

IMMIGRANTS' POLITICAL PARTICIPATION IN LINGUISTICALLY DIVERSE TERRITORIES - THE AUTONOMOUS PROVINCE OF BOLZANO AND THE REGION VALLE D'AOSTA IN AN INTERNATIONAL CONTEXT^{*}

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1. Introduction

Opportunities of political participation is what defines a political community, which is particularly delicate and often controversial in increasingly diverse societies. This chapter aims to explore whether and in what ways integration policies of the Autonomous Province of Bolzano (hereinafter: Aut. Prov. Bolzano) and the Region Valle d'Aosta (hereinafter: VA Reg.) promote political participation of immigrants and whether these two subnational entities are hereby affected by their long existing language diversity. Applying a comparative perspective, these two territorial entities within Italy are analyzed against the background of similar subnational entities in other European countries so as to elucidate their relative position as rather pioneers or laggards in an international context.

To set the stage, the paper first situates political participation of immigrants in the wider context of integration and citizenship studies, before outlining different forms of political participation. Emphasis is thereby placed on two particularly crucial instruments, which then determine the further structure of the chapter, namely local and regional voting rights as well as the involvement of immigrants through consultative bodies (section 2). The ensuing comparative analysis starts with local and regional voting rights and explores the two distinct pathways for immigrants to obtain such rights, that is, the implicit acquisition of electoral franchise in the wake of naturalization and its explicit conferral to persons remaining non-citizens (section 3). Parallel to voting rights, subnational entities may also promote political participation of immigrants through the establishment of consultative bodies, which are again scrutinized from a comparative perspective (section 4). The paper then concludes with a synopsis of the findings re-

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garding differences between the Aut. Prov. Bolzano and the VA Reg. and attempts to explain variations between the two on the basis of factors having impacted on subnational entities in other European countries (section 5).

2. Immigrants' Political Participation: Context and Forms

2.1. Political Participation in Integration and Citizenship Studies

Similar to citizens, immigrants have vis-à-vis public authorities a double role. On the one hand, they are according to New Public Management, today's prevailing doctrine, perceived as *customers*, which are in contact with authorities through the latter's responsibility for the daily administration of the state¹. On the other hand, they are, to a greater or lesser degree, also *participants* in the process of political decision-making.

Most often, such political participation of immigrants is not seen as a means in itself but as a means to the ultimate end of better integration. This nexus is, for instance, reflected in titles of academic publications like «*Integrarsi partecipando*»² or in the Common Basic Principles for Immigrant Integration Policy in the European Union, which the Council adopted in 2004³. Principle no. 9 reads as follows: «*The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration*»⁴. It is worth to note that this principle stresses in particular the importance of participation below the national level of government. This emphasis is again reflected in the explanatory notes to this principle, which call for mechanisms of «*structured dialogue between immigrant groups and governments*» (*note the plural*).

Beyond the context of integration, the issue of immigrants' political participation has also gained relevance in citizenship studies. Whereas citizenship is according to the traditional perspective a formal legal status, which reflects – most visibly through a passport – full membership in a state⁵, another view has in recent years become increasingly popular, above all in social science and partly among experts in European law. Scholars in these areas have, fuelled by debates about EU citizenship, started to construe citizenship in a much broader sense as encompassing the three following dimensions: rights,

¹ For language issues regarding immigrants in this role cfr. R. MEDDA-WINDISCHER in this volume.

² P. Attanasio-G. Pallaver, *Integrarsi partecipando. Le Consulte stranieri di Bolzano e Merano*, in G. PALLAVER (eds.), *Politika 11. Annuario di politica, Raetia, Bolzano, 2011*, p. 241 ss.

³ The Common Basic Principles include the following cornerstones: an understanding of integration as a two-way process, nondiscrimination, respect for the basic values of the EU, employment as the key to integration as well as obligatory basic knowledge of the language and institutions of the receiving society (see Justice and Home Affairs Council Meeting 2618, 14615/04, Brussels, 19 November 2004, p. 19 ss.).

⁴ *Id.*, cit., p. 23.

⁵ According to this view, citizens and foreigners are «correlative, mutually exclusive, exhaustive categories» R. BRUBAKER, *Citizenship and Nationhood in France and Germany*, Harvard University Press, Cambridge, 1992, p. 46.

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sense of belonging *and* participation⁶. As one of the building blocks of citizenship, participation is thereby understood not only as taking part in political life, but, sometimes vaguely, in civil society as a whole. Political participation is thus a constitutive element of an increasingly differentiated notion of citizenship that moves away from the traditional monolithic concept that focused on *one dimension* (the legal status of nationality), *one government level* as conferring this status (the nation-state level) and *one clear-cut group* holding this status (the citizens). Historically, this move towards differentiation is of course closely related to the gradual decline of the Westphalian nation-state through the combined impact of forces like globalization, international migration and legal integration⁷.

For the purpose of a paper focusing on immigrants' political participation in two subnational entities, this conceptual shift is significant for two reasons. First, the differentiated three-dimensional notion of citizenship is unlike the traditional monolithic concept not anymore focused exclusively on *one* government level, but means multilevel citizenship⁸ and thus also involves the European and subnational levels. Secondly, this notion is also more susceptible to the inclusion of immigrants because it made it conceivable to think of something like residence-based citizenship, defining a political community based on rights, participation and sense of belonging. The traditional view would have dismissed such a thing as an oxymoron. A corollary of this conceptual shift is the replacement of the dualism between citizens and non-citizens by many differentiated positions on a sliding scale, which is obviously on the whole more inclusive towards immigrants⁹. Even though monolithic formal citizenship in the sense of nationality of course still matters a lot and grants an enhanced legal status¹⁰, it is in a sense certainly true that for foreigners today «the real prize is legal residency, not citizenship»¹¹.

The significance of residence is reflected in improvements regarding the status of immigrants at the level of both the European Union and several member states. As to

⁶ See, for instance, R. BELLAMY-D. CASTIGLIONE-E. SANTORO, *Lineages of European Citizenship. Rights, Belonging and Participation in Eleven Nation-states*, Palgrave Macmillan, Basingstoke, 2004; J. SHAW, *The Transformation of Citizenship in the European Union. Electoral Rights and the Restructuring of Political Space*, Cambridge University Press, Cambridge, 2007.

⁷ See R. FALK, *Revisiting Westphalia, Discovering Post-Westphalia*, in *The Journal of Ethics*, 6(4), 2002, p. 311 ss.

⁸ It has been pointed out that monolithic citizenship, historically linked to the Westphalian nation-state, is actually «the historical exception» and a quite «recent aberration» (W. MAAS, *Varieties of Multilevel Citizenship*, in W. MAAS (eds.), *Multilevel Citizenship*, University of Pennsylvania Press, Philadelphia, 2013, p. 2).

⁹ See T. HAMMAR, *Democracy and the Nation State. Aliens, Denizens and Citizens in a World of International Migration*, Avebury, Aldershot, 1994; C. DUMBRAVA, *Super-foreigners and Sub-citizens. Mapping Ethnonational Hierarchies of Foreignness and Citizenship in Europe*, in *Ethnopolitics*, 14, 2015, p. 1 ss.

¹⁰ See A. SCHACHAR, *The Birthright Lottery. Citizenship and Global Inequality*, Harvard University Press, Cambridge, 2009.

