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UNITARIANISM WITH ATTRIBUTES OF REGIONALISM – CERTAIN ASPECTS AND RELEVANT GEORGIAN CONTEXT

ABSTRACT

The territorial organisation of Georgia in the current context is difficult to describe with complete precision, but it can be defined as unitarianism with regional autonomies. In this respect, the regional autonomies are the Autonomous Republic of Ajara and the Autonomous Republic of Abkhazia. In addition, the temporary administrative-territorial unit established on the territory of the former Autonomous Region of South Ossetia has a special status.

In general, three classical models (conventional classification) are relevant in the context of territorial organisation: unitarianism, regionalism, and federalism. There are several configurations of these three models. Federalism, in a broad sense, is a subtype of regionalism, while unitarianism can also be represented by attributes of regionalism. Regionalism, in a narrow sense, refers to a constitutional-legal format which includes the classification of territorial units into regions and the territorial division of the unified state into regional autonomies (for example, Spain and Italy).

Given all of the above, the main aim of the Article is to overview the extended standard of regional/political autonomy, with a focus on the idea of improving the Georgian model of territorial organisation, only using Catalonia and South Tyrol as examples so far.

This Article was written as part of a research mission to the Faculty of Law of Humboldt University of Berlin. It aims to implement the research project "Strategy for Georgia's De-Occupation and Future Perspectives of Territorial Organisation". The Article presents only one of the topics that have been developed in the framework of this project. In particular, what exactly, for example, Abkhaz political autonomy should

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In general, everything depends on a political decision to be taken by the Georgian state, taking into account the political rights of Abkhazians as an ethnic minority (or people), and this path may end up in the process of federalisation of the country. In this perspective, the concrete prospect of federalisation of Georgia is among the topics to be explored and is the subject of ongoing research within the framework of the above project.

As a result of the constitutional reform in 2017-2018, it was clarified that the territorial structure in Georgia would be reconsidered once jurisdiction over the entire territory was fully restored, and it should be emphasised that the de-occupation process should start with defining legal benchmarks and identifying a specific model of a territorial structure. The political process cannot outpace the legal process and vice versa.

I. INTRODUCTION

The territorial organisation of Georgia in the current context is difficult to describe with complete precision but it can be defined as unitarianism with regional autonomies. In this respect, the regional autonomies are: the Autonomous Republic of Ajara and the Autonomous Republic of Abkhazia. In addition, the temporary administrative-territorial unit established on the territory of the former Autonomous Region of South Ossetia has a special status.

In general, three classical models (conventional classification) are relevant in the context of territorial organisation: unitarianism, regionalism, and federalism. There are several configurations of these three models. Federalism, in a broad sense, is a subtype of regionalism, while unitarianism can also be represented by attributes of regionalism. Regionalism, in a narrow sense, refers to a constitutional-legal format which includes the classification of territorial units into regions and the territorial division of the unified state into regional autonomies (for example, Spain and Italy).

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There is a consensus among international organisations (in particular within the UN) as well as legal professionals that Abkhazia and the Tskhinvali Region enjoy no right to

secession.[2] "There is no right of secession, in the name of self-determination, for groups living within a State".[3] Furthermore, even if the Abkhaz nation is granted the status of "people", they still have no right to so-called secession, or withdrawal, from Georgia, since modern international law in this sense leans in favour of state integration and excludes the right of secession[4]. As sui generis, the case of Kosovo, whose declaration of independence has been recognised as legitimate by the International Court of Justice of the United Nations (UN), is entirely unique in this context.[5]

Notably, it is rare for a country's constitution to address the issue of secession. In this respect, two cases are distinguished: when the constitution explicitly prohibits secession (negative secession provisions) or declares it admissible (positive secession provisions).[6] For instance, the constitutions of Ecuador, Myanmar and Palau explicitly prohibit secession.[7] Positive secession provisions concerning the admissibility of secession globally are found in the constitutions of the following three countries only: Ethiopia, Sudan and Saint Kitts and Nevis.[8]

Moreover, two models differ in the case of secessionist aspirations of the central government to manage territorial conflicts: the so-called participatory model (Scotland, Quebec) and the denial model (Catalonia).[9] In the first model, the central government seeks to enable the regional authorities to decide their own destiny through democratic processes, for example, through a referendum. In the second, the central government completely ignores demands for secession and makes no concessions. There is also a third model which relates to the issue of granting extended autonomous rights to a region seeking secession (the autonomy maximisation model).[10]

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[2] Thomas Burri, 'Secession in the CIS - Causes, Consequences, and Emerging Principles' in Christian Walter and others (eds), Self-Determination and Secession in International Law (Oxford University Press 2014) 141; James Ker-Lindsay, The Foreign Policy of Counter Secession – Preventing the Recognition of Contested States (Oxford University Press 2013) 24 et seq; Surya Prakash Sharma, Territorial Acquisition, Disputes and International Law (Brill Nijhoff 1997) 225; Christopher Heath Wellman, A Theory of Secession – The Case for Political Self-Determination (Cambridge University Press 2005) 180.

[3] Photini Pazartzis, 'Secession and International Law in the European Dimension' in Marcelo G. Kohen (ed), Secession – International Law Perspectives (Cambridge University Press 2006) 361; Pau Bossacoma Busquets, Morality and Legality of Secession – A Theory of National Self-Determination (Palgrave Macmillan 2020) 364-365.

[4] Tinatin Erkvania, 'Constitutional Framework of the Conflict Regions in Georgia and the Latest Attempts for their Regulation' (2021) 5(1) Journal of Politics and Democratization 1–33.

[5] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010, ICJ Reports, 2010.

[6] Anna Gamper, 'Regionalismus und Sezession – verfassungsrechtliche Herausforderungen und Antworten im europäischen Vergleich' in Walter Obwexer and others (eds), Integration oder Desintegration? Herausforderungen für die Regionen in Europa (Nomos 2018) 61 et seq.

[7] ibid.

[8] ibid.

[9] ibid.

[10] ibid, 78 et seq.

In general, several types of asymmetry are distinguished in the context of the asymmetry of the region's special status:[1] *functional, political, institutional, symbolic* and *regime asymmetries*. These types of asymmetries influence the formation of policies that differ from the standard political processes of territorial autonomy.

Functional, or *horizontal*, *asymmetry* refers to a case where a region with a special status enjoys extensive autonomy. In this case, one region has stronger powers in terms of its freedom of decision-making than other regions within the same state. Such asymmetry can be linked both to general political powers (for example, Catalonia) and to fiscal and monetary policies (for example, Hong Kong).

Political, or *vertical*, *asymmetry* refers to a case where the powers granted to a territorial unit are stronger (deeper) compared to other regions in the same state. Political asymmetry refers to the extent of self-governance that territorial autonomy has within the limits of assigned functions/powers.

Institutional asymmetry refers to a case where territorial autonomy with a special status has institutions with different names, designs and orders compared to other regions in the same state. The high degree of institutional asymmetry can develop into regime asymmetry.

Symbolic asymmetry refers to a case where territorial autonomy recognises its own identity by accentuating more different symbols than in other regions within the same state. These symbols can emphasise the idea of "nation", "nationality", "people", and "different society". All this may result in the creation of territorial political institutions with different names or territorial flags, emblems, anthems or sports groups.

Finally, regime asymmetry is present when the economic and political regime of a particular territorial autonomy differs from the entire political and economic system of the state to the extent that the two spaces (the regional and the central government) rely on different principles in perceiving political legitimacy and constitutional order. The experiences of central Tibet and Hong Kong ("one state, two systems" – this principle underpins Hong Kong's territorial autonomy) are remarkable in this respect.

In addition to the above, the special status of territorial autonomy may be *devolutionary* or *integrative*. Devolutionary autonomy refers to the case where the powers of the central government are transferred to territorial units that form an integral part of the state concerned. The purpose of the special status of devolutionary autonomy is to satisfy the needs of the society of the territorial unit concerned, implying the acceptance by the latter of the legitimacy of inclusion in the state. Catalonia and Corsica are examples of special devolutionary autonomy.

[1] Susan J. Henders, Territoriality, Asymmetry, And Autonomy: Catalonia, Corsica, Hong Kong, and Tibet (Palgrave Macmillan 2010) 15 et seq.

The special status of territorial autonomy may also be *integrative*. This is the case when a territorial unit is incorporated into a new state and granted the status of autonomy. Hong Kong and Tibet are examples of integrative autonomy from 1997 and the 1950s, respectively. Over time, the characteristics of integrative autonomy may evolve into those of devolutionary autonomy.

The statuses of territorial autonomies also vary according to *temporality*. In particular, this standard (temporality, with a focus on time) refers to cases where territorial autonomy is either permanent or temporary. For example, the special status of Hong Kong's administrative region was determined until a certain date, and that date was 1 July 1947. However, when central Tibet was first incorporated into the People's Republic of China in the 1950s, it was granted a temporal (temporary) special status, without a specific date being indicated. *Permanent* special autonomy does not imply any limits in terms of time and duration. Examples of permanent autonomies are Catalonia and Corsica.

In addition, the constitutional status of federal units, territorial units of quasi-federal regional states and regions emerging from decentralisation in unitary states varies in constitutional and legal terms.[2] In general, federalism is a subtype of regionalism. However, regionalism in the narrow sense is often referred to as the "little brother" of federalism. As a rule, regionalism is discussed in the legal scholarly literature in a general context – with a focus on the autonomous rights of the central government of the regions. As for federalism, in this respect, it is often referred to as a specific type of regionalism.[3]

Regionalism is often mentioned in the scholarly literature (and not only), and, in general, federalisation is one of the possible tools for the resolution of territorial/ethnic conflicts.[4]

The present article describes essentially the characteristics of Spanish and, to some extent, Italian regionalism in the way of identifying the standards and institutional features of the Georgian model of regionalism.

[2] Gudrun M. Grabher and Ursula Mathis-Moser (eds), Regionalism(s) – A Variety of Perspectives from Europe and the Americas (New Academic Press 2014) 3 et seq.

[3] ibid; Csilla Dömők, Europa der Nationen und Regionen – eine Geschichte von Einheit und Identität: Regionalismus und Föderalismus in Europa (WVB 2018) 79 et seq.

[4] Michael Wolffsohn, Zum Weltfrieden, Ein politischer Entwurf (DTV 2015); Soeren Keil and Elisabeth Alber, Federalism as a Tool of Conflict Resolution (Routledge 2021) 1 et seq.; Bettina Pettersohn, Konfliktregulierung in multinationalen Demokratien – Föderalismus und Verfassungsreformprozesse in Kanada und Belgien im Vergleich (Nomos 2013) 60 et seq.

