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THE LEGAL CONCEPT OF AUTONOMY IN ITS APPLICATION TO AND WITHIN RELIGIOUS MINORITIES
UNITY OF DIFFERENTIATION?

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Abstract: This paper focuses on an introductory analysis of the relationship between the concepts of autonomy and minority, with the aim of identifying the points of differentiation and unity assigned by the law. Focusing on religious minorities, it aims to reflect on how and to what extent autonomy is an instrument for their protection. Through the paradigm of religious diversity, autonomy paves the way for legal pluralism without abandoning the unity of fundamental rights.

Questo paper si concentra su un'analisi introduttiva della relazione tra i concetti di autonomia e minoranza, con l'obiettivo di identificare gli elementi di differenza e di contatto attribuiti dalla legge. Concentrandosi sulle minoranze religiose, ha l'obiettivo di riflettere su come e fino a che punto l'autonomia è uno strumento per la loro protezione. Attraverso il paradigma di diversità religiosa, l'autonomia traccia la via il pluralismo legale senza abbandonare l'unità dei diritti fondamentali.

Keywords: Religious minorities, Autonomy, Religious diversity, Legal pluralism, Legal theory

Parole chiave: Minoranze religiose, Autonomia, Diversità religiosa, Pluralismo legale, Teoria legale

In the twofold dialogue between the concepts of minorities and autonomy that this section of the Annali di Studi Religiosi wishes to conduct, the present paper intends to draw some purely introductory lines around the concept of autonomy, with a particular focus on its juridical meaning and, within this, on the specific sphere of public law.

The aim of bringing minorities and autonomy into dialogue, as intended by the initiators of the first "Dialogue on minorities" held at the Bruno Kessler Foundation–Isr, is to analyse whether and to what extent the elements that qualify a minority, such as nationality, language or religion, influence the nature and content of the autonomy that this minority claims in relation to a State in which the majority is of a different nationality, speaks a different language or belongs to a different religion.

In this sense, we have the task to analysing whether the concept of autonomy applies equally to all minorities, or whether it has a different meaning depending on the minority in question. It must be acknowledged that the definition of minority is not an autonomous one. Rather, the religious attribute of religiosity that characterises this specific type of minority is derived from a broader definition and consideration that international law provides and protects (Henrard 2013). In fact, the generally accepted definition of minorities includes an explicit reference to the religious characteristics of the group as one of the possible identity factors of diversity in relation to the majority of the population of the State (Capotorti 1979, p. 96)[1].

It is necessary at this point to provide a brief overview of the existing framework of international law and how it relates to the protection of religious minorities. The current legal framework provides for the protection of religious minorities through two different lines of action: the recognition and protection of religious freedom, as enshrined in conventional norms of international law[2], and the prohibition of discrimination based on religion or belief[3], as set out in parallel norms. In this context, it is essential to recognise that minority issues enjoy international protection in the context of human rights (Temperman 2010, Witte and Green 2013). This protection primarily concerns individuals belonging to minorities, rather than minorities as entities *per se*

(1) According to Capotorti, minority is "a group numerically inferior to the rest of the population of a State, in a non–dominant position, whose members — being nationals of the State — possess ethnic, religious or linguistic characteristics differing from those of the rest of population and show, if only implicity, a sense of solidarity, directed towards preserving their culture, traditions, religion or language".

(2) Such as Article 9 ECHR and Article 18 CCPR.

(3) As set in Article 4 UN General Assembly resolution 36/55. See also Article 14 ECHR.

(Henrard 2011; Scolnicov 2010). This distinction has important implications when considering the concept of autonomy in relation to minorities. It is clear from the outset that autonomy is a quality attributed to groups on the basis of their distinctive characteristics. It would therefore be a mistake not to take into account the collective dimension of these groups. At the same time, the legal protection of groups on the basis of their recognised autonomy cannot be limited to addressing the individual needs and rights of its members. Rather, it requires a shift in focus towards understanding the ways in which protection can be extended collectively to such groups, taking into account their specific circumstances. From this perspective, the concept of minority autonomy is more easily understood when viewed through the lens of identity factors such as language (De Varennes 2021) and ethnicity (May, Modood and Squires 2004). However, it is more nuanced (Ferrari 2019). In order to gain further insight into the sources of international and domestic law most concerned with the direct or implicit recognition of minorities, it is necessary to refer to other writings in this section. It can be seen that there is a general lack of explicit recognition of religious minorities as the object of specific international protection. It is therefore necessary to look for other ways in which they can be protected.