¹¹ P.J. SPIRO, *Beyond Citizenship. American Identity after Globalization*, Oxford University Press, Oxford, 2007, p. 159.

the EU, this holds true for the changes brought about by the 2003 Directive concerning the status of non-EU nationals who are long-term residents¹², which created a single status for most categories of third-country nationals with at least five years of continuous legal residence, stable financial resources, health insurance and possible further integration requirements demanded by the respective member state. People fulfilling these criteria are guaranteed the right to take up residence in any EU member state and enjoy equal treatment with citizens regarding access to employment, education and vocational training, at least the core benefits of social assistance, etc. Notwithstanding persistent problems concerning implementation¹³, this residence-based status has entailed significant benefits for many immigrants. From the outset, this status has been deliberately put into the context of a form of civic citizenship including local voting rights, which the European Commission proposed already in 2000 as a possible stage of progressive status improvement over time¹⁴. This rationale of residence-based incremental progression of immigrants' legal status is not new, of course, but rooted in several member states. The German Constitutional Court, for instance, has started as early as in 1978 to grant non-citizens by virtue of the general freedom of action guaranteed in Art. 2(1) of the Basic Law incremental fundamental rights protection, which gradually approximates their legal status as a function of the length of residence to that of German citizens¹⁵.

2.2. Forms of Participation

If one attempts to delve into the concrete forms of immigrants' political participation, it soon becomes clear that different academics and institutions take this notion to mean quite different things. Political participation is indeed an umbrella term that may encompass a conglomeration of manifold practices. It is beyond doubt, however, that 1992 was in this respect a pivotal year because it witnessed both the introduction of the

¹² Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23.1.2004.

¹³ A recent assessment of the impact of the 2003 Directive by the European Commission yielded quite critical results as it detected both a lack of information about the long-term resident status and problems with the transposition into the law of the member states (see European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM(2011) 585 final, 28 September 2011).

¹⁴ See European Commission, Communication on a Community immigration policy, COM (2000) 757 final, p. 21. This link between long-term resident status and civic citizenship has been since then repeatedly emphasized, most notably in: European Commission, Communication on immigration, integration and employment, COM (2003) 336 final.

¹⁵ BVerfGE 49, 168. The underlying idea is that with increasing length of residence the option of returning to the country of origin becomes ever more fictional so that immigrants share with citizens the legal fate of inescapability (*Rechtsschicksal der Unentrinnbarkeit*) and have thus to rely on the German state for their existential protection (see G. SCHWERTFEGGER, *Welche rechtlichen Vorkehrungen empfehlen sich, um die Rechtsstellung von Ausländern in der Bundesrepublik Deutschland angemessen zu gestalten? Gutachten A zum 53. Deutschen Juristentag Berlin 1980*, Beck, Munich, 1980).

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EU citizenship with the Treaty of Maastricht and the adoption of the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (hereinafter: the 1992 CoE Convention). Even though the latter convention has introduced a differentiated protection regime with much leeway for signatory states¹⁶, its ratification has remained limited to only nine states¹⁷. Nonetheless, it has had arguably a non-negligible indirect effect of influencing national legislation in several countries, even in some refraining from ratification¹⁸.

Moreover, the 1992 CoE Convention has to be credited for classifying forms of immigrants' political participation in an international treaty. It did so by distinguishing three pillars: individual rights such as freedom of speech, assembly, association, etc., consultative bodies and the right to vote at the local level, if the person has been a lawful and habitual resident for the 5 years prior to the elections¹⁹. The Migration Policy Index (MIPEX), which measures and ranks the performances of all EU member states and several other countries in eight policy areas²⁰, examines the area of political participation according to similar parameters. Like the 1992 CoE Convention, it focuses on three dimensions, namely political liberties, consultative bodies and electoral rights, albeit also at the supra-local levels. Beyond that, it adds a fourth criterion, namely implementation policies, including active information policy as well as public funding and support for immigrant organizations. Still others, above all social scientists, advocate a much broader conception of immigrants' political participation. Some of these also focus, for instance, on non-state politics and explore such issues as the involvement of newcomers in political parties, in unions, which is historically arguably the cradle of foreigners' political participation, pressure groups like *sans-papiers* movements and direct ethnic community mobilization²¹. Notwithstanding this variety of forms of political participation identified from different scientific perspectives, the predominantly legal focus of this paper suggests that the following sections be geared to the three-dimensional conception of the 1992 CoE Convention. Among the three elements mentioned therein, the guarantee of individual rights is overall less problematic and conten-

¹⁶ Only the individual rights included in Chapter A are obligatory for all signatory states. By contrast, the treaty contains opt-out clauses for the provisions regarding local consultative bodies in Chapter B and local voting rights in Chapter C.

¹⁷ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=144&CM=&DF=&CL=ENG> (accessed on 04 November 2015).

¹⁸ See T. HUDDLESTON, *Consulting Immigrants to Improve National Policies*, Migration Policy Group, Brussels, 2010, p. 4.

¹⁹ Art. 6(2) provides that a state may confine this residence-based right to the active voting right.

²⁰ See T. HUDDLESTON ET AL., *Migrant Integration Policy Index 2015*, Barcelona Center for International Affairs and Migration Policy Group, Barcelona-Brussels. These eight policy areas are the following: labour market mobility, education of children, political participation, family reunion, access to nationality, health, permanent residence and anti-discrimination.

²¹ See M. MARTINIELLO, *Political Participation, Mobilization and Representation of Immigrants and their Offspring in Europe*, in R. BAUBÖCK (eds.), *Migration and Citizenship: Legal Status, Rights and Political Participation*, Amsterdam University Press, Amsterdam, 2006, p. 96 ss.

tious both in the general European context²² and in the Aut. Prov. Bolzano as well as the VA Reg. in particular. Sections 3 and 4 therefore concentrate, respectively, on voting rights and consultative bodies at local and regional level.

3. Local and Regional Voting Rights

As far as voting rights are concerned, immigrants may obtain them essentially via two pathways, namely implicitly as an automatic corollary of naturalization or explicitly through the conferral of electoral rights to non-citizens. In some countries, there is a trade-off between these two pathways in the sense that relatively easy and fast access to nationality compensates for the lack of newcomers' voting rights and vice versa. In other countries, the legal regimes regarding both naturalization and electoral rights are liberal or, quite the contrary, restrictive.

3.1. Implicit Voting Rights through Naturalization

In terms of citizenship law, subnational entities typically play a rather marginal role. A notable exception is the empowerment of the cantons through Art. 37(1) of the Swiss Constitution to establish own criteria for naturalization²³, which indeed has given rise in practice to considerable inter-cantonal variation. For example, the requirement of residence in the respective canton ranges from merely two years in Geneva to twelve years in Nidwalden²⁴. Other subnational entities such as the German *Länder* are not entitled to (co-)legislate on this subject matter. While they indeed face an even stronger national government since the citizenship reform of 1999, the *Länder* still have significant influence on naturalization because their administrations enjoy broad discretion in applying the national laws concerning naturalization²⁵.

In most countries, however, subnational entities do not have substantial legislative or executive powers so that their influence in citizenship matters is limited to lobbying the national government. For instance, intensive political campaigning of the Flemish government has arguably sparked the restrictive turn of Belgium's 2012 citizenship reform. In terms of implementing citizenship law, subnational entities may find ways even without legal competences to either foster or complicate immigrants' access to national-

²² The comparative conclusions of the MIPEX 2015 regarding political participation suggest this (see T. HUDDLESTON ET AL., *Migrant Integration Policy Index 2015. Political Participation*, Barcelona Center for International Affairs and Migration Policy Group, Barcelona-Brussels, p. 16).

