus, no conflict in terms of someone's ethnicity happened since none of the pupils were asked, nor was anyone told the decision on their ethnicity by the counting persons. The conflict is thus only theoretical but can never happen in praxis.

Therefore, the above-described counting of Roma pupils conducted either by the Czech School Inspectorate or by the Ministry of Education, as a new type of the ethnic data collection, is quite different in this regard. Since there is no direct interaction with the pupils, no impact on their identity could be registered. Not only are the pupils not asked about their ethnicity and not informed about results of the survey, but they even did not know that they were counted.

3. Roma escape the national census

It is necessary to mention in this context that the method based on self-identification and thus complying with right to freely choose one's own ethnicity as is used in the nation-wide census would not bring the demanded data. The ombudsman explained it clearly in his report, where he states that when it comes to the planning of anti-discrimination measures it is important to find out who is perceived as a minority by the discriminating majority. Hence, self-definition of the individual does not play a decisive role. Another crucial fact is that the discriminated minority is often stigmatized in the wider society (including media, etc.) so that its members are not willing to confirm and reveal affiliation to such a minority (Popis metody, 2012: 6). He went further into the specific situation of the Czech Republic when pointing out to the fact that in the last general census in 2011 only 13,150 people claimed Roma ethnicity (filling in either "Roma" or dual "Roma and Czech" identity), whereas according to demographic estimates there are about 150-300 thousand Roma living in the Czech Republic. Therefore, it is presumable that the Roma pupils (more precisely their parents) would not claim Roma ethnicity in the school survey either (Popis metody, 2012: 13). Thus, the traditional hypocritical logic "no Roma (according to official data)—no problems to solve" of politicians and other decision-making actors may continue.

Moreover, what is no less important but is not mentioned by the ombudsman is the fact that the traditional ethnic data collection method based on subjective self-identification is, as a

consequence, even an active instrument of maintaining structural inequality and barriers of social inclusion. The problem concerns the majority population's attitude towards the Roma. A Czech social scientist Pavel Barša speaks about "integration paradox" with regard to the Roma. Czech society wants the Roma to assimilate culturally and, at the same time, does not allow them to identify with the Czech nation (assimilate to the Czech identity). As Barša put it, 'Czechs understand the Roma only in their own categories' (2005). According to Katřina Klíčová, inspired by Barša's thoughts, the Czechs demand assimilation of the Roma into Czech society as well as into Czech way of collective existence at the same time (Klíčová, 2006: 252). Due to the results of the national censuses, Czech society thus has two reasons for dissatisfaction with the Roma: they neither assimilated into Czech culture, nor "reveal" their "true" Roma ethnicity.

But blaming the victim (the unadaptable Roma) is just one aspect of the problem. As Kateřina Klíčová states, Czech politicians, civil servants, NGO workers, Roma leaders and social scientists all came with their theories explaining the discrepancy between the census results and "real" numbers of the Roma. Klíčová identified the most frequently used theories: fear (the Roma were afraid of abuse of the data), misunderstanding (nobody properly explained to the Roma the difference between the country of origin and ethnicity), and nonexistence of ethnic identity among the Roma (so called "ethnic indifference") (2006: 233, 235-241).[11] Important in our context is the fact that all of the three reasons work with the "evolutionist" paradigm of the Roma insufficiency and immaturity. In other words, despite such a long time passing since the end of the totalitarian regime, the Roma were not able to get rid of their fear. They were not yet able to gain more information and they did not reach the stage of a matured national consciousness. Thus, the role of the majority population is to force them (or even punish them for their poor performance in their integration) or to help them. I argue that such a preconception expressed every ten years by that "discrepancy" in the national wide censuses maintains a paternalistic attitude towards the Roma and helps keeping the structural inequality of "us"—matured, wise, experienced Czechs—and "them"—underdeveloped, inferior, uninformed Roma. The national census with its principle of subjective self-identification thus indirectly accords with the way in which most of Czech society looks at Roma in their everyday interactions. And, most importantly, it accords with the method of paternalistic "special treatment" that they need from an early childhood and that would safely keep them where they are, including the segregated special school.

4. Neither ethnicity, nor race

In my opinion, the core of the problem which is not properly addressed by proponents of this kind of ethnic data collection in the Czech schools and which provides its opponents with arguments for criticism is an inappropriate terminology. As long as the notion "ethnicity" is used it will always be, at least at the theoretical level, difficult to reconcile it with the legal provisions (fundamental freedom), as well as with the scholarly understanding of ethnicity (see e.g. Eriksen, 2001). The definition of ethnicity provided in the ombudsman's report is confusing. On one hand, it confirms the constructivist nature of this phenomenon, while on the other hand, it references assigning someone's ethnicity according to perception of the out-group (Popis metody, 2012: 5). Primordialist considerations are apparent in statements about a 'traditionally low willingness to self-identification of the Roma', presuming that the Czech ethnicity to which they mostly affiliate in the census is not their "true" identity (Popis metody, 2012: 13).[12] As such, the ombudsman created grounds for a hypothetical conflicting situation when a person is "given" a certain ethnicity in contradiction with his/her own identity.

The fact that ethnicity is regarded as an inappropriate term also by the counting bodies themselves is quite visible in their reports. Whereas in the ombudsman's report from 2012 formulations like "ethnicity", "ethnic composition" or "ethnic data" are very frequent, in reports from the two latest ethnic data collections conducted by the Czech School Inspectorate (2015) and the Ministry of Education (2016) there is just a one single word derived from "ethnicity" in each report, not even directly linked to the counted persons (Tematická zpráva, 2015: 3; Zpráva, 2016: 4). The counted persons are called simply "Roma" or "Roma pupils" or reference is made to their "Romaness" (*romství*). Terms like ethnicity, ethnic group, nation, etc. are not substituted with anything else. In this way, the potential conflict with the right to freely choose ethnicity is avoided.

Another term I will pay attention to is "race". This is not present in any of the official documents of the state authorities. However, it sometimes appears in the statements of opponents of the studied ethnic data collection, often in the context of allegedly "racist" methods and practices of the counting bodies. It addresses primarily the indicators of "Romaness" stipulated by the state authority. The nature of the problem is very similar to the previous one. In other words, if ethnic identity is to be assigned from outside, the same question on the criteria of such an assignment logically arises. The ombudsman, in his report, acknowledges that using any method other than self-identification is not ideal since 'there are no scientific methods how to detect objectively ethnic identity of an individual' (Popis metody,

2012: 13). Nevertheless, he prepared a set of particular indicators for class teachers, who were asked to conduct the "identification according to indirect criteria". These are as follows: typical Roma surname, Roma origin openly declared by at least one parent, Roma culture in a broader sense (speaking Roma language, playing Roma music, maintaining some of the Roma traditions etc.), or living in a socially-excluded neighbourhood (Popis metody, 2012: 14-15).

When looking at this problem from terminological perspective, one may consider using the term "race" as a more suitable expression for what is being measured in this data collection. Despite thorough biological deconstruction of the concept of race, it cannot be simply omitted in social sciences. As Eriksen put it, the 'concepts of race can nevertheless be relevant to the extent that they inform people's actions: at this level, race exists as a cultural construct' (2002: 5). According to Eriksen, there are authors who use the notion of "race" in their analyses in order to distinguish precisely between the "external" categorization and the "internal" self-identification of people. Referring to Michael Banton, he states that 'ethnicity is generally more concerned with the identification of "us", while racism is more oriented to the categorization of "them"' (Eriksen, 2002: 5-6).

The responsible bodies did not engage the "racial" terminology, however. One has to take into account that, unlike in English speaking countries, the "racial" categorization is discredited in the legal context.[13] Hence, using "racial" terms was out of question. Instead of using them, the organizers of the data collection clearly tend to water down the discrepancy between these criteria of "Roma ethnicity" and the lack of their foundation in scholarly terminology and theories.[14] The indicators are introduced by the ombudsman as 'factors that <u>may</u> [underlined in original] influence one's ethnicity' (Popis metody, 2012: 13). Except for "Roma" and "non-Roma", the counting person could also use a category of 'it is not clear whether the pupil is Roma or not' (Popis metody, 2012: 14). The Roma ethnicity was always indicated by two persons independently in order to achieve higher confidence. It was assessed both by an employee of the ombudsman (not knowing the pupils) who 'looked at the pupils in the eyes of the majority population' and by a class teacher (knowing the pupils well) who used the above-mentioned indicators.

Typical for this and similar surveys using the external assessment based on indicators of Romaness is the utilization of the precedent for such an approach that is traced back to the analyses of the Roma "ghettoes" conducted by the Ministry of Labour and Social Affairs in 2006 (see above). In every report, there is a "pedigree" of the definition of Roma, which was already (successfully) applied in some previous survey so that the authors do not bear the main

responsibility for it. As stated in the report from the survey in 2015, which was done by the Czech School Inspectorate, 'due to the nature of the research and the extent of subjectivity that influence it, the whole survey should be regarded not as statistics but as the evaluation of trends in development of numbers of the Roma pupils' (Tematická zpráva, 2015: 4). Similar expressions underlying that the data are mere "estimations", not statistics, appear also in the latest report from the survey in 2016. Hence, it could be party understood as a reaction to the criticisms. No one is forced to follow rigorously those "racial" criteria as the aim of the survey is not to obtain "exact" numbers.

5. No ethnic statistics are politically neutral

Although claiming that these are not "statistics" but "estimations" is an elegant way to escape criticism related this type of ethnic data collection, it is not very sincere. Consider the fact that the school directors are asked to fill in an exact number of pupils whom they regard as Roma, not a range (e.g. 50-100 Roma pupils in the school). And, of course, the Ministry presents the data results in exact numbers too. Due to the persistent critical voices, it is clear that the opponents of this method of ethnic data collection did not fully accept such a bureaucratic terminology fog either. In my opinion, the organizers of the counting of Roma pupils could have gained more credibility had they accepted more responsibility for all pitfalls of ethnic statistics. First of all, the Ministry of Education could no longer present itself as a neutral observer of "reality" in Czech primary schools, but as an active stakeholder in shaping and even "creating" the social reality (see e.g. Kertzer and Arel, 2001). There is little doubt that every census is a form of performing state power, or "biopolitics" in Michel Foucault's terms (Foucault, 2003). Naomi Mezey writes about creating "statistical people" by state census. In her understanding, the census 'functions as a procedure of objectification and subjection'. She goes on saying that 'the statistical person is not a person at all, but rather only a collection of risks' (Mezey, 2003: 96).

Another related issue, especially when it comes to ethnicity in census, is the designing of the (ethnic) category. Benedict Anderson, for instance, described how people in Malaysia with multiple identities were forced to choose their ethnicity for the purpose of national statistics. He showed how particular ethnic categories changed many times in censuses over the last two centuries. The ethnic categories were constantly redefined and re-constellated (Anderson, 1991: 166, quote in Klíčová, 2006: 226).

Similar remarks were made also by a Czech social anthropologist Jakub Grygar, studying ethnic categorization in censuses of inhabitants of Teschen Silesia. As Grygar put it, statistical categories are signs, i.e. they are not the same as the content of the identity, but they only represent it. As representations, they are always historically determined and limited. They are more an instrument of state power and control, rather than an authentic reflection of understanding of one's self (Grygar, 2008: 74). Therefore, 'a list of statistical categories of ethnicity is rather a tool of methodological nationalism of state power and social scientists, who help to construct it' (Grygar, 2008: 73).

In case of Roma minority, examples are given by Kateřina Klíčová, who studied the aftermath of the Czech ethnic data collection in censuses on the local Roma. She analysed how the French "Gypsies" were de-ethnicized, being called in the French administrative terminology "*gens du voyage*", which is rather socio-cultural category. She also depicted how they were ethnicized, being called Tsiganes or Rom, in public discourse in certain contexts again (Klíčová, 2006: 228-230). When it comes to the Czech Roma, she described one of the affirmative programmes of the Ministry of Education running from the late 1990s. The aim of the programme was to give small scholarships to secondary school students of Roma origin. She states that it was often difficult to find out who is Roma and who is not. It was very difficult to specify "Romaness". In many cases, socially disadvantaged students had to identify as Roma in order to get the scholarship even though they would not do so in any other circumstances, so in effect their poverty was ethnicized (Klíčová, 2006: 225-226).

Of course, one may argue that in the studied case of counting Roma pupils the impact on the counted individual and their identity is not so dramatic. Due to the methodology of the Ministry of Education, the pupils do not know that they are being counted. One can hardly speak about any performance of the state authority when the persons in focus are not forced to adjust themselves into any category. Moreover, they "escape" from the category of "statistical Roma" because of the explicit denying by the Ministry that the procedure is ethnic statistics. Nevertheless, presenting the results in the form of a table displaying the number of "all pupils" and "Roma pupils" is quite a clear example of shaping social reality, at least by dividing the pupil's body into selective and arbitrary categories.

However, what makes this active role of a body of state power in shaping social reality legitimate is the purpose of it. Whereas in traditional general censuses the purpose is to provide "neutral" statistical material, which is then used for various reasons (and gives ground for theories of "immature" Roma hiding and denying of their ethnicity), the purpose of counting of

Roma pupils is strictly linked to the urgent need of social integration of the Roma minority. Unlike the sociological perspective of the counting of Roma pupils, the morality of the specific purpose of it is well reflected by the organizers of the data collection (Ombudsman, Czech School Inspectorate, and Ministry of Education) and becomes one of the fundamental pillars of their argumentation.