From this perspective, the notion of autonomy offers a crucial lens through wich to view the issue and serves as an important tool for protecting the rights of religious minorities. This assertion, however, requires a preliminary examination of the potential legal implications of the concept of autonomy, which we will analyse, albeit briefly.

1. The concept of autonomy between the plurality of meanings and the necessity for composition.

The notion of autonomy in modern legal theory has a variety of understandings, that leads to consider it among the polysemic legal categories or, as has been argued, among the set of principles with semantic plurality (Heintze 1998, pp. 7–32). Given the fact that autonomy is inherently multifaceted, it is necessary to identify a set of meanings that are relevant

to this discussion, while acknowledging the existence of other disciplines that assign quite different meanings to the term. This is exemplified by the area of private autonomy, which is inherent to civil law considerations and addresses the need for the legal system to recognise an area in which individuals can independently regulate their interests (Möllers 2018). Thus, private autonomy is essentially individual autonomy in the context of the negotiation relationship. It can be argued that autonomy also encompasses the concept of normative autonomy, which refers to the power of the legal system to recognise a subject's capacity to make and implement its own rules. This concept is linked to the sphere of individual rights, which includes the right to make free and informed choices about aspects of one's life and to make decisions without undue external influence. However, the concept of self-determination also has a collective dimension and is linked to the autonomist aspirations of peoples and minorities (Castellino 2014). In this sense, the self-determination of peoples falls within the scope of the new international human rights law, which recognises a distinct subjectivity in peoples themselves, separate from that of States (Capotorti 1991).

The UNESCO Report and Recommendations on the Concept of the Rights of Peoples defines a people as a group of human beings who share one or more of the following characteristics: a common historical tradition; a racial or ethnic identity; a cultural homogeneity; a linguistic identity; religious or ideological affinities; territorial ties; a common economic life(4). In this context, the sense of a people as a unified entity and the desire to act collectively in their own interests are crucial. While the terms ""people" and "minority" appear to have a similar definition, autochthonous communities differ from minorities in important ways. This distinction can be seen in the preservation of a collective cultural heritage and the pursuit of a unified political future, whereas minorities tend to prioritise the preservation of their distinctiveness within the national cultural context of their origin. If the self-determination of peoples is understood to include the external modification of territories, then the autonomy of minorities necessarily requires the recognition of their identity specificities within those territories. The recognition of spaces of autonomy thus does not entail the extension of social, political and legal

(4) Doc. SHS-89/CONF. 602/7, Paris, 22.02.1990.

fragmentation. On the contrary, it serves to consolidate the principles of freedom, equality and solidarity, which serve to integrate the various elements of society. It is therefore a means of avoiding the risk of assimilation of minority realities, while promoting internal pluralism.

A further profile of research is concerned with the meaning of collective autonomy as it relates to private law (Dagan 2019). This implies the ability and the right to self–organise, as well as its purpose: assert and defend one's rights. It can therefore be said that the sphere of collective private autonomy has points of contact with that of autonomy proper to the public sphere (Habermas 1994; Cooke 2020). The potential to develop a unified understanding of the nature of autonomy is another benefit of exploring the different connotations associated with the term. This in turn could help to reduce the tendency to fragment the concept along ideological or interest lines.

Indeed, the concept of autonomy can be seen as a fundamental concept underpinning all forms of coexistence that imply the recognition of the pluralism of ideas, groups and the identities associated with them.

On closer examination, this unified endeavour demonstrates its usefulness when considered in conjunction with an examination of the relationship between minority and autonomy. According to Capotorti's definition, the essence of a minority lies in its sense of solidarity aimed at preserving cultures, traditions, religions or languages. As a collective, minority groups exercise a function of collective autonomy that includes both the assertion and defence of their distinctive identity. Even in the case of social groups that can be identified as minorities on the basis of international law, it is therefore possible to speak of forms of collective autonomy as self–organised action in defence of their group interests.

