

INTRODUCTION: RELIGIOUS MINORITIES

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ABSTRACT: This contribution examines the meaning and content of the notion of autonomy in relation to religious minorities. It considers these minorities with the aim of identifying the characteristics that differentiate them from other minorities (national, linguistic, ethnic and so on) and the impact that their religious nature has on the way autonomy from the state is understood, its content and extent. The contribution emphasises the need to develop the investigation with reference to individual religious minorities and to take into consideration the specific features of each of them that lead to a different consideration of the notion of autonomy.

Questo contributo esamina il significato e contenuto della nozione di autonomia in relazione alle minoranze religiose. Esso considera queste minoranze con l'intento di identificare i tratti che le differenziano da altre minoranze (nazionali, linguistiche, etniche e via dicendo) e l'impatto che la loro natura religiosa ha sul modo di intendere l'autonomia dallo Stato, sul suo contenuto e sulla sua estensione. Il contributo sottolinea la necessità di sviluppare l'indagine in riferimento alle singole minoranze religiose e di prendere in considerazione i tratti specifici a ciascuna di esse che determinano una diversa considerazione della nozione di autonomia.

KEYWORDS: Minorities, Religion, Autonomy, Rights

PAROLE CHIAVE: Minoranze, Religione, Autonomia, Diritti

In Italy there is no research center specifically devoted to the study and analysis of religious minority rights and no stable meeting point where these rights can be discussed. The “FBK dialogues on religious minorities” aim at becoming such a place, where each year a different topic connected to religious minorities is freely and informally debated

and I would like to thank the director of the FBK–Centre for Religious Studies, Massimo Leone, for hosting the first of these dialogues and Ilaria Valenzi, Research Fellow at the Center, for taking the lead of this initiative. At this table are now sitting the representatives of EURAC, ECMI and the University of Trento and I hope to find them here again next year to continue this dialogue.

Why do we need a place where to discuss religious minority rights? I shall not dwell on what we all already know, that is the new importance gained by religion in the public space. Rather I would like to ask whether the international system of protection and promotion of minority rights pays enough attention to the particular features of religious minorities. At international level we have nothing specifically devoted to them: no conventions, no treaties, even no UN or Council of Europe declarations. In the domestic law of the EU countries, we have very few constitutional references to religious minorities⁽¹⁾ and no specific law devoted to their rights⁽²⁾. It is as if the provisions enacted for national, ethnic, linguistic and other minorities could automatically be applied to religious minorities, without the need for any change or integration. I wonder whether it is so or something is missing in the system of minority rights protection and promotion.

To answer this question, we need to make one step back and answer another question: is there something that is specific to religious minorities and makes them different from other minorities?

This question explains the choice of today's workshop topic. The workshop focuses on autonomy, an issue of interest to all minorities, and aims at understanding whether different minorities conceive autonomy differently and gives it a difference meaning and importance.

(1) Religious or belief minorities are ignored in most of the constitutional charters of the EU countries. Only the constitution of Sweden (Instrument of Government, Art. 2.5) declares itself in favor of the possibility for religious (as well as ethnic and linguistic) minorities to "preserve and develop a cultural and social life of their own" while that of Belgium presents a specific norm in favor of belief minorities (Art. 11). The constitutional texts of two other countries — Romania (Art. 6.1) and Poland (Art. 35.2) — do not explicitly mention religious minorities but contain a reference to religious identity in the norms for the protection of ethnic and national minorities.

(2) On the contrary, a few EU States have enacted laws on national, ethnic or linguistic minorities. See for example Croatia, *Constitutional law on the rights of national minorities*, 13 Dec. 2001; Hungary, *Act CLXXIX of 2011 on the Rights of Nationalities*; Czech Republic, *Act on the rights of members of national minorities*, 10 July 2001; Poland, *Act of 6 January 2005 on National and Ethnic Minorities and Regional Languages*.

If, at the end of our discussion, we conclude that this is the case, we are on the way to identify the differences that separate religious from other minorities.