6. Burden of the "ethic nation"

When analysing why the studied type of ethnic data collection is so revolutionary and why it also attracts so many critical voices, one has to look at a regional and historical context of Central and Eastern Europe. It is essential to emphasize that ethnicity is a very important layer of identity so that it is a sensitive issue to interfere in someone's ethnicity in this part of Europe. First of all, it must be made clear that Central and Eastern European countries, including the Czech Republic, traditionally distinguish between nationality in terms of citizenship (*občanství*) and nationality in terms of ethnicity (*národnost*), which is not the case of states following the French model (in an ideal-typical version) of strictly civic-political nation (Brubaker, 1996). According to some authors (most notably Opalski, 2002), distinction between ethnicity and citizenship was deepened in post-Communist states due to the long-term influence of primordialist Soviet academic theories (such as by Yulian Bromley or Lev Gumilev), as well as to the underdevelopment of civil society that would foster civic-political identity. Rogers Brubaker draws attention also to the role of the Soviet policy of national "management" that became a role model for other states in the Soviet bloc. As he put it,

> ethnic nationality (*natsional'nost'*) was not only a *statistical category*, a fundamental unit of social accounting, employed in censuses and other social surveys. It was, more distinctively, an obligatory and mainly ascribed *legal category*, a key element of an individual's legal status. (Brubaker, 1996: 53, emphasis in original)

If we narrow down our focus to the case of ethnic statistics in Czech society, we would see that ethnicity was a stable element of censuses for a long time. What varied was the method of identifying ethnicity. Whereas in the Austro-Hungarian era the main category deciding about someone's ethnicity was the used language (*die Umgangsprache*), in the independent Czechoslovak Republic the category of ethnicity proper (*národnost*) was established. The "objective" criteria were accompanied by subjective self-identification. However, in the interwar period other categories like religion or the used language were equally or even more important in certain administrative contexts (for instance, collective rights for the German

minority). Another example of ascribing ethnicity from outside at that time was a special "Gypsy card" (based on Act No. 117 from July 14, 1927), which was an obligatory identification card for all people who were perceived as "Gypsies" by the state authorities.

During the Second World War and right after, the worst abuse of ethnic data in Czechoslovak history took place. In particular, the fact that data on Jews (derived from a much more extensive religious community database than the national census) was used by Nazis during the Holocaust and data on Germans and Hungarians (based on census) was used by post-war Czechoslovak authorities in order to perform collective punishment should be mentioned. After the Second World War, a subjective understanding of ethnicity was officially maintained in the census questionnaires. Nevertheless, "third party" ethnic categorization of citizens reappeared again in a secret way. People of Jewish origin were ethnically labelled with no regards to their subjective identity. These data were kept secretly by the state security bodies for their own purposes (Krejčová, 2006). Most significant was the case of Roma, however. They were categorized as Roma directly by a counting official (writing down a letter A on the census form) without their consent in the last two nation-wide censuses in the Communist era in 1970 and 1980 (Klíčová, 2006: 234).

Returning back to Czechoslovak Roma, they suffered from two kinds of discrimination. First, their right to freely choose their ethnicity[15] was not secured since they were counted directly by a state official according to his/her own decision. Second, they were among the officially non-recognized minorities that were not granted any minority rights. Their Roma identity was condemned as just a backward social-class identity that should be assimilated into the mainstream (higher) Czech social strata.

After 1989, two crucial changes when it comes to the ethnic statistics can be observed. Firstly, claiming ethnicity in census became unlimited. No options were predefined and none were excluded as "non-recognized". Secondly, this freedom of self-definition was accompanied by an overall diminished interest of the state in ethnicity as a statistical category. The answer to the question in a census form has been non-obligatory (unlike most of other census questions) since the first post-1989 census. One can even claim two ethnic identities at the same time. Ethnicity was no longer a decisive factor of state authorities in any aspect of one's life. It disappeared from identification cards. That has to be taken into account when the criticism of the ethnic data collection of the Roma in the Czech Republic is studied. There is certainly little support in the Czech society for returning both the administrative importance of ethnicity and interference of state into one's own ethnic identity. Therefore, any attempts of state authorities

in these directions will inevitably be opposed so that there will always be people challenging the legitimacy and validity of the data collection results claiming that it is a "totalitarian" or "racist" procedure.[16] It should be accepted that besides inevitable terminological difficulties that go hand in hand with "objective" ethnic identification from outside, one has to take into account high sensitivity of issues related to ethnicity in Central and Eastern Europe.

Conclusions

Changing perspective from self-definition to ascription of ethnicity from outside was a radical step in ethnic data collection that has been recently taken by the Czech Republic. It could be perceived as an unprecedented and even provocative milestone in national minority policy development in Central and Eastern Europe. However, despite all the controversy, it could be seen as a way towards equality. The ethnic statistics became an important tool not only for the measuring of effectiveness, but also for justifying concrete policies aiming at equal educational opportunities for Roma pupils. The methodological shift in ethnic data collection also brought a significant shift in public and political debate. For the first time the debate moved from the contours of national census into much more specified and focused statistics. And it moved from discussing how to "persuade" the Roma to claim "their" own ethnicity into the debate how to define the Roma at all. Yet the state is not able to find a proper terminology regarding the collected persons.

One may also conclude that the highly-contested term "race" has to be dealt with more openly. In situations in which there are persisting strong racial prejudices in the society, the term "race" cannot be considered taboo in an academic discourse. The issue of racial discrimination could hardly be solved unless "race" is directly addressed and new way of using the term in both academy and politics is sought. Instead of its biological connotation, its sociological implications should be studied.

After centuries when Roma were hunted and expelled from one country or region to another, now there are attempts to "catch" Roma in a symbolic and terminological meaning. In the first period of the post-Communist regime, a "national" category of Roma was prepared for them. But they were somehow not willing to get into it. Nowadays, the state counts the Roma (pupils) on its own, which makes it in a certain respect similar to the "external" identification that took place during ethnic data collection in the Communist regime. Unlike in non-democratic periods in the Czech history, the purpose of "chasing" the Roma is no longer their

eviction or forced assimilation but, at least officially, their inclusion into the society on an equal basis.

Notes

[1] Although there have been some other attempts at ethnic statistics related to the Roma in other post-Communist states, especially in the Balkans (No Data – No Progress, 2010: 29-32) and Hungary (Krizsán, 2001: 192-193), the Czech example exceeds these cases in many respects. Mainly, it is a regular (on a yearly basis) and relatively broad (since 2015 all pupils in all Czech primary schools are included) survey, not just a limited scale one.

[2] The term "special schools" refers in this context to schools which are formally the same as ordinary primary schools but which use curricula for pupils with "light mental handicap" (*LMP – lehké mentální postižení*). They were officially called "special schools" (*zvláštní škola*) before 2004, but since the amendment of the Law on Education they have been called either practical schools (*základní škola praktická*) or just primary schools without any special name. After the law amendment in 2004, the official term "special school" in Czech (*speciální škola*) is reserved for schools educating mainly pupils with more serious mental handicaps (such as autism or Down Syndrome). A lot of confusion stems from the fact that there are two synonymous expressions for "special" in the Czech language.

[3] The issue of Roma discrimination in the Czech educational system and analysis of anti-discrimination measures are not in the primary focus of this article. However, it is clear that data from the counting of Roma pupils played a crucial role in pursuing the measures (see e.g. http://zpravy.idnes.cz/pruzkum-skoly-segreguji-zaky-rom-rovna-se-mentalne-postizeny-pb5 /domaci.aspx?c=A090703_170709_studium_bar). On the contrary, if we look at the side of the opponents, clearly represented by the Association of Special Pedagogues gathering foremost masters of "special schools", it is evident that they belong to the hardline opponents of inclusion of the Roma to the mainstream schooling (see e.g. http://www.romea.cz/cz/publicistika/rozhovory/nadeje-na-spravedlivou-skolu-od-vizi-akademiku-a-blaznivych-hipisaku-k-novele-skolskeho-zakona). One may even assume that their opposition to ethnic monitoring has economic grounds. If all Roma pupils with a "light mental handicap" diagnosis would be integrated into mainstream schooling, then "special schools" would be significantly reduced. This might discredit their argumentation against the ethnic data collection from the very beginning since they feel threatened by data which could prove discrimination and initiate remedial measures. However, one shall not forget that the Roma counting was criticized also by people who do their best to speed up Roma integration.

[4] Nowadays, he is chairman of its Prague branch only. Most recently, a dubious organization (not registered anywhere with unclear membership), the Professional Union of Teachers has taken over the leading position among the opponents of the ethnic statistics. It is a logical shift as the latest surveys were carried out in all primary schools so the "advocate" representing only teachers from special schools plays a diminished role.

[5] http://www.aspcr.cz/asociace-specialnich-pedagogu-cr/2016-10-29-jiri-pilar-ke-scitani-romskych-zaku.html.

[6] The Report is available at:
http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/Vyzkum_skoly-zprava.pdf.
The attachment is available at: http://cosiv.cz/files/materialy/cesky/Vyzkum_skoly-metoda.pdf.

[7] Mr. Pilař often argues this using a statement of the Office for Personal Data Protection from September 2012. According to the Office, it is not possible to stipulate whether the data collection corresponds to any of the exceptions that would allow such activity. However, in the statement of the Office, a lot of uncertainty and conditionality could be felt. It seems that the Office simply lacked detailed information about the case. See e.g. http://www.ucitelskenoviny.cz/?archiv&clanek=7530.

[8] The same applies for the Charter, which declares in Art. 10 the right to protection of one's good reputation and prohibits unauthorized collection and misuse of personal data. In point (3) it stipulates that '[e]veryone has the right to be protected from the unauthorized gathering, public disclosure, or other misuse of his personal data'.

[9] Similar conclusions can be drawn up from analysis of Patrick Simon (2007).

[10] The Czech word for nationality (*národnost*) should be understood as "ethnicity" in English.

[11] Klíčová in her profound analysis points out to the fact that identity is not static, essentialized, and exclusivist entity, but a multi-layered, dynamic, and contextual process. Thus, one can create or select from a number of overlapping identity layers according to the reference frame. Therefore, the census served in many cases as an

opportunity to express Czech identity in civic-political meaning from a number of other identities. It means that, whereas the above-mentioned three reasons for "denying" Roma ethnicity certainly played important role (especially week national consciousness due to the lack of nation-building past), sincere expression of the wish of "being Czech" was widely overlooked by non-Roma observers (Klíčová, 2006: 242-246). In addition to that, there are certainly some other reasons. The reply to the question on ethnicity was not compulsory so many Czech inhabitants had left it blank. Another important fact is that many Roma (especially in "urban ghettoes") live outside their permanent address so that they did not get the form and dropped out of the census completely.

[12] At this point the ombudsman participates in the above-mentioned popular explanations of the "unwillingness" of the Roma to "reveal" their identity.

[13] It does not mean, however, that the term "race" is not used in other realms. On the contrary, elements of racial theory are a frequent topic of public and political debates.

[14] Similar difficulties were faced also by countries where "racial" terminology is (at least to some extent) acceptable in official (administrative, legal) use. Even such an experienced country in ethnic data collection as the United Kingdom has been struggling with the same problem since the 1960s. In every census, different categories for identification were prepared as they often did not reflect the ways in which the minority groups identified themselves. For different statistics, different methods (self-assessment or external "observation") were applied. Moreover, the British authorities were not certain whether to use "ethnic" or "racial" terminology. When using the latter, they became a target of anti-racist criticism ("all humans belong to one race") which reminds of the rhetoric of some of the Czech critiques a few decades later. Finally, the British authorities decided to use "ethnic" terminology ("ethnic groups") while using rather confusing mix of racial ("white", "black"), macro-regional (e.g. Caribbean, African) and ethnic (e.g. Chinese, Irish) categories and definitions of the groups (Banton, 2001).

[15] In every census in Communist Czechoslovakia the question on ethnicity was defined as a subjective self-identification. In 1980, it was furthermore emphasized that ethnicity is based on "one's own conviction" (see Klíčová, 2006: 234).

[16] No matter what were the actual arguments and motivations of the particular opponents mentioned in this paper.

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Metropolitan and Post-national Urbanity Beyond (Pluri)nation(al)-states in the EU: Benchmarking Scotland, Catalonia and the Basque Country

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Abstract

This article compares the cases of the three small, stateless, city-regional nations of Scotland, Catalonia, and the Basque Country in the period after September 2014. Since the referendum on Scottish independence, these nations have, depending on their unique contexts, engaged differently in democratic and deliberative experimentation on the "right to decide" their futures beyond being referential (pluri)nation(al)-states in the UK or Spain. Most recently, the Brexit referendum has triggered a deeper debate on how regional and political demands by these nations could rescale the fixed (pluri)nation(al)-states' structures while even directly advocating for some sort of "Europeanization". Based on a broader research programme on comparing city-regional cases titled 'Benchmarking City-Regions' (www.cityregions.org), this paper argues that the differences in each of these three cases are noteworthy. Yet, even more substantial are their diverse means of accommodating smart devolutionary strategic pathways of self-determination through political innovation processes among pervasive metropolitanization responses to a growing "post-national urbanity" pattern in the European Union. Ultimately, this paper aims to benchmark how Scotland, Catalonia, and the Basque Country are strategically moving forward beyond their referential (pluri)nation(al)-states in such a new European geopolitical pattern that can be called "post-national urbanity" by formulating devolution, and even independence, in unique metropolitan terms.

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Nowadays, city-regions (Harrison, 2010; Paasi and Metzger, 2017) are neither static territorial entities nor isolated geographical areas inside (pluri)nation(al)-states, such as the United Kingdom and Spain, among others, in Europe. Nation-states—either actively or passively, voluntarily or involuntarily, sceptically or acceptingly, alone or with others—end up playing the game of interdependence and entering into agreements on common goods. Therefore, in this era of politics beyond nation-states' borders and given the intimate relations between the nation-states and city-regions in recent years (Calzada, 2015a), the hegemonic idea that predominantly considers city-regions as sub-national entities nestled within singular nation-states (Agnew, 2015: 120) has been superseded in some small stateless city-regional nations such as Scotland, Catalonia (Colomb *et al.*, 2014), and the Basque Country (Calzada and Bildarratz, 2015). Some could argue that this change is caused by a new political equilibrium regarding regional identity confrontations as an evolutionary step toward rescaling some specific nation-states. As such, two main hypotheses could be presented in this article:

1) A new political pattern of regionalism characterized by "smart devolution" (Calzada, 2016; Calzada, 2017c; Calzada and Bildarratz, 2015; Goodwin *et al.*, 2012; Khanna, 2016) and self-determination claims (Guibernau, 2013) expressed and embodied through geo-democratic practices such as the "right to decide" (Barceló *et al.*, 2015; Cagiao y Conde and Ferraiuolo, 2016) is emerging in these cases.
2) Factors driving the changes in these cases could stem from a "post-national urbanity" insofar as these small, stateless nations are driven by metropolitan values and therefore advocate a new, socially progressive political agenda around "civic nationalism" appealing to universal values, such as freedom and equality, in contrast to "ethnic nationalism", which is zero-sum, aggressive, and draws on race or history to set the nation apart (Economist, 2016; Harari, 2017).