2. Autonomy and relationship, organisation and jurisdiction. Institutional theory and the legal orders of religious minorities

In this analysis of the structural unity of a legal concept that varies in its application across different fields, the general theory of law identifies an underlying commonality that seems essential for understanding

the internal pluralisms of constitutional systems, as well as the external pluralities that emerge in contemporary societies. This underlying commonality can be conceptualised as an idea of autonomy as a relational concept (Romano 1946, 1987). To illustrate this concept of autonomy in constitutional law, we can turn to Article 5 of the Italian Constitution. This article outlines a principle of autonomy that is based on the interdependence between individuals. In other words, the idea of autonomy is founded on a relational dimension that allowed individuals to coexist and participate in the formation of the wider social order. The relational dimension is more than the simple organisational dimension of autonomy, understood as the space for self–organisation of one's own interests. Therefore, organisational autonomy is not possible without considering the relationship between two or more subjectivities and is thus inherently relational (Ronchetti 2018). This is what Article 5 of the Italian Constitution refers to when regulating the autonomy principle. In fact, the same principle is embodied in the recognition and promotion by the Republic, one and indivisible, of local autonomies. Although in this case there is also a normative form of autonomy, the defining feature of this relationship is political–administrative autonomy. This means that local autonomies derive their political–administrative direction not from the State but from their own electoral body. The fact that this type of autonomy is enshrined in Article 5 of the Constitution makes it a constitutional principle of all legislation in the Republic.

When examining the issue of religious minorities, it is evident that some EU Member States have enshrined the rights of religious communities to organise themselves in accordance with their own beliefs and traditions within their respective constitutional frameworks (Canas 2019). Conversely, other Member States, such as Belgium, have extended a more specific recognition of the rights and freedoms of ideological and philosophical minorities (Torks and Vrielink 2019). This, it can be argued, facilitates the autonomous organisation of such minorities. In any case, the concept of autonomy is part of national and international legislation whenever the right to freedom of religion is referred to.

In any case, the concept of autonomy appears in national and international legislation whenever the right to freedom of religion is

mentioned, in an individual sphere consisting of the right to have, change or not have religious convictions, and in a collective sphere consisting of the right of religious organizations to have their own structure and rules.

In other words, it is the institutional independence of religious communities from the State (Cardia 2009, p. 3).

The tension with the right to self-determination of the individual member of the religious community lies in this recognition of the autonomy of organisations. It has been pointed out how, on this point, the balancing act between the sphere of confessional autonomy and "the individual's freedom of religion" of the individual constitutes an issue in the interpretation of Article 9 of the ECHR by the Strasbourg Court (Ventura 2001, p. 83).

While it is true, as will be seen below, that the right to religious freedom is a tool to protect denominational autonomy, in some areas this autonomy is limited by the impact of national legislation.

This is the case, for example, when the State intervenes in the funding of religious denominations, as is done in most European countries.

The different models of public funding seem to define different spaces of freedom and to resolve, respectively intensify, this relationship between individual freedom and collective freedom (Cardia 2009, pp.17–23).

The relationship between confessional autonomy and libertarian instances, if not defending against discriminatory practices, in the complex matter of labour relations is even different.

In this respect, the model proposed by the Strasbourg Court is less and less inclined to recognise absolute spheres of competence, while the American model, supported by the Supreme Court's pronouncements, recognises a special value for confessional autonomy (Madera 2014).

The autonomy of religious communities, especially minority ones, from the state, is most evident when the state does not legislate where it should, or when it legislates in a jurisdictional way. The case of the Islamic communities in Italy, and in particular the issue of places of worship, illustrates this (Stefanì 2019, pp. 312–317).

In some other cases, the recognition of autonomous spaces for religious denominations is contingent upon recognition of jurisdictional

autonomy in certain matters pertaining to marriage (Bano 2007). However, given the multicultural and plural nature of contemporary European societies, it is no longer possible to consider confessional jurisdiction in isolation. As a result, the scope of reflection on Catholic ecclesiastical jurisdiction, which is prevalent in countries where relations with the Catholic Church are governed by concordat regimes, needs to be broadened to include other religious denominations. The issue of jurisdictional autonomy or confessional jurisdiction concerns, for example, the recognition of the relevance of private Shariah law, with particular attention to issues concerning broader family law (Bano 2007). This phenomenon can take place along the lines of the recognition of Islamic arbitration courts in European contexts, such as the Shari'a Courts or Shari'a Councils in the United Kingdom (Bano 2012). In such a case, the autonomy granted to individual private Muslim believers to request the intervention of such bodies for the resolution of family law issues *de facto* results in the production of religious pronouncements that are accorded a certain value even for State private law.