II. TERRITORIAL CONFLICTS IN GEORGIA: THE POLITICAL SYSTEM AND AUTONOMY IN ABKHAZIA AND THE TSKHINVALI REGION (SAMACHABLO) – PREHISTORY AND TODAY

1. CONSTITUTIONAL STATUS OF THE ABKHAZIA REGION – PAST AND PRESENT

1.1. Population and administrative division of Abkhazia

It is difficult to determine the exact population of Abkhazia, as the region is occupied by Russia[5] and therefore no census is conducted by the Georgian authorities. In addition, the war in Abkhazia and the ethnic cleansing of Georgians affected the current population of Abkhazia.[6]

The exact number of the current population of Abkhazia is unknown. According to the de facto authorities,[7] the number of the population was 215 972 in 2003 and 240 705 in 2011. However, these figures are not reliable for the Georgian side. According to Geostat's estimates, the region had 179 000 inhabitants in 2003 and 178 000 in 2005. The UNDP estimated between 180 000 and 220 000, while the International Crisis Group estimated between 157 000 and 190 000 in 2006.

The well-known events of 1992-93 dramatically changed the demographic situation in the Autonomous Republic of Abkhazia. The level of migration among the local population increased. The total Georgian population in the occupied territory of Abkhazia decreased by 88.5%. During the Soviet period, according to the 1989 census, and according to the Statistics Division of the Ministry of Economy of the Autonomous Republic of Abkhazia, there were 525 061 residents in Abkhazia, including ethnic Georgians – 239 900 (46%); ethnic Abkhazians – 93 300 (18%); Russians – 74 900 (14%); and Armenians – 76 500 (15%).

According to Article 6(1) of the Law of Georgia on Internally Displaced Persons, "an internally displaced person (IDP) shall be deemed a citizen or a stateless person

[5] Article 2, Law of Georgia on Occupied Territories <https://matsne.gov.ge/ka/document/view/19132?publication=8> [last accessed on 10 May 2022].

[6] The massacre and forced displacement of ethnic Georgians from the territory of the Autonomous Republic of Abkhazia during the Abkhaz war of 1992-1993 and the conflict of 1998. The ethnic cleansing of Georgians is recognised by the Organization for Security and Cooperation in Europe (OSCE) conventions adopted at the Budapest, Istanbul and Lisbon summits (in 1994, 1996 and 1997, respectively). The ethnic cleansing of Georgians in Abkhazia was also recognised by the United Nations (UN) (see General Assembly Resolution A/RES/62/249 of 15 May 2008. In addition, the UN Security Council adopted a number of resolutions on ceasefires in the occupied territories of Georgia).

[7] As a rule, Georgians and Mingrelians are represented as different ethnic groups in the "official" statistics of the de facto authorities. By reinforcing the Mingrelian "identity", the de facto government of Abkhazia seeks to artificially reduce the number of ethnic Georgians living in Abkhazia and, as a result, reduce Georgian influence in Gali district.

permanently residing in Georgia, who was forced to leave his/her permanent place of residence and move within the territory of Georgia, because the aggression of a foreign country, an armed conflict or massive violations of human rights posed a threat to his/her or his/her family member's life, health or freedom."

According to the latest data from the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia, in Georgia there are up to 277 000 internally displaced persons from Tskhinvali and Abkhazia regions. According to the International Displacement Monitoring Centre (IDMC), there are currently 293 000 internally displaced persons in Georgia. The difference in the data is mainly due to a different system of estimation and analysis.

In terms of administrative division, the Autonomous Republic of Abkhazia is administratively divided into 7 municipalities: Azhara municipality, Gagra municipality, Gali municipality, Gudauta municipality, Gulripshi municipality, Ochamchire municipality and Sokhumi municipality.

The area of the Autonomous Republic is 8 700 sq km. The capital of the autonomy is the city of Sokhumi. There are 526 settlements on the territory of the autonomy, including 7 towns (New Athos, Gagra, Gali, Gudauta, Ochamchire, Sukhumi, Tkvarcheli), 5 settlements (Bichvinta, Gantiadi, Gulripshi, Leselidze, Miusera) and 514 villages.

Since 1993, the entire territory of Abkhazia (with the exception of the Kodori Gorge until 2008) has been under the control of the separatist regime.

1.2. Political system of the Autonomous Republic of Abkhazia – prehistory and today

When we talk about the political system in the Abkhazia region, in a historical context the Abkhaz Autonomous Soviet Socialist Republic (1931-1992) and the Autonomous Republic of Abkhazia, already within the independent Democratic Republic of Georgia (existing from 1991 up to the present), differs from each other. Besides, the separatist "Republic of Abkhazia" has its political system (from 1992 up to the present).[8]

In addition to the above, from 1921-1931 there was the Abkhaz Soviet Socialist Republic (ASSR). In December 1921, an agreement was concluded between the Georgian Soviet Socialist Republic and the Abkhaz Soviet Socialist Republic, according to which Abkhazia became part of Georgia. On 16 December 1921, the Abkhaz SSR became part of the Georgian SSR on a federal basis to join the Transcaucasian Socialist Federative Soviet Republic (SFSR).[9] On 13 December 1922, the Abkhaz SSR joined

[8] It should be stressed that on 12 October 1999 an Act of Independence of "the Republic of Abkhazia" was passed based on the 1999 referendum. Accordingly, separatist Abkhazia legally considered itself a constituent entity of Georgia until today.

[9] The Transcaucasian Socialist Federative Soviet Republic (the Transcaucasian Federation, the TSFSR)

the Transcaucasian SFSR as a constituent entity of the Georgian SSR. On 19 February 1931, the status of the Abkhaz SSR was changed to an autonomous republic.

The first constitution of the Abkhaz SSR (if we do not take into account the unofficial constitution of 1925) was adopted only in 1927. Prior to this, since Abkhazia had not had its own constitution for years, the 1922 Constitution of the Georgian SSR, which stipulated Abkhazia's place within Georgia, applied to its territory following the signing of the agreement with Georgia.

According to the Law on the Representation of National Minorities in the National Council of Georgia of 13 September 1918, the Abkhazians had 3 out of 26 seats for representatives of national minorities.

In 1918-1921, Abkhazia was part of the Democratic Republic of Georgia with the status of autonomy. This was reflected in the Constitution of Georgia adopted by the Constituent Assembly of the Democratic Republic of Georgia in February 1921, which relates to the national-state structure of the country (see Chapter 11 of the 1921 Constitution of Georgia).

From 11 June 1918, Abkhazia was an autonomous unit of the Democratic Republic of Georgia, which was officially confirmed on 20 March 1919 by the People's Council of Abkhazia, a supreme juridical body elected in the democratic elections conducted for the first time in Abkhazia. On 16 October 1920, the same body approved a draft constitution of autonomous Abkhazia and forwarded it for approval to the Constituent Assembly, a supreme legislative body of the Democratic Republic of Georgia.

Thus, in 1919-1921, there existed the People's Council of Abkhazia, which was a legitimate legislative body and was elected as a result of the first general elections on the territory of Abkhazia on 13 February 1919.

The People's Council of Abkhazia was multi-party and multi-national. It was composed of 40 deputies who represented 7 factions (27 Social Democrats, 4 Independent Socialists, 3 non-partisan right-wingers, 3 Socialist-Revolutionaries (SRs), 1 National Democrat, 1 Socialist-Federalist, 1 non-partisan colonist). Twenty deputies were ethnic Abkhazians. Of the 40 deputies, 7 (4 Independent Socialists and 3 non-partisan right-wingers) had a radically anti-Georgian attitude. They formed an "independent faction" whose aim was to achieve maximum sovereignty for Abkhazia. The first meeting of the Council was held on 18 March 1919. Arzakan Emukhvari was elected chairperson of the Council. Later, he was also head of the Government of Abkhazia. At the meeting held on 20 March, an Act of Autonomy of Abkhazia was adopted. The document also provided

was a Soviet republic that existed between 1922 and 1936. It comprised the Republics of Georgia, Armenia and Azerbaijan, as well as the Abkhaz SSR in 1922-1931. After 1936, the three Transcaucasian countries became part of the Soviet Union separately.

for the drafting of the Constitution of Abkhazia by a parity commission established with the participation of the People's Council of Abkhazia and the Constituent Assembly of Georgia. The adoption of the Constitution was delayed by the uncompromising policy of the opposition. In October 1920, the People's Council of Abkhazia approved the Regulations on the Autonomous Management of Abkhazia. Following the invasion of Abkhazia by the Red Army and the seizure of Sokhumi on 4 March 1921, the People's Council Abkhazia ceased its activities.

On 20 March 1919, the newly elected People's Council of Abkhazia adopted an Act of Autonomy and submitted it to the Constituent Assembly of Georgia for approval. It stated that:

- Abkhazia is part of the state of Georgia as an autonomous element and notifies thereof the Parliament and the Government of Georgia;
- A constitution shall be drafted for autonomous Abkhazia that will regulate the relationship between the central (all-Georgian) authorities and the autonomous authorities;
- A remote parity commission shall be established to draft the constitution, composed of members of the People's Council and members of the Parliament of Georgia;
- Provisions developed by the commission shall be incorporated into the Constitution of the Democratic Republic of Georgia.

On 29 December 1920, the Small Constitutional Commission of the Constituent Assembly of Georgia adopted Regulations on the Management of Autonomous Abkhazia. The Constituent Assembly of Georgia incorporated the basic principles of the autonomy of Abkhazia into the Constitution of Georgia.

On 21 February 1921, the first Constitution of Georgia, adopted by the Constituent Assembly, constitutionally enshrined the autonomous status of Abkhazia as part of the unified state of Georgia – the Democratic Republic of Georgia.

At this stage, the authorities of the Autonomous Republic of Abkhazia in exile are represented by the Supreme Council of the Autonomous Republic of Abkhazia (the legislative body) and the Council of Ministers (the executive body) of the Autonomous Republic of Abkhazia, which have been based in Tbilisi since 1993.

Accordingly, after the occupation of Georgia by Soviet Russia, the Abkhaz Soviet Socialist Republic (the Abkhaz SSR, officially from 31 March 1921 to 19 February 1931) was established, which was independent for a certain period of time. In particular, on 16 December 1921, the Abkhaz SSR joined the Georgian SSR under the relevant agreement and became subordinated to the latter. In 1931-1992, there existed the Abkhaz Autonomous Soviet Socialist Republic (the Abkhaz ASSR), which was part of the Georgian SSR.

Notably, the Abkhaz side still refers to the fact of the existence of the Abkhaz SSR and demands the restoration of independence based on the same standard.

Following the restoration of Georgian independence, on 9 July 1991, the Abkhaz ASSR passed a Law on the Elections of Deputies of the Supreme Council of the Abkhaz ASSR (amended on 27 August 1991). Under this law, 28 seats were allotted to the representatives of Abkhaz nationality, who made up just 18% of the population of the Autonomous Republic. The Georgian population, which then made of about 47.6% of Abkhazia, had 26 seats, while the remaining national minority had 11 seats.

On 23 July 1992, a group of separatist-minded deputies of the Supreme Council of the Abkhaz ASSR, despite not having 2/3 of the votes necessary to implement constitutional amendments, by a simple majority, completely abolished the 1978 Constitution of the Abkhaz ASSR, renounced the name "the Abkhaz Autonomous Soviet Socialist Republic" and proclaimed the new Republic of Abkhazia. Later, the Georgian faction of the deputies of the Abkhaz ASSR replaced the aforementioned name with the "Autonomous Republic of Abkhazia".