The year 2014 will be remembered as the time when two (pluri)nation(al)-states unevenly faced debates that were similar turning points in their relationships with their

small, stateless, city-regional nations (Cagiao y Conde, 2016; Friend, 2012). This is the case for the United Kingdom and Spain, but in rather different ways. While the UK witnessed an agreed upon referendum between Prime Minister David Cameron and former Scottish First Minister Alex Salmond, Spain, by permanently pointing out the territorial unity of the Spanish nation-state, refused any expression of self-determination (Guibernau, 2013), as was demanded by a considerable population in Catalonia (Crameri, 2015a). Also, Spain's political history over the last 40 years (BBC Radio, 2015) presents another feature of the Basque Country: the city-region attempts to overcome and move past the political violence that has dramatically dominated Spain's political scene. In this direction, there is an awakening towards, or at least an interest in, making progress and leveraging the Basque Country's self-government, as it could be a procedure in which the "right to decide" could be implemented (Barceló *et al.*, 2015; Calzada, 2014).

Nevertheless, Scotland, Catalonia, and the Basque Country cases could be depicted in rather different ways. This is the point of departure for this article, which aims to address the trending, rapidly changing balances between the small nations (Kay, 2009) and their referential (pluri)nation(al)-states (Hennig and Calzada, 2015). The political history of each small nation and previously achieved political statuses through negotiations with their (pluri)nation(al)-states will be shown, which helps the power relationships stand out and establishes the preconditions for future negotiations of the devolution of powers between the regional and state levels.

Although this article will focus solely on the comparativeness of the three cases, this section will show the eight cases that have been studied in the research programme "Benchmarking City-Regions" (Calzada, 2018). This project was funded by Ikerbasque (Basque Science Foundation) and the RSA (Regional Studies Association). Specifically, this comparative study consists of eight city-region cases[i] in reference to their nation-states as follows: Catalonia (Spain), the Basque Country (Spain and France), Scotland (UK), Reykjavik (Iceland), Oresund (Sweden and Denmark), Dublin (Ireland), Portland (Oregon, USA), and Liverpool and Manchester (UK) (Calzada, 2015b).

In particular, to focus on the essence of this paper, we require not only explicit new geopolitical readings of the nation-states (Keating, 2017a; Park, 2017), but also analytical evidence for the fuzzy interpretation (Morgan, 2014) of the city-region concept as a concept itself. As such, in this article, the concept of the pluri-national state (Requejo, 2015) will be deconstructed from the metropolitan perspective of city-regional (Sellers, 2002; Sellers and Walks, 2013) and multi-level governance (Alcantara *et al.*, 2016;

Boronska-Hryniewiecka, 2016). In order to fix a suitable epistemological perspective in the study of the city-region, we are going to focus on cases referring to a considerable degree of regional autonomy (Mylonas and Shelef, 2017). Thus, the analysis in this article will blend analyses from three perspectives: political geography (Brenner, 2009; Sassen, 2002), urban, metropolitan and regional studies (Barber, 2013; Herrschel and Newman, 2017; Katz and Bradley, 2013), and social and political innovation studies (Calzada, 2013; Martinelli *et al.*, 2013; Moulaert *et al.*, 2014; Moulaert *et al.*, 2013; Richez-Battesti *et al.*, 2012). As an analytical tool, we will examine political innovation processes in the three aforementioned cases (Calzada and Bildarratz, 2015). Nevertheless, the study of the city-region should suggest a broader conceptual scope that could cover a range of politically and economically driven city-regional dynamics (or both altogether) (Harrison, 2010; Morgan, 2014; Scott, 2002). Hence, rather than a region merely being defined as 'an intermediate territorial level, between the state and the locality' (Keating, 1999: 9), we suggest specifying the taxonomy of the city-regions we refer to this paper. City-regions can: (1) defined through tense power relationships with counterpart (pluri)nation(al)-states; (2) be managed internally and self-autonomously; and (3) externally portray themselves as internationally self-sufficient actors driven by para-diplomacy (Acuto, 2013; Moreno, 2016; Therborn, 2017). The three cases in this article follow this taxonomy as 'small, stateless, city-regional nations', unlike the other five cases in the "Benchmarking City-Regions" research programme (Calzada, 2018).

Generally speaking—as a reason why this general preliminary framework is presented—this paper attempts to increase the understanding of the emergent nature of city-regions as new, dynamic, socio-territorial, networked entities in (pluri)nation(al)-state contexts (Herrschel, 2002; Herrschel, 2014; Herrschel and Newman, 2017). A recent natural consequence of the post-2008 economic recession has been the acceleration of some city-regions' tendencies to highlight politically driven nationalist devolution strategies to move beyond their nation-states (Scotland, Catalonia, the Basque Country, and Iceland[ii]), while others steadily continue to implement economically driven strategies within their nation-states' borders (Oresund, Liverpool/Manchester, Dublin, and Portland). Nevertheless, in both cases, city-regions are widely recognized as pivotal, societal, and political-economic formations that are key to national and international competitiveness and to rebalancing political restructuring processes within and, indeed, beyond nation-states (Ohmae, 1995). As Soja has recently pointed out:

> [The city-region] represents a more fundamental change in the urbanization process, arising from the regionalization of the modern metropolis and involving a shift from the typically monocentric dualism of dense city and sprawling low-density suburbanization to a polycentric network of urban agglomerations where relatively high densities are found throughout the urbanised region. (Brenner, 2013: 282)

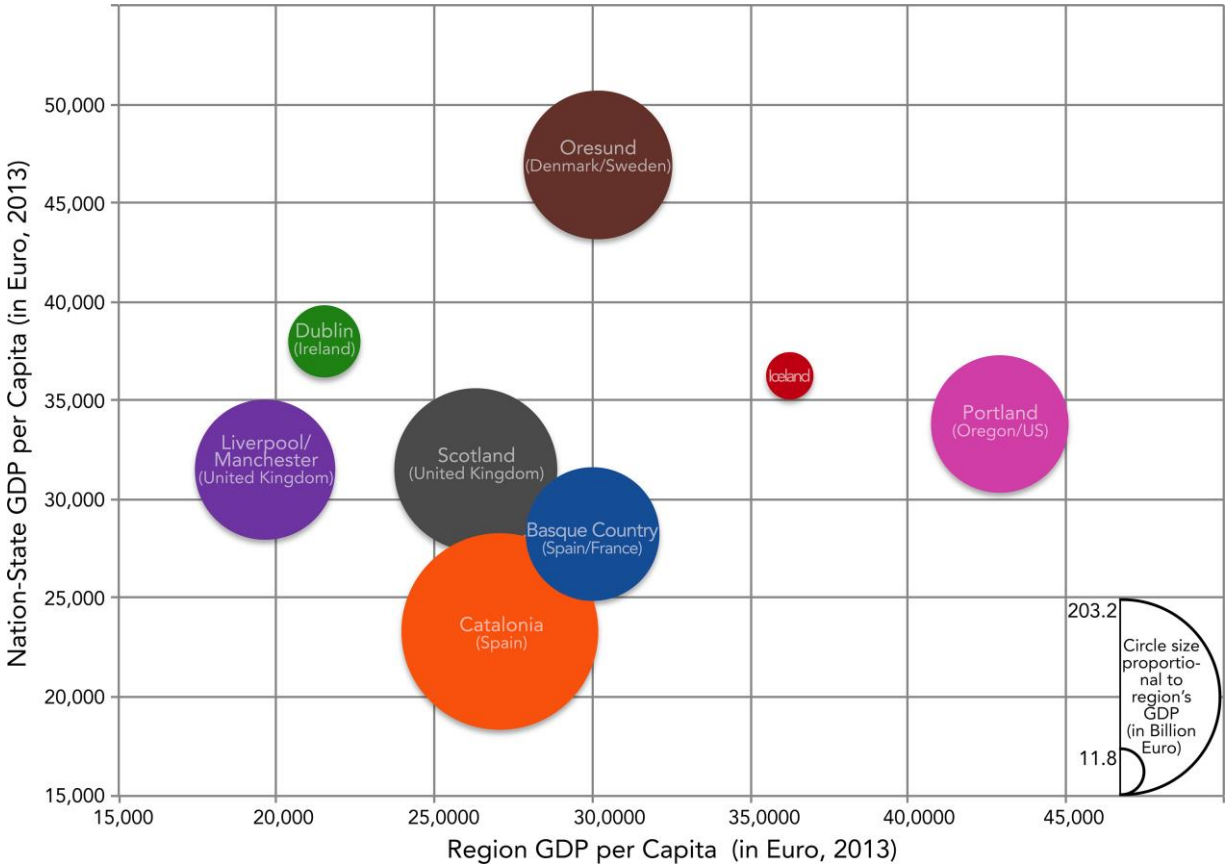
Hence, city-regions (Herrschel, 2014) have become a hotly debated topic in urban and regional political studies (Agnew, 2015) over the past decade. However, there have been relatively few comparisons of diverse city-region cases that trespass their nation-state boundaries, which has clear consequences in terms of reshaping the political and economic policies and spatial configurations of the nation-states themselves. Despite the centrality of city-regions to modern accounts of economic success (Scott, 2002), critics argue that advocates of a new city-regionalism approach overlook how city-regions are constructed politically (Harrison, 2010), which may extend beyond pluri-nationality, nation-state borders, and their understanding of these (Herrschel, 2014). This is exactly because of the different forms of territorial politics through which city-regionalism is conjoined with the nation-states' innovative visions (Jonas and Moisio, 2016: 1) and the requirement to examine—in the three cases we present in this article—political innovation processes that lead us to identify smart devolution strategies in relational terms. Furthermore, as Keating (2001: 1) argues, 'globalization and European integration have encouraged the re-emergence of nationalism within established states'—a notion that connects directly with city-regions. Or, as Khanna (2016: 78) has more recently noted, '[t]he entire European Union is thus a reminder that local independence movements are not the antithesis of lofty post-national globalism but rather the essential path toward it'. These claims have sparked a flurry of research aimed at developing an understanding of nationalistic or non-nationalistic city-regionalism in order to avoid 'the ecological fallacy [that] supposes that what is true of some city-regions is true of all city-regions' (Morgan, 2014: 1). But, what has been achieved lately has been done through an explicit focus on non-nationalistic, state-centric led initiatives such as those that have occurred in the UK, Germany, and the Netherlands, among other countries (Harrison, 2010: 17). Meanwhile, the current, pervasive, and changing geo-political European context fuelled by "devolutionist movements"—the continuing struggle within (pluri)nation(al)-states revolving around new emergent centres of political identity and agency and resultant quests for consideration of their own specific interests and agendas—is absolutely ignored (Turp and Sanjaume-Calvet, 2016).

1. Post-national urbanity: metropolitanization beyond (pluri)nation(al)-states

The key idea of this article is that the three nationalist city-regions analysed present their unique political innovation processes as challenging and timely research tasks regarding the recent "devolution" claims in the UK and Spain. Nevertheless, generally speaking, city-regions could be seen as emergent networked socio-territorial entities heading in either one strategic direction or the another. Consequently, some city-regions are embracing or even independence (i.e., secession, in purely political terms, from their respective nation-states) (Calzada, 2017a). In this context, factors such as institutional self-sufficiency and economic opportunity are driving city-regions in one direction or the other by fundamentally transforming the relationship with—and even the nature of—their established nation-states.

Before focusing on the three cases, we can observe some preliminary metropolitan comparative data visualization results of the general study (Hennig and Calzada, 2015). In the following graph, we calculated and crossed the nation-state GDP per capita with the city-region GDP per capita.

Figure 1. Pluri(nation)al-states and city-regions' GDP per capita (Euro, 2013).



In a nutshell, by investigating the GDP and population contributions of the city-region cases in relation to their pluri-national states, we can conclude that the "regional political tensions" could be explained when city-regional entities critically stand out through some "alternative" economic, political, or social dynamics that differ significantly from their pluri-national states (Anderson and Keil, 2017). These regional political tensions should be understood as consequences of natural rescaling processes into pluri-national and nation-states (Brenner, 2009) insofar as they are merely an outcome of a wide and diverse range of political and economic factors that lead city-regions towards new regional equilibrium and order. An increase in GDP and a city-region's population's contributions to its pluri-national state shows an evident way to approach this issue. Moreover, it sparks a flurry of consequences involving tensions surrounding political and economic sovereignty whether in favour of or in opposition to either recentralization or devolution/independence (Calzada, 2016).

Nevertheless, if we focus our attention on the three city-regional small nations that are presented in this article, the following correlation between the percentage of the city-region's population and its GDP contribution in relation to its referential nation-state and nation-state GDP occurs. This is the case of Scotland, which constitutes 8% of the UK population and 9% of the UK's GDP. In Catalonia, one of the main arguments we are

going to present later is Catalonia's large contribution to Spain both in population and in GDP at 16% and 19%, respectively. Finally, the Basque Country, benefitting from a self-government tax agreement (*Concierto Económico*) (Colino, 2012; Gray, 2016; Serrano-Gazteluurrutia, 2012; Uriarte, 2015) with the Spanish central government, constitutes 6% of the Spain's GDP and 5.5% of its population (See Table 1).