²³ Art. 37(1) reads as follows: «Any person who is a citizen of a commune and of the Canton to which that commune belongs is a Swiss citizen.» Due to this conception of a “multilevel citizen”, a naturalization candidate has to meet requirements stipulated at the municipal, cantonal and national levels (Art. 38(2)).

²⁴ See G. D'AMATO, *Switzerland*, in C. JOPPE-F.L. SEIDLE (eds.), *Immigrant Integration in Federal Countries*, McGill-Queen's University Press, Montreal-Kingston, 2012, p. 179 ss.

²⁵ See I. MICHALOWSKI, *Required to Assimilate? The Context of Citizenship Tests in Five Countries*, in *Citizenship Studies*, 15, 2001, p. 749 ss.

ity. A case in point is the United Kingdom, where the fact that this subject matter is expressly reserved to the UK Government under the Scotland Act²⁶ has not altogether excluded any influence of the Scottish Government. In a deliberate attempt to attract more newcomers, the latter has used its jurisdiction over education and training to offer significantly more ESOL-courses (English for Speakers of Other Languages) in Scotland and thus to improve immigrants' chances to meet the UK Home Office's language requirements for naturalization²⁷.

Most subnational entities accept that naturalization is a clear domain of the national government. The latter's predominance entails that the new wave of citizenship tests, which epitomize a «cultural turn in citizenship discourse and practice»²⁸, are mostly focused on examining the applicant's knowledge and skills regarding the political system, history, culture and language from the perspective of the *country-wide* majority. An exception is, however, the 2003 Flemish Decree on *Inburgering*, which introduced similar courses emphasizing the culture and language of the *regional* majority in Flanders. While formal naturalization is an exclusive national prerogative²⁹, the Flemish government thereby aimed, on the basis of its power regarding the integration of immigrants³⁰, at establishing a parallel process of *inburgering* («citizenization»)³¹. To be sure, this decree only foresaw mandatory integration courses for certain categories of people and subjected non-attendance to rather symbolic administrative fines. Yet, the initiative is quite remarkable because it represented a first attempt with its promotion of Flemish culture to deviate deliberately from back then still very liberal national integration policies³².

As to the acquisition of voting rights through citizenship, Italy is from a comparative

²⁶ Scotland Act 1998, Schedule 5, Section B6.

²⁷ Interestingly, the guidelines of the Home Office would even allow to prove sufficient linguistic skills, as an alternative to English, also in Scottish, Gaelic or Welsh. In practice, of course, only very few newcomers request in view of the very limited number of speakers being tested in these minority languages (see E. HEPBURN, *Is there a Scottish approach to citizenship? Rights, Participation and Belonging in Scotland*, in R. MEDDA-WINDISCHER-K. KÖSSLER (eds.), *Regional Citizenship, Minorities and Migrants. Special Focus of the European Yearbook of Minority Issues Vol. 13*, Brill-Martinus Nijhoff, Leiden-Boston, forthcoming).

²⁸ A. SCHACHAR, *Citizenship*, in M. ROSENFELD-A. SAJÓ (eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, Oxford, 2012, p. 1013.

²⁹ Art. 74(1) of the Belgian Constitution.

³⁰ Art. 128(1) of the Belgian Constitution in conjunction with Art. 5(1) of the Special Law of 8 August 1980 on the Reform of the Institutions.

³¹ M. MARTINIELLO, *Belgium*, in C. JOPPKE-F.L. SEIDLE (eds.), *Immigrant Integration*, cit., p. 71. Martiniello uses the term «citizenization», but at the same time underlines that a literal translation of *inburgering* is impossible.

³² See M. FOBLETS-Z. YANASMAYAN, *Language and Integration Requirements in Belgium. Discordance between the Flemish Policy of "Inburgering" and the Federal Legislator's View(s) on the Integration of Newcomers and Migrants*, in R. VAN OERS-E. ERSBØLL-D. KOSTAPOULOU (eds.), *A Re-Definition of Belonging? Language and Integration Tests in Europe*, Brill-Martinus Nijhoff, Leiden-Boston, 2010, p. 271 ss.

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perspective not an outlier. Since the reform of 2001 its constitution expressly assigns this subject matter to the national Parliament (Art. 117 (2i)). It is argued, however, that there is constitutional scope for a form of citizenship that goes, in line with the differentiated conception outlined above³³, beyond monolithic formal citizenship, which is by definition limited to the narrow circle of passport holders³⁴. This other form has been called «constitutional citizenship»³⁵ and would include all people domiciled, to whom the constitution is addressed and who thus form a part of the political community³⁶. Case law of the Constitutional Court arguably lends support to such an interpretation. In a judgment of 1999 the court referred beyond formal citizenship to another type, namely a «second citizenship ... that welcomes all those who ... receive rights and deliver duties»³⁷. In terms of the distribution of powers, the distinction of these two types makes a difference.

Whereas formal citizenship is a prerogative of the national government, the regions have considerable competences regarding the second type, which is largely congruent with what has been called «substantive citizenship»³⁸, that is, a notion underlining the effective access to rights. This concerns above all regional power to expand or restrict immigrants' access to *social* rights, both in the context of general public services and specific services to facilitate the social integration of newcomers. The 1998 Immigration Act³⁹ indeed states that both regions and local authorities guarantee the rights and interests of immigrants «with particular emphasis on housing, language and social integration» (Art. 5) and that they do so bound by national legislation and in collaboration with other government levels within their respective areas of competence (Art. 42). Also the jurisprudence of the Constitutional Court underlines that social integration is a common task with overlapping competences of different levels⁴⁰ and explicitly recognizes regional competences as expressions «of the different political sensitivities present

³³ See above, section 2.1.

³⁴ According to the MIPEX 2015, an exceptionally high share of 17% of non-EU-citizens were born in Italy, but have not yet acquired Italian nationality. Linked to that is, of course, the particularly high number of people having the more limited status of being long-term residents, which amounted to almost 2.2 million in 2013 (see T. HUDDLESTON ET AL., *Migrant Integration Policy Index 2015. Italy*, Barcelona Center for International Affairs and Migration Policy Group, Barcelona-Brussels, p. 28 ss.).

³⁵ For a comprehensive discussion see L. RONCHETTI, *La "cittadinanza costituzionale" degli stranieri. Una questione di efficacia costituzionale*, in L. RONCHETTI (eds.), *La Repubblica e le migrazioni*, Giuffrè, Milano, 2014, p. 23ss.

³⁶ See G. AZZARITI, *La cittadinanza. Appartenenza, partecipazione, diritti delle persone*, in *Diritto pubblico*, 2, 2011, p. 425 ss.

³⁷ Italian Constitutional Court, Judgment 172/1999.

³⁸ On the distinction between «formal citizenship» and «substantial citizenship» the reader is referred to Enrico Grosso, *Le vie della cittadinanza: le grandi radici, i modelli storici di riferimento* (Cedam, Padova, 1997).

³⁹ Legislative Decree 286/1998 contains the *Testo Unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione giuridica dello straniero*, in GU n 191, 18 August 1998.

