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AUTONOMY AND PROMOTION OF RELIGIOUS MINORITIES' RIGHTS
A HISTORICAL-LEGAL PERSPECTIVE

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Abstract: This paper focuses on the relationship between autonomy and promotion of religious minorities' rights, by examining the main models of autonomy developed in the past and in the present in the European space and on the southern shore of the Mediterranean Sea and the extent to which they have promoted the rights of religious minorities. It also aims to highlight the differences among such models *vis–à–vis* the preferences and needs manifested by some religious minorities.

Questo contributo si concentra sul rapporto tra autonomia e promozione dei diritti delle minoranze religiose, esaminando i principali modelli di autonomia sviluppati nel passato e nell'età contemporanea nello spazio europeo e sulla sponda sud del Mediterraneo, e la misura in cui essi hanno promosso tali diritti. Inoltre mette in luce le differenze tra tali modelli rispetto alle preferenze e bisogni manifestati dalle minoranze religiose esaminate in questo studio.

Keywords: Religious minorities, Autonomy, Promotion of rights, Ottoman Empire, Contemporary Europe, Southern shore of the Mediterranean Sea

Parole chiave: Minoranze religiose, Autonomia, Promozione dei diritti, Impero ottomano, Europa contemporanea, Sponda sud del Mediterraneo

1. Scope and definitional issues

This essay aims at addressing the following issues: what forms of autonomy were recognized in the past and are recognized today to religious minorities (RMs)? Do these forms meet RMs' needs and actually

promote their rights? From the RMs' point of view, are some forms of autonomy more important than others? Does the diversity among RMs influence the type of autonomy they claim? These issues will be addressed by examining the Ottoman Empire, as an historical example, and the space of the Council of Europe and some countries on the southern shore of the Mediterranean Sea, as contemporary experiences.

There is a lot of debate on the notion of "minority" (see inter alia Ferrari 2020). For present purposes, this essay will use the definition elaborated by the *Atlas of Religious or Belief Minority Rights,* according to which a religious (or belief) minority "is a group of people gathered in common membership who represent less than half of the population of a State and who are bound together by the intent to preserve and advance their religion or belief"(1). This definition relies on the indications offered by UN bodies and experts on this matter. A report of 2019 stated that the Special Rapporteur on minority issues would use and promote the following concept of a minority, both within the United Nations and in carrying out his activities:

> An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status (Special Rapporteur on minority issues 2019, para. 53).

The notion of religious minority has been addressed inter alia by the Recommendations of the Forum on Minority Issues at its sixth session held on 26 and 27 November 2013:

> The term "religious minorities" as used in the present document therefore encompasses a broad range of religious or belief communities, traditional and non–traditional, whether recognized by the State or not, including more recently established faith or belief groups, and large and small communities, that seek protection of their rights under

(1) See https://atlasminorityrights.eu/about/Methodology.php#.

> minority rights standards. Non–believers, atheists or agnostics may also face challenges and discrimination and require protection of their rights. Attention should likewise be given to the situation of religious minorities where they form the minority in a particular region or locality, but not in the country as a whole (Forum on Minority Issues 2013, para. 8).

2. A historical model of autonomy: the Ottoman millet system

In the Ottoman Empire — as it happened in the past in Europe (Ruffini 1974, pp. 33–63; Bottoni and Cianitto 2022) — individuals belonging to a RM did not have the same rights as the members of the majority religion. However, as collective entities, RMs enjoyed a great autonomy under a legal regime, which has become known in history as the *millet* system[2].