Table 1. Small, stateless, city-regional nations' population and GDP contributions to their referential (pluri)nation(al)-states (Calzada, 2014).

City-regional small nations	Population in Millions (Nation-State %)	GDP contribution related to Nation-State (%)
Scotland	5.3 (8)	9
Catalonia	7.5 (16)	19
Basque Country[i]	2.2 (5.5)	6

[i] Data relate to the Basque Country side in Spain. The French side is not represented in these figures.

Notwithstanding the geo-economical evidence-based analysis, we can argue that within the scope of the European context, these complex dynamics occur through political innovation processes and smart devolution strategies and require further pervasive and qualitative analyses to explain the sources and potential scenarios of this new city-regional order.

This new city-regional order that we call "post-national urbanity" is characterized by a profound metropolitan rescaling process (Brenner, 2009), in which the (pluri)nation(al)-state formations are under huge pressure, even modifying their internal and external structures. "Post-national" (Sassen, 2002) "urbanity" (Corijn, 2009) refers to the current pervasive metropolitanization phenomenon (Clark and Moonen, 2013; Katz and Bradley, 2013), which is increasingly shaping the political regional claims in small, stateless, European nations for the right to decide their own futures and the potential rescaling processes in some (pluri)nation(al)-states, such as the UK and Spain. Actually, globalization restructures "spaces of flows" and "spaces of places" (Castells, 2009),

repositioning cities and regions on a wider scale than just their national environments (Herrschel and Newman, 2017). At present, Europe's changing re-foundational momentum, shaped by small, stateless nations' claims and fuelled by metropolitan dynamics, is both part of and a reaction to this (Calzada, 2017b). Now, in 27 member states, the EU regulates at least half of our daily lives, and simultaneously, within the (pluri)nation(al)-states' realities, significant devolution processes are occurring, transferring socioeconomic regulation in a competitive environment to smaller units. As Khanna (2016: 63) argues:

> Devolution is the perpetual fragmentation of territory into ever more (and smaller) units of authority, from empires to nations, nations to provinces and provinces to cities. Devolution is the ultimate expression of local desire to control one's geography, which is exactly why it drives us toward a connected destiny.

This "connected destiny", according to Barber (2013), is already happening between cities and regions, rather than between (pluri)-nation(al)-states. Thus, pluri-nationalism itself is a term that is debated between decentralized positions, such as federalism, devolution and secessionism, and recentralization state imperatives. Looking at cities and the global-local nexus in the European context thus immediately introduces the question of urbanity as a pre- and post-national formation, and therefore a para-national domain. Cities are not just parts of countries. In the current post-national context, urbanity—made up of city-regions in certain state configurations—is trespassing upon pluri-nationality in internal geopolitical terms while establishing an uncertain and unpredictable scenario in external geostrategic metropolitan terms between small, stateless, city-regional nations, their referential states, and the supranational European Union (Klinke, 2016).

2. Small, stateless, city-regional nations' taxonomy and benchmarking: political innovation processes and smart devolution strategies

For the purpose of this article, it is rather difficult to proceed with an analysis of political innovation processes and smart devolution strategies based solely on politically constructed subjective categories such as nations. Nations, according to Benedict Anderson (1991), are "imagined communities", which could be interpreted ethnographically in many different pluri-national and cross-border national territories (Moncusí, 2016). Yet Guibernau (2013: 368) provides a wider definition when she

defines nation as 'a human group conscious of forming a community, sharing a common culture, attached to a clearly demarcated territory, having a common past and a common project for the future, and claiming the right to rule itself'. It is, therefore, a subjective construction that could be applied to any nationalistic political idea. Paradoxically, nation-states are the most reluctant entities to accept that they have also been built on the basis of "invention". Recently, a radio programme called "The Invention of Spain" by BBC Radio 4 was issued (2015), aiming to provide objective information regarding the controversial debate on the Catalan self-determination strategy fulfilled in the plebiscitary election of September 27, 2015 (Basta, 2015).

Regarding the three cases, the political innovation processes occurring in such changing contexts reveal that beyond Europe, there are separatist challengers to nation-states, who made their cases for greater autonomy based not only on identity-based arguments, but also on considerations of a fair distribution of resources within their nation-states (Pattie and Johnston, 2017). The Basque Country, Scotland, and Catalonia have long histories of making claims for more regional autonomy and have been characterized by significant degrees of devolution over the past two decades (Keating and Harvey, 2014). They now each have their own parliaments, governments, and executive leaders. Therefore, by measuring devolution, we mean that power is shared between tiers of government, and the power that is exercised by lower tiers, such as regions and provinces, varies across and within (pluri)nation(al)-states.

In the context of this article, we are going to apply to three political contexts a working definition of social innovations as processes 'which allow going beyond the containerised view of territory, by starting from the political dimension of territories, and by placing and considering innovation and networks in their spatial and historical context without losing sight of the material territoriality' (Calzada, 2015a: 354). In this attempt to deconstruct the political meaning of "metropolitan" and "post-national urbanity" through social innovation processes, we should clarify what we mean by political innovation processes as particular types of social innovation. Richez-Battesti *et al.* (2012) make a triple distinction between social innovation as: 1) a neoliberal instrument of modernization of public policies; 2) a way to promote the figure of social entrepreneurs; and 3) a model to refer to a socially responsible and solidarity-based model of local development. In the context of this paper, the understanding of politically applied social innovation processes goes beyond the particularized triple meaning Richez-Battesti *et al.* (2012) attribute to the term of social innovation itself. Furthermore, social innovation

processes are generally observed through actor-network theory analysis (Latour, 1996), where social contexts are built by the actors in certain social settings. However, including the political factor in these processes suggests that despite the social interactions between agencies, there are also pervasive political confrontations and tensions between institutional structures and non-institutional manifestations at the national political level. As such, within the scope of this paper, the given "metropolitan" and "post-national urbanity" of the three analysed cases, embodied in a unique composition of a network of cities, produce an unequivocal repertory of political city-regional responses. Thus, in the benchmarking analysis of the three cases, political innovation processes should be understood as socially rooted city-regional and political responses produced by the metropolitan stakeholders in the national-state context characterized by a variable post-national complex urbanity.

By observing Table 2, we can see that the political innovation process for each case varies. Whereas the established fiscal, irregular policy and political asymmetric devolution scheme made up of three administrative entities (Basque Autonomy, Statutory Community of Navarre and Pays Basque) has been entirely fixed by its own institutions, over the past forty years, the political violence between the organization ETA (*Euskadi Ta Askatasuna*, or Basque Country and Freedom—the armed Basque nationalist and separatist organization) and the Spanish state has impacted almost all social relations in the political realm (Alvarez, 2017; Anderson and Keil, 2017; Calzada and Bildarratz, 2015; Zabalo and Saratxo, 2015). Gladly, to this end, there is some progress being made, or at least an interest in founding the post-violence politics in the Basque Country, as the most substantial political innovation process in the last long decades of violent troubles. Notwithstanding this, the political innovation process now is to set up for a more imaginative and smarter "devolution" scheme based on two opposite strategies: bilateralism, agreeing with the central government (as in Scotland in 2014), or unilateralism, setting up a constitutive territorial and political process regardless of the opposed prohibition of exercising the "right to decide" by the central government (as in Catalonia in 2015 and now in 2017).

In Scotland, the political innovation process since 2014 has been the rationalized dialectic within the city-region and with the central government. However, the recent response by the British PM, Theresa May, to the Scottish FM, Nicola Sturgeon, warning that it was not the "right time" to call a second independence referendum between 2018 and 2019 could present very challenging momentum for addressing smart devolution

strategies in a post-Brexit period onwards. Thus, the political innovation process in Scotland in reference to the UK is not that straightforward given the tensions and the external geopolitics involved in the relations between Scotland and the UK regarding the re-foundational momentum the EU is embracing. However, rejoining the EU, respecting the 62% of Scottish people who voted to remain, may not be that easy to achieve. This new situation may require further "smart devolution" avenues.

In Catalonia, civic society has shown the most vibrant response to pushing its government into a unilateral secession process insofar as the central government was unwilling to establish any sensible dialectic to channel the emotional and rational desire by thousands of Catalans to split from Spain. Under these circumstances, the EU seems to be seen as a potential ally, although the political innovation process for Catalans through unilateralism presents remarkable shortcomings amidst the broad crisis the EU is facing: sooner or later, the EU will have to consider "minority issues" as essential parts of the European integration, unlike state-centric composition.

Despite the fact that the three cases present the same drivers for devolution, as they have been presented so far, their political innovation processes are nonetheless grounded in diverse factors and their smart devolution claims are proceeding with divergent strategies and covering different dimensions (see Table 2). However, within the scope of this paper, the city-regional nature of the three cases is a relevant similarity for overcoming the traditional approaches to "peripheral nationalisms" or "minority issues" as such. To cap it all, the suggested urban dimension in this paper is a response to a necessity to further analyse the city-regional vs. nation-state confrontations from a dynamic metropolitan perspective instead of a fixed state-centric dysfunctional understanding that we have called "post-national urbanity". Indeed, what does the "metropolitanization effect" mean to small, stateless city-regional nations and to their nationalisms, and vice versa? To answer this complex question, we could notice that Brexit and the soon-to-be end of the UK's continued membership in the EU have triggered a much wider debate, not only about the organization and the legitimization of nation-state power, both institutionally and territorially, but also about the way in which metropolitanization has influenced inclusive/exclusive migratory political positions regarding welfare state provisions by fuelling two types of "nationalistic" responses, which are, in essence, the causes of a deep re-scaling process regarding the UK as a nation-state. Here, then, we should distinguish between two nationalisms: the first is "ethnic", backwards, xenophobic, right-wing and populist (Winlow *et al.*, 2017); by

contrast, the second is "civic", conciliatory, inclusive, forward-looking and emancipatory (Macwhirter, 2015). Thus, by responding to the previous question, we could conclude that "metropolitan" and "post-national urbanity" have affected "stateless nationalisms", namely, the three compared in this paper, Scottish, Catalan, and Basque, by reinforcing their European profiles and policy agendas towards the second type of nationalism: the "civic". These three cases thus share a common ground of "civic nationalism" that appeals to universal and European values, such as freedom and equality, in opposition to "ethnic nationalism", which is populist, zero-sum, aggressive and nostalgic, and draws on race or history to set the nation apart.

"Metropolitan" and "post-national urbanity" thus should suggest more detailed analysis of how small, stateless, city-regional nations' cross-border cooperation schemes, political positions on migration, Europeanization and welfare state provision policies are influencing the state political game, and, in parallel and as a consequence, altering their political priorities and updating their metropolitan strategies (OECD, 2015). The impact of the post-2008 economic recession has intensified the political strategic trend of some small stateless city-regional nations to highlight politically driven nationalistic devolution priorities. As we are going to pose, in the Basque case, the permanent negotiation driven by the main political party running the Basque regional institutions over the last forty years, PNV (Basque Nationalist Party), around the Economic Agreement (*Concierto Económico*) has been pivotal in relations with the Spanish central government (either *Partido Popular*, or PP, or *Partido Socialista Obrero Español*, PSOE). Despite the critics, it has allowed a certain level of "devolution" for the Basque citizenship. Here, the question remains open: in addition to the Economic Agreement between the PNV (representing the Basque regional government) and the PP (representing the Spanish central government), what will be feasible in the short-term future to complement this fiscal devolution scheme (between elites) with "new political status" through the democratic experimentation of the "right to decide"?

In the case of the Basque Country (BBC, 1955), after suffering from political violence, there is remarkable evidence that this era is being left behind. As evidence-based qualitative data to prove this statement, in 2015 in St. Sebastian, a non-precedent-based summer school event titled "Political Innovation: Constitutional Change, Self-Government, the Right to Decide and Independence" took place (Calzada and Bildarratz, 2015). The event showed that political parties were pursuing a normalized context in which they could express projects without the threat of political unrest and violence. In

this context, there is an intense and committed effort from institutions and civic society to cure the wounds of political violence. Indeed, devolution claims may not be radicalized but, insofar as self-government status is rooted within the population, they are deliberately engaged in further city-regional devolution. However, it should also be mentioned that the recent budgetary state agreement between the central government (run by *Partido Popular*, PP) and the PNV will allow a new trade-off between the "elites" (Spanish Government, 2017): the central government will have the support of the PNV to accept the state budget in the Spanish parliament, and, in exchange, the fiscal devolution scheme will be fed by the central government in what has been seen as a new "devolution era", far beyond the hostile atmosphere experienced for years with the Catalan government. As such, the PNV embraces bilateralism, whereas the Catalan regional government leans towards unilateralism. This is because, in line with citizens' willingness, the Basque Autonomy and Navarra Statutory Community own full fiscal powers as a consequence of the Economic Agreement (*Concierto Económico*) with the nation-state, which is the source of the Basque Country's historic self-government system. Similarly, it can be argued that the Basque Country presents a remarkable policy (education and health, among others) and political devolution (insofar as the regional political parties determine strategic discourse). Due to the increasing presence of Basque institutions stemming from the building up of institutional instruments in the thirty-eight years since the Gernika Autonomy Statute, institutions have been the principal leaders of this autonomist strategy. In regard to the political innovation processes currently driving Basque society, we could summarize the current situation as having post-violence political momentum. Thus, the devolution agenda may have some "smart" modifications as a consequence of the acceleration of these processes. However, the aforementioned budgetary state agreement between the PP and PNV has been criticized as being a "smart" agreement between the "elites" without having given Basque citizens the "right to decide". This is a present example showcasing the complex policy arena that the mix between "political innovation processes", "smart devolution" and the "right to decide" involve in (pluri)nation(al)-states.

