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From Protection to Empowerment through Participation: The Case of Trentino—a Laboratory for Small Groups

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This article analyses the legal framework for the protection and promotion of three linguistic groups with a historical presence in the Province of Trentino, Italy, namely: Ladins, Mòcheni and Cimbrians. By assuming the need for a normative approach based on the empowerment and direct participation of minorities in the definition and implementation of promotional policies, the article describes the legal model set out in Provincial Law 6/2008 on the protection and promotion of the rights of local linguistic minorities. It analyses the specific approach to linguistic minorities adopted by the Province of Trentino, highlighting the role of the linguistic groups in both policy making and policy implementation. It focuses on the normative framework, with special attention being paid to participatory and accountability instruments. The analysis addresses the role of linguistic minorities in implementing promotional policies, and the case study demonstrates how it is possible to integrate the right to participate in the decision-making process with a *duty to take action* conferred directly upon minorities and their institutions, by increasing the level of adequateness, feasibility and sustainability of the legal framework.

Keywords: Trentino; linguistic minorities; empowerment; participation; legal protection; law of diversity

1. Introduction: a "law of diversity" for minorities' empowerment

To move beyond mere protection of national minorities and achieve empowerment is the primary goal of a new approach to minority protection, defined as the "law of diversity" in a favourable cultural, political and social context (Palermo and Woelk, 2005). This approach aims to overcome the traditional focus on "protection of minorities", which is rooted in principles such as state sovereignty and "top-down" recognition of a minority, and 'indicates the complex bunch of legal instruments that

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can be adopted at all possible levels in order to deal with the request for accommodation of potentially endless claims for diversity' (Palermo, 2007: 70). According to this approach, the key for a balanced relationship between majority and minority groups is participation. This is particularly challenging for numerically small groups. According to Palermo and Woelk, the law protecting minorities is 'inevitably subject to constant revision, in terms of [...] proportionality, efficiency and sustainability, and directly linked to the changes of the societal reality' (Palermo and Woelk, 2005: 9). The three main elements characterizing it are: *asymmetry* of application, according to the concrete characteristics of each group; *pluralism* of legal sources and of subjects; and *negotiation* of its content in a quasi-contractual framework. Starting from this premise, Malloy argues that the procedural dimension must be also taken into account, particularly in terms of minority law-making: in order to evolve from participation to empowerment, within the paradigm of political minority law-making, 'minorities are forced to become self-empowered and, in doing so, they become empowered to be self-protecting' (Malloy, 2006: 22). As we will see below, the system of minority protection and promotion established in the Autonomous Province of Trento (also known as "Trentino") seeks to enforce the principle of minority self-empowerment, by calling for active participation in law-making, legal implementation and monitoring.

This article analyses the specific approach to linguistic minorities implemented by the Province of Trentino, highlighting the role of linguistic groups with a historical presence in the territory in both policy making and policy implementation. It focuses on the normative framework, assessing the legal mechanisms for minority promotion, paying particular attention to participatory and accountability instruments. It also addresses the role of linguistic minorities in implementing promotional policies: the case study demonstrates how it is possible to integrate the right to participate in the decision-making process with a *duty to take action* conferred directly upon minorities and their institutions, by increasing the level of adequateness, efficacy, feasibility and sustainability of the law.

2. The Italian legal framework: diversity promotion and asymmetry

Since the entry into force of its 1948 constitution, Italy has benefited from a pluralistic and promotional legal model. According to Toniatti, a 'national State of multinational and promotional inspiration' is characterized by the predominance of a

national group (the majority) and the presence of one or several minority groups (Toniatti, 1995: 206 ff.). Within this model, 'the recognition, protection and promotion of minorities are an integral component of the constitutional order and its fundamental values' (Palermo, 2011: 29). Article 6 of the Italian constitution states that safeguarding linguistic minorities is a binding constitutional obligation of the Italian republic. Protection is applied through an asymmetric approach: according to the area of settlement, "historical" (with a traditional presence) linguistic groups are subject to different protection and promotional measures, although within a common general framework of principles provided for by law.

According to Law 482/1999, only minorities which are explicitly recognized by the state can benefit from protection under Article 6 of the constitution: it means that the state must formally recognize a linguistic group as a minority within a given region and local authorities must implement specific legislative measures to protect those minorities (Art. 2). As the concrete implementation of the law is delegated to local authorities, each minority is entitled to a different level of protection, and to differentiated measures aimed at promoting its language and culture. With regard to the Italian legal framework, scholars divide minorities into three categories. The first is "recognized, super-protected" minorities, which includes groups that are settled in regions with special autonomous powers, such as the Aosta Valley, Trentino-Alto Adige/South Tyrol, and Friuli Venezia Giulia. These groups enjoy a high degree of protection (Palici di Suni, 1999), with the highest level accorded to the German-speaking group in South Tyrol (Woelk, Palermo and Marko, 2007; Benedikter, 2007). The second category is "recognized minorities with *possible* protection": these are groups that, while recognized under Law 482/1999, might be, but are not necessarily, protected. This is linked to legislation stipulating that different levels of protection depend on the implementation of legislative measures at the local level. The third category is "non-recognized minorities", which are not recognized by the state as linguistic minorities, notably Roma and migrants. These last groups are only guaranteed protection against discrimination, but do not enjoy special protection under the 1999 law.