In other legal contexts, such as those of the Italian courts, the issue of recognising the civil consequences of acts that are governed by Shari'a law has presented challenges in reconciling these acts with constitutional and civil principles of equality and equal treatment between men and women (Benigni 2019). One example is the issue of repudiation, where acts are recorded in civil registry records of the Italian State. Beyond the questions that more closely concern the technical elements underlying the recognition in otherwise of the lawfulness of such acts and their effects, the issue raises questions of public order precisely because of the lack of conformity of such acts with the principles proper to the order of the State. This issue therefore raises fundamental questions concerning the relationship between the components of society and the legal framework within such relationships are established and maintained. In particular, questions arise about the compatibility of religious minorities autonomy recognised by the State with the legal systems that recognise such autonomy. In light of the aforementioned considerations, it is imperative to examine into the nature of the relationship between the different legal systems that interact each other.

Organisational structure and jurisdictional authority appear to be insufficient for fully addressing the autonomy granted to religious minorities. Furthermore, they do not provide a comprehensive explanation. On closer examination, the concept of relationship can be identified as an underlying principle of ordinal autonomy. This concept is part of the well-known institutional theory of orders, most famously interpreted by Santi Romano. The institutionalist theory is most notable for its contribution to the understanding of the legal system by challenging the exclusive role of the State as the sole actor in legal matters. This has led to the recognition of the plurality of legal orders (Romano 1917, 2018). In this context, autonomy is best understood as a relationship between subjects or between legal orders. The latter is particularly important in understanding the autonomy and independence of legal orders in relation to each other and to the order of the State. The State is therefore the standard to evaluate whether an order, for example that of a religious minority, can be considered autonomous and independent, thus defined as original (*originario*), or alternatively as deriving its status and rights from the State, thus not being an autonomous entity in its own right. The State may have granted certain rights to the religious group, or may have recognised it as a separate entity. In the specific field of public law pertaining to the relationship between State and religions, autonomy of religious minorities is undoubtedly a pivotal issue.

Article 8, paragraph two of the Italian Constitution recognises the autonomy of non-Catholic religious communities to organise themselves according to their own statutes. This right is essentially based on historical reasons and is therefore applicable to religious minorities identified within the national context in question (Ferrari and Ferrari 2010). The internal autonomy of minority religious denominations is therefore explicitly recognised by the Constitution, which allows them to participate in the legal production of domestic law. In this regard, the principle of autonomy is employed in order to attribute to religious minorities an instrument of recognition and protection in the face of the lack of a specific normative provision expressly dedicated to the concept of minority. The autonomy of the system thus constitutes the key to the indirect recognition of what the constitutional system seems to overlook directly.

From another perspective, the concept of autonomy seems to be used to recognize the specific categorization of religious minorities. This is achieved by invoking the concept of sovereignty, which is enshrined in Article 7 of the Constitution with regard to the Catholic Church, the predominant religious entity (Mazzola 2019). If sovereignty is perceived to be inherently limitless and thus inherent to an original order, autonomy appears to be in a reciprocal relationship with minorities whose orders possess this attribute. This is significant when a discrepancy in perceptions emerges between the legal subjects involved in the relationships of originality and derivation.

Consequently, the minority acting as an original order will establish its relationship with the State order not only in terms of autonomy but also of independence, which will affect State–religion relations in a distinctly separatist way. This separation implies, on the one hand, the impermeability of the internal order to State interference and, on the other, the recognition of autonomous institutions of the religious minority.