Its origins date back to 1453, when Mehmed II, the Conqueror of Constantinople, granted wide civil and religious powers to the Ecumenical Patriarch Gennadios II. This decision was probably grounded on a number of reasons: the respect for Islamic rules[3]; political considerations on the objective difficulty to rule directly populations with very different languages, usages and customs; the opportunity to continue the policy implemented in the provinces previously conquered; the need to repopulate the sieged city (Ubicini and Pavet de Courteille 1876, p. 186; van den Steen de Jehay 1906, pp. 21–22; İnalcık 1998,

(2) *Millet* is the Turkish form of the Arabic word *milla,* originally meaning "religion", "religious community" and "nation". In literature, it is generally used to indicate non–Muslim communities within the Ottoman Empire. However, at least until the beginning of the 19th century, it also meant "religious community" in the broadest sense, and indicated Christian communities outside the Ottoman Empire as well as the Ottoman Muslim community. For a more detailed treatment, see *The Encyclopaedia of Islam* 2002, under *millet; İslâm Ansiklopedisi* 1940–1988, under *millet*, p. 317; Zekiyan 2007; Quer 2010.

(3) As known, in Islam there is a distinction between believers and non–believers, and the latter are further distinguished between the "People of the Book" and the others. In the Islamic perspective, the Jews, the Christians and, in some traditions, the Zoroastrians are not equal before the law but, unlike the other non–believers, they can obtain the status of "protected" (*dhimmi* in Arabic, *zimmi* in Turkish), because they have received the divine revelation through a holy book. This revelation is regarded as having been corrupted, but nevertheless as coming from God. The status of *dhimmi/zimmi* implies the guarantee of the right to stay in the Muslim territory and to security of life under the payment of a personal tax (*jizya* in Arabic, *cizye* in Turkish). See Miccichè 2024, pp. 18–33; Al– Qattan 1999; Grignaschi 1984.

pp. 197 and 204; Papadopoulos 1924, pp. 80–82). The community governed by the Ecumenical Patriarch was called *Rum Milleti*[4], and it was composed by all Orthodox Christians: not only Greeks, but also Serbs, Bulgarians, Bosnians, Romanians and Albanians, without any distinction as to languages or ethnic groups (Ubicini 1855, p. IX). Gregorian Armenians — members of one of the six Oriental Orthodox Churches accepting only the first three ecumenical councils and rejecting the Christological doctrine approved by the fourth ecumenical council, held in 451 in Chalcedon[5] — did not recognize the Ecumenical Patriarch's authority and obtained the establishment of their own separate community (*Ermeni Milleti*) in 1461, under the rule of the Armenian Patriarch. This was an interesting development, justified by the need to address the problem of "minorities within a minority", which was recurrent in Ottoman history and is a topical problem, too, as we shall see. The *Ermeni Milleti* came to include all non–Eastern Orthodox Christians, such as Nestorians, Chaldeans and Armenian Catholics (Ubicini and Pavet de Courteille 1876, p. 187; van den Steen de Jehay 1906, p. 92). About twenty years later, the Jewish community (*Yahudi Milleti*) was established, as well (Ubicini 1853–1854, pp. 367 and 375; Ubicini and Pavet de Courteille 1876, p. 205).

Each *millet* was governed — under Ottoman supervision — by a patriarch or a rabbi, entitled with both civil and religious powers, and — unlike their counterparts in European countries — regarded as public officials. They were elected or appointed by the *millet* itself and

(4) *Rum* is the Ottoman form of PΩMAIOI, that is, Romans. As known, Constantinople built its own myth as the "new Rome", not only because of the fall of the Western Roman Empire in 476, but also for being the capital of a Christian Empire, and therefore superior to the ancient Rome, associated to polytheism and untrue religions. The synonymy between "Christian" and "Roman" explains why, in the Ottoman age, the Church was not renamed either Greek or Byzantine, ma continued to be called Roman.