3. The case of Trentino and its relationship with international standards: Trentino as a laboratory for the "law of diversity"?

The case of the Autonomous Province of Trento can be considered a paradigmatic example of translating international standards into domestic regulation. It forms part of the Autonomous Region of Trentino-Alto Adige/South Tyrol, together with the Province of Alto Adige/South Tyrol. Trentino is characterized by the historical settlement of three small linguistic groups: Ladins, Mòcheni and Cimbrians. According to the last national census of 2012—which for the first time provided residents of the Province of Trento with the option of declaring minority affiliation on the basis of minority languages spoken—the Ladin-speaking community comprises 18,550 persons, the Mòcheno-speaking community 1,660, and the Cimbrian-speaking community 1,072. Within the Province, the three groups are subject to differentiated and detailed regulations under Law 6/2008 for the protection and promotion of local linguistic minorities, which is justified by the different contextual features and characteristics of the respective groups.

Law 6/2008 is grounded in four fundamental principles: (1) minority participation; (2) minority accountability in enforcing the promotional measures provided by the law; (3) the enforcement of a procedural approach to minority protection, especially with regard to the evaluation of impact and feasibility; (4) regulatory flexibility, to translate norms into reality. This approach by Trentino decision-makers can be considered a move towards the "law of diversity", and from a comparative perspective Trentino can also be viewed as a "regulatory laboratory" in which to test and develop traditional and prospective international and European standards. This paper argues that the Trentino regulatory system could provide an opportunity for further development of the "law of diversity", which in turn could enhance the role played by participatory mechanisms, and monitoring and evaluation of the effective implementation of international, national and local standards. The assessment of the concrete achievement of regulatory goals becomes crucial in order to avoid the risk of "symbolic participation". This can be achieved by balancing and reconciling, on the one hand, "object-oriented" regulatory activity, which aims to guarantee minority rights in traditionally challenging contexts (culture, language, education, equal opportunities); and, on the other hand, "process-oriented" action, which focuses on 'the processes by which decisions on these matters are made', and tries to overcome the 'simple majority decision-making [which] appears arbitrary and

unsatisfactory for persons belonging to minorities' (Packer, 2000; 30; see also Pattern and Kymlicka, 2003).

4. From participation to empowerment? The involvement of minorities in the law-making process

4.1 *International standards driving national policies on participation in law-making and implementation*

According to the Explanatory Report for Article 15[1] of the Framework Convention for the Protection of National Minorities (FCNM[2]), consultative mechanisms have a fundamental centrality as a necessary, if not sufficient,[3] tool for guaranteeing the effectiveness of minority participation (Weller, 2010). The institutional measures that states can implement can be classified according to their function: (a) *ex ante* participation mechanisms, such as consultation of persons belonging to minorities and their representative institutions; and (b) *ex post* mechanisms of implementation, monitoring and evaluation of policies, such as bodies mandated to evaluate the impact of regulation on minorities and their effective participation in the decision-making process at the local level. Following the adoption by the Advisory Committee on the FCNM of the Third Thematic Commentary on the Language Rights of Persons Belonging to National Minorities (2012), a new set of standards emerged that subsequently guided the actions of national and regional decision-makers (on language rights, see Beco and Lantschner, 2012; Marko, 2010; Lantschner, 2008).[4]

With regard to the main focus of this paper—the use of minority languages in relations with administrative authorities in areas inhabited traditionally or in substantial numbers by national minorities—the Advisory Committee calls for a feasible and predictable (non-arbitrary) enforcement of the conditionality clauses implicit in the expression "substantial numbers", contained in Article 10 FCNM.[5] This provision gives member states a broad margin of appreciation with regard to application, which may effectively nullify its protection (Auerbach, 2010). The call for a reasonable interpretation of the "substantial numbers" clause is also reflected in the implementation of the principle of territoriality,[6] which gives rise to a duty to act on the part of public authorities and was traditionally used to delineate the concrete geographical context within which linguistic rights may be lawfully exercised.

With the Advisory Committee's Commentary on Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs (2008), the set of standards to be considered when assessing and evaluating national regulations increased (see also generally Verstichel, 2004). As noted above, one of the main risks to be avoided when approaching minority rights is that of "symbolic participation", which occurs when the formal inclusion of minorities within the decision-making process has no practical impact.[7] To counter this risk, the public administration must guarantee the establishment of procedural and institutional tools to periodically monitor and assess the impact of minority participation. In order to make participation effective, a comprehensive approach must be taken by public decision-makers, which mainstreams a minority perspective across all levels of policy making and involves a series of procedural steps to be taken by all actors involved in the policy making process (para. 73). This approach is crucial in order to facilitate the transition from minority protection to minority empowerment; it is a *holistic* approach that starts from the assumption that minority protection is not a '"competence matter" […] vested with one subject or another. It rather becomes a transversal and shared objective which is to be achieved by different actors and instruments in a combined approach' (Palermo, 2005: 41).