According to the version of the 1978 Constitution of the Abkhaz ASSR at the material time, the passing of laws and other acts on issues of the legal status of Abkhazia, and the making of decisions on issues related to amendments to the Constitution of the Autonomous Republic and on holding a referendum and electing or appointing high-ranking officials, as well as relevant bodies, should have been carried out by the two-thirds of the deputies of the Supreme Council of the Abkhaz ASSR. Despite this, with the adoption of the illegal Declaration on the State Sovereignty of Abkhazia, the leadership of the Abkhaz ASSR consistently began to implement legislative and organisational measures, the ultimate goal of which was to infringe on the territorial integrity of Georgia and secede from Georgia.

This policy forced Georgian deputies (26 seats) and other representatives of national minorities (11 seats) to leave the Supreme Council of the ASSR.

At the time, in 1991-1992, by a decree of the Presidium of the Supreme Council of the Abkhaz ASSR (the Supreme Council elected its standing and accountable body, the Presidium of the Supreme Council of the Abkhaz ASSR, which performed the functions of the highest state authority of the Abkhaz ASSR during the period between the sessions of the Supreme Council), normative acts were adopted, whereby a number of laws of the Republic of Georgia were declared invalidated in Abkhazia.

On 24 July 1992, Abkhazian legislators adopted a decision, according to which the 1978 Constitution of the Abkhaz ASSR ceased to have an effect and the 1925 Constitution of the Abkhaz SSR was restored, while no such legislative act was adopted in 1925. In 1925, there was only a draft of such a document. The constitutional requirement that

such a decision could be adopted only by the votes of two-thirds of the deputies were neglected.

In 1994-1996, the Parliament of Georgia adopted several important resolutions. These were the resolutions of 10 March 1994, 24 February 1995, 14 June 1995, 17 April 1996 and 25 December 1996.

- By the resolution of 10 March 1994, the Parliament of Georgia dissolved the Supreme Council of the Abkhaz ASSR, recognised the Government of the Autonomous Republic of Abkhazia as a government-in-exile and repealed the Law of the Abkhaz ASSR of 9 July 1991 (as of 27 August 1991) on the Elections of the Supreme Council of the Abkhaz ASSR (Georgians also called this law an apartheid law because only 26 deputy seats were given to the Georgian population). Under the same resolution, all the legal acts adopted in violation of the then legislation of Georgia, including the Autonomous Republic of Abkhazia, were declared to have no legal effect.
- By the resolution of 24 February 1995, the Parliament of Georgia restored the seats of 26 deputies of the Supreme Council of Abkhazia, in particular, declaring "those deputies elected to the Supreme Council of the Abkhaz ASSR in 1991 and representing the genuine interests of the majority of the population of Abkhazia and who did not take part in the anti-constitutional activities of the Gudauta separatist group – to be the Supreme Council, a supreme representative and legislative body of the Autonomous Republic of Abkhazia".
- On 14 June 1995, by a resolution of the Parliament of Georgia, due to the state of emergency in the Autonomous Republic of Abkhazia, the members of the Parliament of Georgia elected in Abkhazia were admitted by way of co-option to the membership of the Supreme Council of Abkhazia. Accordingly, the resolution stipulated that, in addition to the above-mentioned 26 deputies, the Autonomous Republic of Abkhazia also includes deputies elected to the Parliament of Georgia from the Autonomous Republic of Abkhazia in 1992.
- According to the resolution of 17 April 1996, the so-called Constitution of the Republic of Abkhazia adopted by separatists, the institution of a president, and the treaties and agreements with foreign entities have no legal force and are null and void. This also applies to all governing bodies and their decisions, as well as civil law agreements in conflict with the legislation of Georgia and the Autonomous Republic of Abkhazia".
- The Resolution of the Parliament of Georgia of 25 December 1996 "On Extending the Term of Powers of the Supreme Council of the Autonomous Republic of Abkhazia" provided for the extension of the powers of the Supreme Council of the

Autonomous Republic of Abkhazia until the actual restoration of the jurisdiction in Georgia.

The Supreme Council of the Autonomous Republic of Abkhazia currently consists of the members elected in 1991 and the members elected in 1992 from the Autonomous Republic of Abkhazia to the Parliament of Georgia. Some of them are no longer alive today, and the question of a further full or partial renewal of the Supreme Council remains contentious and problematic (obviously, before the restoration of territorial integrity, if this process lasts long). The current constitution of the Autonomous Republic of Abkhazia is an amended and revised version of the Constitution of the Abkhaz ASSR of 6 June 1978 (the latest version is the version updated in 2019).

2. LEGAL STATUS OF THE TSKHINVALI REGION (ALSO KNOWN AS SOUTH OSSETIA) – PAST AND PRESENT

2.1. Population and administrative division of the Tskhinvali Region

The Tskhinvali Region (i.e. Shida Kartli, or Samachablo) currently covers the territory of the Autonomous Region of South Ossetia of the former Georgian SSR (1922-1990). The territory of the former autonomy is part of the regions of Shida Kartli and Mtskheta-Mtianeti. In addition, there is a temporary administrative-territorial unit on the territory of the former Autonomous Region of South Ossetia, which includes the territory of the former Autonomous Region of South Ossetia (abolished in 1991). This temporary administrative-territorial unit was created by the resolution of the Parliament of Georgia of 8 May 2007. On 10 May of the same year, by an order of the President of Georgia, its administration (the so-called Administration of South Ossetia) was formed.

In addition, in 2007, a law on the creation of appropriate conditions for the peaceful resolution of the conflict in the former Autonomous Region of South Ossetia was adopted, which "aims to create all conditions for the former Autonomous Region of South Ossetia to define autonomous status within the state of Georgia, to confer on it broad political self-governance and to hold democratic elections with a view to ensuring the cultural identity of the Ossetian people in the state of Georgia and the political self-government of the region".

The self-governing units in the Tskhinvali Region are: Akhalgori municipality, Eredvi municipality, Tighva municipality, Kurta municipality, Java municipality and the city of Tskhinvali.

As for the population of the Tskhinvali Region, in Soviet times, according to the 1989 census, the population of the Autonomous Region of South Ossetia was 98 527, of whom 65 232 (66%) were ethnic Ossetians and 28 544 (29%) were Georgians. After the

August 2008 war, figures were published for 2012, according to which 51 600 people were living in the Tskhinvali Region, including 46 000 (89%) ethnic Ossetians and 4 600 Georgians (9%). In 2015, the *de facto* authorities of the Tskhinvali Region conducted a census. The population of the "Republic" is 53 532, including 48 146 ethnic Ossetians (90%) and 3 966 (7%) Georgians.

As of December 2009, over 251 000 internally displaced persons from Abkhazia and the Tskhinvali Region were registered in Georgia, representing about 6% of Georgia's population. After the Russian-Georgian conflict in August 2008, up to 26 000 people were added to those numbers.

As a result of this war, Georgia lost the Kodori Gorge, also known as upper Abkhazia, the Liakhvi Gorge and the Akhalgori region.

2.2. Political system of the Tskhinvali Region – prehistory and today

On 6 March 1921, after the occupation of Georgia, the Revolutionary Committee (Revcom) of South Ossetia was set up. The final legalisation of the terms "South Ossetia" and "North Ossetia" took place in 1922-1924 when first "the Autonomous Region of South Ossetia" was formed (April 1922) and two years later "the North Ossetian ASSR" (July 1924). The so-called Autonomous Region of South Ossetia was part of the Georgian SSR from 20 April 1922 to 11 December 1990.

Today's Tskhinvali Region includes the territory of the Autonomous Region of South Ossetia of the former Georgian SSR (1922-1990). As a result of the Georgian-Ossetian conflict that started in 1989, the Supreme Council of Georgia abolished the status of region on 10 December 1990.

The separatist forces declared independence in 1990 under the name of the "Soviet Democratic Republic of South Ossetia", which led to hostilities in the region in 1991-1992.

On 11 December 1990, the Supreme Council of the Republic of Georgia passed a Law on Abolishing the Autonomous Region of South Ossetia. In 1991, Tskhinvali and Znauri districts were abolished, Tskhinvali district merged with Gori district, and Znauri district with Kareli district. Several villages in Java district were transferred to Sachkhere and Oni districts. The town of Znauri was named Kornisi. At the same time, in 1990-1991, there was an armed confrontation between the central government of Georgia and the forces of the Autonomous Region of South Ossetia. On 24 June 1992, Georgia and Russia signed an agreement in Dagomys, according to which Russian military units in the Tskhinvali Region were given the status of "peacekeeping mission". As a result of the agreement, hostilities ceased, three peacekeeping battalions (Georgian, Russian

and Ossetian) were deployed in the conflict zone, the Tskhinvali Region was divided into the Georgian and Ossetian zones, and a mixed commission consisting of Georgia, Russia, South Ossetia and North Ossetia was established. After the 2008 war, Georgia left the mixed commission, withdrew from the CIS and officially called the presence of Russian armed forces in the Tskhinvali Region an occupation.

In 2008, the Law on Occupied Territories was adopted. This law applies to Abkhazia and the Tskhinvali Region (the territories of the former Autonomous Region of South Ossetia).

III. UNITARIANISM WITH REGIONAL AUTONOMIES IN SPAIN AND ITALY

1. CATALONIA REGION AS A MODEL OF TERRITORIAL AUTONOMY (SPAIN) FOR GEORGIA

The standards of Spanish and Italian regionalism, in particular, Catalonia[10] and Trentino-Alto Adige/South Tyrol's models of territorial autonomy can serve as interesting examples for determining the status of the Parliament of the Abkhazia region. In both cases, the question of granting territorial autonomy is linked to the protection of ethnic minorities. Both Spain and Italy do not officially grant the status of "people" to respective ethnic minorities (in the case of Catalonia, the Catalans; and in the case of Tyrol, the Germans and Ladins)... Hence, in this context, a discussion on peoples' right to political self-determination in relation to the territorial autonomies of Spain and Italy take place (so far) only in a political context, without the presence/creation of relevant constitutional and legal bases.

The formation of various autonomous units in Spain took place under complex procedures between 1979 and 1983.[11] The Basque Country, Catalonia, Galicia and Andalusia were the first to adopt the Statute of Autonomy *(Estatutos de Autonomía).*

Catalonia is one of Spain's 17 regions which, together with the Basque Country and Galicia, enjoys the status of historical autonomy *(nacionalidades históricas).*[12]

As of today, all the autonomous units enjoy an equal degree of political autonomy and there are rather few differences between their powers (mainly some specific cultural and linguistic powers, civil legislation and some specific provisions on police and public security, immigration, etc.). The only exception is the specific financial system of the Basque Country and Navarre.

[10] Regarding the origin, development and prehistory of the territorial autonomy of Catalonia see Henders, supra note 10, 49 et seq.

[11] Regarding cultural, linguistic and political pluralism in the Kingdom of Spain and thus territorial autonomies see EUI Working Paper, EUF No. 95/6, Language, Collective Identities and Nationalism in Catalonia, and Spain in General, Andrés Barrera-González, 1995.

[12] See the official web page: Gencat <https://web.gencat.cat> [last accessed on 10 May 2022].