Scotland is recognized as a constituent nation of the UK, an issue that contrasts with the "indivisibility unity of the Spanish nation" that is the principal source of conflict in the case of Catalonia. Scottish autonomy is newly developed; it was established by the Scotland Act, in which the New Labour government of 1998 enabled the election of the first Scottish Parliament in May 1999 and the formation of a new, devolved Scottish

government in charge of a wide-range of policy fields, including health care, education, and energy. Thus, Scotland has been gaining political and policy devolution fuelled by the new Scottish government. This is the same government that held the independence referendum in 2014 (Geoghegan, 2015; Johns and Mitchell, 2016) and obtained 54 and 35 out of 59 MPs from Scotland in the 2015 and 2017 UK general elections, respectively. At the end of the day, the Scottish public's interests are essentially to achieve greater levels of trust in Holyrood than in Westminster, even beyond claims for further fiscal devolution. To summarize, even though independentists were defeated by a very slim margin (45% in favour of independence versus 55% opposed), the rationalized way in which the independence debate was run showed a smart dialect by constructively identifying pros and cons (BBC News, 2014). Hence, we could argue, based on many other final conclusions (Hazell, 2015), that the September 2014 referendum and the recently confirmed Brexit vote established a turning point not only in Scotland and the UK, but also for devolutionist processes elsewhere. In the despair over Brexit, there could be the opportunity to ask what the UK is and what it can be now. As the English were prepared to vote in a way that would disrupt the union, it should be no surprise to the union is at risk. This was a vote for English independence at the price of English dominance. The English were not asked about independence but, in its own way, the decision makes it explicit that devolution debate has come to stay.

Finally, the pro-independence parties in Catalonia framed the 2015 Catalan regional election, held on September 27, as a proxy for an independence referendum (Martí and Cetrà, 2016) that has been recently announced for October 1, 2017 (Crameri, 2015b; Cuadras-Morató, 2016; Davidson, 2016; Editorial, 2017a; Herszenhorn and Von Der Burchard, 2017; Rovira I Martínez). Thereafter, the new government aimed to declare independence in 18 months by unplugging Catalonia's institutional structures from Spain. In 2006, a new Statute of Autonomy was approved by the Spanish Parliament, the Catalan Parliament, and a popular referendum in Catalonia, but it was immediately challenged in the Spanish Constitutional Court by the right-wing, unionist Popular Party (PP). In 2010, the Constitutional Court published its sentence on the Statute of Autonomy, culling significant parts of the text. This led to massive demonstrations in Catalonia. The "Catalanist" feeling, though not directly secessionist, became one of independentism, while the Catalan political profile could have been portrayed as federalist up to this point (Serrano, 2013). The so-called "Right to Decide" (Cagiao y Conde and Ferraiuolo, 2016; Calzada, 2014; Requejo, 2015; Sanjaume-Calvet and Gagnon, 2014) became the key

motto of the secessionist and federalist demonstrators, increasing tensions between the Catalan city-regional nation and the Spanish (pluri)nation(al)-state[iii]. It should be pointed out that the lack of respect for the fiscal devolution claim led federalists/Catalanists/secessionists to the organization of anticipated regional elections in November 2012, leading, in turn, to political parties supporting the right to decide and the self-determination of Catalonia, which now represents nearly two-thirds of the Catalan Parliament. Catalonia's strategy is focused not only on getting policy, political, and fiscal devolution, but also on creating it is own state that will be "directly" integrated with the EU member states' structure (Herszenhorn and Von Der Burchard, 2017).

Table 2: Small, stateless, city-regional nations' taxonomy and benchmarking (adapted from (Calzada, 2015b).

Small, Stateless, City-Regional Nations' Taxonomy and Benchmarking			
	Basque Country	**Scotland**	**Catalonia**
1) Post-National Urbanity = Metropolitanization	Network of cities: Bilbao, San Sebastián, Vitoria, Pamplona, and Bayonne.[4] Established fiscal, irregular policy, and political asymmetric devolution in three administrative entities (Basque Autonomy, Statutory Community of Navarre, and Pays Basque). Fixed by institutions.	Network of cities: Glasgow, Edinburgh, Inverness, Aberdeen, and Dundee. Gradual policy and limited political devolution. Fuelled by governments.	Network of cities:[5] Barcelona, Tarragona, Girona, and Lleida. Constrained political devolution and banned fiscal devolution. Driven by civic society.
2) Political Innovation Processes	Post-Violence Politics: Unilateralism/Bilateralism?	Rationalized Dialectic: Bilateralism	Antagonistic Dialectic: Unilateralism
3) Smart Devolution Strategies			
3.1) To what extent is the starting point of each city-regional small nation's devolution similar according to governance, history, and policies?	· 1979: Gernika Statute of Autonomy with fiscal, political, and policy devolution. · 2016: a new political status update requires the articulation of the right to decide beyond legal instruments. While the centre-right nationalist party, PNV, follows bilateralism to agree the Economic Agreement (*Concierto Económico*), the left-independentist coalition, EHBildu, strongly encourages a unilateral strategic pathway for implementing the right to decide from the grassroots movement called *Gure Esku Dago* (Geller *et al.*, 2015) by imitating Catalonia through its main associations: ANC (Catalan National Assembly), AMI (Pro-independentist Municipalities' Association) and Òmnium Cultural (Language, Culture, Country).	· 2014: independence referendum held on September 18 provoked a turning point in the fiscal devolution within the UK (Pike, 2014). · EU Referendum has led Scotland to the Second Independence Referendum (Qvortrup, 2017). · Recent UK general elections in 2017 depict a less positive outcome for the SNP than previous elections, which has turned into a strategic reflection upon the party and the independence of Scotland as a gradual goal.	· 2010: the Spanish Constitutional Court invalidated the democratically achieved 2006 Statute of Autonomy. · November 9, 2014: a non-binding self-determination referendum was organized. · September 27, 2015: a plebiscitary election with a unity list in favour of "YES" was announced. · October 1, 2017: the independence referendum has been already announced.
3.2) What are the potential political scenarios for each city-regional nation as a result of the de/recentralization attitude of its referential (pluri)nation(al)-state?	· General elections determined the PNV and EHBildu strategies to suggest a content application of the right to decide whether or not to be linked to the constitutional change. · Regional elections as "bulletproof".	· In 2015 54 and now in 2017 35 MPs in Westminster could renegotiate further devolution beyond Smith powers (Cairney, 2017). · The second independence referendum has been determined by the EU membership of the UK (as the opportunity to legitimate a secession from the side of the SNP). · Although after the outcome of the 2017 general elections, the SNP and the pro-independence parties have entered a novel period in search for setting up the new strategic pathway towards independence.	· September 27, 2015: elections were uncertain, but the "YES" vote gathered international focus. · Regardless of the outcome, the key issue remains pending; as long as "YES" wins, what will be its role within the EU? (See next section: Final remarks) · Uncertainty and tension is increasing between the Spanish central government and the Catalan regional government. Mutual accusations are taking place and will be until the unknown outcome by October 1, 2017. Something will happen in Catalonia but nobody knows quite what (Keating, 2017b).
3.3)	· With no doubt, the leading politically innovative process has been the achievement of peace and the end of political	· It is noteworthy that even after the independence referendum, a	· The most striking point in the Catalan devolution dynamic is the way the 'YES' campaigners are

What are the most relevant strategic political innovation processes occurring in each case?	violence. Although currently some uncertainties are focusing the attention of many regional actors: ETA prisoners to be moved closer to families, recognition of all the victims of the armed struggle, truth and reconciliation, competing memories, etc. Regardless of the cause, it should be taken into account that a pluralistic approach to Basque society should be required to articulate a bottom-up and top-down "right to decide" binding consultation/referendum: which of the pending powers would it be? How will be the Basque Country organize a deliberative experimental consultation as the highest democratic level that guarantees the coexistence of the wide range of political projects?	large majority of the public expressed opinions that the referendum implied a new turning point in Scottish politics. The positive influence of the debate among the citizens has increased trust in politics and the importance of devolution in citizen's daily lives. · However, Brexit vote has entirely re-focused the independence debate throughout a wider multi-dimensional phenomena by including both, the refoundational momentum in the UK and in the EU (STV, 2017).	dealing with their differences. A diverse range of remarkable stakeholders such as politicians, activists, academics, businesspeople, entrepreneurs, public managers, public figures, and others, are portraying themselves as a collective plural leadership (Editorial, 2017b). · The weeks before October 1, 2017, can be foreseen with strong mediatic and social tensions.

Conclusion: towards an age of smart devolution in the EU?

This article has benchmarked a taxonomy that encompasses three "small, stateless, city-regional nation" cases—particularly Scotland, Catalonia, and the Basque Country—in a growing metropolitan European context (OECD, 2015) regarding their politically innovative processes in attaining smart devolution strategies in reference to their constitutive (pluri)nation(al)-states—the UK and Spain, respectively (Molina, 2017; Moreno, 1986). In all three cases, the article articulated some interpretations regarding self-determination and democratic experimentation, using the EU as a supranational and geopolitical reference. In this direction, as Connolly (2013) and Avery (2014) argue, independentism or secessionism is a living issue in Europe today as a result of two main consequences. First, the effects of the post-2008 recession brought about broader processes of territorial transformation and re-scaling in the context of welfare state reforms. Second, the "denaturalization" of nation-state space is a process that reveals that stakeholders might keep sharing a space but have no common interests as to how to order that space in the broader sense of the term.

This paper did not aim to resolve any of the particular cases presented. Instead, amidst the original research project "Benchmarking City-Regions" (Calzada, 2018), it has shed light on the political analysis of three particular European small stateless city-regional nations by observing them from the metropolitan and post-national urban perspective. Unlike those city-regions that are not driven by any particular nationalistic vision (Oresund, Manchester/Liverpool, Dublin or Portland), the three cases compared stem from "civic nationalistic" political principles. As a general conclusion, first, we may argue that the key political issue for these three city-regions is how nation-states can share their democratic sovereignty with city-regions that are willing to request further devolution through experimental democratic practices such as the "right to decide". Second, it is not clear yet how the city-regional political parties and stakeholders could be democratically organized to serve the general public interest rather than particular party politics, an aspect that is applicable with different intensities and forms in the three compared cases.

Regarding European metropolitan dimension, authors such as Bourne (2014), Muro *et al.* (2016), and Moreno (2015) have investigated the role of the future EU memberships of these three cases as potential new states in debates on the advantages and disadvantages of devolution, secession, or even independence. However, paradoxically, the EU's structure may stimulate support for an independent state while discouraging acts of secession. In fact, insofar as the EU could provide a complex web of opportunities and constraints for approximately 20 significant pro- and anti-independence or devolution movements, it is likely to remain

implicated in secession processes (Bourne, 2014: 95). These arguments can be considered arguments about "Europeanization" or the ways in which European integration affects politics, policies, and institutions within interdependencies between current European (pluri)nation(al)-states and small, stateless, city-regional nations (Huwyler, 2017).

Highlighting this timely issue,[6] Herrschel (2015) suggests the European Union's regional policy and multi-level arrangements of governance have provided an important set of mechanisms for such politically innovative activities on the basis of growing metropolitan consciousness as places that "matter" and that are willing to own their decisions and their political futures "in their hands".[7] Similarly, these dialectics may vary in nature depending on the respective power and influence of the relevant players. The outcome is a complex, multi-level, continuously re-negotiated, composite political identity that can express itself through local, regional, or "national" narratives and implement the so-called "right to decide" through remarkably diverse, deliberative experimentation exercises.

However, the current context requires the EU's adoption of an anticipative and active role within its policies and programmes as to re-found what we can call "smart devolution". This re-foundational momentum of the EU should deal with the tensions between the small, stateless, city-regional nations (such as those in Scotland, Catalonia, and the Basque Country) and their referential (pluri)nation(al)-states. As we have seen, such states depict different democratic articulations in order to accommodate territorial diversity and devolution schemes. As Connolly (2013: 12) points out, the EU will play a leading role in determining the outcomes of Scottish, Catalan, and Basque nationalist claims. However, he also adds that devolution and the rights to secession and self-determination, as currently understood in international law, provide little in the way of guidance for addressing separatist claims by Europe's stateless nations or, for that matter, other parts of the world. He continues to say that in Europe, self-determination claims will increasingly be dealt with through the institutions of the EU as a part of the ongoing push and pull among EU member states and city-regions. Whether this results in "independence in Europe" or some form of accommodation short of secession remains to be seen. In the same direction, reinforcing what Connolly suggests, Khanna reflects and concludes on the nature of self-determination:

> Self-determination should be seen as "pre-legal" in the sense that it reflects the will of peoples rather than the international law's bias toward existing states. […] Self-determination is a sign not of backward tribalism but of mature evolution. We should not despair that secessionism is a moral failure, even if it recognizes innate tribal tendencies. A devolved world of local democracies is preferable to a world of large pseudo-democracies. Let the tribes win. (2016: 67)

Notes

[1] The summary and the outcomes of this study can be read in the following article: Calzada, I. 'Benchmarking Future City-Regions beyond Nation-States'. *RSRS Regional Studies Regional Science*. 2(1) (2015a): 351-362. DOI: 10.1080/21681376.2015.1046908. www.cityregions.org Retrieved: August 31, 2015.
[2] The fact that Iceland is a former colony of Denmark is relevant here.
[3] The usage of "(pluri)nation(al)-states" attempts to highlight, especially in this sentence but also throughout the article, the lack of a plural and diverse understanding of the state territory. As such, the post-national urbanity pattern is pervasively depicting the centralistic resistance of the Spanish nation-state by being reluctant to articulate a federal configuration in the XXI century, as authors such as Moreno argues.
[4] BAB is the Biarritz-Anglet-Bayonne metropolitan conurbation, which could be considered as part of the Eurocity cross-border multilevel governance articulation. Bayone and Biarritz are its chief towns, included in the Basque Eurocity Bayonne-San Sebastian.
[5] The inclusion of Valencia, Balearic Islands, some parts of Aragon, Roussillon and Perpignan in France, the Principality of Andorra, and the city of Alghero in Sardinia in Italy should be considered in order to establish the nationalistic vision of "Paisos Catalans". "Països Catalans" refers to those territories where the Catalan language, or a variant of it, is spoken. It is commonly used for the Spanish regions of Catalonia, Valencia and the Balearic Islands, and for the French region of Perpignan.
[6] http://www.politico.eu/article/president-of-catalonia-vows-to-go-ahead-with-independence-vote-referendum-spain
[7] The grassroots movements in favour the "right to decide" in the Basque Country is called "Gure Esku Dago", which means "In Our Hands". www.gureeskudago.eus

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European Minorities Win a Battle in Luxembourg – The Judgment of the General Court in the Case Minority SafePack European Citizens' Initiative

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Abstract

The Lisbon Treaty introduced the European Citizens' Initiative (ECI), a brand new tool of transnational participatory democracy aiming to bring Europe closer to the people. Five years after the first ECI was lodged, we have yet to see an ECI that would pass the full procedure and end up as a proposal for a legal act. The European Commission (hereinafter: Commission) refused to register almost one third of the initiatives lodged on the basis that they fall manifestly outside the framework of the Commission's powers to submit a proposal for a legal act. The organizers of the refused Minority SafePack ECI challenged the Commission's decision before the Court of Justice of the European Union. The General Court approved the claims of the organizers of an ECI for the first time in this case. The General Court's findings with regard to the Commission's duty to give proper reasoning with respect to the refusal of an ECI may be a small but important step in achieving the goals of the ECI.