With regard to the establishment of specialized governmental bodies, the Advisory Committee stresses that their 'main role [...] is to initiate and coordinate governmental policy in the field of minority protection', acting as 'important channels of communication between the Government and minorities'.[8] Therefore, those bodies should take part in the process of mainstreaming minority matters, which becomes a general objective of public administration and simultaneously a general principle driving its action in all areas of intervention (Topidi, 2010: 238). If we agree with this approach, both administrative activity and its organization need to be shaped around the duty to accommodate the needs of minorities, at least (but not exclusively, as we will see below) in those territories where minority groups are historically present. This involves primarily the decision-making process, but also subsequent activity related to the implementation of regulations and policies. Thus, consultative and participatory mechanisms are fundamental aspects of both the decision-making and enforcement processes. They not only contribute to increasing the feasibility of regulation and avoiding the risk of symbolic participation, but allow minorities to become directly responsible for the implementation of promotional policies. Such

policies, then, are not merely delegated to the central government or administration, but become the direct responsibility of both persons belonging to minorities and their representative institutions.[9] Moreover, this approach might contribute to participation in a more dynamic and accountable way, introducing the element of minority empowerment under the broader goal of the "law of diversity".

4.2 *Implementation at the provincial level: minority participation in the law-making process*

Trentino's minority protection system seems to have incorporated both the need to mainstream minority concerns through policy, and the need to adapt administrative structures and their functions to meet this goal. Alongside an extensive policy framework aimed at favouring and promoting minority communities settled in the Province, an integrated structure of participatory and monitoring mechanisms has also been established, not only at the decision-making level but also with regard to legal implementation. As we will see below, participation is approached from the perspective of empowerment, as minorities are directly responsible for creating the conditions for exercising their rights.

In order to better understand the innovative nature of the Trentino model, one can analyse the decision-making process behind Law 6/2008. In this case, one can argue that the standards developed by the Explanatory Report of the FCNM to guarantee effective participation of minorities were successfully applied in the region. First, minority consultation has been guaranteed through the establishment of representative institutions for the three linguistic groups. Second, minority consultation has been ensured through the establishment of an expert Working Group, which includes representatives of minority institutions and experts in the field, and is entrusted with developing guidelines and recommendations on the core principles and content of the law. Concretely, the Working Group has been asked to assess and evaluate the efficacy of existing regulations with regard to: the risk of assimilation of minorities; preservation and promotion of minority languages; strengthening of minority community identity; the financial impact of minority policies; and optimal use of resources.[10] The Working Group has proven effective with regard to its impact on both the general approach and the legislative solutions to minority issues: its recommendations were the basis for the development of Provincial Law 6/2008.

In order to make *ex ante* participation effective, a set of requirements is needed to avoid associated risks such as paternalism. Participation should not be merely symbolic but should be understood in a functional way, as a tool for providing cognitive insights into the reality to be regulated and the concrete interests involved. It should result in improved regulation and policies, ensuring compliance of promotional measures with international standards of proportionality, adequateness and sustainability. Furthermore, participatory mechanisms should be regularly applied in contexts that have a direct or indirect impact on minorities (this recalls the principle of mainstreaming at the European Union level). In turn, this may increase both the legitimacy and adequateness of political choices. In the first case, participation can enable minority interests to emerge in the decision-making process through institutionalized mechanisms. Although one cannot guarantee that outcomes are consistent with the priorities expressed by minorities (Toniatti, 2011), it may avoid the risk of a "rejection crisis": indeed, a well-established and transparent participatory process increases the degree of acceptance of the outcome of the decision-making process, which is not perceived as an imposition by the majority, but rather as the result of a "bottom-up" process involving minorities themselves (Palermo, 2010). Moreover, the likelihood that good policies are adopted can be increased by avoiding the risk of "institutional overloading", resulting from an oversized institutional framework that is disproportionate to relative needs and resources. An excessive number of bodies inevitably reduces the quality of participation and thus that of the overall decision-making process. Consultative mechanisms must be permanent and must not be limited to specific decision-making processes: they have to exist within the law-enforcing, monitoring and evaluating processes as well, in order to guarantee the effectiveness and ongoing adequateness of promotional policies. As we will see below, in the section dedicated to the institutional system established under Law 6/2008, the Trentino model seems to address this need by providing both consultative and co-decisional bodies at both levels of government (see Arts. 9 and 10).

After focusing on the decision-making process in Trentino, and its degree of consistency with international standards on minority participation, we now address two specific issues related to the Trentino legislation: the impact of the "minority factor" on the organization and functioning of public administration—especially with regard to the process of accommodating the latter to ensure effective implementation of linguistic rights and promotional policies.

5. Linguistic rights and public administration: fundamental principles guiding the functions and organization of public administration

This section focuses on the impact of the presence of minority groups in Trentino on administrative organization and functioning. If we accept that public administration must act to promote public interests within a community (national, regional or local), the "minority factor" inevitably influences the planning and implementation of administrative and political actions. The "minority factor" is particularly relevant in all those territories in which minorities are historically settled, even if the traditional territorial principle behind minority promotion policies is interpreted by the law in a more flexible way. The question is: how (and how much) does the "minority factor" influence administrative functions, with regard to both the planning and the implementation of policies, in order to concretely and effectively satisfy public interests, as qualified by the presence of minority groups (Suski, 2008)? To answer this question, I analyse Trentino's public administration—the most innovative aspect of the Trentino system of minority protection—through the lens of the fundamental principles governing regulatory structure, goals and tools.