The Generalitat of Catalonia (Spanish: *Generalidad de Cataluña*) is a unity of political institutions that carry out the self-governance of the autonomous region of Catalonia in accordance with the Statute of Autonomy. According to the 2006 Statute of this regional autonomy, the Generalitat comprises three institutions:

- the Parliament of Catalonia, which drafts and adopts laws and controls the President and the Government,
- the President of the Generalitat, elected by Parliament from among the deputies and appointed by the King, is the supreme representative of the Generalitat,
- the Government of Catalonia, which consists of the President of the Generalitat and ministers (consellers). The Government implements the laws adopted by Parliament, directs the administration and has the power to initiate laws.

The Parliament of Catalonia is unicameral and consists of 135 members elected every four years by direct universal suffrage. They are elected in four constituencies (provinces): 85 in the province of Barcelona, 17 in the province of Girona, 15 in the province of Lleida and 18 in the province of Tarragona. Seats are allocated based on the *D'Hondt* method at the constituency level. Only those parties which receive at least three per cent of the vote in the constituency concerned are included in Parliament.

Parliament adopts laws in accordance with the Statute of Autonomy of Catalonia (the latest version of the Statute has been in force since 2006). The Statute of Catalonia regulates, on the one hand, the powers of the autonomous region vis-à-vis the state of Spain and, on the other hand, the relations of the regional institutions of Catalonia and is therefore the functional equivalent of the Constitution. Amendments to the statute require consent from the Parliament of Catalonia, approval by the Parliament of Spain *(Cortes Generales)* (in the form of an organic law) and approval by a referendum throughout the Catalonia region.

The Regional Parliament of Catalonia elects the President of the Generalitat of Catalonia *(President de la Generalitat de Catalunya)*, who is the head of the regional autonomy. The President of the Generalitat has the power (Statute of Autonomy, Article 67, No 8) to appoint the *Conseller Primer* (i.e. Prime Minister) and appoint other ministers who together form the *Consell Executiu*, or the regional government.

All the institutions of the regional autonomous government of Catalonia together (the Parliament, the President and the Government) form the Generalitat of Catalonia.

The Statute of Autonomy of Catalonia is an organic law of Spain and is the basis of the legal order of the Autonomous Region of Catalonia. It is recognised by Article 147 of the Constitution of Spain as part of the Spanish legal system and regulates the rights and obligations of the citizens of Catalonia, the political institutions of Catalonia, their responsibilities and relations with the state of Spain, as well as the financial resources of the Generalitat of Catalonia.

The first Statute of Catalonia was adopted in 1979. It was confirmed by the referendum held throughout Catalonia and was ratified by the Parliament of Spain in November 1979. On 18 December 1979, *King Juan Carlos I* signed the Statute of Autonomy of Catalonia as the organic law of the state. It entered into force on 31 December.

Until 2006, the political institutions of Catalonia were based on the 1979 Statute of Autonomy. On 30 September 2005, the Parliament of Catalonia adopted "a draft of a new Statute of Autonomy of Catalonia", known as "the Statute of Miravet" because of the place where it was negotiated. After long and emotional negotiations between the parties represented in the Parliament of Spain, about half of the articles of the draft law were changed. On 30 March 2006, the Congress of Deputies of Spain voted for the text. On 10 May 2006, the Parliament of Spain finally approved the statute. In the final referendum held on 18 June 2006, 73.9% of Catalans voted for the new statute. After *King Juan Carlos I* signed the statute on 19 July 2006, it entered into force on 9 August 2006.

On 31 July 2006, a political party called the PP *(Partido Popular)* filed a constitutional claim with the Constitutional Court of Spain *(Tribunal Constitucional)*, in which it considered 114 out of 223 articles of the Statute of Autonomy unconstitutional. Among the provisions appealed, there were about thirty similar or identical articles that are also contained in the statutes of Andalusia and the Balearic Islands. After almost four years of consideration, the court pronounced its decision on 28 June 2010. Interestingly, with regard to referring to Catalonia as a "nation" in the preamble of the Statute of Autonomy, the Constitutional Court found that this had no legal force in general and had no legal effect in interpreting the other provisions of the statute. The claim as a whole was not granted.

The representation of the regions in the central parliament is of interest. Spain is a constitutional/parliamentary monarchy. In general, the *"Cortes Generales"* represent the Parliament of Spain. This constitutional body consists of two houses: the Congress of Deputies *(Congreso de los Diputados)* and the Senate *(Senado)*. They exercise legislative power in the state, approve the state budget, supervise the activities of the Government and fulfil all other functions assigned under the Constitution. No one can be a member of both houses at the same time. There is no imperative mandate. All citizens of Spain who have attained the age of 18 have the right to vote and ballot.

According to Article 68 of the 1978 Constitution of Spain, the Congress of Deputies is composed of 300-400 deputies elected by universal, free, equal, direct and secret suffrage. The Constitution contains the following additional provisions: the electoral constituencies *(circunscripciones)* cover 50 provinces and 2 enclaves of Ceuta and Melilla in North Africa. There are 52 electoral constituencies in total (Article 68.2). Elections are held in defined electoral constituencies in accordance with proportional representation (Article 68.3).

The Senate is the upper representative house of the regions, comparable, for example, to the German Bundesrat, the Austrian Bundesrat and the Council of States of Switzerland. The Senate of Spain currently has 259 members, of whom 208 are elected by general, free, equal, direct and secret suffrage in the following way:

- each province elects four senators (irrespective of the size of the population);
- large islands – Gran Canaria, Mallorca and Tenerife – elect three senators;
- small islands – Ibiza-Formentera, Menorca, Fuerteventura, La Gomera, El Hierro, Lanzarote and La Palma – elect one senator each;
- the African exclaves of Ceuta and Melilla elect 2 senators;
- in addition, the regional parliaments of the autonomous regions of Spain appoint one senator each and an additional senator per one million inhabitants in the region concerned. The number of senators appointed under this system is oriented to the development of the population for each new election and is therefore variable. In total, there are currently 58 senators (since 2011), who are appointed to the Senate by indirect elections. The Senate is also elected for a term of four years.

The Spanish Parliament is a bicameral system. The Congress is a house that provides real people's representation, and the Senate is "a house of territorial representation" (Article 69 of the Constitution). Each province has four senators in the Senate, irrespective of the size of the population.

Overall, the Congress of Deputies has a strong political advantage over the upper house of the Parliament (the Senate).

The Prime Minister and ministers of Spain do not have to be Members of the Parliament at the same time, but the government submits reports on a weekly basis to both the Senate and the Congress at a parliamentary session known as *"sesión de control"* (see Section V of the 1978 Constitution of Spain, § 108). Ministers of lower rank, such as secretaries of state or deputy ministers, are interviewed in parliamentary committees.

According to Article 2 of the 2006 Statute of Catalonia, the highest regional political bodies are:

- the Parliament;
- the President;
- the Government;
- the Council Securing the Statute of Autonomy (Article 76 of the Statute);
- the Ombudsman of Catalonia (Article 78 of the Statute);
- the Court of Auditors (Article 80 of the Statute);
- the Catalan Audiovisual Council (Article 82 of the Statute).

In addition to the above, Catalonia has an independent judicial system and the Council of Justice. Catalonia also has its own Attorney General (see Articles 95-109 of the Statute).

Under the 2006 Statute of Catalonia, the powers of the region are:

- Exceptional powers: the Generalitat has legislative, executive and regulatory powers and is able to pursue independent policies in specific areas. Within the limits of exclusive powers, Catalan legislation is predominantly applicable to other provisions.
- Shared/competitive powers:[13] in matters, in which the Statute of Autonomy grants shared powers to the Generalitat and the central public authorities, the Generalitat has executive and regulatory powers according to the scope defined by the central government (this scope is determined by the Statute). The Generalitat has the right to pursue its own policy, subject to the above criteria. In addition, Parliament adopts laws and expands/makes more specific the criteria defined in the statute to enable the exercise of shared powers.
- Implementing powers: the Generalitat, as part of its executive powers, has regulatory powers, which involve the capacity to adopt resolutions to ensure the implementation of laws adopted by the central authorities, as well as the power to set up its own administrative bodies. In general, these include all the functions and actions that comprise the idea of public governance.
- The Statute of Catalonia separately highlights powers/competencies relating to the implementation of European Union law.
- The Statute also regulates separate matters relating to subventions and their management based on individual powers (see Article 114).
- The Statute also defines the scope and extent of the exercise of autonomous powers (Article 115).

As regards the specific areas in which these powers are exercised, the latter is defined in Articles 116-173 of the Statute. Furthermore, the description of each power specifies whether the power is exclusive, shared/competitive or implementing.

The 2006 Statute of Autonomy of Catalonia also contains a list of basic rights. Individual chapters regulate the relations of the Generalitat with the central government and other bodies of autonomous units, the European Union, the Generalitat's foreign policy powers, the financing of the Generalitat, and the issue of the possibility to reform the statute.

[13] Compare the so-called idea of competitive federalism to Articles 72, 74 and 105 of the Federal Constitution of Germany.

In general, the autonomous regions of Spain can participate in the political decision-making process of EU bodies through the Spanish delegation. Such participation takes place through internal and various sectoral conferences and, since 1997, directly through the committee system that oversees delegated acts implemented by the European Commission (formerly Comitology). In addition, from 9 December 2004, the autonomous units and autonomous cities can participate in certain meetings and working groups of the Council of the European Union.

In general, the upper house of the Parliament of Spain is not considered a representative body of the regions, which is often regarded as a weakness of Spanish regionalism.[14] Another weakness of Spanish regionalism is the lack of horizontal cooperation between the autonomous regions.[15] Moreover, a distinctive feature of Spanish regionalism is the model of bilateral cooperation between the autonomous regions and the central authorities. However, this bilateral cooperation is rather symbolic in practice and, as is often noted, rarely have there been issues that the central government has discussed within the framework of such cooperation with the regions.[16]

In general, as Spain is not a federal state, its judicial system is mainly centralised and belongs to the central government, in contrast to federal systems where only the courts of last resort essentially operate at the central level. The same model applies to the organisation of the judicial system in Italy, which is also a federal republic.

2. TRENTINO-ALTO ADIGE/SOUTH TYROL AS A MODEL OF TERRITORIAL AUTONOMY (ITALY) FOR GEORGIA

South Tyrol's autonomy derives from the principles of protection of ethnic minorities, stemming from the existence of German-speaking and Ladin-speaking groups of the population within the territory of Italy.[17]

Italy is divided into 20 regions, of which 5 (Sardinia, Sicily, Trentino-Alto Adige/South Tyrol, Friuli-Venezia Giulia) enjoy a special status *(statuto speciale)* in the form of regional autonomy. One of them is the region of Trentino-Alto Adige/South Tyrol

[14] María Jesús García Morales, 'Zukunftsperspektiven des spanischen Autonomienstaates: Blockade oder Neuformulierung?' in Hermann-Josef Blanke and others (eds), Verfassungsentwicklungen im Vergleich: Italien 1947 – Deutschland 1949 – Spanien 1978 (Duncker&Humblot 2021) 273.
[15] ibid.
[16] ibid, 273.
[17] Regarding South Tyrol's autonomy in general see Francesco Palermo, 'Südtirol als eine autonome Region Italiens' in Beiträge zum Kolloquium vom 17. Januar 2019 im Parlament der Deutschprachigen gemeinschaft in Eupen, 100 Jahre nach den Pariser Friedensverträgen – vier regionen im Vergleich: Åland-Inseln – Elsass – Südtirol – Deutschsprachige gemeinschaft Belgiens (Parlament der Deutschsprachigen Gemeinschaft 2020), 29 et seq.