(5) They are the Armenian Apostolic Church, the Coptic Orthodox Church (Copt comes from the Greek Αἴγυπτος, meaning "Egypt"), the Ethiopian Orthodox Tewahedo Church, the Eritrean Orthodox Church, the Syrian Orthodox Church and the Malankara Orthodox Syrian Church. They have rejected the Chalcedonian Christological doctrine, according to which Christ is one person in two natures, and have adopted that of "the one incarnate nature of the Word of God". They are in communion with one another, but each one is fully independent and possesses many distinctive traditions. For example, the Ethiopian Orthodox Tewahedo Church and the Eritrean Orthodox Church still follow practices inherited by Judaism and soon abandoned by early Christian communities, such as male circumcision, the prohibition to eat pork and the respect for the Shabbat (day of rest) on Saturday.

confirmed by the Ottoman Emperor by way of a document called *berat,* which listed or confirmed the jurisdictional privileges granted to each *millet,* such as the management of all matters concerning faith and worship, the regulation of family and succession law according to their own religious rules, the administration of justice and education. It should be noted that each *millet* enjoyed different spheres of autonomy. For example, as regards inheritance, the *Rum Milleti* applied Byzantine law, whereas the *Yahudi Milleti* could regulate only successions concerning movable property according to Jewish law, being the others regulated by Islamic law. Successions within the *Ermeni Milleti* were entirely regulated by Islamic law (Bertola 1927, pp. 35–38 and 53–54; *İslâm Ansiklopedisi* 1988–2002, pp. 472–573). Despite such differences, this legal system allowed RMs in the Ottoman Empire to enjoy a degree of freedom unknown to those residing in European countries, and to become almost like "States within the Ottoman State".

The traditional *millet* system experienced dramatic changes in the context of the Oriental Question, conventionally dated from 1774 to 1923 (see inter alia Anderson 1966). This expression refers to the military, political, and economic weakness and to the territorial dismemberment of the Ottoman Empire (the "sick man of Europe"(6)), which stimulated the European Powers' competition and interference in the Ottoman internal affairs (Djuvara 1914; Süslü 1983). Some dynamics of the relationships between the European Powers and the Ottoman Empire were similar to those taking place in other areas of the world threatened by the aggressive European imperialism (Ward 1970). However, unlike for example China or Japan, the Ottoman Empire had one characteristic that gave a specific ideological orientation to this confrontation: the religion professed by the majority of the Ottoman population was Islam. European Christian countries' economic success and military power — compared with the decline of the last great Islamic empire — seemed to confirm Christianity's spiritual superiority and to strengthen the idea that Islam was the main, if not the only,

(6) This expression is believed to have been coined in 1853 by Czar Nicholas I, who reportedly said to British Ambassador Hamilton Seymour: "Nous avons sur le bras [...] un homme très malade; ce serait, je vous le dis franchement, un grand malheur si, un de ces jours, il venait à nous échapper, surtout avant que toutes les dispositions nécessaires fussent prises" (quoted by Mantran 1989, p. 501).

cause of the Ottoman Empire's disgrace[7]. The European Powers justified their interferences in the Ottoman internal affairs on an alleged right–duty to protect RMs from Islamic oppression, while conveniently overlooking that the members of Ottoman RMs were treated comparatively better than those in Europe. France established a religious protectorate over Catholics[8] (except those in Bosnia–Herzegovina, who fell under Austrian jurisdiction and protection). Likewise, Russia claimed to protect Christian Orthodox.

In that context, RMs' autonomy became a key issue in the reply to the question that tormented generations of Ottoman reformers: *Bu Devlet Nasıl Kurtarılabilir*? (How can this State be saved?). It was very clear to them that the European Powers could consolidate their influence only by exaggerating the differences between Muslim rulers and RMs, and by pushing towards the recognition of a greater and greater autonomy, which in the end should result in the independence of each Christian *millet* as a newly founded nation–State. In fact, the solution that the European Powers envisaged to the problem of the alleged Muslim oppression was the quasi–extinction of the Ottoman Empire. This explains why Ottoman reformers promoted a series of reforms to emancipate non–Muslims and to recognize them the same rights as Muslims[9]. In their view (and hope), this was the only effective way to undermine the foundations of the European Powers' self–proclaimed right to protect RMs and, as a consequence, to deprive them of any justification to interfere in the Ottoman internal affairs. At this point,