Public administration can be considered a tool for satisfying people's interests and promoting their personal development. The presence of minority groups, particularly in a promotional (albeit asymmetric) system such as the Italian one, must be taken into account when establishing both a specific administrative structure and its particular functions. However, the need for adapting administrative organisation and functions is common to every territory characterized by the presence of a minority: what makes Trentino a possible model for implementation in similar contexts? Which specificities and innovations are introduced? The principles which characterize administrative activity in the field of minority protection derive from different normative levels and, significantly, recall and try to implement international standards and various aspects of the "law of diversity".

The main source guiding administrative activity in Trentino is the Autonomous Statute of the Region of Trentino Alto-Adige/South Tyrol, which entered into force as a constitutional law in 1948 (Constitutional Law 5) and contains a number of "minority-oriented" provisions (Verstichel, 2009). It was reformed in 2001, reflecting a paradigm shift in minority protection and promotion. First, it clearly showed an evolution from static protection (guaranteeing the existence of minorities) towards dynamic protection (promoting minority rights). Second, it allowed for the

realignment of fundamental policy-guiding principles in relation to the three minority groups: until then the two minorities speaking Germanic languages (Cimbrians and Mòcheni) were guaranteed a lower of degree of protection than the Ladins; however, the reform extended the promotion of cultural activities—previously reserved for the Ladin community—to the other two groups (Art. 102). The same happened in the area of education, when the right to learn minority languages, including through the medium of those languages, was extended to the Cimbrian and Mòcheno communities.

Alongside the general duty to guarantee adequate financial support for minority promotion policies, Article 15(3) of the Statute introduces a number of other standards:

a) *Adequateness* of legal and administrative policies, by recalling 'the suitability to promote both the protection and cultural, social and economic development of populations';
b) *Territoriality* as a general principle delineating the area of enforcement of policies ('within their own territories');
c) *Differentiation*, by establishing interventions in relation to 'populations' size and specific needs'.

These principles were then integrated and specified at the legislative level. From the structure and aims of Law 6/2008, three other fundamental principles can also be derived:

a) The principle of the minority population's "*own language*", an approach already adopted by the Catalan system (*ex plurimis*, Pla Boix, 2006);[11]
b) The principle of *empowerment* of minority communities, which are called to directly participate in the implementation of relevant laws and policies;
c) The principle of *subsidiarity*, which prescribes that decisions should be taken at the level that is most relevant and legitimate in relation to the introduction and implementation of minority policies.

These principles can be further categorized according to their nature and functions. They can be sub-divided into general, methodological and enforcement principles:

a) Principles of territoriality and minorities' "own language" are classified as general principles: they contribute to the definition of the concrete scope of application of minority-oriented policies (territoriality) and the goals that

minority-oriented policies must achieve (protection and promotion of minority languages).

b) Principles of subsidiarity and empowerment are classified as methodological principles: they guide the allocation of functions between different institutional levels (subsidiarity) and seek to involve minority groups directly in designing and implementing promotional policies.

c) Principles of adequateness and differentiation are classified as implementation principles: they orient the concrete exercise of functions with regard to both content (adequateness), in terms of feasibility of achieving the intended objectives, and implementation (differentiation), which implies that the decision-makers must adapt policies to the specific needs of each minority group.

In the next section, the Trentino regulatory system will be described through the lens of the above principles, in order to determine whether and how it may be considered an innovative and potentially exportable model, not only with regard to minority protection but also to minority empowerment.

5.1 *Territoriality and minorities' "own language": general principles through which functions are established*

The Italian constitutional court has consistently identified territoriality as the main criterion for delineating the scope of implementation of minority policies, with little room for the "personal principle". In Decision 159 of 2009, the court stated that 'the right to use their language afforded to persons belonging to linguistic minority communities is a personal right, but the right is limited to their communication with institutions in the territory where these communities are traditionally located'. This approach has been interpreted as recognizing a personal right that is dependent on territoriality (Stradella, 2009): territory becomes a condition to access the protection guaranteed by Article 6 of the Italian constitution, which states that 'the Republic shall protect linguistic minorities by means of specific measures' (Piergigli, 2010). Law 6/2008 also applies the territoriality principle, but interprets it more flexibly, particularly with regard to entitlement to linguistic rights for persons belonging to the three linguistic groups. Accordingly, on the one hand Article 3 of Law 6/2008 identifies territories of minority historical settlement as the basic context in which linguistic rights can be effectively exercised and guaranteed by specific administrative

measures and financial support: 'within those territories, all citizens have the right to know the language of the respective community and to use it in the social, economic and administrative life, without being discriminated'. On the other hand, this apparently rigid interpretation of the territoriality principle is more flexibly understood with regard to the concrete use of minority languages: the right to use a minority language is not limited to the territories of historical settlement in those cases in which schools or administrative institutions, even if not located in those territories, are entrusted with "minority-oriented" functions. A relevant example is the Provincial Ombudsperson (Law 6/2008, Art. 10), who can receive complaints relating to minority protection.