Keywords: European citizens' initiative; protection of national and linguistic minorities; cultural diversity; refusal of registration; obligation to state reasons; admissibility test

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In July 2013 the Citizens Committee[1] of the 'Minority SafePack – one million signatures for diversity in Europe' European Citizens' Initiative (MSPI) submitted its proposal to the European Commission. The aim of the proposal was to call upon the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union. The European Commission refused to register the initiative by its Decision C(2013) 5969 final of September 13, 2013 (hereinafter: the contested decision) on the grounds that it manifestly fell outside the powers of the Commission to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties of the European Union (hereinafter: Treaties).[2] As a result, the organizers could not even start collecting signatures for the MSPI. In November 2013, the decision of the Commission was brought before the General Court.[3] The General Court with its judgment on February 3, 2017 approved the claims of the applicants and annulled the contested decision (hereinafter: Judgement).[4] This was the first time the claims of the organizers of an ECI were approved by the Court of Justice of the European Union in relation to the rejection of the Commission's decision.

1. The Minority SafePack European Citizens' Initiative (MSPI)

1.1 The aim and subject matter of the MSPI

It follows from the required information that the objectives pursued by the MSPI consist of calling upon the European Union 'to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union' and that those acts 'shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support'.[5] If we look at the required information of the proposed initiative it is clear that the proposal respects the terminological and legal scope of the European Union. Firstly, the initiative aims to improve the protection of persons belonging to national and linguistic minorities. The organizers adhere to the individualistic approach of minority protection reflected in Article 2 of the Treaty on the European Union (TEU) ('persons belonging to'). They focus on the rights of persons belonging to minorities as a core value of the European Union. At the same time, they clarify this goal with the personal scope of Article 21 of the Charter of Fundamental Rights of the European

Union, namely, national and linguistic minorities.[6] Secondly, the initiative focuses on strengthening the cultural and linguistic diversity in the Union described in Article 167 of the Treaty on the Functioning of the European Union (TFEU).

The organizers included a more detailed annex[7] to the MSPI as part of the required information (hereinafter: Annex)[8] in accordance with the final paragraph of Annex II Regulation No 211/2011 (hereinafter: ECI Regulation).[9] Accordingly, the aim of the proposal is to secure the adoption of a series of legal acts listed and described in sections 2 to 7 of the Annex (Judgment, 2017: point 2). More specifically, the proposed ECI seeks the adoption of (Judgment, 2017: 25):

1) a recommendation by the Council 'on the protection and promotion of cultural and linguistic diversity in the Union';
2) a proposal for a decision or a regulation to adapt 'funding programmes so that they become accessible for small regional and minority language communities';
3) a proposal for a decision or a regulation to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages, and promote diversity at all levels and be financed mainly by the European Union;
4) a proposal for a regulation to adapt the common provisions relating to EU regional funds in such a way that the protection of minorities and the promotion of cultural and linguistic diversity are included therein as thematic objectives;
5) a proposal for a regulation to amend the regulation relating to the 'Horizon 2020' programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the EU;
6) a proposal for a directive, regulation or decision to strengthen the place of citizens belonging to a national minority within the EU, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament (EP);
7) proposals for effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of existing Council directives on the subject of equal treatment;

8) a proposal for the amendment of the directive on audiovisual media services, for the purpose of ensuring the freedom to provide services and the reception of audio-visual content in regions where national minorities reside; and

9) a proposal for a regulation or a proposal for a decision with a view to the block exemption of projects promoting national minorities and their culture.

1.2 National minorities as a legal and political term

The organizers specified in the Annex that a:

> national minority/ethnic group should be understood as a community, (i) that is resident in an area of a state territory or scattered around a state territory, (ii) that is of smaller number than the rest of the state population, (iii) the members of which are citizens of that state, (iv) the members of which have been resident in the area in question for generations, (v) that is distinguishable from the state's other citizens by reason of their ethnic, linguistic or cultural characteristics, and who wish to preserve these characteristics. (2013)

This explanation follows the definition used internally by Federal Union of European Nationalities (FUEN) in its Charter since 2006.[10] It is also very similar to the definition of Recommendation 1201/1993 of the Parliamentary Assembly of the Council of Europe.[11]

At this point, it is worth elaborating on the coherence of this definition with the wording of the current international and European law documents. It is widely known that the term 'national minority' or simply 'minority' does not have any generally accepted definition enshrined in a legally-binding international or European law document. Some of the EU member states have precise legal definitions for their national minorities, while others have not provided such legally-binding concepts (Framework Convention, 1995: 1). Therefore, for several reasons, the definition of 'national minorities' was never a matter of European consensus.[12] Accordingly, European decision makers could not find a description of the term minority which would be acceptable for all EU member states. Notwithstanding the above, in the past few decades scholars and institutions have offered some well-described definitions. A prominent example is the previously mentioned definition proposed by the Parliamentary Assembly of the Council of Europe in 1993.[13]

2. The Judgment of the General Court

Soon after the Commission had declined to register the initiative, the organizers decided to challenge it before the Court of Justice of the European Union. They filed an application at the

General Court on November 25, 2013.[14] The applicants sought for the General Court to annul the contested decision and order the Commission to pay the costs.

In support of the action, the applicants rely on two pleas in law. Firstly, the applicants stated that the contested decision infringed on essential procedural requirements, violating requirements laid down in Article 296(2) TFEU and Article 4(3)[15] of Regulation No 211/2011 (hereinafter: ECI Regulation).[16] Firstly, the applicants argued that the Commission's reasoning was incomprehensible, because the Commission in its reasoning: (i) failed to identify which among the eleven topics in its opinion fall outside the framework of its powers to submit a proposal for a legal act, although the Commission admitted that some of the acts requested in the Annex might be acceptable; (ii) the Commission further failed to state why those topics fall outside that framework; and (iii) the Commission did not state why the ECI Regulation does not confer a power to register at least a part or parts of a planned citizens' initiative. Secondly, the applicants alleged that the contested decision infringed on the provisions of the Treaties and the provision for the implementation of the Treaties, thereby amounting to a material infringement. They claim that Article 11 TEU, Article 24(1) TFEU and Article 4(2) and (3) of the ECI Regulation were violated. The applicants stated that none of the topics in relation to which the Commission was called upon to submit proposals lie manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. They add that, even if one of the topics were to fall outside that framework, the Commission should have registered the planned citizens' initiative with respect to the topics which, in its opinion, did not fall manifestly outside that framework.[17] Thus, the applicants believe all the proposals are valid, therefore, the complete proposal should have been registered.

2.1 The Commission's obligation to give appropriate reasoning upon refusal of an ECI

The applicants criticize the Commission for not fulfilling its duty to give appropriate reasoning regarding the refusal of the proposal. The Commission merely stated in the contested decision, without further specification, that some of the themes described in the Annex fell within the framework of its powers, to then conclude that the registration of the proposed ECI must be refused in its entirety, because the partial registration of a proposed ECI is not provided for in the ECI Regulation (Judgment, 2017: 9). Respect for the obligation to state reasons is, the applicants argue, especially important because the ECI is the tool of direct democracy and citizens' participation that should be accessible and easy to implement, and the organizers of ECI proposals are not legal professionals (Judgment, 2017: 9). Accordingly, the applicants

argue that the Commission should have specified the proposals that, in its view, fell outside the framework of its powers, and also should have stated the reasons for which it came to that conclusion. Without a proper reasoning the organizers cannot identify which parts of the proposed ECI are well founded and they cannot draw conclusions in order to submit a new proposal. Furthermore, the applicants state that Commission's attitude induced the authors of the proposal to submit the 11 measures provided in it separately, which is contrary to the principle of procedural economy and does little to encourage participation by citizens and make the European Union more accessible (Judgment, 2017: 10).

The General Court recalls the settled case-law (Anagnostakis case, 2015),[18] according to which the purpose of the obligation to state the reasons for an individual decision described by Article 296 TFEU is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which could make it possible for its validity to be contested, and to enable the Courts of the European Union to review its lawfulness (Judgment, 2017: 15). The General Court also concludes that the statement of reasons must be appropriate to the nature of the measure in question, in particular the content of the measure and the nature of the reasons given, and it must be assessed not only with respect to its wording but also its context (Judgment, 2017: 16).

The General Court traces the duty to give appropriate reasoning back to the right of citizens to submit a citizens' initiative (Article 24 TFEU) when concluding that the refusal to register the proposed ECI is an action that may impinge upon the very effectiveness of the right of citizens to submit a citizens' initiative. Consequently, such a decision must disclose clearly the grounds justifying the refusal (Judgment, 17). It concludes that a citizen who has submitted a proposed ECI must be placed in a position to be able to understand the reasons for which it was not registered by the Commission. According to the General Court, this follows from the very nature of the right of a citizen to submit a citizens' initiative, which is intended to reinforce citizenship of the Union and to enhance the democratic functioning of the European Union through the participation of citizens in its democratic life (Judgment, 2017: 18).

The Commission's obligation to give proper reasons is set forth under recital 20 of the ECI Regulation,[19] which helps explain the reasons that led the Commission to its decision. From the appropriate reasoning, citizens can draw conclusions and launch a corrected proposal that is liable to pass the admissibility test of the Commission. The General Court conclusively states in its judgment that the rejection of a proposal for an ECI shall be comprehensible and interpretable without involving experts of EU law. This interpretation is consistent with the

requirements of recital 2 of the ECI Regulation.[20] If the decision on rejecting a proposal for an ECI does not make it clear which part of the proposal is inadmissible and why, the organizers do not know where exactly there are differences in their legal opinions regarding the competences of the Commission. This could encourage the organizers to resubmit their proposals separately for the different topics. Consequently, such an approach of the Commission as applied in 2013 would not reduce the growing gap between the EU and its citizens, but by contrast, would exacerbate the democratic deficit of the EU. In its report the European Parliament also stresses that 'all further assessment of the instrument should be aimed at attaining maximum user-friendliness, given that it is a primary means of linking the citizens of Europe to the EU' (Report, 2015: 3).

Therefore, the judgment of the General Court is correct when concluding that without proper reasoning, the submission of a new, corrected proposal based on the opinion of the Commission about the limits of its competences would be hampered, thereby also violating the goals of the ECI. The General Court's declaration that a refusal to register a proposed ECI may influence the effectiveness of the right of citizens to submit a citizens' initiative is also a progressive statement. Emphasizing the importance of the right to an ECI is the crucial point of the judgment, just like the General Court's argumentation when it traced the Commission's obligation to provide an appropriate reasoning to organizers back to the right of citizens to submit a citizens' initiative.

2.2 The possibility to register proposals partially

According to the applicants, the contested decision should have stated the reasons that led the Commission to arrive at the conclusion that the ECI Regulation did not permit it to register only part of a proposed ECI. Neither the text of the regulation nor the Treaties support such an interpretation of the Commission (Judgment, 2017: 12). Moreover, in section 8 of the Annex the organizers note that they realize that

> differences of legal opinion can arise when interpreting the Treaties. The authors therefore expect each proposal to be verified on its own merits; if one of the proposals is deemed to be inadmissible, this should have no effect on the other proposals made. (Annex, 2013: 14)

Thus, the organizers requested that the Commission examine each of the 11 proposals individually and register the proposal partially, where appropriate. The organizers argue that the exercise of their rights by citizens, who are not specialized legal professionals, and the importance of the ECI as an instrument of direct democracy, impose an obligation on the

Commission (Judgment, 2017: 12) to fully examine the ECI and allow the partial registration of the proposals. By contrast, the Commission argued that the conclusion cannot be called into question by the fact that its authors invited the Commission to examine whether the proposal was manifestly inadmissible with regard to each of the themes referred to in that Annex (Judgment, 2017: 13). The Commission states that the contested decision indicated clearly that a proposed ECI cannot be registered when part of it falls outside to scope of the commission, and the Commission is not required to state reasons for the interpretation of Article 4(2)(b) of the ECI Regulation (Judgment, 2017: 14).

The General Court concludes in its judgment that in spite of the fact that it follows clearly from the contested decision that the Commission rejects the registration of the proposed ECI due to a non-fulfilment of the condition laid down in Article 4(2)(b) of the ECI Regulation, it must be held that its reasoning is manifestly inadequate in view of the case-law cited above, and the content of the Annex that listed specific legal acts in order to achieve the purpose of the proposal (Judgment, 2017: 22). The General Court states that it is clear from the contested decision that the Commission failed to identify in any way which of the 11 proposals for legal acts manifestly did not, in its view, fall within the framework of powers under which it is entitled to submit a proposal for a legal act of the European Union. The Commission also failed to provide any reasons in support of that assessment, notwithstanding the precise suggestions provided by the organizers on the proposed type of act as well as the respective legal bases and the content of those acts (Judgment, 2017: 27).