This last aspect represents a different interpretation of the relationship between State and religious minorities, when the latter claim their rights based on internal laws, such as subjective statutes, marriage bonds, or rights of descent. On the other hand, the minority that recognizes the role of the State as a derivative order will recognize the State's greater capacity to intervene in its sphere of action, as well as its greater obligation to guarantee the effectiveness of the autonomy it recognizes. Originality and derivation, autonomy and independence, in other words, illustrate the diversity of models that exist in the relationship between the State and religious minorities (Ferrari 1995). These models range from the complete absence of the State's involvement in the recognition of the rights of religious minorities to a demand for the State's maximum promotion of these rights, which may involve direct State intervention or the recognition of the autonomy of minority orders to act independently in their own spheres.

3. Territory, nation and minority autonomy. A model not necessarily for everyone

The principle of autonomy, thus oriented, is the result of combining the principles of freedom, equality and solidarity in order to facilitate the pluralism of individuals and groups. In this context, it is essential to determine which groups are intended to be included when the principle of autonomy is applied. As noted above, minorities, including those defined as "autochthonous", "historical", or even "national", are the main focus.

In this context, the emerging cultural diversity in Europe since the end of the Second World War has challenged the traditional concept of the Nation–state, where a unified concept of the people was assumed to prevail. Instead, this diversity has led to the recognition of different rights for historical minorities, or groups that can be identified by their national and linguistic characteristics or by the coexistence of these characteristics. These are, in particular, the situations of groups that have historically resided in an original territory, but which have subsequently had to deal themselves with changed State borders. Consequently, they experience a minority situation in relation to their initial situation. The history of international law and of Europe, in particular, is replete with examples of "minority issues". In the year 1993, the UN World Conference on Human Rights, convening in Vienna, explicitly recognised the importance of the protection of national minorities for maintaining democratic stability and security in Europe(5).

In the same years, the Council of Europe adopted the European Charter for Regional or Minority Languages (1992)(6) and the Framework Convention for the Protection of National Minorities (1995)(7). In 1993, the Organisation for Security and Cooperation in Europe (OSCE) also established its own specific policy on national minorities. Finally, in 1997 and 1998, both supranational institutions drafted their own standards on national minorities(8). It is widely ac-

(5) World Conference on Human Rights, Vienna, 14–25 June 1993.

(6) Council of Europe, European Charter for Regional or Minority Languages, Strasbourg, 2.X.1992.

(7) Framework Convention for the Protection of National Minorities, 1 February 1995.

(8) National minority standards of the Council of Europe, available at https://www.coe.int/en/web/minorities/council-of-europe-national-minority-standards; Natinal minority

knowledged that the standards serve as an invaluable tool to verify the capacity of individual Council of Europe member States to comply to and uphold the minimum standards of protection established at the international or supranational level.

In this context, the term "minorities" and its associated concept of "autonomy" are employed to refer to groups whose cultural, linguistic, ethnic, or national origins distinguish them from the majority community in the territory of settlement. In this context, the concept of autonomy and the notion of autonomy itself interact with the presence of historical or autochthonous minorities, thereby serving to recognise and protect their rights.

In this discourse, it is essential to consider that in the context of minority protection, the principle of autonomy must be closely linked to the collective dimension of the minority. Autonomy confers special rights upon a collective of individuals, which are realised through the concession of partial forms of self–government, as is evident in the cultural, educational and linguistic spheres. The need to guarantee specific forms of protection for linguistic minorities in Trentino–Alto Adige represents the main reason for the establishment of the Trentino–Alto Adige Region's distinctive form of autonomy. The imperative to safeguard linguistic minorities, particularly those that are numerically significant, was also a pivotal factor in the evolution of the Region's autonomy, contributing to its regulatory, institutional, and organisational autonomy. From this perspective, autonomy can be defined as a territorial entity's capacity to self–govern and manage its economic resources and competencies independently. Autonomy is therefore distinct from decentralisation, which merely involves the peripheral application of centrally–defined rules, and instead recognises broader spaces of action for minorities.

From this perspective, it can be argued that the recognition of a minority by a State entails the recognition of its rights, which in particular contexts implies the attribution or recognition of its autonomy. This, in turn, conditions the status of an entire territory. In such cases, we are dealing with an autonomy of a territorial nature. However, in other cases, the ownership of autonomy is not attributed to territorial

standards of the OSCE and the High Commissioner on National Minorities, available at https://www.coe.int/en/web/minorities/osce-national-minority-standards.

entities, but to organisations representing groups or minority groups, regardless of the residence of their members. In this instance, we are referring to personal or cultural autonomy.