The principle of territoriality is more rigidly applied in the context of general administrative acts that concern the whole community. In this case, the duty to publish acts in minority languages is limited to the territories of historical settlement (Law 6/2008, Art. 16(3)). Notwithstanding, when a public act is considered of particular relevance (i.e. "direct interest") to the linguistic communities, the public administration has a general duty to publish it in the minority language(s) (Law 6/2008, Art. 16(5)). In this case, the direct interest of minorities to be informed of the content of the acts allows for a more flexible interpretation of the territoriality principle, as the duty to translate is not limited to those public administration institutions located in the territories of traditional settlement.

However, a rigid approach is adopted with regard to the right to use minority languages during meetings of the elected assemblies, which is limited to the municipalities and local boards located within the territories named under Article 3 of Law 6/2008 (Art. 16(4)). A rigid approach also characterizes the rule that the proven knowledge of the minority language guarantees absolute precedence in appointments to positions in public administration, exclusively within the minority territories (Law 6/2008, Art. 29).

In the context of "communities of the valley", the principle of territoriality is combined with that of subsidiarity.[12] These communities were established in the territory of the Province as intermediate administrative bodies between municipalities and the Province, and were entrusted with functions and policies previously assigned to local government institutions (the Province) and the municipalities. They do not directly represent linguistic minorities, but, when territories of minorities' historical settlement are part of the communities, they perform activities directly related to

minority protection as part of their delegated functions, and must guarantee the effective exercise of the right to use minority languages in public administration. They agreed to propose a flexible interpretation of the principle of territoriality, especially with regard to the right to use minority languages in communication with public administration. The communities recognize the right to know, preserve, promote and learn a minority language and the right to use it, orally and in writing, in all relations with the communities' offices and without discrimination. Within the communities' area of competence, these rights can be exercised within the whole territory of traditional settlement, and not exclusively in communication with institutions based in the territory in question. This results in a corresponding duty to ensure that administrative offices are able to guarantee the effective enjoyment of these rights, in terms of both individual and organizational resources, i.e. the presence of civil servants proficient in minority languages.

To summarize, the principle of territoriality seems to be rigidly interpreted when it is balanced against other public interests, such as the organization and efficiency of administrative and political functions related to the work of elected bodies and public recruitment. However, it becomes more flexible when the right to use a minority language comes into the equation: then, the goal of promoting the use and knowledge of the language in question requires the public administration to act to guarantee its effective realization, notwithstanding the costs of organization and financial support. Law 6/2008 introduces the principle of use of minorities' "own language" in cases where minority groups are settled within the provincial territory, by stating that the three languages represent the respective minority communities' own languages (Art. 3). This approach is typical of the Catalan context, according to which a minority's own language must be interpreted as that language which, within a specific area, represents the main language, both of official and everyday use. This does not amount to mere symbolic recognition, as it affects the whole regulatory structure and represents the normative premise for the right to use a minority language in dealings with public institutions, rendering the application of the territoriality principle more flexible. On the basis of this, Article 4 of Law 6/2008 recognizes a set of rights of citizens belonging to linguistic minorities: the right to know the language of the community to which they belong (the community's own language); the right to use it, both orally and in writing, in social, economic and administrative life, without discrimination; the right to learn it and to receive an adequate education in that

language. By formalizing this set of rights, the law creates responsibilities for public administration at all levels of government (central, intermediate and local) to guarantee their implementation. Accordingly, the organization and recruitment procedures of the public administration are affected by this duty, especially within territories of historical settlement and when providing services to minorities. Article 29 states that, in order to make both linguistic rights and duties (Art. 4) effective, the proven knowledge of the minority language guarantees absolute precedence in access to employment through public recruitment procedures. Furthermore, public administration operating in territories of historical settlement must guarantee the appointment of civil servants with proficiency in the minority language, and public servants that are appointed on the basis of their knowledge of the minority language are required to use it. Thus, administrative structures are organized in such a way that promotes one of the fundamental principles on which the system is based: the shift from minority protection to minority empowerment, not only within the decision-making process, but also—and most importantly—within the implementation and monitoring processes.

This dimension—which can be seen as a call for co-responsibility of minority representative institutions (see below) within the process of implementation of the relevant minority language provisions—is reaffirmed by the law, which states that not only the central government, but also (and primarily) minority communities, must assume responsibility for guaranteeing the conditions for the promotion of the community's own language and the exercise of minority rights (Art. 4(3)). As we will discuss below, when approaching the methodological principles of subsidiarity and empowerment, political choices made by the provincial legislature seem to enable the further evolution of the traditional "minority approach": promotion develops into empowerment, by entrusting the institutions that represent minorities with direct responsibilities (and accountability) for the implementation of statutory regulations (Verstichel, 2010).

