

Input for “Call for input - 2024 GA Report on minority issues”

Eurac Research (Institute for Minority Rights and Centre for Autonomy Experience)

1. Do you consider the interests of persons belonging to minority groups appropriately taken into account in your country? If yes, how? If no, why?

Yes, there are several legal and institutional provisions safeguarding the interests of persons belonging to minorities in Italy. Italy has ratified the Council of Europe Framework Convention for the Protection of National Minorities, however, it has not yet ratified the European Charter for Regional or Minority Languages. The legal framework for minority protection in Italy (Constitution, special statutes and Law 482) lead to a very asymmetric system, in which some minorities such as Sinti and Roma are not even taken into account.

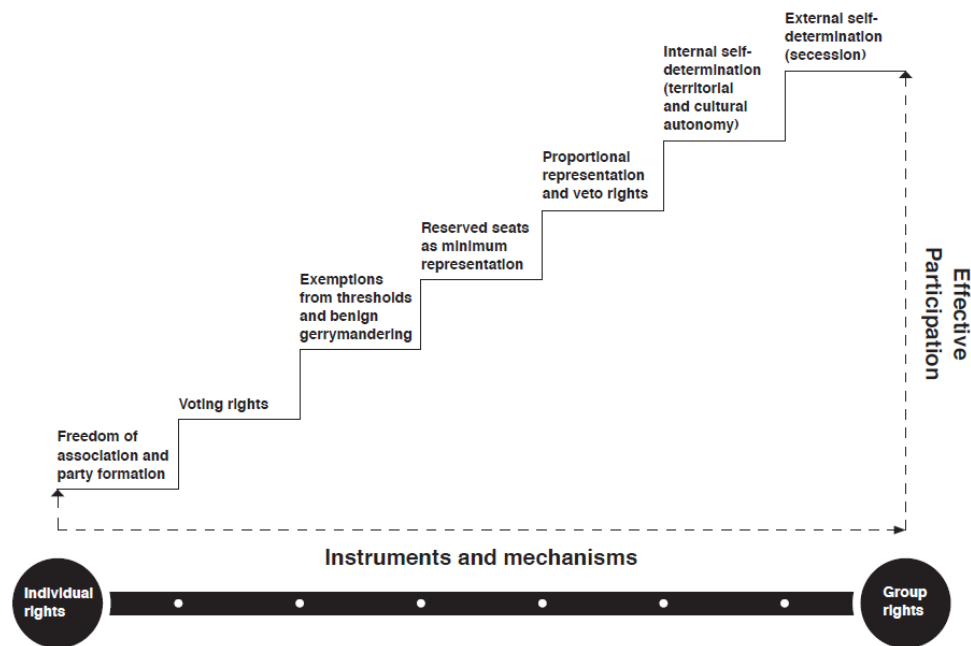
In the Italian Constitution, Article 3 establishes equality before the law for all citizens, “without distinction of sex, race, language, religion and political orientation, personal and social conditions”. Article 6 specifically refers to linguistic minorities, stating that “The Republic shall safeguard linguistic minorities by means of special measures”.

Law 482/1999 (Law 482 of 15 December 1999, n. 482 norme in materia di tutela delle minoranze linguistiche storiche) establishes protective measures for the historical linguistic minorities present in the country. It also explicitly refers to Italian as the official language of the Italian Republic, and states that the Republic values the linguistic and cultural heritage of the Italian language, while at the same time fostering the valorization of the languages and cultures protected by law 482/1999. The law stipulates that the language and culture of twelve linguistic minorities are safeguarded, namely the Albanian, Catalan, Germanic, Greek, Slovenian, Croatian, French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian minorities. However, Law 482/1999 is in itself a framework law: it only established a potential protection mechanism, which local authorities may then use as a basis for the granting of genuine language rights, while respecting the limits imposed by the Law. It is explicitly stated that the Law 482/99 does not affect special language protection rules that exist in regions with a special statute (Trentino-Alto Adige/Südtirol, Valle d’Aosta/Vallée d’Aoste, Friuli Venezia Giulia) and in the autonomous provinces of Trento and Bolzano/Bozen; the most favorable provisions apply. Due to its local implementation, the impact of the law varies and is difficult to assess; the Council of Europe Advisory Committee pointed out that “minority rights are protected and implemented in a very asymmetric way” and that “not all minorities have benefited on an equal basis [...]” (Council of Europe 2016: 1).