⁴⁰ Italian Constitutional Court, Judgment 300/2005.

in the regional community»⁴¹. As a result of this focus on social rights and the powers of regions precisely in these areas, the essence of this residence-based second type of citizenship also largely overlaps with the notions of "regional citizenship" and "social citizenship", which have come to be used in both academic publications and legislative acts⁴². Still another notion of citizenship, which has recently attracted in Italy much public attention is that of "civic citizenship". The conferral of such a status, as by the City of Torino, to non-citizen minors born in the city is of course merely a symbolic act and a visible expression of protest against the exclusion of this group from formal citizenship. As such, it does not confer an enhanced legal status regarding the acquisition of Italian nationality or even the residence permit.

In conclusion, such regional and local citizenship initiatives are certainly interesting because they may reduce, at least symbolically, the gap between monolithic formal citizenship on the one hand and often multiple allegiances (local, regional, national and, sometimes, European). After all, «immigrants are naturalized as citizens of Belgium, Germany, Italy, ... , but they are socialized as Walloons or Flemish, Bavarians or Hamburgers, Venetians or Sicilians, ... »⁴³. Overall, it is certainly true that the notion of citizenship has undergone in Italy in line with the above-mentioned international trend of differentiation a significant change towards transcending formal citizenship. However, these "new citizenships" are limited to the access to *social* rights or even only symbolical and thus fail to endow immigrants with electoral rights. In this respect, foreigners would therefore depend on the explicit conferral of such rights.

3.2. *Explicit Voting Rights of Non-citizens*

Even though immigrants may have a «legitimate claim» to participate in local and regional elections, which is subject to negotiations and dependent on contextual factors, they typically do not have a «justiciable right» to such participation⁴⁴. From a comparative point of view, three observations appear to be particularly important. First, even though states are generally reluctant to grant voting rights, they are less so regarding re-

⁴¹ Italian Constitutional Court, Judgment 372/2004.

⁴² For example, "social citizenship" is clearly embodied in Art. 5 of the Regional Law of Tuscany 29/2009 and explicitly referred to in point 14 of this law's preamble, which reads as follows: «Through the possibility of access to services and essential social and health benefits aimed at protecting health and existence of the person *even if without permit of stay*, it is necessary to promote the value of social citizenship granted to individuals as such, irrespective of their legal status and membership of a certain political-state entity.»

⁴³ D. THRÄNHARDT, *Immigration and Integration in European Federal Countries. A Comparative Evaluation*, in D. THRÄNHARDT (eds.), *Immigration and Federalism in Europe. Federal, State and Local Regulatory Competencies in Austria, Belgium, Germany, Italy, Russia, Spain and Switzerland*, Institut für Migrationsforschung und Interkulturelle Studien, Osnabrück, 2013, p. 7.

⁴⁴ For this differentiation between «legitimate claim» and «justiciable right» see R. MEDDA-WINDISCHER, *Old and New Minorities. Reconciling Diversity and Cohesion. A Human Rights Model for Minority Integration*, Nomos, Baden-Baden, 2009, p. 240 ss.

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gional and, above all, local elections. Secondly, the right to stand for election is typically more restricted than the active right to vote⁴⁵. Thirdly, electoral rights for non-citizens are more widespread in Western and Northern Europe than in the comparatively new immigration countries of the Mediterranean⁴⁶, among them Italy being a country of net migration since the mid-1970s.

In most states, the extension of suffrage falls within the exclusive responsibility of the national government. Whereas the German *Länder*, for instance, play an important role in applying federal citizenship legislation⁴⁷, they have only little leeway regarding the extension of voting rights to immigrants. Attempts to make residents with citizenship of certain foreign countries part of the electorate at local level have been undermined by the Federal Constitutional Court as early as in 1989⁴⁸. When the *Land* Schleswig-Holstein granted voting rights at local and county level in case of five years of legal residence in Germany to citizens of six selected countries, the court held that the term «people», which shall be represented by an elected body (Art. 28(1) of the Basic Law), would only include German citizens. While this judgment is obviously a constitutional limit not only for the *Länder*, but also for the national government, the latter has in Spain more leeway. The Spanish government indeed used this leeway to introduce a differentiated regime with electoral rights restricted to the municipal level and, concerning the personal scope, to EU citizens and people from third countries with reciprocal agreements, which concerns most Latin American states⁴⁹. This evidently guarantees political participation of some categories of immigrants and excludes others, for instance, from Asia or Africa. Even though certain Autonomous Communities have demanded an extension of foreigners' voting rights as early as a decade ago⁵⁰, they do not have themselves constitutional powers to change this *status quo*. As opposed to subnational entities in Germany, Spain and most other countries, the Swiss cantons have such powers and several of them, rather the predominantly French-speaking cantons, have indeed used these powers to introduce electoral rights for non-citizens in respect of local and sometimes cantonal elections⁵¹.

The fact that the vast majority of subnational entities is excluded from determining local and regional voting rights does not mean of course that the national electoral regu-

⁴⁵ See Migration Policy Group, *Migrant Political Participation*, EWSI, Brussels, 2013, p. 6.

⁴⁶ See M. MARTINIELLO, *Political Participation*, cit., p. 94.

⁴⁷ See above section 3.1.

⁴⁸ BVerfGE 83, 37. Since the entering into force of the Maastricht Treaty in 1993, EU citizens are of course entitled to participate in local elections as part of EU citizenship.

⁴⁹ See D. GEBHARDT, *The Difference that Being a Minority Territory Makes. Exploring Immigrant Citizenship in Catalonia vs. Andalusia and Madrid*, in R. MEDDA-WINDISCHER-K. KÖSSLER (eds.), *Regional Citizenship*, cit.

⁵⁰ For example, Autonomous Community of Madrid, *Plan de Integración 2006-2008 de la Comunidad de Madrid*, 2006, p. 132; Generalitat of Catalonia, *Un pacte per viure junts i juntes. Pacte Nacional per a la Immigració*, 2008, p. 65.

⁵¹ See H. WALDRAUCH, *Electoral Rights for Foreign Nationals. A Comparative Overview of Regulations in 36 Countries*, European Centre for Social Welfare Policy and Research, Vienna, 2003, p. 15.

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lations refrain from doing so. Quite the contrary, there has been a trend among EU countries to grant local franchise to foreigners meeting certain residence requirements. This may be regarded as an incremental process towards local residential citizenship, albeit interestingly pushed forward in most cases by national governments⁵². Today, third-country nationals are permitted at municipal level to stand for election after three to five years of legal residence in 11 EU member states and to vote in 15, with five even guaranteeing the right to vote at regional level⁵³.

Contrary to this trend, third-country nationals in Italy have electoral rights neither at local nor at regional level. This leaves currently 2.7 million non-EU adults disenfranchised with regard to elections at all levels of government and makes the country in combination with the above-mentioned restrictive naturalization rules one of the most exclusive democracies within the European Union⁵⁴. In the past, attempts have been made at several levels to change this *status quo*. For instance, a draft of the 1998 Immigration Act had provided active and passive voting rights in local elections for immigrants with a residence permit for more than six years (Art. 38). This provision, however, was later repealed in the process of enacting the bill into law⁵⁵. As Italy in 1994 had opted out upon ratification of the 1992 CoE Convention from Chapter C of the Treaty, it was not obliged under international law to introduce such a right⁵⁶.