5.2 *Subsidiarity and empowerment: the allocation of functions at different institutional levels*

Although subsidiarity is a common principle within the "law of diversity", directly linked to asymmetry and differentiation, the specific approach of Law 6/2008 should be underlined (Topidi, 2010). Law 6/2008 defines both horizontal and vertical

subsidiarity (together with adequateness, differentiation, democracy and participation (Art. 6)) as a general principle that influences the actions of public bodies in their pursuit of minority protection and promotion. It obliges all levels of government to implement all possible measures to guarantee the effective fulfilment of provisions for the promotion, protection and development of the ethnic, cultural and linguistic identities of minorities (Law 6/2008, Art. 1). This approach calls for the direct empowerment of minority communities to become a subject, and not merely an object, of both identification and implementation of promotional policies. Law 6/2008 introduced the principle of direct responsibility of minorities, which provides for a *duty to take action* conferred directly upon minorities and their institutions (see Arts. 4(3) and 6). It integrates the *right to take part* in the decision-making process deriving from the principle of effective participation, and adds a new dimension to the "law of diversity" by stressing the need for adequateness, efficacy, feasibility and sustainability. Participation is qualified in the sense of responsibility and empowerment, particularly in implementation of the law, from a two-fold perspective. As stressed above, this involves the application of law and policies (Malloy, 2010): these processes are delegated directly to minority representative institutions, which are responsible to their own communities for guaranteeing the effective enjoyment of linguistic rights and implementation of promotional policies, including within the context of broad institutional and organizational autonomy and administrative decentralization (Art. 7). Additionally, it involves monitoring and evaluating activities aimed at assessing the concrete impact of policies on the social, economic and cultural conditions of minority communities. Evaluating the outcomes of public interventions thus becomes crucial, as stressed by the FCNM Advisory Committee with regard to linguistic rights;[13] and the duty to establish monitoring institutions and procedural mechanisms to review policies through periodic assessment lies with both the central government/administration and minority representative institutions.[14] Interestingly, monitoring and advisory activities are procedurally linked, indicating that a functional circle between law-making and implementation processes should be guaranteed, in order to gather sufficient evidence for the development of future policies and regulations. The next section analyses the organizational tools outlined in the law for the achievement of this objective.

5.3 *Adequateness and differentiation: principles guiding the exercise of administrative functions*

Asymmetry is one of the main characteristics of the "law of diversity", with regard to both its application and single instruments, as 'differentiation in the legal position of the groups becomes the rule' (Palermo and Woelk, 2005). Accordingly, adequateness requires that concrete promotional measures be tailored to the specific characteristics and needs of each group. There is thus a clear link between adequateness, differentiation and effectiveness, where effectiveness is the main criterion guiding decision-makers in their actions. The inclusion in the two main international treaties on the protection of minorities and their languages (the FCNM and the European Charter for Regional or Minority Languages (ECRML)) of so-called "conditionality clauses" may be interpreted as seeking to guarantee the presence of formal means through which member states can tailor policies to the needs of different minority groups, especially at the local level. These are clauses that contain wording such as "in substantial number", "real needs" or "*traditionally* inhabited areas" [italics added], which need to be concretized in order to enable the effective implementation of international standards at the domestic level. The domestic implementation of those clauses enables the process of differentiation between various "minority-targeted" policies, by enforcing the principle of adequateness. This, however, cannot be left solely to the discretion of the local authorities concerned,[15] and a set of standards was adopted by the Advisory Committee on the FCNM to limit the margin of appreciation of states in accordance with the principles of reasonableness and proportionality.[16]

Law 6/2008 introduced the principle by which the 'allocation of resources is guaranteed in adequate measure to promote cultural, social and economic development of linguistic populations, taking into account their size and specific needs' (Art. 1(2)). It provides for an assessment of the size, geographical distribution and socio-linguistic conditions of minority communities, in order to evaluate and improve the effectiveness of promotional policies (Art. 5(1)). Such an assessment is a necessary tool for ensuring consistency of policies with the principle of adequateness and the soundness of differentiation among minority groups.

Furthermore, Article 6 refers to adequateness and differentiation of promotional measures as fundamental principles to be implemented by decision-makers in order to facilitate achievement of its core objectives: the protection and promotion of the cultural and linguistic identity of minorities residing in the Province.

These processes must be integrated into an institutionalized system of monitoring and evaluation of effective implementation and of the impact of policies, in line with international standards arising from the FCNM and the ECRML. The Trentino legal framework provides for monitoring and evaluation through the Authority for Linguistic Minorities (Law 6/2008, Art. 10), which has the power to monitor, evaluate and inspect implementation of the law on protection and promotion of linguistic minorities. It must be underlined that the mechanism was only established in 2014, and the delay has inevitably weakened the legal and policy framework.

On the basis of the assessment of outcomes, and in light of the normative link between law-making, implementation and evaluation processes, decision-makers in Trentino are required to adapt policies targeted towards a specific minority community to increase the level of adequateness of means, and therefore effectiveness of results. This effectively limits their discretionary powers, as actions must be grounded on a thorough assessment based on both empirical and statistical data and monitoring outcomes, with adjustments made in light of the minority's changing circumstances.