(Italian: *Trentino-Alto Adige*). The regions, in turn, are divided into provinces.[18] The Trentino-Alto Adige/South Tyrol region is politically divided into the Provinces of Trento (Trentino) and Bolzano (Alto Adige). These are the only Italian provinces with legislative powers.

After World War I and following the transfer of South Tyrol from Austria to Italy, sanctioned under the Treaty of Saint-Germain in 1919, there were calls for the autonomy of provinces. In December 1919, the German Association presented an 18-point catalogue of demands, which was followed in August 1920 by an alternative project for social democracy in South Tyrol. Both proposals were rejected by the Italian governments. The rise of fascism thwarted all attempts at self-governance and ended in a massive campaign of Italianisation.

After World War II, the winning states did not dispute that South Tyrol was part of Italy, although discussions began about giving the German and Ladin population of this territory has special rights to protect its language and cultural identity. To this end, the Paris Agreement on the protection and equal rights of the German-speaking group was signed between Italian Prime Minister *De Gasperi* and Austrian Foreign Minister *Gruber*. It provided for primary and secondary school education in the mother tongue, the equality of the German and the Italian languages in public institutions and official documents, as well as bilingual denominations in certain places, the equality of employment in public offices to achieve a more equitable distribution of posts between the two communities, and the granting of autonomous legislative and executive powers.

The regulation of the region's status involved several stages. These stages were: the signing of the *Gruber-de Gasperi* Agreement (1946), in which autonomy rights were first documented (under international law); the entry into force of the Constitution of Italy with the first Statute of Autonomy of Trentino-South Tyrol (1948); the entry into force of the second statute on the expansion of autonomy already for the provinces of Trento and Bozen (1972) and its implementation by 1992.

The special (second) statute of the region of Trentino-Alto Adige (Italian: *Statuto speciale per il Trentino-Alto Adige*), colloquially called "the statute", forms the core of local autonomy. It implies the statute after significant amendments to it in 1971 and 1972. It continues to exist in the form of the 1948 constitutional act, amended by the incorporation into this package of other constitutional acts in 1971 and 1972.

The existence of the region is ensured both legally and politically. On the one hand, the statute of the region is approved by constitutional law and, in addition, the Constitution of Italy states that the provinces of Trentino and South Tyrol form a region (Article 116, paragraph 2).

[18] As of 2010, there are 110 provinces in the country. A subdivision of a lower level than a province is a "comune", which is equivalent to a municipality. There are 8 047 "comunes" in Italy.

The Regional Council of Trentino-Alto Adige/South Tyrol (Italian: *Consiglio Regional del Trentino-Alto Adigee*) is a unicameral legislative body of the Autonomous Region of Trentino-Alto Adige/South Tyrol[19] of Italy. It has been functioning since 1948, when the region of Trentino-Alto Adige/South Tyrol was established and has representation in Trentino and South Tyrol. During the first half of the legislature period (two and a half years), the meetings of the Regional Council are held in Trento, the official seat of the Autonomous Region of Trentino-South Tyrol, and during the remainder of the legislature period, in Bolzano. The main tasks of this regional parliament are to enact regional laws and elect the regional government of Trentino-Alto Adige/South Tyrol.

The Regional Council has 70 members and is composed of the representatives of the Supreme Council of South Tyrol (a legislative body, in English: the Council of South Tyrol or the Provincial Council; in German: *Südtiroler Landtag*; in Italian: *Consiglio della Provincia autonoma di Bolzano*) and the Supreme Council of Trentino (a legislative body, in English: the Provincial Council of Trento, in German: *Der Landtag des Trentino,* in Italian: *Consiglio della Provincia autonoma di Trento*), each consisting of 35 representatives. The regional legislature period lasts for five years.

The Regional Council is headed by a president, who is elected for a term of two and a half years, interchangeably from the German and the Italian language groups. Alternatively, after the entry into force of Constitutional Law No 2/2001, a representative of the Ladin language group can also hold the office.

With the adoption of the first statute of the Autonomous Region in 1948, the region of Trentino-Alto Adige region acquired the status of an autonomous region with expanded powers. The Regional Council, which was then elected every four years, exercised the relevant legislative powers.

After the adoption of the second Statute of Autonomy (1971) and its entry into force (1972), most of the powers shifted to the level of the provinces of Trentino and South Tyrol. The Regional Council, which was virtually devoid of power and is now elected every five years, lost its political significance as a result. Following the constitutional reform in 2001, the Regional Council is no longer elected directly.

The Regional Council is responsible for adopting regional laws and is therefore the legislative body of the region of Trentino-Alto Adige/South Tyrol. In addition, within the framework of the institutional division of powers, it elects the Regional Government of Trentino-South Tyrol from among its members by an absolute majority and secret ballot, and supervises its activities. The members of the Regional Council elected to the Regional Government retain the mandate of the Regional Council, which means that the members of the Regional Government have a dual role in the legislative and executive branches of government.

[19] See the official web page: Regione Autonoma Trentino-Alto dige/Südtirol <www.regione.taa.it> [last accessed on 10 May 2022].

The Regional Council is governed by a bureau consisting of a president, two vice-presidents and secretaries to the president. The term of office of the president of the Regional Council is two and a half years, so a representative of both the German and the Italian language groups can preside within a 5-year legislature period. Electing a representative of the Ladin language group to the office of President or Vice-President of the Regional Council only became possible after the adoption of Constitutional Law No 2/2001. Earlier, these posts were only available to representatives of the German and Italian language groups.

The Regional Government of Trentino-Alto Adige/South Tyrol (in Italian: *Giunta Regionale deli Trentino-Alto Adige*) is the executive body of the Autonomous Region of Trentino-Alto Adige/South Tyrol (sometimes referred to as the Regional Committee). Through orders and administrative decrees, it ensures the actual implementation of regional laws adopted by the Regional Council of Trentino-Alto Adige. Following the adoption of the second statute of the Autonomous Region (1971) and its entry into force (1972), whereby most powers were transferred to the two autonomous provinces of South Tyrol and Trentino, the Regional Government retained only minor executive powers. It is based in Trento, the official seat of the autonomous region of Trentino-Alto Adige/South Tyrol.

The Regional Council elects the Regional Government from among its members by secret ballot and by an absolute majority. The members of the Regional Council who are elected to the Regional Government retain the mandate of the Regional Council.

The Regional Government is composed of a president, two vice-presidents and several ministers. In any case (at this stage, as a rule, the government is composed of five to six people), the composition of the Regional Government must reflect the proportional distribution of the German and the Italian language groups in the Regional Council. According to the 1972 Statute, each of the two language groups has a vice-president. The representation of the Ladin language group in the Regional Government has been made compulsory under constitutional law No 2/2001: Article 36 provides that representation in the Regional Government is ensured for the Ladin language group, irrespective of the proportional representation of the German and the Italian language groups.

In accordance with the Statute of Trentino-Alto Adige/South Tyrol, the official languages of the region are Italian and German.

The representation of the Autonomous Regions of Italy at the central level, in the Parliament of Italy, is of interest.

The Parliament of Italy *(della Republique Italiana)* is the national representative body of the citizens of the Italian Republic and functions as a constitutional body exercising legislative power in accordance with the 1948 Constitution of Italy. It consists of two chambers: the Senate *(Senato della Repubblica)* and the Chamber of Deputies *(Cam*

dei MP). The Parliament plays an important role in the political system of Italian parliamentary democracy (Italy is a parliamentary republic). Permanent confidence in each chamber is essential for the activities of the government.

Both chambers enjoy equal rights in all respects. The only difference is in matters of protocol. This so-called "perfect" bicameralism is a classical feature of the Italian constitutional order.

The chambers differ in the number of members, their composition, the procedure for electing their members, and the standards of age limits on active and passive suffrage.

The Chamber of Deputies (the lower house of the Parliament of Italy) is more numerous and, according to the Constitution, consists of a fixed number of 630 deputies. Twelve of them are representatives of Italians living abroad. Elections are held by constituencies. To be elected as a deputy, an Italian citizen must be at least 25 years old. All Italian citizens who have attained the age of 18 have the right to vote.

The Senate of the Republic (the upper house of the Parliament of Italy) consists of 315 senators and is elected on a regional basis. Only Italian citizens who are at least 25 years old have the right to vote. An Italian citizen who has reached the age of 40 is entitled to be elected as a senator. The twenty Italian regions send a fixed number of senators to the Senate, which varies according to the population of the region. However, each region has at least seven senators. The only exceptions are the particularly small regions of Molise (two senators) and Valle d'Aosta (one senator), as well as the constituencies abroad (six senators). In addition, the number of senators appointed for life by the President of Italy is a maximum of five senators. At the same time, after the expiry of their term of office, Italian presidents become *ex officio* senators appointed for life. The Constitution of Italy does not provide for an exact number of members of the Senate.

As an exception, both chambers of the Parliament of Italy meet at a joint sitting at the *Palazzo Montecitorio*. A joint sitting of the Parliament is chaired by the President of the Chamber of Deputies. The Constitution of Italy determines when a joint sitting of the two Chamber of Deputies is convened:

- election of the President of the Republic. In this case, the constitutional body is expanded to include the representatives of the regions;
- election of five of fifteen constitutional judges;
- election of one-third of the members of the High Council of Justice;
- election of the jury for the impeachment of the President of the Republic;
- swearing-in ceremony of the President of the Republic;
- impeachment of the President of the Republic.

The types of autonomous legislative powers of the region are:

- primary powers: involve exclusive functions to regulate certain matters;
- secondary powers: involve the regulation of certain matters within the limited legislative framework defined by the central government;
- tertiary powers: involve only functions to supplement the central government's legislation;
- delegated powers: involve the possibility to exercise powers delegated by the central government of the state.

In addition to the several deputies represented in the central parliament, there is also a so-called "parity commission" which seeks to ensure and implement the provisions of autonomy. The commission consists of so-called sub-commissions.[20] Proposals adopted by the commission are often turned into legislation that serves the idea of strengthening autonomy.

In addition, judges are represented in courts according to minorities, under a quota system.[21]

3. ISSUE OF THE CONSTITUTIONALITY OF THE 2006 STATUTE OF CATALONIA (DECISION OF THE CONSTITUTIONAL COURT OF SPAIN OF 2010)

Separatist aspirations were always evident in Catalonia, but separatism within this autonomous region particularly intensified following the 2010 decision of the Constitutional Court of Spain, whereby certain sensitive provisions of the Statute of Catalonia were declared unconstitutional from 2006.[22]

Until 2006, Catalan political institutions were based on the 1979 statute. On 30 September 2005, the Parliament of Catalonia adopted "a draft of a new Statute of Autonomy of Catalonia", also known as "the Statute of Miravet", because of the place where it was negotiated.