In view of the failure of the national parliament to extend voting rights, some regions did so concerning local elections by amending their statutes⁵⁷. The national government subsequently challenged these provisions before the Constitutional Court on the grounds that this matter was beyond the prerogatives of the regions. For instance, Art. 3(6) of the Statute of Tuscany had foreseen that *«the region promotes, with respect for the principles of the constitution, the extension of the right to vote to immigrants»*. In two landmark cases regarding this statute and the one of Emilia-Romagna⁵⁸ the Constitutional Court ruled that provisions do not fall within regional competences and thus do not have any legal force. It deemed them, however, constitutionally legitimate in the form of mere political commitments. At the level of ordinary legislation, the regions started as well to deal with the issue of immigrant integration. Such regional laws were even regarded as necessary by the Constitutional Court following the novelties intro-

⁵² See R. BAUBÖCK, *Citizenship and migration: Concepts and controversies*, in R. BAUBÖCK (ed.), *Migration and Citizenship: Legal Status, Rights and Political Participation*, Amsterdam: Amsterdam University Press, 2006, 15-32, at 24-25.

⁵³ See T. HUDDLESTON ET AL., *Mipex 2015. Political Participation*, cit., p. 16.

⁵⁴ See T. HUDDLESTON ET AL., *Mipex 2015. Italy*, cit., p. 24.

⁵⁵ See D. SARDO, *Il dibattito sul riconoscimento del diritto di voto agli stranieri residenti*, in *Rivista telematica giuridica dell'Associazione Italiana dei Costituzionalisti*, 2010, p. 7 ss.

⁵⁶ On the opt-out clause see above section 2.2.

⁵⁷ See A. GENTILINI, *Statuti e leggi regionali in materia di migrazioni*, in *Osservatorio sulla legislazione, Rapporto 2010 sulla legislazione tra Stato, Regione e UE*, tomo II, Camera dei Deputati, Rome, 2010, p. 199.

⁵⁸ Italian Constitutional Court, Judgment 372/2004 (concerning the Region of Tuscany) and 379/2004 (concerning the Region of Emilia-Romagna).

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duced by the 1998 Immigration Act and an increased influx of newcomers⁵⁹. Moreover, these laws were enacted in the context of an unclear legal situation, as the constitutional reform of 2001 had arguably blurred the previous distinction between national and regional powers in this area⁶⁰. However, the focus of this regional legislation was clearly on *social* integration, parts of which were confirmed by the Constitutional Court as genuine matters of regional jurisdiction⁶¹, and not on *political* integration. Thus, this ordinary legislation did not touch upon the topic of extending voting rights to immigrants.

The Aut. Prov. Bolzano and the VA Reg. refrained, unlike Tuscany and Emilia-Romagna, from attempting to grant franchise to non-citizens.. In some respects, they even stand out, from a comparative perspective, through a quite restrictive approach. In contrast to more open legislation of many regions, the 2011 provincial integration law of the Aut. Prov. Bolzano⁶² focuses primarily on the «*integration of foreign citizens living in the Province who have regular permits of stay*» (Art. 1 (1)) and provides only limited measures for «*aliens who in any case are present in the Province*» (Art. 2 (1a and c)). Even more recently, Art. 19(1b) of the 2013 VA regional law on public housing stipulated that access would require a minimum of eight consecutive or non-consecutive years of residence in the region⁶³. The Constitutional Court eventually declared this provision to be unconstitutional as «an unreasonable discrimination» against non-citizens. In the court's words, it would be «glaringly disproportionate for the purpose and inconsistent with the very aims of public housing as it may end up preventing access precisely to those who are in conditions of greatest difficulty»⁶⁴.

4. Consultative Bodies

When it comes to consultative bodies, the Explanatory Report to the 1992 CoE Convention clarifies that such institutions may take manifold forms, but include, in particular, participation by representatives of non-citizens as advisers in the deliberations of local authorities, consultative committees with mixed membership and consultative councils with purely foreign membership⁶⁵. Despite this variety of forms, it is practically be-

⁵⁹ Italian Constitutional Court, Judgment 300/2005.

⁶⁰ See D. STRAZZARI, *The Scope and the Legal Limits of the "Immigration Federalism". Some Comparative Remarks from the American, Belgian and the Italian Experiences*, in *European Journal of Legal Studies*, 2012, p. 18.

⁶¹ Italian Constitutional Court, Judgment 300/2005 and 156/2006. Upon a challenge by the national government, the court held that the competence of the national legislator to regulate the «legal status of non EU citizens» (Art. 117 (2a) of the Italian Constitution) does not encompass legislation on issues like social assistance and public housing, which generally fall within regional jurisdiction.

⁶² Provincial Law of Bolzano 12/2011.

⁶³ Regional Law of Valle d'Aosta 3/2013.

⁶⁴ Italian Constitutional Court, Judgment 168/2014. The necessary length of residence was afterwards reduced to two years.

⁶⁵ Explanatory Report to the Convention on the Participation of Foreigners in Public Life at Local Level (no. 144), para. 33.

yond doubt that consultative bodies do not encompass mere advisory boards, which are composed entirely of experts and NGOs working with immigrants, but not *representing* them⁶⁶. Effective consultative bodies at local level are not only the focus of Chapter B of the 1992 CoE Convention. Also the Council of Europe's Congress of Local and Regional Authorities has repeatedly demanded the establishment of such institutions⁶⁷. Furthermore, the European Commission's Agenda on Integration of 2005 regarded them as a way to give effect to the Council's above-mentioned Common Basic Principle no. 9⁶⁸. From a comparative perspective, it is beyond dispute that the number of local consultative bodies has massively increased. While the oldest such institutions were already set up in the Benelux and Nordic countries from the late-1960s onwards, the more recent creation of advisory bodies in the newer immigration countries of the Mediterranean has been influenced, albeit to a varying degree, by European standards, as enshrined in the 1992 CoE Convention and the 2004 Common Basic Principles of the EU. With regard to these newer bodies it has been argued that their record is at best mixed, mainly because governmental actors relatively often tend to dominate them and to manipulate the process of selecting immigrant representatives⁶⁹.

International practice indeed reveals that consultative bodies frequently suffer, to a usually lesser degree in older immigration countries, from certain typical shortcomings. First, immigrant associations are often structurally weak or even deliberately weakened by governments during the stages of constituting the consultative body and its functioning afterwards. Even if the Explanatory Report to the 1992 CoE Convention does not prescribe a specific mode of selection, it still underlines that immigrants' representative «should be directly elected or nominated by the relevant organizations (*of immigrants themselves*)»⁷⁰. In some cases, however, a «crowding out» effect has been observed, as NGOs acting on behalf of immigrants are not only the primary recipients of public funding, but also the main partners of governments in consultative processes⁷¹. Beyond the effective exclusion of foreign residents from these processes, this may also have the more structural long-term effect of discouraging them from founding their own associations. Precisely such associations, however, are not only important for functional rea-

⁶⁶ See T. HUDDLESTON, *Consulting Immigrants*, cit., p. 6.

⁶⁷ Resolution 141 (2002) on the participation of foreign residents in local public life: consultative bodies and Recommendation 115 (2002) on the participation of foreign residents in local public life: consultative bodies. Afterwards, it also commissioned a comprehensive handbook on that topic (see S. GSIR-M. MARTINIELLO, *Local Consultative Bodies for Foreign Residents. A Handbook*, Council of Europe, Strasbourg, 2004).

⁶⁸ European Commission, A Common Agenda for integration: Framework for the Integration of Third-Country Nationals in the European Union, COM (2005) 389 final, 1 September 2005, at 10.