The General Court recalls the Commission's reasoning that parts of a proposed ECI cannot be registered, and thus the application had to be rejected in its entirety, whatever its content. According to the General Court, even assuming that this position is well founded, the organizers were not placed in a position to be able to identify those parts of the proposals which, in the Commission's view, fell outside the framework of its powers, or to reconstruct the reasons which led to that assessment. Consequently, the organizers could not challenge the merits of the assessment, just as the General Court is prevented from exercising its review of the legality of the Commission's assessment. Moreover, without a complete statement of reasons, the possible introduction of a new proposed ECI, taking into account the Commission's objections on the admissibility of certain proposals, would be seriously compromised, as would also be the achievement of the objectives, referred to in recital 2 of the ECI Regulation, i.e. encouraging participation by citizens in democratic life and rendering the European Union more accessible (Judgment, 2017: 28-29).

Although the Commission argues that the ECI Regulation does not permit the Commission to register only those parts of the proposal that fall inside the framework of its powers, the General Court rightly finds this conclusion to lack substance. It should be underlined that the ECI Regulation does not exclude the possibility of a partial registration; in fact, it does not even regulate this issue. Therefore, it cannot be stated that the ECI Regulation does not permit the partial registration of an ECI (Karatzia, 2015: 526). Accordingly, we must arrive at the conclusion that, without a written provision of the Treaties or the ECI Regulation on excluding it, partial registration is possible, and at least the parts falling inside the powers of the Commission should have been registered. Treating the proposal strictly as an indivisible package, and thus, rejecting the proposal in its entirety, including the parts that according to the Commission fall inside the framework of the EU, is a solicitous decision (Gordos, 2014: 144-145; Gordos, 2015: 88-89). Moreover, the European Parliament in its report invites the Commission 'to consider the possibility of registering only part of an initiative in the event that the entire ECI does not fall within the Commission's powers' and to

> give the organizers, at the time of registration, an indication as to which part they could register, recognising that dialogue and engagement with ECI organizers is essential throughout the process, and to inform Parliament of its decision concerning the registration of the ECI. (Report, 2015:16)

The Commission's interpretation of the provisions on the registration of an ECI is contrary to the interests of the citizens, violates the efficiency and enforcement of the ECI's goals (Organ, 2014: 432), and is in conflict with the settled case law and principles of interpretation developed by the Court of Justice of the European Union (CJEU). EU law does not expressly permit the partial annulment of legal acts either; however, according to the settled case law of the CJEU, partial annulment is possible where elements whose annulment are sought may be severed from the remainder of the decision.[21] The General Court concluded several times that the requirement of severability is not satisfied, and thus, partial annulment is not permitted, when the partial annulment of an act would have the effect of altering its substance.[22] Where the General Court consistently applies a principle, such as the core principle of partial annulment of legal acts, the latter, in analogy, has to prevail in other cases as well. Thus, if the partial annulment of legal acts is possible without an express provision of EU law to this end, the partial registration of the proposals for an ECI shall be possible too, where the proposal is severable.

The General Court finds in its judgment that the Commission's reasoning is manifestly inadequate in view of *Anagnostakis v Commission* (Anagnostakis case, 2015: 25-26), but it left

open the question of the partial registration of a proposed ECI. It was not examined in the article which of the proposed issues fall outside the scope of the Commission's powers to submit a proposal for an EU legal act. In the judgment, the General Court says that 'even assuming that the position expressed by the Commission on the substance, according to which a proposed ECI cannot, whatever its content, be registered if it is deemed in part inadmissible by that institution, is well founded', the organizers were not placed in a position to be able to identify the issues which, in the Commission's view, fall outside its powers to submit a proposal for a legal act. Therefore, the judgment does not provide a conclusion on the question whether is it even possible to register the proposed ECI partially.

2.3 Taking into account the Annex

With regard to the importance of the Annex, the applicants claim that, contrary to the position expressed by the Commission, the information provided additionally has the same importance as the compulsory information (Judgment, 2017: 11). The Commission, however, argued that the subject matter of a proposal is fixed definitively in its body, thus, only the "corpus" can determine the content of the initiative, whereas the explanations given in the Annex are purely indicative and informative, and are thus incapable of expanding or limiting the subject matter (Judgment, 2017: 13).

The General Court recalled its judgment in the *Izsák and Dabis* v *Commission* case and concluded that the information set out in Annex II to the ECI Regulation is not limited to the minimum information which must be provided under that annex. Since the organizers have a right to provide Annex, the Commission has to consider that information as any other information provided pursuant to that Annex, including the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case and, therefore, to state the reasons for its decision in the light of all of that information (Judgment, 2017: 32). The Commission's decision on taking into account the Annex is truly controversial in the light of the *Izsák and Dabis* v *Commission* case,[23] where the General Court concluded that the Annex must be taken into account by the Commission, without the Commission being entitled nor obliged to ask itself whether or not the taking into account of that information is in the organizers' interests. Therefore, the General Court would contradict itself if it would agree with the Commission in this case (Izsák and Dabis case, 2016: 49, 50, 56-57).

2.4 Falling manifestly outside the framework of the Commission's powers to submit a proposal for a legal act

In light of the foregoing considerations, the General Court held that the contested decision manifestly fails to clarify elements to enable the applicant to ascertain the reasons for the refusal to register the proposed ECI with regard to the various information contained in that proposal and to react accordingly, and to enable the General Court to review the lawfulness of the refusal to register. Consequently, it concluded that the Commission has failed to comply with its obligation to state reasons by not indicating those measures which, among those set out in the Annex to the proposed ECI, did not fall within its competence, nor the reasons in support of that conclusion, and that, therefore, for that reason alone, the action must be upheld, without any need to examine the second plea (Judgment, 2017: 33-34).

In this case, just as in the past few years, the Commission refused to set the issue of national minorities in its agenda (Crepaz, 2014). Nevertheless, the author is of the view that in the current case the proposal respected the framework of the Commission's powers. However, this cannot be certain, as the General Court refused to examine the second plea in law regarding the material mistake of the Commission, namely, the arguments of the applicants that none of the topics of the proposal lie manifestly outside the framework of the Commission's powers to submit a proposal for a Union legal act. The General Court concluded that since the Commission has failed to comply with its obligation to state reasons on the rejection of the proposed ECI, the General Court was not in the position to exercise its review of the legality of the Commission's decision (Judgment, 2017: 29). Accordingly, the General Court upheld the action, without examining the second plea, withdrawing itself from the duty to interpret the term 'falling manifestly outside the powers enabling the Commission to submit a proposal for the adoption of a legal act of the European Union for the purpose of implementing the Treaties'.

There may be serious legal concerns regarding the contested decision both generally speaking and from the aspects of the current case. First of all, neither the ECI Regulation, nor the Treaties define what shall be meant by the term 'manifestly falling outside the framework of the Commission's powers'. In the Commission's interpretation, these are situations when 'there is no Treaty provision, which allows for a legal act to be adopted following a proposal from the Commission, which can serve as the legal basis for a Union act covering the subject matter of the proposed initiative' (ECAS, 2014: 3-4). Secondly, with respect to this specific case, it should be highlighted that the Commission in the contested decision informed the organizers that 'the in-depth examination of the provisions of the Treaties that you suggested and of all other possible legal bases' has led to its conclusion. We may ask the question: why

was the in-depth examination necessary at all, if the initiative 'manifestly' fell outside the framework of the Commission's powers to submit a proposal for the adoption of a legal act?

In the *Costantini* v *Commission* case[24] the interpretation of Article 4(2)(b) was a key argument. The applicants contend that, in the light of the regulation's objectives and spirit, the Commission cannot interpret and apply this condition overly strictly, because it would be contrary to the objective of the ECI mechanism, which is to increase the democratic participation of citizens. The applicants also argued that the Commission can only refuse a proposal if it manifestly falls outside the framework of the Commission's powers (Costantini case, 2016: 10). The Commission, on the contrary, argued that the condition set out in Article 4(2)(b) of the ECI Regulation must be examined at the registration stage, and this legal review must be full in order to prevent the procedure from progressing although it is clear that the Commission cannot propose the adoption of an act (Costantini case, 2016: 13). However, the General Court did not explain what does 'manifestly' mean, therefore, we still cannot be sure what it actually means. The author is of the view that if the initiative falls manifestly outside the Commission's powers, with regard to the grammatical interpretation of the formula, the in-depth examination would be obsolete. Consequently, the proposal cannot manifestly fall outside the framework of the Commission's powers if such an examination was necessary to draw this conclusion.

3. Commission Registers the Minority SafePack ECI

As a result of the judgment the European Commission had to issue a new decision on the proposal. On March 29, 2017 the Commission decided to partially register the Minority SafePack ECI.[25] Accordingly, from April 3, 2017, the organizers have one year to collect the necessary one million statements of support, with respect to the registered 9 proposals, from at least seven different member states. As it was previously highlighted, the Commission made it clear in the contested decision that some of the proposed topics fall inside the framework of its powers, while others do not, since the ECI Regulation does not give floor to register only parts of a proposed initiative, the registration of the ECI was not possible. However, the Commission in its new decision expressed that while 2 of the 11 acts manifestly fall outside the framework of the Commission's power to propose legislation,[26] 9 of them do not, and, as such, the Commission took the decision the register the ECI partially regarding these 9 topics.[27] Consequently, we may come to the conclusion that the Commission in this new decision

accepted the possibility to register only parts of proposed ECIs; however, this is contrary to the previous statement put forward in the contested decision. This change of attitude is particularly interesting with regard to the fact that the General Court did not make any clear statement on the possibility of partial registration of an ECI. Nonetheless, the Commission stresses in its press release of March 29, 2017 that the 'decision to register the Initiative concerns only the legal admissibility of the proposal', and has not analysed the substance at this stage. The Commission underlines that after the organizers successfully collected the necessary signatures, the 'Commission can decide either to follow the request or not, and in both instances would be required to explain its reasoning'.[28] Therefore, the Commission drew the attention of the organizers to the fact that it has no obligation to submit a proposal for a legal act, and it still can drop the initiative after the successful collection of the supportive signatures.

The organizers underlined that this decision 'is not only important for the minorities, but for all European citizens, since it makes it easier to register new citizens' initiatives', as a 'major hurdle has been removed now for everyone who wants to use the instrument'. They pointed out that as a result of the Minority SafePack Initiative the EU could adopt more than nine different EU legal acts, which is 'more than what has been achieved in regard to minority rights protection inside the EU since the signing of the Rome Treaty sixty years ago'.[29]

Conclusion

The judgment is a win for the organizers and for European minorities as well.[30] It also has historical relevance since this was the first time that the organizers of an ECI successfully challenged the decision of the Commission rejecting the registration of the initiative, and their claims were upheld by the General Court. The judgment draws several important conclusions. The General Court emphasized, for instance, the importance of enforcement of the right of citizens to submit a citizens' initiative and the need for a clear, simple and user-friendly ECI. Reducing the gap between the citizens and the EU is one of the main goals of the ECI. An efficient tool of transnational participatory democracy, which should be strengthened through guaranteeing the right enshrined in Article 24 TFEU, may contribute to reaching this goal. The main conclusion of the judgment is the identification of the Commission's obligation to give appropriate reasoning in respect of the refusal of a proposal for an ECI, in order allow organizers to resubmit their proposal with due consideration to the reasons for refusal. This could be a progressive step in the enforcement of the efficient functioning of the ECI. At the same time, the General Court left open the question of partial registration, and, due to the lack of proper

reasoning, the General Court could not review the legality of the Commission's assessment either. Thus, the General Court left the term 'manifestly outside of the framework of the Commission's powers' uninterpreted. Unfortunately, the unclear meaning of this requirement seems to be a free pass for the Commission to reject ECIs in the admissibility test. Therefore, the judgment is relevant for its conclusion regarding procedural law, as it requires an appropriate reasoning from the Commission when it rejects the registration of an ECI in order to provide the organizers with the opportunity to resubmit their proposals. As such, the judgment is a step forward in promoting the efficient functioning of this agenda-setting tool and helps to fulfil its goals.

Notes

[1] Consisting of: Hans Heinrich Hansen (Denmark), Kelemen Hunor (Romania), Karl Heinz Lambertz (Belgium), Jannewietske Annie De Vries (The Netherlands), Valentin Inzko (Austria), Alois Durnwalder (Italy) and Anke Spoorendonk (Germany).

[2] C(2013)5969 final. https://www.fuen.org/fileadmin/user_upload/downloads/2._Rejection_COM.pdf.

[3] *The Citizens' Committee for the Citizens' Initiative Minority SafePack – One Million Signatures for Diversity in Europe and Others* (the "applicants") v *the Commission* (the "defendant").

[4] Judgment of the General Court on 3 February 2017 in the Case T-646/13, *Minority SafePack – One Million Signatures for Diversity in Europe* v *European Commission.*

[5] http://ec.europa.eu/citizens-initiative/public/initiatives/open/details/2017/000004/en?lg=en.

[6] In fact, Art. 21 literally speaks only about national minorities, but as it prohibits discrimination based on any grounds, included language and membership of a national minority, we can say that the term "national or linguistic minority" does not exceed the scope of this article.

[7] https://www.fuen.org/fileadmin/user_upload/main-activities/MSPI/MSPI-Safepack-EN-mit-aufkleber_260215.pdf.

[8] In accordance with Annex II of the ECI Regulation, the required information, the "corpus" of the initiative, as the Commission refers to it, are the following: title (no more than 100 characters), description of the subject matter (no more than 200 characters), and the description of the objectives of the proposed citizens' initiative on which the Commission is invited to act (no more than 500 characters). The organizers of a proposed ECI also have the opportunity to 'provide more detailed information on the subject, objectives and background to the proposed citizens' initiative in an annex. They may also, if they wish, submit a draft legal act.'

[9] Regulation (EU) No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the Citizens' Initiative (OJ 2011 L65, 1).