On 2 November 2005, the Statute of Miravet was presented to the *Cortes Generales* (the Parliament of Spain). The speakers of the Catalan parties CiU, FCC and ERC justified the need to reform the statute, which had existed since 1979, by the fact that the latter was adopted in the parliament of the centralised state *(Cortes)* during Franco's regime. The following changes were also to be taken into account: firstly, the fact that Spain

[20] Palermo, supra note 27, 29 et seq.

[21] Christoph Perathoner, 'Die Südtirol-Autonomie als internationales Referenzmodell? – Die internationale Absicherung und die Verallgemeinerungsfähigkeit der Südtiroler Errungenschaften' in Peter Hilpold (Hrsg.), Autonomie und Selbstbestimmung – in Europa im internationalen Vergleich (Nomos 2016) 135 et seq.

[22] Morales, supra note 40, 275.

joined the European Union 26 years ago, and secondly, the fact that Catalonia is a single nation.

After long and emotional negotiations between the parties represented in the Cortes, about half of the articles of the draft law were changed. On 30 March 2006, the Congress of Deputies of Spain voted for the text. In the final referendum held on 18 June of 2006, 73.9% of Catalans voted for the new statute, but the participation of around 49% of voters (low voter turnout) was a major disappointment.

After *King Juan Carlos I* signed the statute on 19 July 2006, it entered into force on 9 August 2006.

On 31 July 2006, a political party called the *PP (Partido Popular)* filed a constitutional claim with the Constitutional Court *(Tribunal Constitucional)*, in which it criticised 114 out of 223 articles of the Statute of Autonomy as unconstitutional. Among them were about thirty similar or even identical articles which, as a result of influence of the PP, had been incorporated in the provisions of Andalusia and the Balearic Islands (government under the PP). After almost four years of deliberation, the court announced the judgment on 28 June 2010.[23] According to it, 14 articles were declared wholly or partly unconstitutional. In the case of other 27 articles, it was determined how the latter should be constitutionally interpreted. As regards the highly controversial designation of Catalonia as a "nation" in the preamble of the Statute of Autonomy, the Constitutional Court ruled that this had no legal effect when interpreting other norms (in particular, this clause means nothing to other regions which, unlike Catalonia, do not refer to themselves as a "nation").

Accordingly, in 2010, the Constitutional Court declared the provisions of the Statute of Autonomy of Catalonia (comparable to the regional constitution) unconstitutional. These provisions regulated very sensitive aspects and were of particular importance for Catalonia: including, for example, the designation of the Catalan people as a nation in the preamble of the Statute of Catalonia, the question of the preferential use of Catalan as a school language in public administration and the same model in the Catalan media, as well as the formation of a financial system similar to the Basque model.

As for certain legal standards defined by the decision, the following components are generally important and essential for Georgian reality:

- The decision pointed out and established that the people who founded the Constitution were "the Spanish people" and the people of Catalonia were part of this legal concept. "Catalan people", as an independent and separate legal term/ phenomenon/concept, was rejected by the decision.[24]

[23] See Decision STC 31/2010 of the Constitutional Court of Spain.
[24] ibid, para 9.

- At the same time, the terms "nation" and "national reality" used in the preamble to refer to Catalonia were found to lack any legal effect.[25]
- The decision pointed out that only Spain was regarded as a state and that the Generalitat was only an autonomous unit rather than a type of state formation.[26]
- The decision determined that there should be no preference between Spanish and Catalan and that these two official languages should be equally compulsory in the territory of Catalan autonomy.[27]
- The powers that could involve the legislative capacity to set and regulate taxes of local autonomy were declared unconstitutional.[28]

4. ARTICLE 155 OF THE 1978 CONSTITUTION OF SPAIN AS THE "NUCLEAR OPTION"[29] AND THE CATALAN CRISIS IN 2017-2018

On 27 October 2017, the central government of Spain invoked Article 155 of the Constitution of Spain against Catalonia. This provision corresponds to Article 37 of the Federal Constitution of Germany, which is commonly known as "federal coercion/intervention" *(Bundeszwang)*. This is the first time in its history that Article 155 of the Constitution of Spain has been applied. In general, the constitutions of the territorial states formed according to the principles of regionalism and federalism contain similar coercive provisions, but they are rarely used or not used at all. In the case of Spain, this was due to the attempted secession of the Catalonia region. The legal situation established under Article 155 of the Constitution of Spain lasted 281 days. However, the Catalan conflict could not be resolved.[30]

In 2017, Catalonia attempted to secede from Spain, triggering the most important constitutional crisis in the history of Spain, the likes of which had not been seen since the Constitution of 1978. For this reason, the central government of Spain invoked Article 155 of the Constitution (the so-called "federal coercion/intervention" article), under which the established legal situation lasted from 27 October 2017 to June 2018. The purpose of the so-called "federal coercion/intervention" is to resolve the conflict

[25] ibid, para 12.
[26] ibid, para 13.
[27] ibid, paras 23, 24.
[28] ibid, para 142.
[29] Raphael Minder, 'Article 155: The 'Nuclear Option' That Could Let Spain Seize Catalonia' (New York Times, 20 October 2017) <https://www.nytimes.com/2017/10/20/world/europe/catalonia-article-155.html> [last accessed on 4 March 2022].
[30] For more information, see María Jesús García Morales, „Bundeszwang und Sezession in Spanien: Der Fall Katalonien" (2019) 1 (Januar) Die Öffentliche Verwaltung, Zeitschrift für Öffentliches Recht und Verwaltungswissenschaften.

between the central government and the government of the regional/federal unit.[31] In addition to the possibility of resolving disputes through judicial procedural instruments, the constitutions of the federal/regional territorial states contain instruments that can be used as *ultima ratio* in the case of a political conflict between the regions/federal unit and the central government. Article 155 of the Constitution of Spain is based on the model provided for by Article 37 of the Federal Constitution of Germany. In Spain, this article is usually referred to as "Article 155" rather than the rule providing for "federal coercion/intervention" as the German counterpart. The Constitution of Spain, in the case of Article 155, provides for a rule that is an instrument to resolve a political conflict in a decentralised state where powers are devolved from the central government to the autonomous regions.

The application of Article 155 of the Constitution by Spanish authorities was the most important political and legal decision in the history of the state of autonomies of Spain.[32] The application of this provision was not in vain from a legal point of view, but it did not resolve the complex political conflict surrounding the secession of Catalonia from Spain.[33]

The Constitution of Spain is the only normative act[34] in Europe that literally borrowed Article 37 from the Constitution of the Federal Republic of Germany (Basic Law) and defined its content in the form of a new article – Article 155. An analysis of these two provisions shows the extent to which the German model influenced the Spanish counterpart.

According to Article 37[35] of the Constitution of Germany:

"(1) If a Land[36] fails to comply with its obligations under this Basic Law or other federal laws, the Federal Government, with the consent of the Bundesrat, may take the necessary steps to compel the Land to comply with its duties.

[31] For more information regarding the German model of the so-called "federal coercion/intervention" (Bundeszwang), see Hans H. Klein, 'GG Art. 37' in Günter Dürig and others (Hrsg.), Grundgesetz-Kommentar, Werkstand: 95. EL Juli (Beck 2021); Hans D. Jarass, 'GG Art. 37 [Bundeszwang]' in Hans D. Jarass and others (Hrsg.), Grundgesetz für die Bundesrepublik Deutschland (16. Auflage, Beck 2020). Notably, this provision has not yet been applied by the central government of the Federal Republic of Germany. No legal grounds for this have yet emerged.

[32] Spain is sometimes referred to as a state of autonomies, given the legal standard of its territorial organisation.

[33] Morales, supra note 40.

[34] ibid.

[35] The same provision in the German language: "Art. 37: (1) Wenn ein Land die ihm nach dem Grundgesetze oder einem anderen Bundesgesetze obliegenden Bundespflichten nicht erfüllt, kann die Bundesregierung mit Zustimmung des Bundesrates die notwendigen Maßnahmen treffen, um das Land im Wege des Bundeszwanges zur Erfüllung seiner Pflichten anzuhalten. (2) Zur Durchführung des Bundeszwanges hat die Bundesregierung oder ihr Beauftragter das Weisungsrecht gegenüber allen Ländern und ihren Behörden."

[36] A federal unit is meant. The German Federation consists of 16 Lands, or federal units.

(2) For the purpose of implementing such coercive measures, the Federal Government or its representative shall have the right to issue instructions to all Länder and their authorities."

According to Article 155[37] of the Constitution of Spain:

"1. If an Autonomous Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way seriously prejudicing the general interests of Spain, the Government, after complaining with the President of the Autonomous Community and failing to receive satisfaction therefore, may, following the approval granted by an absolute majority of the Senate, take the measures necessary to compel the latter forcibly to meet said obligations, or in order to protect the above-mentioned general interests.

2. With a view to implementing the measures provided in the foregoing clause, the Government may issue instructions to all the authorities of the Autonomous Communities."

The 1978 Constitution of Spain was strongly influenced by the 1949 Constitution of the German Federation. Although the federal model of territorial organisation was not taken into account in the case of Spain, the "federal coercion/intervention" clause was nonetheless incorporated into the 1978 Constitution. This may be explained by historical experience:[38] during the existence of the second Spanish Republic in 1934, there was a conflict between the central government and Catalonia, which ended with Catalonia demanding secession from Spain. The Spanish Republican Constitution of 1931, in this sense, did not provide for any coercive legal mechanisms. Under the law adopted on 2 January 1935, the central government of Spain overthrew the government of Catalonia and took over the governance at the level of this region. The Constitutional Court of Spain later declared the said law unconstitutional.[39] According to the Court, the Constitution of Spain did not provide for such a legal mechanism, and the 1935 law was unconstitutional in this context.

Consequently, the reason for incorporating Article 37 of the German Federal Constitution into the Constitution of Spain was, taking into account Spain's historical experience, to

[37] The same provision in the Spanish language:
"Artículo 155: 1. Si una Comunidad Autónoma no cumpliere las obligaciones que la Constitución u otras leyes le impongan, o actuare de forma que atente gravemente al interés general de España, el Gobierno, previo requerimiento al Presidente de la Comunidad Autónoma y, en el caso de no ser atendido, con la aprobación por mayoría absoluta del Senado, podrá adoptar las medidas necesarias para obligar a aquélla al cumplimiento forzoso de dichas obligaciones o para la protección del mencionado interés general. 2. Para la ejecución de las medidas previstas en el apartado anterior, el Gobierno podrá dar instrucciones a todas las autoridades de las Comunidades Autónomas."

[38] Morales, supra note 40.