(7) A remarkable, and disturbing, example is offered by Lord Stratford Canning, British ambassador to Constantinople (1825–1827 and 1842–1858), who maintained that the Ottoman Empire could be saved only through a collective apostasy of Islam and a subsequent Christianization. In his opinion, "The master mischief in this country is dominant religion.... That is the real Leviathan which "floating many a rood", overlays the prostrate energies of Turkey. Though altogether effect as a principle of national strength and reviving power, the spirit of Islamism, thus perverted, lives in the supremacy of the conquering race and in the prejudices engendered by a long tyrannical domination. It may not be too much to say that the progress of the empire towards a firm re–establishment of its prosperity and independence is to be measured by the degree of its emancipation from that source of injustice and weakness" (quoted by Cunningham 1968, p. 263).

(8) Interestingly, French governments did not renounce it even after the approval of the Law of Separation of Churches and State in 1905. See Frazee 1983, pp. 229–230.

(9) A detailed treatment of the Ottoman reforms goes beyond present purposes. For more information, see inter alia Bottoni 2012.

it is interesting to examine the different impact that the two opposite European–led centrifugal and Ottoman–led centripetal forces had on RMs and their notion of autonomy.

As mentioned, the European Powers encouraged the development of distinct "national" identities, which resulted in the first place in the phenomenon of "*millet* proliferation" (especially visible in the 19th century). In fact, external pressures influenced the relationships not only between the *millet* and the Ottoman authorities, but also among and within RMs themselves. This aspect is an important one, because it highlights that the issue of a RM's autonomy arises not only vis–à–vis State authorities, but also within a group of communities linked to the same religion but in fact belonging to different denominations. In the 1820s the Congregation *de Propaganda Fide*'s proselytizing efforts succeeded in converting to Catholicism a number of Gregorian Armenians who — under France's aegis — started demanding the establishment of their own separate community. In fact, Catholic Armenians had been governed by their own religious authority since 1740, but they were still dependent on the Armenian Patriarchate in matters concerning civil affairs. In 1828, they obtained to be represented by a Muslim delegate in civil matters, and by an archbishop appointed by the Holy See in religious ones. Two years later, they were authorized to elect a head exercising both religious and civil powers. In 1844, the Chaldeans and Syriac Catholics, until then governed by the Armenian Patriarchate, were placed under the jurisdiction of the head of the Catholic Armenian community(10). Latin–rite and Melkite Greek Catholics obtained the establishment of their own distinct community respectively in 1840 and 1847(11).

(10) Van den Steen de Jehay 1906, pp. 247–248 and 271; Ubicini 1855, p. X; Ubicini and Pavet de Courteille 1876, pp. 187–188, 212 and 216. It should be noted that the date of the establishment of the Armenian Catholic *millet* varies according to the scholars concerned. The year was 1831 for Bertola (1927, p. 155), Fedalto (1994, p. 201), Siniscalco (2005, p. 269), Noradounghian (1978, pp. 203–204). Other studies have indicated the year 1834 (Hajjar 1962, p. 265) or 1835 (*Blackwell Dictionary of Eastern Christianity* 1999, under *Armenian Christianity*, p. 58). According to yet others, the community was established in 1829 under the religious authority of the archbishop of Constantinople who, in 1846, was also vested with civil powers (Farrugia 2000, p. 70).