2. Are there institutional arrangements that guarantee (or facilitate) effective political representation of persons belonging to minorities? For example, a Second Chamber in Parliament, the federal structure of the State, specific “minority institution” (such as a Council of Minorities or a dedicated Ombudsperson, or electoral mechanisms (quotas, separate lists for minorities).

One of the basic principles of minority protection is that states should create the necessary conditions for the effective participation of national minorities in public affairs. It would be reasonable to assume that the more pluralistic the mechanisms for minority involvement in public affairs are, the more effective minority participation is. Ultimately, the litmus test is the impact of these mechanisms on the situation of minorities and society in general.

As Marko and Constantin (2019) point out, the effective participation of minorities is ensured through a continuum of instruments and mechanisms:



Source: Marko and Constantin (2019: 342)

At one pole is the individual right of freedom of association as a precondition for a mere representation of minorities. At the other pole are group rights such as veto powers in the decision-making process and self-governance arrangements designed to ensure effective participation. Between these two poles of the continuum lies a range of special measures such as exemptions from threshold requirements, *benign gerrymandering*,¹ dual voting, reserved seats, and consultation mechanisms.

The type of electoral system, electoral thresholds, the drawing of electoral districts' boundaries as well as the magnitude of the electoral district (i.e. the number of candidates to be elected in each electoral district) have a great impact on the level of minority representation in elected bodies. For instance, exemptions from threshold requirements in proportional vote systems and benign gerrymandering in majority vote systems can facilitate the political representation of national minorities. However, these arrangements do not necessarily guarantee the representation of minorities in elected bodies. To solve this problem, states may provide for special mechanisms such as dual voting and reserved seats for persons belonging to national minorities.

While it represents a departure from the principle of equality of voting rights (i.e., one person - one vote), dual voting is justified if it concerns a small minority, it has transitional character and it is impossible to reach the aim pursued through other less intrusive measures. Most states that have adopted a system of reserved seats to ensure a minimum minority representation established limits regarding candidacy or electorate.²

Veto rights have the role of transforming the mere political representation of national minorities into power to influence the decision-making process which shall effectively ensure minority participation. However, veto powers might be problematic in deeply divided societies. In such contexts, strong veto powers in conjunction with group-based representation through ethnic quotas may block decision-making processes.

Consultative mechanisms are essential arrangements for dialogue and negotiation between majority and minority groups. In practice, there is a wide scale of consultative bodies, ranging from weak

institutions with a limited mandate and functions to strong mechanisms legally entrenched in constitutional law, which can influence decision-making processes. Some may focus on specific issues of high interest for minorities or on a particular minority group that has specific needs and expectations. The effectiveness of consultative bodies depends on several factors, such as membership, working procedures and resources.

Finally, a system of self-governance (i.e., territorial or non-territorial autonomy) gives minorities the highest level of control over the main issues that concern them and strengthens their effective participation as equals in public life. While minority groups have no right to autonomy under international law, in practice there are numerous examples of autonomy arrangements around the world. The magnitude of self-governance depends on the types and degree of powers transferred. Autonomy arrangements vary along a continuum ranging from basic forms of associations and few competences to complex entities with broad legislative, executive and judiciary powers (see also the answer to question 6).

In Italy's asymmetrical system of minority protection several instruments and mechanisms mentioned above are applied to some of its linguistic minorities. For example, German and Ladin minorities in the autonomous province of South Tyrol enjoy a consociational system which includes consultative bodies, reserved seats, proportional representation, veto power, and cultural and territorial autonomy.

[Note: This brief answer is based mostly on the following open-access resource: Marko, Joseph and Constantin, Sergiu. 2019. "Against marginalisation: the right to effective participation". In *Human and Minority Rights Protection by Multiple Diversity Governance. History, Law, Ideology and Politics in European Perspective*, edited by Joseph Marko and Sergiu Constantin, 340-395. Routledge: London and New York. For a detailed discussion of the various mechanisms for the effective participation of national minorities, you may download the chapter at this [link](#).]