Given this differentiation, territorial autonomy is undoubtedly granted form of autonomy in cases where minority groups are concentrated in specific areas. Indeed, it can be argued that territorial autonomy represents the most optimal solution to disputes caused by the presence of minorities within a social order (Roach 2004). This is particularly the case where the social order in question adheres to a philosophy of pluralism and diversity.

This form of autonomy necessarily implies the existence of precise constitutional guarantees and precise forms of guaranteed participation in State-sponsored activities.

It has been argued that the establishment of territorial autonomy can serve as a means of preventing minority secession, particularly when these minority groups perceive the existing State system to be oppressive and therefore seek alternative ways for recognition and self-determination. (Wright 1999; Mancini 2008).

However, it is crucial to acknowledge that the State is no longer the sole authority in determining minority rights. Indeed, respect and protection of minorities are the criteria for the accession of new member States to the European Union (Sasse 2013). Moreover, the Lisbon Treaty of 2009 established the rights of individuals belonging to minority groups as a value that underpins the Union[9] (Barten 2015). In this context, it could be argued that personal autonomy is becoming increasingly significant in the application of the "right to difference" that is characteristic of minorities. In light of this, it becomes evident that formal equality is not sufficient to manage the existence of culturally diverse and minority groups within a state designed by the majority. Indeed, minority groups risk being discriminated against. Consequently, the explicit recognition of their differences becomes crucial in overcoming disadvantage through the allocation of specific legal provisions that balance the situations of minorities against those of majorities. This right to difference is to be established by international and supranational law according to minimum standards. Contemporary legal systems, thus, face the challenge of

(9) Article 2 TEU.

developing instruments that are able to combine equality with difference. As the multicultural and plural society becomes increasingly diverse, the number of historically defined minorities will decrease, whereas the number of groups demanding recognition of their right to diversity will increase (Kymlicka 2011).

In this context, it is questionable whether the recognition of autonomy as a means of safeguarding the rights of newly constituted minority groups is an adequate solution when the concept is based on the "basic" principle of territorial autonomy, given the difficulties in achieving a requirement of territorial compactness when considering the potentially endless replication of minority groups on the basis of the right to difference. One may inquire whether a school system can be established to preserve the diversity of languages derived from immigration through the recognition of the right to autonomy in terms of linguistically distinctive educational institutions. This examination must consider the broader implications, including whether such autonomy is beneficial for the social, political, and legal integration of society as a whole, whether it fosters the integration of marginalized communities, what is the right balance between equality and difference (Guliyeva 2013). It also becomes necessary to consider whether reasonable accommodation can constitute a supplementary or alternative route to that of autonomy (Caron 2014). At the same time, it is important to recognize that personal autonomy is linked to a person's identity. This identity, however, is increasingly fluid, allowing an individual to identify with more than one group at the same time or to prioritise to one group to another depending on different circumstances. Intersectional studies provide a valuable framework offering insights into the ways individuals simultaneously experience multiple differences in their personal lives (Krenshaw 1994; Angeletti, 2021).

4. Religious minorities. Autonomy or difference?

A similar argument can be posed with regards to religious minorities. In this respect, Prof. Toniatti notes that the prevailing principle espoused by the nation–state, which stipulates that subjects should be governed according to their religious beliefs, and which effectively brought an end

to religious persecution and ushered in the era of religious toleration, has gradually given rise to a status of full citizenship for religious minorities (Toniatti 2022). Nevertheless, it is important to note that historical religious minorities (i.e., those historically present in Europe) have developed a distinctive identity that sets them apart from other types of minorities. Instead of being subject to constitutional regulation, alongside other factors such as language and nationality, these minorities have been afforded broader protection under the freedom of religion. It can be argued that religious minorities are not protected as minorities, but rather as individuals who are protected by the constitutional affirmation of the right to religious freedom. This affirmation applies to everyone, including groups that profess a religion different from that of the majority of the population, where such a majority exists.

This raises the question of whether and to what extent it is possible to apply the same concept of autonomy to the concept of religious minorities as well, and what kind of relationship exists between the two.