[39] See Decision STC 5.3.1936 of the Constitutional Court of Spain.

overcome a similar political conflict in a case similar to Catalan resistance. Nevertheless, Article 155 of the Constitution of Spain is not exactly analogous to Article 37 of the Constitution of the German Federal Constitution and has its own procedural and substantive background.[40]

First of all, Article 155 of the Constitution of Spain, unlike its German counterpart (Article 37 of the German Federal Constitution), provides for less stringent preconditions for "federal intervention": According to Spain's Article 155(1), there need to be two preconditions – a violation of the Constitution of Spain, as well as a violation of a law adopted by the central government or the autonomous unit, an act contrary to the public interest of Spain. Article 37 of the German Federal Constitution is stricter in this respect, and the precondition for the "federal intervention" procedure envisaged by it is a breach of an obligation under the German Federal Constitution or another federal law. Accordingly, in the case of Spain, a violation of a law of the autonomous unit and a "serious violation" of the public interest of Spain may be grounds for applying Article 155, in contrast to its German counterpart, whose preconditions are much stricter.

In the case of Article 155 of the Constitution of Spain, the precondition of a "serious violation" of the public interest of Spain is especially disputed. The background of the incorporation of this precondition in the Constitution remains shrouded in obscurity and cannot be determined.[41]

Furthermore, the composition of the concept of "a serious violation of the public interest of Spain" is vague and indefinite.[42] It is perhaps difficult to imagine that these interests would be violated without the constitutional order being violated.

In addition to the above, Article 155 of the Constitution of Spain, if the preconditions for its application are confirmed, provides for a two-stage procedure: the action of the Government and the action of the Senate. First of all, the Spanish government notifies the autonomous unit that it intends to invoke the procedure under Article 155. This kind of request *(requerimiento)* by the central government to the autonomous unit is not provided for in the German Federal Constitution. It was incorporated in Spain's Article 155 upon the proposal of the Catalan left-wing coalition (nationalist and pro-independence parties) to ensure that the autonomous unit is warned before Article 155 is applied.[43]

This so-called *"requerimiento"* addressed to the head of government of the autonomous unit must be made by the central government of Spain on a collegiate basis. It aims to give an opportunity to the autonomous unit to eliminate the preconditions for the application of Article 155.

[40] Morales, supra note 40.
[41] ibid.
[42] ibid.
[43] ibid.

The main difference between the German and Spanish models is also the following: in the case of Spain, an absolute majority of the Senate is required. In the case of Germany, only the consent of the Bundesrat (the upper house of the German federal parliament) is required.

The governments of the autonomous units are not represented in the Spanish Senate (the upper house of the Parliament). Only the parties which are also represented in the Congress of Deputies of Spain (the lower house) are represented in the Senate. The lower house of the Parliament of Spain is elected based on a proportional electoral system, and the upper house is based on a majoritarian electoral system. Accordingly, it is generally accepted that, in practice, the lower house, given its functions, plays a more important political role than the upper house.[44] One of the few functions assigned to the Spanish Senate is the consent procedure provided for by Article 155. But since the Senate does not represent the governments of the territorial units, unlike the German Bundesrat, its consent to the application of Article 155 cannot be equated with that given by the German Bundesrat.[45]

Unlike the Federal Republic of Germany, the Kingdom of Spain has strong separatist aspirations in the Basque Country and Catalonia. The Basques and Catalans, as well as the parties in power in the region, refer to peoples' right to political self-determination and demand independence. The sense of identity in these two regions is very strong. The most powerful autonomies, as is often noted,[46] are in the Basque Country and Navarre, which have their own financial system.

The financial relations between the autonomous regions and the state are divided into two models in Spain: of the 17 regions, 15 use a common system in which most of the tax legislation and tax collection powers belong to the state. In the common system, the autonomous regions receive a share of the relevant taxes levied in their territory – for example, 50% of revenues from VAT and income tax and 100% of revenues from inheritance tax. The Basque Country and Navarre use a so-called foral system which grants the regions much broader fiscal autonomy, implying that the formation of tax legislation and the collection of taxes in the regions is essentially carried out by them. The common financial system of the autonomous regions (with the exception of the Basque Country and Navarre) provides for an equalisation mechanism (horizontal level) that involves above all, a distribution of tax revenues. In addition, these regions receive direct transfers from the central government of Spain (vertical level).[47]

[44] ibid.
[45] ibid.
[46] ibid.
[47] The Spanish financial equalisation system consists of three funds: (1) the Guarantee Fund for Fundamental Public Services Transfer. This is the largest fund, which aims at the equal provision of basic public services in the regions; (2) the Global Sufficiency Fund, which includes additional transfer payments from the state that are linked to the income of the respective region; (3) the Convergence Funds, which include the

Consequently, autonomy granted to the regions in the state of Spain is not of equal degree. Catalonia, for example, enjoys special powers in the context of the protection of the Catalan language and the formation of civil law. In this sense, Catalonia has its own education system, which provides for teaching in the Catalan language. There is also a civil code drafted and in force in the Catalan language.

Catalonia also demands such a financial system as the Basque country has, which, for its part, is guaranteed by the Constitution of Spain. The Basque financial system implies a high degree of financial autonomy, in particular the freedom to collect taxes (except for value-added tax). The Basque Country also has the power to decide what it will use these funds for in the exercise of its powers. In this respect, Catalonia, unlike the Basque Country, has a financial system similar to that of other regions: the central government receives taxes and distributes them according to the regions itself.

Catalonia's demand for financial autonomy, similar to that of the Basque country, failed. This further fuelled separatist demands: the political process in Catalonia began with the need for a referendum on independence (2012).

It should be noted that the right to political self-determination is not enshrined in the Constitution of Spain. A formal decision to hold a referendum is taken by the King, while the head of government is responsible for submitting a proposal for a referendum and taking a substantive decision on the matter once the latter has been approved by the Congress (see Article 92 of the Constitution of Spain). The autonomous regions can only hold a plebiscite, but cannot hold a referendum without the consent of the central government (Constitution of Spain, Article 149, paragraph 1).

For example, like in Scotland, the basis for autonomy in Catalonia is the historical and cultural identity of the region and its inhabitants, and also particular linguistic identity, unlike in Scotland.

Unlike the UK authorities, the Spanish authorities reject Catalonia's demand for independence and the procedure under which Catalonia seeks to put the issue to a referendum. This negative attitude of the authorities was also upheld by the Constitutional Court of Spain,[48] which in 2014 declared unconstitutional the provisions of the Catalan resolution[49] that enabled the Catalan people to decide their future through a referendum.

Despite this, the regional authorities of Catalonia ordered that the question of Catalan independence be discussed in a plebiscite *(„consulta popular no refrendaria")* on 9

Competitiveness Fund to support the regions with below average funding and the Cooperation Fund for the regions with below average GDP per capita.

[48] See Decision STC 42/2014, 25 of the Constitutional Court of Spain.

[49] Versions de resolucions <https://www.parlament.cat/web/documentacio/altres-versions/resolucions-versions/index.html> [last accessed on 16 April 2022].

November 2014.[50] However, the Spanish government brought the decree ordering a referendum[51] and certain provisions of Catalan law[52] that serves as its legal basis before the Constitutional Court of Spain, which led to their suspension. The Constitutional Court subsequently declared these legal acts unconstitutional.[53] Meanwhile, the regional authorities in Catalonia announced on 14 October 2014, via a website, that they would conduct an "alternative" poll on Catalan independence. The poll was held on 9 November 2014 and, as stressed by the Catalan authorities, the majority turned out to be in favour of Catalan independence. However, this unofficial plebiscite, or rather the actions of the Catalan authorities in relation to this unofficial poll, were challenged by the Spanish government, and the Constitutional Court found them unconstitutional as well.[54]

Following the 2015 parliamentary elections, the Parliament of Catalonia adopted a "resolution on the beginning of the political process in Catalonia as a result of the 27 September 2015 elections",[55] which aimed to pave the way to an independent republican Catalonia. Once again, the Constitutional Court declared the decree "invalid and unconstitutional", stressing the sovereignty and unity of the (entire) nation.[56] The court also observed that the decree violated the principle of fidelity to the Constitution and ruled out the possibility of a full review, which is subject to an extremely complex and completely different procedure. According to Article 168 of the Constitution of Spain, constitutional review requires a complex procedure. Finally, on 7 July 2016, the Constitutional Court of Spain declared several legal provisions of Catalonia unconstitutional and once again referred to the concepts of national sovereignty (with which, according to the court, regional autonomy should not be equated) and the supremacy of the Constitution.[57]

Accordingly, the central government of Spain follows the so-called "denial model": the secession of Catalonia from Spain is completely excluded *de constitutione lata* because the current constitution provides for the indivisibility of the state and the sovereignty of the Spanish nation, but not for the political rights of the Catalan nation.[58] This denial is not only politically but also constitutionally justified, hence not only by the Spanish

[50] Gamper, supra note 5, 89 et seq.
[51] Decreto 129/2014, de 27 de septiembre, de convocatoria de la consulta popular no refrendaria sobre el futuro político de Cataluña.
[52] Llei 10/2014, del 26 de setembre, de consultes populars no referendàries i d'altres formes de participació ciutadana.
[53] See Decisions STC 31/2015, STC 32/2015, 25 of the Constitutional Court of Spain.
[54] See Decision STC 138/2015 of the Constitutional Court of Spain.
[55] Resolució 1/XI del Parlament de Catalunya, sobre l'inici del procés polític a Catalunya com a conseqüència dels resultats electorals del 27 de setembre de 2015.
[56] See Decision STC 259/2015 of the Constitutional Court of Spain.
[57] See Decision STC 128/2016 of the Constitutional Court of Spain.
[58] Gamper, supra note 5, 91-92.

authorities but also by the Constitutional Court of Spain, which should be considered centrist-minded, both in terms of the procedure for appointing judges and the style of its judicial activities. According to Article 1(2) of the Constitution of Spain, only the Spanish people, from whom all state power emanates, are the bearers of sovereignty. According to Article 2, the Constitution is based on the indivisible unity of the Spanish nation as the idea of a common and indivisible homeland for all Spaniards. The same provision recognises and guarantees the right of all nationalities to autonomy and regional organisation, including the principle of solidarity. In this context, the central government of Spain and the Constitutional Court of Spain do not in fact recognise the political rights and sovereignty of the Catalan nation as "people".

Overall, as Spanish legal experts agree[59] and as the Constitutional Court of Spain noted, without an amendment to the Constitution of Spain, no region, including Catalonia, can hold a referendum unilaterally, demanding independence and referring to the right to political self-determination. All this contravenes the 1978 constitutional framework of Spain (see Article 92 of the Constitution).[60] As the Constitutional Court of Spain observed, such a unilateral referendum also contravenes Article 2 of the Constitution of Spain (the principle of popular sovereignty as well as the principle of the unity and indivisibility of Spain). In this context, the Constitutional Court of Spain also relied on the 1998 decision of the Supreme Court of Canada on the matter of Quebec[61] and pointed out that Catalonia could not decide independently the issue of territorial integrity within the framework the current Constitution of Spain of 1978 and that only the central government of Spain was competent to regulate this matter. The Court also observed that, without constitutional amendments, the *status quo* remained unchanged.[62] Consequently, the laws of the Parliament of Catalonia and the actions of the government in organising the referendum were declared unconstitutional by the Constitutional Court of Spain.