Autonomy is Ilaria Valenzi's topic and I shall limit myself to underline that there are different forms of autonomy. There is the institutional autonomy, guaranteed for example by Article 7 of the Italian Constitution to the Catholic Church; there is an autonomy of a territorial nature, such as that recognized to Muslim citizens living in Thrace (but not in other parts of Greece) (Tsitselikis 2011); there is the organizational autonomy mentioned in Article 41 of the Portuguese Constitution, which ensures that Churches and religious communities are free to set up their own organization; there is the jurisdictional autonomy, such as that recognized in Spain, Croatia and other countries to the courts of the Catholic Church in some marriage matters⁽³⁾. We also know that there are different types of minorities. Just to mention the traditionally recognized ones, Article 27 of the International Covenant on Civil and Political Rights — the *grundnorm* when it comes to minority rights — mentions ethnic, religious, and linguistic minorities, and the 1992 United Nations Declaration also considers national minorities, which are the specific subject of the 1995 Council of Europe Framework Convention.

The list of forms of autonomy and the list of types of minorities could go on and on, but what has been said is enough to make it clear that we are faced with a landscape that is not only multifaceted but also intricate, as the forms of autonomy tend to intermingle and the types of minorities to overlap. This intricate picture prompts a first question: what is the connection between types of minorities and forms of autonomy? Do ethnic, religious, linguistic and national minorities attach equal importance to institutional, organizational, territorial and jurisdictional autonomy, or do the specific characteristics of each type of minority make a specific form of autonomy more important than the others?

This question brings us back to the other question I formulated a few minutes ago about the characters that make it possible to speak of

(3) See the chapters devoted to these countries in G. Robbers (ed.), *State and Church in the European Union*, Baden-Baden, Nomos, 2019.

religious minorities as a specific type of minority. Now I shall try to address this question by pointing out some features that characterize religious minorities and their legal regulation.

The unifying element for members of a religious minority is a *Weltanschauung*, a conception of life and the world, encompassing the private and public spheres, the *forum internum* and *externum*, the earthly and eternal life. This *Weltanschauung* is not regarded by the believers as a human construct but as the outcome of a divine revelation or a cosmic order that precedes human beings (this is the main difference with the philosophical or political conceptions of life and world). National, ethnic and linguistic minorities may also have their roots in *Weltanschauungen* but, on the one hand these are understood by their followers as a human construction and on the other they are generally directed toward the achievement of a specific goal, thus less all-embracing than the religious ones. Moreover, the *Weltanschauung* of religious minorities is normative, that is, it produces norms, rules, and guiding principles that govern the behavior of minority members. Other minorities, as social groups, also produce law but the legal systems of religious organizations differ from that of the others on the fundamental point that has already been mentioned: they reflect a law that precedes human beings and to which they must adhere even when it conflicts with the law of the state (Ferrari 2019). The existence of such a law is evident in the case of religions based on revelation, such as Judaism, Christianity and Islam, where the expression “divine law” is current to denote a law revealed by God to human beings; but even in Hinduism and Buddhism, where the notion of revelation has less prominence or is missing, the idea of an order preceding human being and pervading everything is present. In both cases, moreover, this law or order is the yardstick for measuring whether or not human behavior is appropriate and therefore whether the state law prescribing a different behavior should be obeyed or disregarded.

The reference to a “higher law” brings the religious legal systems close to legal theories based on natural law. But unlike the latter, the laws of religions do not find their foundation in human reason or conscience. Instead, they refer, in different ways, to “something (the ‘sacred’) or someone (superhuman beings, gods, God), which transcends

the human dimension and at the same time positions itself its foundation” (Filoramo 2004, p. 76). Herein lies the peculiar element that characterizes the laws of religions with respect to secular-based natural law conceptions. The ultimate foundation of the law lies neither in human reason nor in human conscience but in a reality external to human beings: sometimes — maybe even most of the time — there will be no contrast between what is dictated by human reason and conscience on the one hand and what is commanded by this transcendent reality on the other, but the latter is never integrally reducible to the former two.