3. Are there minority issues insulated from (or not subject to) State authorities' decisions (including the Parliament)? (For example, constitutional guarantee; political/traditional agreement; competence on minority issues at a regional level, where the persons belonging to a minority represent the majority of the population).

The basic principles regarding the territorial autonomy for the German-speaking population in the Trentino-Alto Adige/Südtirol region are outlined in the Paris Treaty of 1946. The Treaty guarantees "complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element". German-speaking citizens were granted elementary and secondary teaching in their mother tongue; parification of the German and Italian languages in public offices and official documents, as well as in bilingual topographic naming; the right to re-establish German family names that had been previously Italianized during the fascist regime, and equality of rights as regards the entering upon public offices, with a view to reaching a more appropriate proportion of employment between linguistic groups. The Treaty also granted the exercise of an autonomous legislative and executive regional power. In 1948, the provisions for territorial autonomy on the regional level were implemented through a constitutional law, the First Autonomy Statute, detailing the areas in which the region Trentino-Alto Adige/Südtirol had legislative competence. However, as the autonomy was established regionally and not on the level of the two autonomous provinces of Bozen/Bolzano and Trento, most competences remained at the regional level and thus with the

Italian-speaking regional majority. In 1972, the Second Autonomy Statue was passed, giving legislative competences on a variety of matters to the respective provinces of Trento and Bozen/Bolzano. This provided the German-speaking population, who was in a majority position at the provincial level, with further possibilities for actively shaping provincial legislative and political decision-making processes. Having competences at the provincial level ultimately enabled South Tyrol to implement the provisions establishing the ethnic quota system for civil service posts and resources between the major language groups and guaranteeing the use of the German language in the public sphere (e.g., bilingualism in the administration and judiciary and the right to mother tongue education) (Alber 2021: 178).

4. Are there institutional arrangements and/or political practices that de facto exclude persons belonging to minorities from effective participation in decisions at the national – and, where appropriate, regional level – concerning the minority to which they belong?

Voting rights and parliamentary representation can be regarded as important indicators of the grade of effective participation in the collective sphere, as these are fields where specific requirements for minorities typically collide with the democratic principle of majority rule. Proportional electoral systems have therefore often been introduced at national, regional and municipal levels. While it might be difficult to guarantee more than symbolic representation at the national level, effective participation at the regional and/or local level might present more promising results (Palermo & Woelk 2003: 229). For national minorities, who are citizens of the state they live in, voting rights are usually granted at different levels of governance. However, depending on the minority's political position and representation and also on its numeric strength, these provisions might not be enough to ensure effective participation in political decision-making processes. Next to guaranteed seats in local or national parliaments, advisory and consultative bodies might be a possibility for minorities to make their voices heard in the political process.

5. Are there legal, administrative or other barriers that prevent persons belonging to minorities to participate effectively in cultural, religious, social, economic or public life?

Persons belonging to minorities confront disproportional problems in effectively accessing education, employment, and housing because of existing prejudice in combination with their particularly vulnerable situation (Bedard 2005: 13). National minorities are more likely to be underemployed, and if they are employed, they are likely to earn less than the general population. Housing conditions tend to be poorer, with a below-average standard of living and social services (Alfredsson 2005). Next to the right to maintain cultural diversity and identity, and non-discrimination provisions, socio-economic participation is therefore one of the crucial points to be tackled for successful minority inclusion. Socio-economic equality of minorities is also an important prerequisite for establishing social cohesion and security (Cârstocea 2018: 3). Unfortunately, instruments like the Framework Convention for the Protection of National Minorities sometimes fall short of monitoring socio-economic participation, e.g., for Italy, the only aspect monitored under Art. 15 (socio-economic participation of national minorities) is that of representation of national minorities in elected bodies, with no mention of socio-economic participation (Cârstocea 2018: 8). The only minority whose situation is analyzed comprehensively (e.g. housing, health care and in particular the impact of the pandemic) is that of the Roma, who represent a particularly marginalized minority. The Fifth Opinion by the Advisory Committee also mentions that a large proportion of persons belonging to linguistic minorities in Italy live in rural, isolated (islands or mountainous areas) or economically depressed areas (Council of Europe 2023: 32). The Advisory Committee also expressed concern that women belonging to national