⁶⁹ See T. HUDDLESTON, *Consulting Immigrants*, cit., p. 6 and 10.

⁷⁰ Explanatory Report to the Convention on the Participation of Foreigners in Public Life at Local Level (no. 144), para. 33.

⁷¹ See T. CAPONIO, *Policy networks and immigrants' associations in Italy. The cases of Milan, Bologna and Naples*, in *Journal of Ethnic and Migration Studies*, 31(5), 2005, p. 931 ss.

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sons. They also provide opportunities for «initial political socialization»⁷² of immigrants. A second problem concerns the deliberate design of consultative bodies to ensure the dominance of government representatives. A case in point is Spain, where the Autonomous Communities have mostly followed the model of a similar body at the national level, that is, the Spanish Forum for Immigrant Integration. These institutions typically have in common that they are the result of a top-down initiative, with immigrant representatives being appointed by politicians and consultations having very little practical impact. Consequently, consultation has mostly taken place, if at all, rather informally⁷³. A third problem is the volatility of consultative bodies. These often lack legal entrenchment and are then prone to be ignored or even dissolved in case of absent political interest⁷⁴.

In the Italian context, political participation through consultative bodies became a widespread phenomenon in the wake of the 1998 Immigration Act, which foresaw the establishment of such bodies at different levels of government. In practice, however, problems of identifying and involving the most representative immigrant associations arose regarding the national institutions, which eventually resulted in the official disbandment of these long ineffective bodies. Formal mechanisms of consultation have been comparatively more resilient at the local and subnational levels in the form of both the Territorial Councils for Immigration (*Consigli territoriali per l'immigrazione*) foreseen since 1998 and others bodies, even though the latter vary with regard to their actual influence on political decision-making and their democratic legitimation. Evidence shows that representatives are in fact often selected and not elected by immigrants themselves⁷⁵. While the first consultative bodies were established in some Italian cities during the late-1980s, the implementation of the 1998 law certainly promoted the diffusion of this instrument. Some observers, however, portray the current performance of consultative bodies in a rather negative light and criticize widespread problems regarding funding and information policies, interference of authorities with selection processes and the reduction of these bodies to fig leaves covering up a lack of real influence⁷⁶.

The Aut. Prov. Bolzano and the VA Reg. established Territorial Councils for Immigration in 2000 and 2011, respectively, which differ only slightly regarding their composition. In both cases, they include representatives of the subnational government and of the largest municipalities⁷⁷, organizations of employers and employees as well as integration-focused NGOs and associations of immigrants themselves. In the Aut. Prov. Bolzano the council is chaired by the Prefect, that is, a representative of the national

⁷² I. BLOEMRAAD, *Becoming a Citizen. Incorporating Immigrants and Refugees in the United States and Canada*, University of California Press, Berkeley, 2006, p. 6.

⁷³ See D. GEBHARDT, *The Difference*, cit., forthcoming.

⁷⁴ See T. HUDDLESTON ET AL., *Mipex 2015. Political Participation*, cit., p. 15.

⁷⁵ Migration Policy Group, *Migrant Political Participation*, cit., p. 20.

⁷⁶ See T. HUDDLESTON ET AL., *Mipex 2015. Italy*, cit., p. 25.

⁷⁷ These are the City of Bolzano, Merano and Bressanone in the Aut. Prov. Bolzano and the City of Aosta in Reg. VA.

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government responsible, among other tasks, for monitoring the presence of immigrants and the capacity of the province to receive them. In the VA Reg., by contrast, the President of the Region acts as chairman in performing *his functions as Prefect*. What distinguishes the two subnational entities, however, to a much greater extent is the creation of further consultation bodies beyond the Immigrant Councils for Immigration, which they are anyway obliged to establish under the Immigration Act of 1998.

Instead of establishing additional advisory bodies at the local or regional levels, the VA Reg. rather seems to have focused since 2003 on intercultural mediation as a main instrument of integration⁷⁸. This mediation, which is supposed to facilitate communication in various environments such as social work and health care institutions, is indeed a crucial element but does not substitute, of course, political participation. As to the latter, the strengthening of immigrant associations as primary institutions to channels opinions and demands is naturally a preliminary stage for an effective consultation process. Promoting the activities of these associations is indeed the explicit aim of several institutions in the VA Reg. such as the *Servizio Migranti*⁷⁹ and the *Centro Comunale Immigrati Extracomunitari di Aosta* (CCIE), which was established in the City of Aosta already in 1991 and today serves other local governments as well. However, in these promotional activities they concentrate, according to their explicit aims, on cultural and recreational activities⁸⁰. Immigrant associations are therefore not seen, at least not primarily, as important institutional prerequisites for *political* participation through a process of consultation. The interlocutors on the other side are in this process of course the relevant political institutions. Unlike in the Aut. Prov. Bolzano, where responsibility for integration was recently concentrated and assigned to *one* member of the provincial executive⁸¹, this task has so far remained in the VA Reg. dispersed on essentially three different members⁸².

In contrast to the VA Reg., additional consultative bodies have been set up in the Aut. Prov. Bolzano over the last decade. First, in 2004 the two largest municipalities of the province, that is, Bolzano and Merano, established Municipal Advisory Boards composed of elected representatives of third-country nationals and stateless persons⁸³. Activities of these bodies include above all consultancy for local authorities and a double function of information by both spreading among immigrants knowledge about rel-

⁷⁸ See already Deliberazione della Giunta regionale 976/2003.

⁷⁹ Deliberazione del Consiglio Comunale 5/2013.

⁸⁰ In Italian: «*promozione dell'aggregazione e dell'associazionismo a carattere culturale e ricreativo*».

⁸¹ This is the *Assessore all'istruzione e cultura tedesca, integrazione*. Of course, close collaboration is nonetheless expected with government members responsible for specific integration-related issues like education or social welfare.

⁸² These three are the *Presidente della Regione* with the *Servizio Affari di Prefettura* and the *Agenzia Regionale del Lavoro*, the *Assessore alla sanità, salute e politiche sociali* and the *Assessore all'istruzione e cultura*.

⁸³ In Italian the *Consulta comunale delle cittadine e dei cittadini extracomunitari ed apolidi residenti a Bolzano* and the *Consulta comunale elettiva per le/i cittadine/i straniere/i extra UE ed apolidi residenti a Merano*.

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evant regulations and making the general public aware of the immigration issue from the perspective of newcomers themselves⁸⁴. Potentially problematic are in both cases the rather restrictive procedures of interaction with the municipal institutions. In Merano the President of the Advisory Board has the right to speak but not to vote only in sessions of the commissions of the municipal council (Art. 2 of the Statute)⁸⁵, while in Bolzano he/she may participate without a vote in meetings of all local institutions, including the municipal council. However, this participation is again limited insofar, as it requires a reasoned request in written form in relation to one or more specified items of the meeting's agenda. The president of the relevant local institution may then react with an approval or a reasoned rejection (Art. 2.3 of the Statute).

Another difference concerns the electoral systems and, consequently, the composition of the two consultative bodies. In the Advisory Board of Merano, one seat is reserved for people from each state, which accounts for more than 10% of all eligible voters, while smaller immigrant groups are represented collectively on the basis of their origin from one of four geographical areas (Art. 12 and 13 of the Election Law)⁸⁶. In contrast to this rather rigid system, the City of Bolzano foresees one seat per 600 inhabitants, who are third-country nationals or stateless (Art. 13 of the Electoral Law), and thus indirectly forces smaller groups into forming inter-group alliances endorsing a joint compromise candidate.