This asymmetric and differentiated approach, albeit within the context of a general legal framework with common fundamental principles, is evident not only at the central, but also at the local, level. Differentiation is possible, in particular, in the context of education, while its scope of application decreases in the case of exercise of linguistic rights in the public sphere and dialogue with the public administration (see above). With regard to education, even if the educational system recognizes and promotes linguistic diversity by establishing common fundamental principles, it provides for different institutional and other means to implement them. In light of considerations of size and territoriality, only Ladins have their own autonomous educational institution (the Fassa Valley Ladin School or *Scola Ladina de Fascia*). Conversely, teaching of minority languages and cultures, including through the medium of minority languages, is guaranteed to the Germanic-speaking minorities (Cimbrians and Mòcheni) in schools located in the territories of historical settlement. Interestingly, teaching in and of Cimbrian and Mòcheno is made conditional by law on the 'concrete availability of qualified teachers' (Art. 51), which recalls the conditionality clauses typical of the FCNM and ECRML. In the case of the exercise of linguistic rights in public life and before public administration, the principle of differentiation is not applied. As noted above, the list of linguistic rights of citizens

belonging to minorities recognized by law are the same for every linguistic community. There are common institutional and organizational means guaranteeing enjoyment of these rights (the right to use a language in dealings with public administration; special conditions of public appointment; translation of public acts, and so on).

To summarize, the aim of protecting and promoting minority communities influences administrative actions, including in the implementation of international standards on linguistic rights and effective participation. The principle of minorities' "own language" implies a duty to guarantee conditions for the implementation of linguistic rights in dealings with the public administration, by means of *ad hoc* institutional, organizational and financial measures. According to international standards,[17] the "minority factor" should allow for more flexible implementation of the principle of territoriality, especially in the case of linguistic rights. Finally, public policies must be accompanied by a well-established, feasible and periodic system of monitoring, evaluation and reform, in which minorities and their institutions are regularly involved, in line with the principles of subsidiarity, responsibility and empowerment. The way in which the administration is conceived and structured is decisive in ensuring the effectiveness of promotional policies, and in avoiding obstacles to the enjoyment of minority rights, such as symbolic participation, regulatory rejection and institutional overload.

The overall aim of Provincial Law 6/2008 is not only to create an administration that is responsive to the needs of minorities, but to develop a sense of ownership among the relevant communities with regard to its implementation. It designs a legislative framework grounded in fundamental principles such as adequateness of promotional measures via differentiation, and empowerment of minority groups via subsidiarity, and seeks to guarantee effective implementation of that framework through institutional mechanisms. Of particular importance are the establishment of the Authority for Linguistic Minorities (Law 67/2008, Art. 10) and the strengthening of the Conference of Minorities (Art. 9), which has the power of co-decision in relation to local policies. At the local level, minority groups benefit from *ad hoc* consultative and monitoring bodies. Among others, the Ladin Council fulfils the function of analysing the needs and requests of the Ladin community in relation to the promotion of its own language, monitoring and evaluation of promotional activities, identification of the needs and priorities, and the elaboration of linguistic

policy guidelines (Law 6/2008, Art. 26). Within the Mòcheno community, an Assembly (*Assemblea mòchena*) (Law 6/2008, Art. 30) has the function of assessing implementation of promotional policies and establishing the general guidelines to orientate the actions of interested municipalities and communities.[18]

Implementation of promotional policies is also guaranteed by the establishment of a Provincial Fund for the protection of linguistic minorities (Law 6/2008, Art. 24), through which the Province can finance initiatives and projects aimed at protecting and promoting the ethnic, cultural and linguistic identity of linguistic communities located in its territory. The financial support guaranteed to promotional activities, developed at the initiative of the linguistic communities themselves (through educational institutions, associations and groups), is an essential condition for the effective implementation of linguistic rights, together with the institutional design of the relevant public administration (see the contribution by F. Guella in this JEMIE special issue).

To date, the legislative framework has yet to be fully implemented. Although the legal provisions themselves are consistent with the aim of enhancing the protection of minorities—providing for a comprehensive set of participatory, monitoring and evaluative mechanisms—there are difficulties and delays with regard to implementation: a clear example here is the Authority for Linguistic Minorities, a key body in the protection of linguistic rights (Law 6/2008, Art. 10), which was only established in 2014.

Conclusion

The delay in the full implementation of the legal and institutional framework for the protection and promotion of the rights of linguistic minorities inevitably weakens the innovative dimension of the Trentino approach, which is centred in: empowerment of minorities through participation, and a combination of power-sharing and duty-sharing; the establishment of institutions aimed at strengthening the effectiveness and performance of minority policies; and periodic and systematic monitoring and evaluation, in which minorities are required to participate directly. In order to increase the effectiveness of minority policies and their compliance with international standards, it would be advisable to develop and apply a set of political, legal and judicial indicators (on this, see De Beco, 2008; and Kicher and Möstl, 2012). A different, but complementary, means of enhancing minority policies is through *ex*

ante and *ex post* impact assessments. *Ex ante* assessments consist of a preventive evaluation of the impact of alternative legislative solutions on both citizens (belonging to minority groups) and public institutions. *Ex post* impact assessments focus on evaluating the performance of certain policies, according to a set of parameters measuring levels of minority protection, e.g. awareness of legislation among both citizens and civil servants; the degree of implementation; the adequateness of policy, through an assessment of the effective fulfilment of legislative aims and concrete effects and costs for citizens, public institutions and society. One can conclude that the "minority factor" decisively impacts upon both the allocation and the exercise of administrative functions, which are directly or indirectly linked to the promotion of minority linguistic rights. The protection and promotion of linguistic minorities is a distinctive element of the institutions in Trentino; the exercise of administrative functions is also qualified by the general goal of promoting the cultural and social heritage of those groups, and their involvement in guaranteeing the effective implementation of promotional policies. This model is not devoid of problems, however, which are essentially caused by the difficulty of effectively guaranteeing a viable and accountable system of institutions for the promotion of linguistic rights.