(11) Ubicini and Pavet de Courteille 1876, pp. 188 and 218. Sources diverge concerning the date of the establishment of the Melkite Greek Catholic community, too. Some indicate the 1830s (*Blackwell Dictionary of Eastern Christianity* 1999, under *Melkite Catholics*, p. 312),

Other examples highlight that the *millet* proliferation was a product less of internal developments within the community concerned, than of Christian Powers' disruptive action on inter– and intra–communal relationships. In 1834, the Ottoman government adopted a decree to prohibit apostasy: although it was supported by Islamic authorities, this measure had been vehemently invoked by the Ecumenical Patriarch, who aimed to stop Catholic proselytism, and it was favored by the Armenian Patriarch, who was concerned about conversions to Protestantism (Augustinos 1992, pp. 65 and 114–122). The decree was later revoked, and the conversion of about 15,000 Armenians (Mantran, p. 498), as the result of the proselytizing activities carried out by British and American missionaries, justified the establishment of the Protestant *millet* in 1850 (Noradounghian 1978, pp. 392–394). This finally provided the United Kingdom with a legal basis to exercise a religious protectorate, on an equal footing as France, Austria and Russia (Berkes 1982, p. 150). Next was the establishment of the Bulgarian Catholic community in 1861 (the Congregation *de Propaganda Fide* had succeeded in converting a number of Bulgarians, who formally adhered to the Catholic Church on 24 December 1860), and of the Bulgarian Orthodox community in 1870 (where an important role was played by Russia, which encouraged and exploited the Bulgarians' displeasure at Greek dominance within the *Rum Milleti*) (Engelhardt 1882, pp. 179–180 and 184–185; Frazee 1983, pp. 245–246; Ubicini and Pavet de Courteille 1876, pp. 219–220 and 228–230; van den Steen de Jehay 1906, p. 147 and 286). At the end of the 19th century, the number of non–Muslim communities had therefore significantly increased, although there were differences in the degree of autonomy that they were recognized. The *Rum, Ermeni, Yahudi,* Armenian Catholic, Melkite Greek Catholic and Bulgarian Orthodox communities enjoyed larger administrative and jurisdictional autonomy than smaller ones (the Latine–rite Catholics, Bulgarian Catholics and Protestants), which only had the right to be represented by their own delegate in the relationships with the Ottoman government (Ubicini and Pavet de Courteille 1876, pp. 189 and 225).

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whereas for others the year was 1837 (Fedalto 1994, p. 195) or 1848 (Bertola 1927, p. 154; Farrugia 2000, pp. 484–485 and 495; Hajjar 1962, pp. 266–267).

As regards the Ottoman measures to counteract centrifugal tendencies and to promote a common feeling of loyalty to the Empire, a process of emancipation was started, in order to recognize the equality of all subjects (Muslims and non–Muslims alike) before the law. In the reformers' view, the enactment of the principle of equality before the law required the application of the same law to all Ottoman subjects, and the recognition not only of the same rights but also of the same duties. Derogating from the Islamic principle that non–Muslims are forbidden to bear arms, the Ottoman Empire repeatedly tried to extend compulsory military service to non–Muslims, but all such attempts invariably failed. Failure was not determined only by Muslims' refusal to allow non–Muslims to bear arms, but also by non–Muslims' tenacious resistance to the imposed duty to serve in the army of their oppressors. In particular, the Ecumenical Patriarch is reported to have declared that the Christian Orthodox would emigrate *en masse* from the Ottoman Empire if the government insisted in imposing compulsory military service (Engelhardt 1882, pp. 126–127. See also Lamouche 1934, pp. 38–39). The Ottoman reformers also tried to replace the various religious laws applying to the different religious communities with a secular law(12). The *Rum Milleti* was especially active in its opposition to those reforms, which aimed to abrogate temporal prerogatives and privileges while safeguarding the spiritual powers of the RMs' leaders.