Beyond occasional problems during the process of consultation, the voter turnout has eventually emerged as a main weakness of both Advisory Boards. While in Merano participation in the elections has been from the start below 30%, in Bolzano it dropped from a respectable 43.8% in 2004 to 25.8% five years later⁸⁷. In the case of Merano, the elections even had to be postponed from 2008 for one year because it proved to be impossible to reach the minimum number of candidates according to Art. 10 of the Election Law. This development has been attributed to several reasons. Among them is disappointment about the fact that the elections to the essentially powerless Advisory Boards did not turn out to be a first step towards local voting rights for immigrants, which had been publicly debated precisely at the time of the creation of these bodies in 2003-2004⁸⁸. This might also be reflected in the contrast between the low voter turnout, on the one hand, and the wish of 66% of the immigrant population to be granted active franchise regarding the clearly more important municipal and provincial elections⁸⁹. The natural corollary of the weak backing of the Advisory Boards among immigrants was a

⁸⁴ See P. ATTANASIO-G. PALLAVER, *Integrarsi partecipando*, cit., p. 248 ss.

⁸⁵ Deliberazione del Consiglio Comunale 9/2003.

⁸⁶ These geographical areas are Africa, America and Oceania, Africa as well as non-EU Europe, Russia and stateless persons (Deliberazione del Consiglio Comunale 9/2003).

⁸⁷ ASTAT-Info (2004), *Gli stranieri in provincia di Bolzano 2003*, no. 20, Luglio 2004; ASTAT-Info (2009), *Gli stranieri in provincia di Bolzano 2008*, no. 35, Giugno 2009.

⁸⁸ See P. ATTANASIO-G. PALLAVER, *Integrarsi partecipando*, cit., p. 255 ss.

⁸⁹ See R. MEDDA-WINDISCHER et al. (eds.), *Condizione e prospettive d'integrazione degli stranieri in Alto Adige. Relazioni sociali, lingua, religione e valori*, Eurac Research, Bolzano, 2011, p. 55.

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decrease of the political weight. The fact that there was no best practice to emulate arguably also had a negative and restraining effect on debates about the introduction of Advisory Boards in other municipalities like Bressanone, where intense discussions over recent years have not led to the creation of a formalized consultation body so far. Beyond that, the Provincial Government, which according to Art. 6(10) of the 2011 integration law promotes the establishment of advisory boards at municipality and district level, recently created so-called “model areas for integration policy”. These model areas, namely the municipalities of Bressanone and San Candido as well as the district of Brunico, discuss, among other tools, the instrument of consultative bodies.

The critical debate on the two existing local Advisory Boards in Bolzano and Merano also contributed eventually to the establishment of a similar consultation body at the provincial level. Art. 6 of the 2011 provincial integration law foresees a Provincial Advisory Board for Immigration⁹⁰ which is tasked with counseling the Provincial Government, in particular regarding relevant legislation and the adoption of the multiannual program on immigration, including objectives, time frames and budget plans (Art. 4). Whereas the composition of the Provincial Advisory Board resembles the above-mentioned municipal bodies in its effort to assemble both governmental and non-governmental actors, members are not elected, but nominated by the Provincial Government (Art. 6(1)). The latter is obliged, however, to follow quite detailed rules in this selection process, which assign a specific number of seats to certain categories. An interesting feature is in this regard the mandatory inclusion in this *subnational* consultative body of two delegates from the *local* level. In concrete terms, the Association of Municipalities proposes these representatives, one of whom has to be from a town with more than 20.000 inhabitants (Art. 6(3f)). Furthermore, eight out of a total of 18 seats are reserved to immigrant representatives, who are thus in a minority position. In respect of the concrete procedural rules for nominating these eight members, the law merely stipulates that the selection has to involve hearings with the immigrant communities (*note the plural*) and to ensure adequate representation of gender, geographical origin, and nationality (Art. 6.3h in conjunction with Art. 6.9). Otherwise, it refers to further provisions to be enacted with an implementing regulation. This regulation⁹¹, which deals not only with the nomination of the members of the Advisory Boards, but also with the convocation of its meetings (Art. 6.9), was eventually adopted in 2012 after a consultation process with working groups involving experts, among them immigrants themselves.

Particularly controversial from a legal point of view were Art. 6.3c and Art. 6.6, according to which the Police Headquarters (*Questura*) and the Office of the Government Commissioner (*Commissariato del Governo*) would be represented by a common delegate or a substitute sent by this person. Upon a challenge by the Italian government, the Constitutional Court declared these provisions to be unconstitutional because the Aut.

⁹⁰ In Italian *Consulta Provinciale per l'Immigrazione*.

⁹¹ Decreto del Presidente della Provincia 35/2012.

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Prov. Bolzano may not unilaterally foresee collaboration with organs of the national public administration⁹². Apart from this legal dispute, the design of the Advisory Board may also be challenged for other reasons. There is certainly potential for improvement concerning the interaction with political institutions in the province. Whereas the Advisory Board in the City of Bolzano foresees interaction, in principle, with *all* relevant local institutions, the provincial body is focused on the Provincial Government. The latter is represented within the body by the member in charge of integration as chairperson and by four additional representatives dealing with particularly integration-related issues such as education, social housing, etc. In this light, it might be an improvement of immigrants' political participation to foresee the possibility for their representatives to attend also sessions of the Provincial Parliament⁹³. Whether such participation, including a right to speak, but not a right to vote, could be an effective instrument in the specific context of the Aut. Prov. Bolzano, remains unclear and would have to be tested on the ground. There is, however, the argument that such «politics of presence», which *enables* viewpoints of an otherwise excluded group to resonate with members of the majority, has at least the potential to effectively influence political decision-making⁹⁴. In each individual case, this would evidently depend considerably on contextual factors such as the concrete political culture, party constellations and the political potential of immigrant representatives.

5. Conclusions

Overall, the analysis of this chapter has demonstrated that activism concerning the facilitation of immigrants' political participation is slightly stronger in the Aut. Prov. Bolzano than in the VA Reg. It is decidedly weaker, however, than in some other parts of Italy like Tuscany and Emilia-Romagna as well as other subnational entities in Europe. The question is then what factors, which have proven to be significant in other cases, could account for the fact that neither the Aut. Prov. Bolzano nor the VA Reg. appear to be among the pioneers regarding the political participation of newcomers. Two factors seem to be particularly relevant.

First, a fundamental issue is certainly to what degree a subnational entity *actually is* a territory of immigration and *perceives itself* as such. Similar to different states within Europe, also different subnational entities within states have been impacted unevenly by what has been termed «super-diversity»⁹⁵ or «diverse diversity»⁹⁶, that is, both more

⁹² Italian Constitutional Court, Judgment 2/2013.

⁹³ In this direction Recommendation No. 29 in R. MEDDA-WINDISCHER-A. CARLÀ, *Migrazione e convivenza in Alto Adige. Raccomandazioni per una cittadinanza civica nella provincia di Bolzano*, Eurac Research, Bolzano, 2013, p. 4.

⁹⁴ A. PHILLIPS, *The Politics of Presence*, Oxford University Press, New York, 1995.

⁹⁵ S. VERTOVEC, *Super-diversity and its Implications*, in *Ethnic and Racial Studies*, 30, 2007, p. 1024 ss.