minorities living in rural areas with large numbers of “conscientious objectors” (doctors refusing to terminate pregnancies for moral reasons) and fewer facilities providing sexual and reproductive healthcare may be disproportionately impacted by additional barriers in accessing these services (Council of Europe 2023: 32). This development highlights the importance of intersectional perspectives on the socio-economic participation of minorities, e.g., taking into account the specific situation generated by the overlapping of gender and minority status.

6. What are the benefits and/or challenges of recognizing and granting sectoral (for example, concerning sectors like education) or territorial autonomy to minorities?

The main differences between non-territorial autonomy (NTA) and territorial autonomy (TA) concern their founding principle, subjects (beneficiaries), working mechanism and legal basis (Marko and Constantin 2019, 386-387). However, there are various areas of overlap between NTAs and TAs. On the one hand, a territorial arrangement includes a set of rules that allows the various minority groups living in the autonomous entity to govern themselves in specific fields, such as education, culture and religion. On the other hand, territory still matters for NTAs because such regimes require a territorial scope of application that can be the whole country or a part of it.

Proponents of NTA highlight several key benefits it offers. Firstly, NTA can be applied to both regionally concentrated and dispersed minority communities, protecting them against assimilation. Moreover, it allows for the pluralist representation of different minority communities, fostering cooperation and understanding among diverse groups. One of its fundamental principles is individual freedom, as NTA is based on the individually expressed will of its members, granting them the liberty to exit the group if they choose to do so. Additionally, NTA can serve as a counterbalance to elite interests within minority communities, prioritizing community development and ensuring the equitable distribution of resources within the respective minority community. Finally, an NTA arrangement acknowledges the multinational character of the state without giving rise to territorial disputes and, therefore, de-securitizes minority issues.

Opponents of NTA emphasize several challenges that must be addressed. Determining group affiliations for autonomous public corporations can be complex and contentious, leading to conflicts over membership criteria. Moreover, NTA may inadvertently perpetuate resource inequalities between national minorities, especially if economically weaker groups struggle to fund their educational and cultural institutions adequately. Cultural exclusion is another concern, as communities may prioritize their own cultural preservation over fostering multicultural exchange. NTA has a territorial element but there are no clear criteria for determining the territorial framework of NTA application. This ambiguity further complicates its implementation. Additionally, NTA may overlook the significance of a national minority's attachment to its historic territory and its aspirations for powers beyond cultural affairs. More often than not, large and territorially concentrated minorities do not find satisfactory an NTA framework and claim TA.

For its proponents, TA has several key advantages. Firstly, TA ensures the effective participation of minorities in decision-making processes, facilitating their integration into society. It is often viewed as a viable solution for managing conflicts in divided societies. TA provides minorities with a comprehensive legal and institutional framework for preserving and developing their national identity. Additionally, TA enables the formulation of regional policies tailored to local needs and allows minority communities to have a certain level of control over the natural resources of their region, promoting economic development. TA enhances mutual trust and cooperation among diverse communities at regional and local levels, contributing to social cohesion and stability. Finally, internal self-determination within the framework of TA may help mitigate secessionist claims.

However, criticisms of TA have also been raised, highlighting several challenges. Firstly, granting TA is often contingent on a national minority being the regional majority population. This principle of TA may lose its relevance if the regional majority population becomes outnumbered due to demographic trends and immigration. Such development may potentially lead to restrictions on free mobility within the state and closed societal structures aimed at preserving the regional majority status of the respective national minority. Additionally, TA may not adequately address the concerns of internal minorities within the autonomous region, potentially exacerbating tensions between different ethnic groups. Furthermore, TA has been criticized as a potential stepping stone to secession, as it may provide the institutional and political infrastructure necessary for independence movements to gain momentum.

[Note: For a comprehensive online compendium on TA and NTA see “Autonomy Arrangements in the World” at <https://www.world-autonomies.info/>]

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