The disconnection between intended goals and concrete means and achievements is also linked to the difficulty of tailoring both institutional and functional assets to the actual size and resources of minority groups; the common general principles (territoriality, minority's own language) should be differently applied to each community, according to the principles of differentiation and subsidiarity, so as to link administrative means with concrete resources on the ground. It is, then, crucial to provide for mechanisms to monitor and assess the impact of promotional policies, in order to regularly adjust them in line with the principles of adequateness and empowerment of communities. The way forward is through the effective implementation of a set of well-established, efficient and feasible monitoring, evaluation and reform mechanisms, in which minority groups actively participate by sharing the duty to provide for adequate and effective promotional measures. These processes can serve not only to enhance the rights of linguistic minorities in Trentino per se, and its institutional and legal framework, but they can act as a "laboratory for small groups" in the promotion of the principles of the "law of diversity".

Notes

1. 'The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them'.
2. Italy ratified the FCNM in 1998. It has not yet ratified the ECRML. http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=148&CM=8&DF=&CL=ENG. Retrieved: July 14, 2014.
3. See also paragraph 104 of the Advisory Committee's Commentary on Effective Participation.
4. According to paragraph 51, 'it is essential that any decision related to language policies and the enjoyment of language rights is made in *close consultation* with minority representatives to ensure that the concerns of persons belonging to national minorities are effectively duly taken into account' [italics added]. In paragraph 93, the Committee goes on to stress that 'guarantees must be in place to ensure that consultative mechanisms for persons belonging to national minorities, such as Advisory Councils, adequately process contributions made by minority representatives and effectively take them into account in the decision-making process'.
5. Article 10(2) states that 'in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities'.
6. The Committee seems to welcome a flexible interpretation of territoriality, especially in the context of linguistic rights, as it 'encourages states to give careful consideration to the setting up of thresholds for determining the areas inhabited by persons belonging to national minorities in substantial numbers and welcomes measures taken by the authorities to lower any such thresholds as appropriate' (para. 57).
7. The Committee stresses that 'it is not sufficient for State Parties to formally provide for the participation of persons belonging to national minorities. They should also ensure that their participation has a *substantial influence on decisions* which are taken, and that there is, as far as possible, a shared ownership of the decisions taken' [italics added] (para. 19).
8. They are a condition for adequateness and effectiveness of minority policies, as they may contribute to the government's awareness of 'the needs of persons belonging to national minorities and that minority issues be mainstreamed in the work of other governmental services' (para. 105).
9. Palermo and Woelk refer to 'horizontal subsidiarity of minority issues', according to which 'groups become the first (but certainly not the only) 'mechanisms' of the complex 'machinery' assembled for their own protection: with all the inevitable consequences in terms of potential, but also in terms of responsibility' (Palermo and Woelk, 2005: 7).
10. Both the Working Group's nature and functioning seem to comply with international standards on effective minority participation. According to the Commentary on Effective Participation, direct minority consultation must not exclude "where appropriate" analogous consultation of independent experts, as 'the expertise is a useful complement to the consultation procedure' (para. 114).
11. See Article 6 of the Statute of Catalonia, which states that 'Catalonia's own language is Catalan. As such, Catalan is the language of normal and preferential use in Public Administration bodies and in the public media of Catalonia, and is also the language of normal use for teaching and learning in the education system'. The Spanish Constitutional Tribunal declared the word "preferential" to be unconstitutional in the context of the use of Catalan (Decision 31/2010, 28 June 2010).

12. They are instituted by Provincial Law 3/2006 on Trentino local government (*governo dell'autonomia del Trentino*). Article 2 defines a community as 'a public body, constituted by municipalities belonging to the same territory for the implementation of administrative functions transferred by the same municipalities, activities and services'.
13. 'The rights of persons belonging to national minorities to use their languages should therefore be clearly defined and adequately protected by legislation, and its implementation monitored regularly' (para. 22).
14. According to the Commentary on Effective Participation, 'participation of minorities in the monitoring process [...] is crucial for achieving a balanced and quality outcome' (para. 142). Developing principles which are also appropriate to contexts outside the FCNM, the Commentary states that 'the Advisory Committee has encouraged State Parties to set up a system of regular consultation providing an opportunity for minority representatives to discuss their concerns between the monitoring cycles of the Framework Convention, be it follow-up seminars or other modalities'. Regular consultation is also confirmed as a standard to be complied with by member states at the local level.
15. See the FCNM Advisory Committee's Thematic Commentary on Linguistic Rights, 2012 para. 55.
16. *Ibid*., paras. 56, 57 and 93.
17. See the FCNM Advisory Committee's Thematic Commentary on Linguistic Rights.
18. An analogous public body is established within the Cimbrian community (Law 6/2008, Art. 31).

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