⁹⁶ K. BANTING, *Canada*, in C. JOPPKE-F.L. SEIDLE (eds.), *Immigrant Integration*, cit., p. 82.

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and more complex immigration in terms of mobility patterns and profiles of newcomers. Again similar to states, different subnational entities are not only *de facto* at different stages of the migratory process, but also have to come to terms with this reality of being a territory of immigration. As the German example demonstrates,⁹⁷ this process of recognizing *de facto* changes may be complicated and protracted. Even where this recognition of being a territory of immigration has taken place, active integration policies tend initially to respond to often emerging perceptions of immigrants as a threat to social peace and public order rather than addressing the supposedly not so urgent issue of political participation⁹⁸. Thus, there is typically a more or less extensive lag between the transformation into an immigration territory and effective measures to ensure immigrants' political participation.

That the VA Reg. and the Aut. Prov. Bolzano are at different stages of this process might also partly explain the fact that the latter entity is slightly more active when it comes to the promotion of such participation. Both territories are quite similar concerning the respective shares of EU citizens and third-country nationals of the immigrant population⁹⁹ as well as the immigrants' share of the total population. Even if the latter figure is in the VA Reg. at 7.1% the lowest of all regions in Northern and Central Italy, the percentage for the Aut. Prov. Bolzano is 8.9%, thus not much higher. What might matter more is the absolute number of newcomers, which is 46.045 in the Aut. Prov. Bolzano and merely 9.075 in the VA Reg. In the VA Reg., this relatively small group might be considered by policy-makers just still too irrelevant to be worth the effort of introducing more comprehensive integration policies, including more channels for political participation. Another point concerns the timing of immigration. Whereas the share of the immigrant population in Aut. Prov. Bolzano started to increase already during the 1990s, the onset of the influx of newcomers in the VA Reg. occurred later and was followed by a more rapid growth. Immigration is, therefore, simply a newer phenomenon in this region and of course very different from the internal migration of people from Southern Italy, above all Calabria, which had characterized the history of the VA Reg.

⁹⁷ Although Germany was a *de facto* country of immigration soon after World War II, mostly due to the admission of temporary workers (*Gastarbeiter*) from Southern Europe and descendants of German settlers in the countries of the Communist Bloc, it was long reluctant to recognize this reality. This self-perception, which «articulates not a social or demographic fact but a political-cultural norm» (R. BRUBAKER, *Citizenship and Nationhood in France and Germany*, Harvard University Press, Cambridge, 1992, p. 174), was gradually reversed only during the last two decades. There is good reason to expect that subnational entities may have similar difficulties to acknowledge the fact of being a territory of immigration.

⁹⁸ H. MAHNIG, *The Politics of Minority-Majority Relations. How Immigrant Policies Developed in Paris, Berlin and Zurich*, in R. PENNINX-K. KRAAL-M. MARTINIELLO-S. VERTOVEC (eds.), *Citizenship in European Cities. Immigrants, Local Politics and Integration Policies*, Ashgate, Aldershot, 2004, p. 17 ss.

⁹⁹ The share of EU-citizens is 37.3% in Reg. VA and 32.7% in the Aut. Prov. Bolzano. What distinguishes them much more is the quite different percentage of people from the new member states. They amount for 31.8% and 18.5%, respectively (see Centro Studi e Ricerche IDOS, *Dossier Statistico Immigrazione 2015*, IDOS, 2015, p. 452 and 459).

so far.

A second factor that may have impacted on the Aut. Prov. Bolzano and the VA Reg. is the extent to which the integration of immigrants is seen through the lens of the already existing language diversity in these two subnational entities. In several European regions, an inclusive approach towards political participation of immigrants has at least partly served also the purpose of including them as allies against the national government in regional projects of nation-building. As to participation through parties, for instance, the Scottish National Party (SNP) has pursued a deliberate strategy of welcoming representatives of immigrant communities in order to distinguish itself through this inclusiveness from the rest of the UK and also to win them over to support its political agenda¹⁰⁰. In Catalonia, efforts of making immigrants allies for a project of regional nation-building are more far-reaching because this project has, unlike in Scotland, also an important linguistic dimension. Immigrants are indeed a main target group of Catalonia's language policies, which aim at reinforcing the use of Catalan as the main language of communication. In general, this objective was expressed in the Statute of the Autonomous Community, which did not only declare Catalan as a co-official language in the region (Art. 6(2)). It also defined it as Catalonia's «*own language*» and «*language of normal and preferential use*» in various areas (Art. 6(1))¹⁰¹. The relationship between the Castilian and Catalan languages provoked a series of cases in high courts¹⁰² as well as a famous judgment of the Constitutional Court, which ruled the «*preferential use*» unconstitutional because this would inevitably imply an imbalance between the two official languages¹⁰³. Beyond the envisaged preference for Catalan in general, explicit reference is also made to such a status with specific regard to immigrants in the Catalan National Agreement on Immigration¹⁰⁴. The fact that political participation of newcomers may be slightly more extensive in Catalonia than in most other Autonomous Communities is arguably in part due to the strong perception of participation as being instrumental for efforts of nation-building¹⁰⁵.

Unlike in the cases of Scotland and Catalonia, such participation is hardly seen in this light in the Aut. Prov. Bolzano, and even less so in the VA Reg. As to the promotion of a minority language among immigrants, this issue is much less on the political agenda in the Aut. Prov. Bolzano because German is unlike Catalan mostly regarded as

¹⁰⁰ See E. HEPBURN, 'Citizens of the Region'. Party Conceptions of Regional Citizenship and Immigrant Integration, in *European Journal of Political Research*, 50(4), 2011, p. 513.

¹⁰¹ These areas are public administration bodies and public media of Catalonia as well as, regarding the language of normal use, teaching and learning in the education system.

¹⁰² For an overview see G. POGGESCHI, *Language Rights and Duties in the Evolution of Public Law*, Nomos, Baden-Baden, 2013, p. 132 ss.

¹⁰³ Spanish Constitutional Court, Judgment 31/2010, FJ 14. The expression «*normal use*», by contrast, is in line with the constitution, if Castilian is interpreted as equally normal language so that the balance between the two is maintained.

¹⁰⁴ See Generalitat de Catalunya, *National Agreement on Immigration. An agreement to live together—Challenge 2: Making Catalan the common public language* (19 December 2008), at 69-70.

¹⁰⁵ See D. GEBHARDT, *The Difference*, cit., forthcoming.

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offering per se incentives to newcomers, not least with a view to a wider prosperous German-speaking area. There are only very few statements of German-speaking politicians warning against, from their perspective, excessive linguistic integration of immigrants into the Italian-speaking community. This is even much less an issue in the VA Reg. where French is anyway only spoken by a tiny share of the population and thus much less present in public life. Overall, both subnational entities seem to be reluctant to promote more vigorously political participation of immigrants notwithstanding their long history of internal diversity or, perhaps, precisely because of it. Although we may conclude that both the Aut. Prov. Bolzano and the VA Reg. are not leading of immigrants' integration in the political sphere, neither within Italy nor on the international scale, the concrete drivers behind this gap remains to some extent in question. The two factors just mentioned, that is the long transformation, both de facto and in terms of self-perception, into a territory of immigration as well as the absent functionality for regional nation-building and minority language promotion, seem to play a role here. However, this is certainly only part of a broader picture so that the impact of other factors definitely merits further research.