This last possibility makes states uneasy as questions state supremacy. This uneasiness has become evident with the immigration in Europe of a large Muslim community. Behind the conflicts around ritual slaughtering of animals, fasting during Ramadan, the muezzin calls to prayer or the wearing of religious symbols looms the presence of large groups of people who feel themselves bound to apply a religious law which is not conform to the law of the country. This is not something unheard of. History shows us examples of national, linguistic and ethnic minorities refusing to apply the law of the state of which they are part, but this does not happen on the same scale and with the same frequency.

The second specificity of religious minorities can be grasped by comparing the rules that regulate nationality, language, ethnicity and religion: changing religion is easier than changing one of the other three identity markers that I have just mentioned.

This statement needs to be qualified and circumscribed. First, for many religions apostasy is a crime that must be punished (Ferrari 2010). However, this element is not relevant for the purpose of my intervention, which does not concern the regulation of religious minorities in the legal systems of religions. Second, there are states that prohibit and punish change of religion⁽⁴⁾. However, in most cases, this relates only to apostasy from the majority religion: even in these states, followers of a minority religion are free to abandon their religion and adopt another, whether majority or minority.

Having cleared the field of these two objections, we can examine how international law addresses the controversial issue of change of religion.

(4) See Law Library of Congress, *Laws Criminalizing Apostasy in Selected Jurisdictions*, Washington, Law Library of Congress, 2014

The picture is not clear cut. Article 18 of the International Covenant on Civil and Political Rights (ICCPR), unlike the corresponding article in the Universal Declaration of Human Rights, affirms the right to adopt and not the right to change religion, and this distinction, however subtle, is not accidental because it came at the end of a debate with the very states that do not recognize this right (van Schaik 2023). However, many other conventions, starting with the European (Art. 9) and ending with the American Convention on Human Rights (Art. 12), and the General Comment of the UN Human Rights Committee on art. 18 CCPR⁽⁵⁾ explicitly state that religious freedom includes the right to change one's religion. It is therefore correct to say that state provisions prohibiting the abandonment of a particular religion are of less than full compliance with human rights, so that states that apply them are regarded with some suspicion.

It is true that under international law and the law of many states, it is not impossible to change nationality, language or ethnicity. However the right to choose one's religion is considered a human right that the state cannot limit, while the right to choose one's nationality, ethnicity or language does not exist among human rights (see Ruiz Vietez 2021). Moreover, the legal systems of most states allow their citizens who are members of a minority religion to change their religion without encountering the obstacles they would encounter if they wanted to change their nationality, language or ethnicity. While changing religion is a right (albeit with the limitations now mentioned), changing nationality, language or ethnicity is not.

In conclusion, religious minorities are considered and regulated as a "community of assent": a person can be born Christian in a Muslim country or Muslim in a Christian-majority country and change his or her religion without finding any obstacle in state or international law. In contrast, linguistic, national and ethnic minorities are regulated as "communities of descent", whose membership is not a matter, or at least not exclusively a matter, of individual choice (Morris 1966, pp. 238–245). This distinction should not be emphasized too much because also

(5) See CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), available at <https://www.refworld.org/legal/general/hrc/1993/en/13375>, accessed on 14 March 2024.

religion is frequently an inherited identity marker. However, conversion, apostasy, change of religion, syncretism have become significant features of the contemporary religious landscape, particularly in Western societies where religious communities can increasingly be described as belief groups rather than ethno-religious groups (Little 2002, p. 34). This characteristic makes a difference with national, linguistic and ethnic minorities up to the point that some scholars wonder whether religious minorities are more militant than other ethnic minorities (Fox 2003).

These two characteristics connote all religious groups and thus also minority groups. The specificity lies in the fact that their members share a choice of conscience that results in adhering to a particular *Weltanschauung*, which in turn refers to a supernatural law or order. Though this specificity affects only one part of the religious group (the *belief community*) and concerns only partially another part (the *ethno-religious community*), whose membership in the religious group is more a matter of tradition than of personal choice, this is sufficient to differentiate religious minorities from other minority groups.