> In 1879, a law was promulgated in order to extend state jurisdiction over the various religious minorities' ecclesiastical courts, and to fix a uniform procedure regardless of religious customs. In a token of protest, two Greek Orthodox patriarchs resigned and, in 1890, the

(12) Secularization of law is not a synonym of secularization of society. The latter implies a decline in religion or religiosity, but in law it must be understood as the process of State's assumption of jurisdiction in domains, such as education and administration of justice, which before had lain outside its competence and had been instead a monopoly of the religious institutions. Typical products of the secularization of law are civil marriage (as opposed to religious marriage) and civil courts (as opposed to religious courts). This process does not necessarily result in a decline of the importance of religion in the legal system of the state concerned. One telling example is the secularization of penal law. In Western Europe, the secularization of penal law was not originally characterized by the enactment of non–religious norms. Blasphemy and contempt of religion were originally crimes only in the Church's legal system but, over the course of time, when the official religion was regarded as a state institution and protected as such, they were punished also by legal provisions enacted by the secular lawmaker.

> Patriarchate's Synod went as far as closing all churches and suspending all offices for three months. Facing such opposition, the Ottoman government had to yield (Bottoni 2007, p. 180).

Although there were differences in the RMs' reactions to Ottoman reforms, including a varied degree of resistance, their autonomy–related expectations proved in the end to be adverse to the survival of the Ottoman State.

The difficult relationships between RMs' and the State authorities explain why, in the aftermath of World War I, Turkish nationalists — after declaring the dissolution of the Ottoman Empire on 30 October 1922 — made the abolition of the *millet* system a priority. Under Art. 42 of the Treaty of Lausanne — signed on 24 July 1923 and marking conventionally both the end of the Oriental Question and the birth of "new Turkey" — non–Muslim communities only retained the right to "settle questions concerning their family law or personal status in accordance with their customs". All other jurisdictional and administrative prerogatives were abolished. However, even the surviving ones were preserved only until the Republic of Türkiye's adoption of the Swiss civil code (17 February 1926), which subjected all Turkish nationals — regardless of their religion — to the same legal rules in matters of civil law. As early as October 1925, first Jewish and then Gregorian Armenian authorities notified their decision to renounce their prerogatives under Art. 42 of the Treaty of Lausanne to the Turkish government. The Greek Orthodox community followed their steps in January 1926, after an intense internal debate and continuous demands on the part of Turkish authorities (Toynbee 1925, pp. 71–72). The Armenian Catholic community waited for the entry into force of the code before formally adhering to the decision, which the other RMs had already taken (Morrison 1935, p. 455). On 1 March, the Italian penal code was adopted. These and other reforms have aligned the Republic of Türkiye with the other European countries: unlike other regions in the world, civil and penal law are entirely regulated by territorial legal rules, that is, they equally apply to all citizens and residents (thus, including RM members), being their religion irrelevant. As we shall see, religion–based personal law systems inherited from the Ottoman Empire

continue to exist (for example in Lebanon and Israel), but this is not the preferred solution in countries of Western legal tradition.

3. Contemporary models of autonomy: the European space

All Member States of the Council of Europe share some common principles concerning the legal regulation of the religious factor, in its individual and institutional dimensions, despite some differences in their application. One of them is doctrinal and organizational autonomy, which is recognized to all religious and belief organizations (RBOs) and not specifically to RMs. This principle "basically means absence of state intervention in the doctrine and internal organisation of religious communities" (Ferrari 2010, pp. 480–481), which in the past affected both the majority religion and RMs. Numerous legal provisions of European countries (in constitutions[13], general laws on religious freedom, concordats and bilateral agreements) as well as the case law of the European Court of Human Rights (ECtHR) recognize RBOs' right to freely define their own doctrine and to organize themselves consistently with their own principles.

One of the factors defining the respective boundaries has been the specific idea of autonomy that the RBO concerned had. For example, Italy's two historical minorities — the Waldensians and the Jews — elaborated quite distinct notions. The former benefitted of emancipation and liberalism–oriented separatist trends to organize themselves independently from the State. In the case of Judaism, the related dynamics were more complex, because they were characterized by the interaction of three, and not two, actors: the State, the Jewish community and the individuals. Unlike with the Waldensians, the State played a role also as an arbiter in the pursuit of a balance between the needs of the community