The Catalan conflict reached a particular intensity in 2017, when the Parliament of Catalonia adopted two laws:[63] the first on the referendum on political self-determination and the second on declaring Catalonia a republic. As is known, both laws were passed

[59] ibid.

[60] According to this article, the so-called right to hold an advisory referendum is conferred on the King of Spain, on the recommendation of the head of government, after the lower house of the parliament gives its consent.

[61] Reference Re Secession of Quebec, [1998] 2 SCR 217.

[62] See relevant important decisions SSTC 42/2014 and 259/2015 of the Constitutional Court of Spain.

[63] Catalan Law 19/2017 on the Referendum on Self-determination, published on the same day in the Official Gazette of Catalonia (Diari Oficial de la Generalitat de Catalunya) and coming into force upon its publication; Catalan Law 20/2017 on Legal Transition and Founding of the Republic, published the following day in the Official Gazette of Catalonia. Regarding this issue, see María Jesús García Morales, "Federal execution, Article 155 of the Spanish Constitution and the crisis in Catalonia" (2018) 73 Zeitschrift für öffentliches Recht 791–830.

in a single reading and without the participation of deputies from the parties that did not support the referendum. The first law set 1 October 2017 as the date of the referendum on self-determination[64] and did not provide for a minimum limit on the participation of the Catalans in the referendum, nor did it provide for any majority on which the declaration of independence should be based. Consequently, even with a regular majority, Catalonia would be empowered to declare its independence and, already in accordance with the second law, a transitional phase to adopt a new constitution.

Nevertheless, a referendum was held in Catalonia on 1 October 2017. The question asked in the referendum was as follows: "Should Catalonia become an independent state in the form of a republic?" The referendum was held with significant irregularities. The result was that only 43% of eligible voters took part in the elections, of which 90.2% voted for independence.

There is no specific law in Spain which would further define Article 155 of the 1978 Constitution of Spain. The Constitutional Court of Spain, through its own jurisprudence, indicates only in the form of *obiter dicta*[65] that this instrument can only be used as *ultima ratio*, for the negligent or deliberate violation of the regional autonomy standard.

On 10 October 2017, following the referendum, the head of the Government of Catalonia *(Carles Puigdemont)*[66] decided to declare independence. On 11 October of the same year, the central government of Spain submitted to the latter a *"requerimiento"* in accordance with Article 155 of the Constitution of Spain. This request described in detail the basis and regulations for its application. As the response of the head of the Government of Catalonia on the basis of this request (16 October 2017) proved vague, the central government of Spain considered independence to have been declared and on 26 October 2017 submitted a package of measures under Article 155 of the Constitution of Spain to the upper house of the Parliament (Senate) for approval. On 17 October of the same year, after a series of procedures, the Senate approved the package of measures by an absolute majority. On the same day, a few minutes earlier, the Parliament of Catalonia had formally declared independence. The package envisaged the removal of the main actors in the secession process from the political process: the dissolution of the Parliament of Catalonia and the resignation of the Government. The central government undertook the respective functions. On 21 December 2017, it was

[64] Before 2017, a plebiscite was held in Catalonia on 9 November 2014, which was annulled by the Constitutional Court of Spain in 2015 and declared unconstitutional: see SSTC 138/2015 and 259/2015.

[65] See Decisions SSTC 215/2014, 76/1983, 49/1988, 41/2016 of the Constitutional Court of Spain.

[66] Carles Puigdemont is a Spanish politician who belongs to the Catalan separatist party "Together for Catalonia" (Junts per Catalunya (Junts)). He was elected President of the Catalan Generalitat in 2016. After the illegal referendum in 2017 on the declaration of independence, he was overthrown along with the government he ran on the basis of Article 155 of the Constitution of Spain. He was handed over to Spanish law enforcement authorities for "rebellion". Puigdemont eventually fled from Spain and took refuge abroad, where he leads separatist movements in exile.

announced that elections for the Parliament of Catalonia would take place within the next 6 months.

Whether the standard of application of Article 155 of the Constitution of Spain (rather than the application *per se*) was constitutional became the subject of debate by the Constitutional Court.

In general, the application of Article 155 was criticised by lawyers using the example of Catalonia.[67] The criticism related in particular to the fact that the Government of Catalonia, being presented with the *"requerimiento"*, was provided with information on the application and grounds for the application of Article 155 only, rather than the information on the package of measures that the central government ultimately used.

In general, the measures that the Spanish authorities used in applying Article 155 are widely regarded as controversial, but dogmatically, in most cases, are still considered constitutional in the scholarly literature. Measures, such as the abolition of autonomy or the use of the armed forces, would be entirely unacceptable measures. Germany also lacks dogmatic certainty as to what measures of "federal intervention/coercion" Article 37 of the Federal Constitution may include. In this context, it is significant and clear that the principle of proportionality is used. What is relevant to the argumentation of the constitutionality of the measures applied under Article 155 in Spain is the fact that these measures were provisional in nature. It is interesting to see what clarifications the Constitutional Court of Spain will give to this effect.

Article 126 of the Constitution of Italy[68], Article 234 of the Constitution of Portugal[69]

[67] Morales, supra note 40.

[68] Article 126 (Dissolution of the Regional Council and Dismissal of the President)
(1) By means of a decree of the President of the Republic stating the reasons for it, the dissolution of the regional Council and the dismissal of the President of the regional Cabinet may be ordered when they have acted against the Constitution or when they have committed serious violations of the law. The dissolution and the dismissal may also be ordered for reasons of national security. The decree is adopted having consulted a Commission for regional affairs composed of Senators and Deputies and formed according to the law of the Republic. (2) The regional Council may express its no confidence in the President of the Cabinet by a motion for which reasons must be stated, which shall be undersigned by at least one fifth of its members, voted by roll-call and approved by a majority of its members. The motion shall not be debated before three days after it has been moved. (3) The approval of a no confidence motion against the President of the regional Cabinet elected by universal and direct suffrage, as well as the removal, the permanent impediment, the death or the resignation of the President entail the resignation of the Cabinet and the dissolution of the Council. In every case the same effects follow when a majority of the members of the Council simultaneously resign.

[69] Article 234: Dissolution and removal of self-government bodies
1. After first consulting the Council of State and the parties with seats in the Legislative Assembly in question, the President of the Republic may dissolve the Legislative Assembly of an autonomous region.
2. Dissolution of a Legislative Assembly of an autonomous region shall cause the removal of the Regional Government, whereupon and until such time as a new Regional Government takes office following elections, the Regional Government shall be limited to undertaking such acts as are strictly necessary in

and Article 100 of the Constitution of Austria[70] provide in similar cases for an obligation of collaboration among various constitutional bodies. In particular, the dissolution of the parliament and the resignation of the government requires, for example, the consent of the parliament, or the matter is regulated by a special decree (law).

However, these provisions have not yet been applied in practice in these countries.

Regarding the application of Article 155 of the Constitution of Spain in the context of resolving the Catalan crisis, the scholarly literature often points out that this does not resolve the conflict and that Catalan autonomy needs to be strengthened.[71] In this respect, it refers to the possibility of revising Spain's territorial structure towards federalisation. Accordingly, it is often noted that the Catalan statute needs to be reformed in the context of further strengthening the autonomy of the region, otherwise the problems of the autonomous state may become more and more acute.

It should be noted that in general, if a strong autonomy as Catalonia's is envisaged for Abkhazia, a provision similar to Article 155 of the Constitution of Spain should be integrated into the Constitution of Georgia, but with more specific procedures than in the Spanish or the German counterpart (for example, Article 126 of the Constitution of Italy, Article 234 of the Constitution of Portugal and Article 100 of the Constitution of Austria, which include similar provisions on "federal intervention/coercion", may be useful). In particular, the constitution should explicitly provide for the possibility of exercising powers to dissolve the regional parliament and remove the government, as well as other powers, to restore constitutional order. In addition, a certain scope of action should be left to the central government: From a constitutional point of view, in order to respond adequately to certain cases, it is possible that appropriate coercive measures during "federal intervention" be presented in the Constitution in a non-exhaustive manner.

order to ensure the management of public affairs. 3. Dissolution of a Legislative Assembly of an autonomous region shall not prejudice the continuation of its members' term of office, or the responsibilities of its Standing Committee, until the Assembly's first sitting following the subsequent elections.

[70] Article 100

(1) Every Land legislature can be dissolved by the Federal President on the motion of the Federal Government [and] with the assent of the Federal Council. The assent of the Federal Council [is] decided in the presence of one-half of the members and with a majority of two thirds of the votes cast. The representatives of the Land, whose Land legislature is to be dissolved, may not take part in the voting. (2) In the case of dissolution, new elections must be scheduled within three weeks, in accordance with the provisions of the Land Constitution; the convocation of the newly elected Land legislature must ensue within four weeks after the election.

[71] Morales, supra note 24, 277 et seq.

IV. CONCLUSION

In general, in identifying the models of Catalonia and South Tyrol, it is clear that the identification of the rights-related standard for ethnic minorities and the prevention of ethnic conflicts within this model cannot be fully attained within a unified state. On their own, both models are interesting and can be implemented in Georgia with some modifications, but it is necessary to take into account the political discourse that will exist in Georgia during the de-occupation process and after the end of this process.

In general, the autonomy of Catalonia is of a higher degree than that of South Tyrol. But there is a higher rights-related standard for ethnic minorities and their political rights than in the Autonomous Republic of Abkhazia today. In this context, the constitutional status of the autonomy of South Tyrol and the prospects of its introduction in Georgia should be further elaborated. In addition, we can also think of the Catalan model to regulate the constitutional status of Abkhazia, because in the latter case the concept of ethnic minorities and the Catalan nation (Catalan ethnicity as an ethnic minority but not as "people" by international legal standards) is more developed than in Southern Tyrol of Italy.

In general, federalism is seen in Georgia as too high a quality for the type of political autonomy that the Abkhazians, as an ethnic minority, should have. The recognition of the Abkhazian ethnos as "people/nation" in the context defined by modern international law may not be relevant for the following reason: the founding people/nation of the Georgian state is the unity of citizens of Georgia with its ethnic minorities, and in that context "Georgian" means a citizen of Georgia. Abkhazians, like Ossetians, are only an ethnic minority. As part of the right of peoples and nations to political self-determination, only the Georgian nation/people can be considered a state-founding political actor in the international legal context, but respecting the principle of solidarity with ethnic minorities and recognition of their political rights.

Notwithstanding the above, everything depends on a political decision to be taken by the Georgian state, taking into account the political rights of Abkhazians as an ethnic minority (or people), and this path may end up in the process of federalisation of the country. From this perspective, the concrete prospect of federalisation of Georgia is among the topics to be explored[72] and is the subject of further research.

As a result of the constitutional reform in 2017-2018, it was clarified that the territorial structure in Georgia would be reconsidered once jurisdiction over the entire territory was fully restored, and it should be emphasised that the de-occupation process should start with defining legal benchmarks and identifying a specific model of a territorial structure. The political process cannot outpace the legal process and vice versa.

[72] In general, the rudiments of federalism and the normative framework are fundamentally elaborated by Prof. Giorgi Khubua – Giorgi Khubua, Federalism as a Normative Principle and Political Order (ABA 2000).