The two characteristics that have been outlined make some elements that are central to other minorities less important for religious minorities and have an impact on the issue of autonomy. This is the case of territory. National, and frequently also linguistic, minorities are closely linked to a territory, either that in which the minority language is spoken or that of which a national minority claims self-government or independence. This territorial element is much less important in the case of religious minorities. Many religions are transnational and transcend national and also linguistic borders (Ferrari 2007). Since the common element is a conception of life and the world, an Italian Muslim can share his or her religious identity with an Egyptian or Indonesian Muslim, that is, with a person who is member of another nation, belongs to another ethnic group and speaks a completely different language. Religions have a place of birth but are not tied to the territory where they have been born. If this analysis is correct, territorial autonomy is less important for religious minorities than for other minorities. Again, generalizations should be avoided. There are religious minorities linked to a specific territory and there are national minorities without a territory: but, in both cases, these are exceptions.

If we now look at linguistic minorities, another difference emerges. As already said, religions are systems for the regulation of human behavior: each provides norms and precepts that prescribe what their faithful can do or are forbidden to do. Religious minorities reflect this characteristic. Language is primarily a tool of communication (Ruiz Vieytez 2021). Certainly, it is not only that, but the regulatory component of the entire human life is less strong in language minorities than in religious minorities and this regulatory component entails the existence of lawmakers, tribunals and a bureaucratic machine that may require some kind of organizational autonomy.

The list of differences could be much longer, but it is time to abandon this somewhat too general level of investigation and proceed to a more analytical and also more challenging examination. Within the category “religious minorities” there are in fact multiple minorities and each of them presents characters that have a different impact on the notion of autonomy. In the Catholic tradition, the independence and autonomy of the Church from the state is a fundamental element that, rightly or wrongly, is traced back to the evangelical distinction between God and Caesar; in the Orthodox Christian tradition, history and theology joined to shape the guiding principle in this area, the symphony between political and religious power, which leads to a significant lowering of the “wall of separation” between church and state; and in the Muslim tradition, the word “umma” indicates the community of believers which is a religious and a political community at the same time. These differences emerge clearly when institutional autonomy is considered: it is difficult to find in the constitutions of the countries with a Christian Orthodox majority provisions equivalent to Article 7 of the Italian Constitution which declares the independence of the Church from the state, and it is impossible to find it in the constitutions of Muslim-majority countries. On the contrary, Orthodox Christian Churches and Islam seem to attach more significance than the Catholic Church to the territorial element. Within the theological and legal tradition of the former the notion of “canonical territory” has developed, with significant consequences on the freedom of proselytism of the non-Orthodox Christian Churches, while Islamic law draws a territorial dividing line between *Dar-al-islam*, the house of Islam,

and *Dār-al-ḥarb*, the house of war, attaching to this distinction a set of different rights and obligations for Muslims living in one or the other territory. Again, the examples could go on but those already given indicate that specific religious minorities may present characters closer to or farther away from those of national or linguistic minorities, drawing a complex and varied landscape that is sometime difficult to interpret.

What to do, then? Confronted with this complexity, are we going to throw up our hands and conclude that it is impossible to identify the impact of the religious nature of these minorities on the issue of autonomy? I do not think this is the right answer to the challenge of complexity. Instead, I believe that we need to roll up our sleeves and take the necessary steps to meet this challenge at the level at which it arises. Without disavowing what has been written above about the specificity of religious minorities as opposed to national, ethnic and linguistic minorities, it should be recognized that the different history of each has had an important impact on the way the notion of autonomy has been elaborated. This means, in other words, that the general analysis of the characteristics of religious minorities must be accompanied by a particular analysis of the characteristics that each of them presents. Only in this way will it be possible to give an exhaustive answer to the question posed at the beginning of this contribution.

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