The question arises as to whether the religious element constitutes one of the factors contributing to the identity of a cultural minority, along with language, nationality and geographical proximity. In such cases, autonomy may be recognised as a form of protection, for example through the ratification of an international treaty, statute or convention (Gilbert 2002). In contrast, it is important to acknowledge that in the contemporary era, the re–emergence of the religious factor as an element in the identification of minority groups has brought the issue of religious minorities back to the forefront of the international political agenda. This is evident from the numerous cases of persecution of religious minorities. One of the most notable examples is the situation of the Uyghur minority, which is part of the same Uyghur minority in China, which differs from it in terms of religion (Rudelson 1997; Lemon, Jardine and Hall 2023). This discrimination is further compounded by a religious element that serves to distinguish the group in question. One case in point is the Rohingya Muslim minority in Myanmar, where the issue of territorial, national or ethnic autonomy has been insufficient in guaranteeing protection from persecution[10].

(10) See *Situation of Human Rights of Rohingya Muslims and Other Minorities in Myanmar*, UN Doc. A/HRC/39/L.22 September 2018.

Consequently, as no protection can be afforded to these minorities by means of the aforementioned traditional instruments of international law, given the breakdown of the religious element within the context of other defining characteristics, international law has sought to adopt the personalist principle as a means of safeguarding human rights, with the autonomy in question being that of the individual belonging to a religious minority, whether by birth or by profession of faith.

The right of religious believers to self–determination also includes the freedom of conscience, which allows them the autonomy to choose whether to convert to another religion, to remain part of a minority group, or to cease to believe altogether. This right is internationally recognised as a fundamental aspect of personal autonomy. However, the scope of this right is not limited to these specific examples; it extends to all aspects of an individual's life, including the possibility of choose between religious and common law. One may cite the 2018 European Court of Human Rights judgment in the case Molla Sali vs. Greece[11]. This judgement concerns the internal law of succession of the Muslim community of Thrace. This is a Greek territory with a system of autonomy recognised for a specific religious minority and which allows the application of religious jurisdiction by virtue of the Peace Treaties of Sèvres and Lausanne. This pronouncement allows the existence of special religious based legal systems within Member States. These systems are parallel to those already legally recognised in consideration of the principles of territorial autonomy granted to that particular religious minority. Therefore, the recognition of individual rights, raises the question of the compatibility of the autonomies recognised to religious minorities with public order and the European Convention on Human Rights (Fokas 2021; Tsevas 2023).

In other cases, cultural (and no longer exclusively territorial) autonomy is based on the principal of freedom of association and freedom of belief. As an illustrative case, one might cite an organisation that is capable of managing and representing a collective of individuals who share a common religious affiliation. In this case, it may be appropriate to refer to the internal autonomy of the religious community. This

(11) ECHR, Grand Chamber, Case of Molla Sali v. Greece, (ric. n. 20452/14), 19 December 2018.

would entail the community being afforded the freedom to establish its own rules of operation and discipline, and, in more complex cases, even its own legislation. In these cases, the concept of institutional autonomy previously outlined proves to be invaluable; the order of a religious community, even a minority one, is autonomous and independent in relation to that of the State, that is, it represents an original order that does not derive from the State itself. This can be exemplified by a variety of confessional realities, which provide for their own "law". For example, an examination of the Italian legislation on relations between the State and religious denominations shows that the first agreement signed between the Italian Republic and the Waldensian Church, represented by a religious minority, recognise the autonomy and independence of the order. Article 1 of the agreement(12) provides for the acknowledgment of the existence of the order as an autonomous entity that does not derive its legitimacy from the State. The internal body of rules of the Church are also recognised.

Furthermore, the case of this historical Italian religious minority serves as an illustrative example when viewed through the lens of the concept of autonomy. The historical minority in question is territorially connoted only for a part of its history, namely the unification of Italy. Prior to that, the minority had only its own language, French and the Occitan language, and its own territory, namely some Alpine valleys in Piedmont. Subsequently, the minority spread throughout Italy and opted for the official use of the Italian language and the construction of a national church. The minority in question could have opted for territorial autonomy or at least linguistic autonomy. Instead, it made a different choice and currently falls within the categories of personal and cultural autonomy, rather than territorial autonomy. However, despite this, it undoubtedly remains a historical and autochthonous minority (Peyrot 1990). Therefore, a simplistic history of territorial context is insufficient to explain the complexity of the background of this religious minority.