[10] https://www.fuen.org/fileadmin/user_upload/downloads/Charter.pdf.

[11] '...the expression "national minority" refers to a group of persons in a state who: (a) reside on the territory of that state and are citizens thereof; (b) maintain longstanding, firm and lasting ties with that state; (c) display distinctive ethnic, cultural, religious or linguistic characteristics; (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; and (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.'

[12] One of the reasons why there is no consensus in defining the concept of minority and establishing an effective system of protection in Europe is that member states are demographically varied and as such, the constitutional status of national or ethnic minorities living in the territory of a member state is mainly determined by its demographic position and historical aspects. See for more information: Balázs Vizi, 'Protection without Definition – Notes on the Concept of "Minority Rights" in Europe'. *Minority Studies*. 15 (2013): 7-24.

[13] It does not have any binding effect on states, however, since the proposal was not approved by the Committee of Ministers of the Council of Europe.

[14] By order of the President of the First Chamber of September 4, 2014, Hungary was granted leave to intervene in support of the form of order sought by the applicant, and the Slovak Republic and Romania were granted leave to intervene in support of the form of order sought by the Commission. On September 16, 2016 the hearing for the Minority SafePack Initiative took place at the General Court of the EU in Luxemburg. See FUEN Press Releases,

September 16, 2016. https://www.fuen.org/news/single/article/european-minorities-optimistic-after-hearing-at-the-eu-court.

[15] According to Art. 296 TFEU 'legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties'. Art. 4(3) of the ECI Regulation states that 'where it refuses to register a proposed citizens' initiative, the Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them'.

[16] Regulation (EU) No. 211/2011 of the European Parliament and of the Council of 16 February 2011 on the Citizens' Initiative (OJ 2011 L65, 1).

[17] http://curia.europa.eu/juris/document/document.jsf?text=&docid=151054&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=281572.

[18] Judgment of 30 September 2015, *Anagnostaki* v *Commission*, T-450/12, at present under appeal, EU:T:2015:739, paras. 22 and 23.

[19] Recital 20 of the ECI Regulation: '…the Commission should explain in a clear, comprehensible and detailed manner the reasons for its intended action, and should likewise give its reasons if it does not intend to take any action'.

[20] Recital 2 of the ECI Regulation: 'The procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible.'

[21] See Judgment of the Court of 10 December 2002 in Case C-29/99, *Commission of the European Communities* v *Council of the European Union*, 45-46.; Judgment of the Court of 30 September 2003 in Case C-239/01, *Federal Republic of Germany* v *Commission of the European Communities*, 12; Judgment of the Court (Second Chamber) of 30 March 2006 in Case C-36/04, *Kingdom of Spain* v *Council of the European Union*, 9; Judgment of the Court (Grand Chamber) of 18 March 2014 in Case C-427/12, *European Commission* v *European Parliament and Council of the European Union*, 16; Judgment of the Court (Second Chamber) of 18 June 2015 in Case C-508/13, *Republic of Estonia* v *European Parliament and Council of the European Union*, 11.

[22] See Judgment of the Court of 31 March 1998 in Joined Cases C-68/94 and C-30/95, *French Republic and Société commerciale des potasses et de l'azote (SCPA) and Entreprise minière et chimique (EMC)* v *Commission of the European Communities*, 257; Judgment of the Court of 10 December 2002 in Case C-29/99, *Commission of the European Communities* v *Council of the European Union*, 46.; Judgment of the Court (Grand Chamber) of 24 May 2005 in Case C-244/03, *French Republic* v *European Parliament and Council of the European Union*, 13; Judgment of the Court (Second Chamber) of 29 March 2012 in Case C‑504/09P, *European Commission* v *Republic of Poland*, 98.

[23] Judgment of the General Court of 10 May 2016 in Case T-529/13, *Balázs-Árpád Izsák and Attila Dabis* v *European Commission*, ECLI:EU:T:2016:282 (at present under appeal).

[24] Judgment of the General Court of 19 April 2016 in Case T-44/14, *Bruno Costantini* v *European Commission*, ECLI:EU:T:2016:223.

[25] C(2017)2200 final.

[26] The Commission refused to register the adoption of a legal act for the purpose of strengthening the place of citizens belonging to a national minority within the EU, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of members of the European Parliament. Moreover, in the Commission's view a legal act cannot be adopted either as regards effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of the existing Council directives on the subject of equal treatment. See C(2017)2200final, recitals 7, 8.

[27] As Lóránt Vincze, president of FUEN expounded: some of the proposed topics are highly important for the organizers and if the Commission rejects these proposals, even if it partially registers the proposal although some topics would be rejected by the Commission, the organizers will lodge a new initiative in line with the Commission's decision. Presentation of the president of the FUEN in Budapest on February 10, 2017 at a conference organized by the Research Institute for the Hungarian Communities Abroad. https://www.fuen.org/dk/nyheder/single/article/fuen-president-lorant-vincze-spoke-about-the-minority-safepack-in-budapest/.

[28] European Commission. 'Commission Registers "Minority Safepack" European Citizens' Initiative'. European Commission Press Release, Brussels, March 29, 2017. www.europa.eu.

[29] FUEN. 'Green Light for the Minority SafePack Initiative'. FUEN Press Release, March 29, 2017. www.fuen.org.

[30] FUEN. 'European Minorities win Minority SafePack Case against the European Commission'. FUEN Press Release, February 3, 2017. https://www.fuen.org/hu/hirek/single/article/european-minorities-win-minority-safepack-case-against-the-european-commission/.

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Book Review: *Romaphobia. The Last Acceptable Form of Racism*, by Aydan McGarry, London: Zed Books, 2017, 294 pp

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The text of Aydan McGarry brings to light a topic which, despite its relevance in contemporary society, has not attracted much scholarly attention: *Romaphobia*. As the author emphasizes in the title, *Romaphobia* is the last acceptable form of racism; a fact that is sadly observable not only in the increasing xenophobic attacks on Roma all over Europe, but also in the general tendency of justifying and legitimizing racist comments towards this community within media and political debates. Notwithstanding, the scholars who are engaged in the analysis of the marginalization of Roma have so far mainly focused on the supposed social and/or cultural characteristics of this group, instead of questioning the broader system which keeps the Roma at its margins. In this book, the explicit aim of the author is to divert this discourse and to look for the roots causing the persistent vilification of the Roma in the values and structures that regulate social life within the state (p. 4). With this purpose, he investigates the way the nation-state has constructed the relationship between identity, territory and belonging and how such construction has contributed to the persistent representation of the Roma as "the eternal other".

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This book's results are particularly interesting and timely, as the issue of "Roma inclusion" has gained more attention both within academia and at the EU policy level in recent years. The EU is engaged in the promotion of the rights of the Roma since the beginning of the 1990s, initially with a legal anti-discriminatory approach and then with a socio-economic one, but its intervention has failed to bring a sustainable and concrete change. Consequently, many scholars are investigating the reasons behind the shortcomings and debating potential ways forward. Within this context, the text of McGarry makes an important contribution, since it seems to open up a new path and contributes with fresh perspectives in this field. The second aspect that makes *Romaphobia* innovative and timely relevant is its interdisciplinary content, which goes beyond the narrow field of Romani Studies by also engaging with other disciplines, such as Critical Geography, Politics, Sociology and Post-colonial Studies. For this reason, the text represents one of the first attempts to provide a comprehensive account of the systematic reasons behind the vilification and consequent marginalization of the Roma.

The topic tackled by the book is strictly linked to the issue of representation of the Roma, an issue already analysed by this author in previous works (McGarry 2014; McGarry and Drake 2013). The Roma are still associated with a variety of different connotations— poverty, criminality, deviance, parasitic lifestyle etc.—which continue to inform prejudices and policies centred on securitization and exclusion. The main outcome of such representation is the denial of the subjectivity and agency of the Roma individual, who remains bound within a collective identity constructed by others. As the author writes, 'stereotypes are the ultimate expression of out-group power, an expression created by diminishing individuality and reducing a group identity to unflattering homogeneous characteristics' (p. 96). The second outcome is the reinforcement of the narrative us vs. them, which sees the Roma as not belonging to our society and reinforces the typically colonial opposition between an "us"—western and modern—and a "them"—others and backwards. McGarry investigates the roots of such a narrative in the context of the development of the nation-state, based on the control of a population within territorial boundaries, and in the consequent construction of a Roma de-territorialized identity.

Territory is the central topic of the second chapter. This is, first of all, because of the stigmatization of nomadism as an inner characteristic of the Roma and as a sign of their de-territorialization, and second, because of the relevance of territorial stigmatization—the process through which the Roma are identified with liminal spaces, reproducing and justifying policies of exclusion. The stigmatization of nomadism is pointed to as a central element: 'Romaphobia finds fertile ground to flourish due to the perception of Roma as rootless nomads who do not

have ties to any one nation or state' (p. 48). The author uses works of political theorists and geographers such as Foucault, Raffestin, Massey and Sack to argue that the root of *Romaphobia* lies in the conflation between belonging and a bounded territory: the objective of the state, whose power is based on territory, is to control a population, which has to be legible and loyal. For this reason, identity and belonging are manipulated in order to be territorially based (pp. 49-57). Consequently, the Roma are stigmatized as nomads without territory and not belonging anywhere. In addition, the stigmatization of Roma results in their physical marginalization in liminal spaces, which, besides obstructing their inclusion, it also reinforces the prejudice of the Roma not belonging to the mainstream society.

In the third chapter the author analyses the Roma identity. McGarry emphasizes the fact that it would be more correct to talk about Roma "identities", as the common understanding of a Roma identity, bounded and homogeneous, is a construction by the non-Roma. Indeed, 'Romaphobia means that the voice of Roma is stifled and non-Roma are able to shape public understandings of Roma identity' (p. 86). Furthermore, this understanding of Roma identity informs and shapes the representation and policies targeting this group. In his analysis, McGarry refers to Brubaker and the concept of "groupism", which identifies 'the tendency to take discrete, sharply differentiated, internally homogeneous and externally bounded groups as basic constituents of social life' (Brubaker, 2002, quoted on p. 104). This tendency determines the systemic denial of the individual agency and reinforces the process of "othering". The author finally analyses the emergent idea of a "Roma nation", which was promoted by the International Romani Union through a reporting of the academic debate over its potential and critical points. The issue is indeed still unsolved: on the one side, the promotion of a Roma nation or Roma identity by Roma themselves can be a powerful means for political mobilization; on the other side, it can reinforce the us/them division and the idea that the Roma do not belong to the respective national territories.

The fourth chapter is dedicated to the analysis of two different cases in which the Roma community lives in spatially segregated areas as a result of Romaphobia: the municipality of Šuto Orizari in Skopje, FYROM, and the Lunik IX district in Košice, Slovakia. Both neighbourhoods have been created by the local authorities in order to move the Roma inhabitants living in the city centres to a segregated area. Nevertheless, as the author notices, the two cases disclose important differences between each other. 'Unlike Lunik IX, Šuto Orizari is a vibrant community with services, activities and opportunities and where people feel invested in their community' (p. 169). Although serious problems of high unemployment and

a lack of infrastructure also exist in Šuto Orizari, the area is connected to the rest of Skopje, interactions between Roma and non-Roma are significant and, most importantly, its population is engaged at the political level and its administration is controlled by Roma. On the contrary, Lunik IX is completely abandoned by the authorities, the housing conditions are deplorable and its inhabitants live in a state of resignation, as they just want to go away from there, but do not have the possibility to escape.

The last two chapters present two examples of how Roma agency can help to challenge stereotypes and claim its space within public discourses. The first example concerns the organization of the annual Roma Pride, which the author analyses by reporting the voices of the activists who participated in the events in Prague (2014) and Budapest (2015). Although some questions remain over the organization, effectiveness and objectives of such initiatives, McGarry presents them as a potential way to affirm the voice of the Roma, but also to challenge the representation of Roma by non-Roma. The second example considers a number of protests organized in response to the expulsion of Roma migrants from western European countries, in particular, France and Italy. In this case, the analysis is conducted through a reflection on the relationship between citizenship and migration in the EU context. The author indeed claims that such manifestations can be interpreted as acts of citizenship.

Romaphobia represents an interesting and valuable contribution to the academic debate on the marginalization of Roma, especially as it provides a new perspective, which, rather than looking to the oppressed (the Roma), looks to the oppressor (the non-Roma). As such, this perspective makes an important contribution to Romani Studies, in which an increasing number of Roma scholars call for a decolonization of the knowledge production (Matache 2016; Mirga-Kruszelnicka, 2015). However, while the author touches upon some important issues related to the topic, which are also crucial for further developments in this area of study, his arguments are not always sufficiently developed. One such example is to be found in the author's attempt to address the role of the EU in relation to the issue of the Roma. While the author presents the Framework for National Roma Integration Strategies as a hope for the empowerment of this community (p. 9), his argument does not consider the numerous criticisms directed at this text because of its reproduction of stereotypes and its inability to acknowledge properly the diversity within the Roma group (Marushiakova and Popov, 2015; Rostas, Rovid, and Szilvasi, 2015). Although other sections do recognize some shortcomings of the EU's approach to Roma, this issue is not developed further and the question on potential ways forward in this context is left unanswered. It would most probably be useful to investigate the colonial legacy of Europe and

how this is reproduced within the policies towards Roma. Such a lens of analysis could have helped the author to engage more critically in the analyses of the role of the non-Roma NGOs in promoting Roma rights and in catalysing the Roma movement. Although some scholars, such as Trehan and Kóczé, have highlighted the limits of the engagement of non-Roma NGOs professionals in the promotion of Roma rights and the risks of an *NGOization* of the Roma movement (Trehan, 2009; Trehan and Kóczé, 2009), McGarry does not fully consider these aspects. In the case of the Roma Pride, the author just mentions the controversy on the role of a non-Roma NGO in initiating the manifestation, but does not investigate further the implications of such an involvement (p. 184).

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