This serves to illustrate how the interpretive norms of territorial autonomy fail to take into account the specific characteristics of religious minorities.

(12) L. 449/1984.

The picture becomes more complex in light of the advance of religious and cultural pluralism. This raises the question of what kind of autonomy should be granted to religious minorities in a context where old and new religious and cultural traditions are present. It is a paradigm shift, no longer and only based on coexistence, but on the promotion of differences in the same State context. The question is therefore whether autonomy is a form of promoting these differences.

In certain contexts, the recognition of the autonomy of a religious minority requires the establishment of an autonomous discipline for family law. This is to ensure that traditions are maintained, and that matters pertaining to courts, education, etc., are addressed in an appropriate manner. As previously outlined, we have identified certain aspects of this autonomy, with a focus on jurisdictional autonomy and the wider implications for the broader recognition of minorities. In many cases, the recognition of autonomy with regard to such matters, such as marriage and family law, is contingent upon the compatibility of religious models with the State model, which applies to all, regardless of religious affiliation.

A case in point is the constitutional changes that have occurred in some Maghreb countries following the Arab Spring. Despite constitutional affirmation of certain principles related to women's equality of women in the public and private spheres, traditional law continues to call for differences between subjects on the basis of the autonomy of religious law (Alvi 2015). The application of the principle of autonomy to religious choices entails both a personal option and the risk of personal discrimination, rather than on the basis of religious differentiation. This risk arises not from differences in religious belief *per se* but rather from the State's recognition of religious autonomy in regulating common aspects of life, including those that are not specifically religious in nature.

5. Conclusions. Religious diversity as a new paradigm

The issue of autonomy must be considered within the context of a new paradigm, in which the question of religious minorities is less about the relationship between majority and minority, and more about the regulation of religious diversity (Ferrari, Wonisch and Medda–Windischer 2021).

In this sense, the category of autonomy seems to align more closely with the paradigm of legal pluralism: multiple legal regimes are the rule rather than the exception (Toniatti 2024). In this dimension, different groups, including minorities and religious minorities, live within and interact with multiple legal regimes. At the territorial level there are multiple legal frameworks which are further divided by denominational lines. These lines are observed within the borders of States' autonomous spaces and also extend into the realm of international and transnational legal frameworks, where they prevail. On the one hand, the fundamental principles of human rights are those of a personalistic nature; on the other, the specific legal regimes pertaining to transnational communities make discourses of legal pluralism global in scope (Berman 2012). Such discourses are devoid of territorial considerations and concentrate solely on the object of legal protection. The aforementioned aspect seems to illustrate aspects of openness that are beneficial for the regulation of the right to differences, as it broadens the range of subjects it addressed and considers them on the basis of their specificity.

In this context, global legal pluralism may be defined as a law in a state of constant evolution which responds to need that individual States, with their borders and their application of territorial autonomy, cannot satisfy. It remains to be seen whether this paradigm can also be useful in solving the relationship between legal systems, with particular reference to State legal systems and the legal systems of religious minorities in their relationship of autonomy and independence. This could be the subject of possible future investigation. However, it is possible to identify a number of potential limitations associated with the use of the paradigm of legal pluralism, irrespective of the specific interpretation. Silvio Ferrari has observed that the strength of the State is not solely a means of maintaining equilibrium between different social groups; rather, it serves to guarantee a robust foundation of rights that must be upheld by all individuals, regardless of whether they reside within or beyond the boundaries of a particular community. This ensures that, even in a system of legal pluralism, "regulatory universes" cannot violate a core of fundamental rights that must be respected at all times and in all places (Ferrari 2016). We must therefore acknowledge

the existence of problems concerning individual and collective autonomy within any legal system, irrespective of whether it adheres to the principles of monism or pluralism. In conclusion, it can be posited that autonomy is a fundamental principle within any legal system that adheres to the principles of legal pluralism. In such a system, the State retains the responsibility to implement differentiated treatment, in order to safeguard the rights of minorities, without jeopardising the fundamental unity of the application of rights.

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