(13) See the constitutions of Albania (Art. 10.4), Croatia (Art. 41.2), Germany (Art. 137.3 WRV), Hungary (Art. VII.3), Ireland (Art. 44.2.5), Italy (Art. 7.1 and Art. 8.2), Lithuania (Art. 43.3 and Art. 43.4), North Macedonia (Art. 19.4), Malta (Art. 2.2), Moldova (Art. 31.4), Montenegro (Art. 14.2), Poland (Art. 25.3), Portugal (Art. 41.4), Romania (Art. 29.3 and Art. 29.5), Serbia (Art. 44.2), Slovakia (Art. 24.3) and Slovenia (Art. 7.2). See also the Austrian Fundamental Law Concerning the General Rights of Citizens, designated as constitutional law (Art. 15) and the Czech Republic's Charter of Fundamental Rights and Freedoms, declared a part of the State's constitutional order (Art. 16.2).

— regarded as an institution necessary to provide every single Jew with the fundamental collective form to fully live one's Jewishness and to observe all religious rules prescribed for associated living — and the individual demands for freedom of Jews — who belonged by birth to the community. Before emancipation, cohesion and internal homogeneity had been the natural reaction to oppression and isolation, but after it — due to measures favoring the integration, if not the assimilation, of Jews as well as to conversions to Catholicism and mixed marriages — communitarian bonds were weakened. Despite differences among the Jewish communities in the territories that came to constitute the Kingdom of Italy, the prevailing trend favored jurisdictionalist policies, which ultimately led to the Royal Decree no. 1731 of 30 October 1930 containing rules on the Jewish Communities and the Union of the Communities themselves. This is known as Falco Law because of the role played by Jewish scholar Mario Falco, who drafted the text to present to the government based on the Jewish leading groups' *desiderata:* institution of the Union of the Italian Jewish Communities and homogenization of the once different internal organizations of the communities that came to be recognized as public entities, to which Jews belonged by birth and paid a tax. This legal arrangement reflected Jewish leaders' notion of administrative and fiscal autonomy (Dazzetti 2024, pp. 1–12), which was quite different from the one of the Waldensians, who — as mentioned — supported instead the separatist principles of State indifference and non–interference, implying inter alia no intervention or participation in the definition of the internal organization of religious entities and associations (Valenzi 2024, p. 298).

With the entry into force of the constitution of the Italian Republic in 1948, the Waldensians' form of autonomy fit well the new democratic order, whereas the Union of the Italian Jewish Communities had to adjust its own. Under Art. 8.2 of the constitution, "denominations other than Catholicism have the right to self–organization according to their own statutes, provided that these do not conflict with Italian law" (for a detailed treatment, see Pasquali Cerioli 2006; Floris 1992). In 1979 a doubt of constitutional legitimacy of the Royal Decree no. 1731/1930 and, in particular of Arts. 4 and 5, was raised. Art. 4 stipulated that all Jews residing in the territory of the Community belonged to it by law, that is, for the mere reason of being a Jew and without a manifestation

of consent being necessary. This belonging implied rights (performance of religious rites and burial in the Jewish cemetery) as well as duties (the payment of the tax due by all members to their Community). Under Art. 5, anybody who converts to another religion or declares the will to be no longer regarded as a Jew under the Decree ceases to be a member of the Community. The declaration must be made to the president of the Community or the Chief Rabbi, in person or through a notarial act. Those who cease to be members of the Community lose the right to make use of the Jewish institutions of any Community, and in particular the right to the performance of religious rites and burial in the Jewish cemetery(14). In the judgment no. 239 of 30 July 1984, the Constitutional Court declared the illegitimacy of Art. 4 of the Royal Decree for its inconsistency with Art. 3 of the constitution (equality of all citizens before the law regardless inter alia of their race and religion), as well as with Arts. 2 and 18 of the constitution (protection of the inviolable right to enter and leave not only associations but also social formations, which include religious denominations). The judges did not give relevance to the fact that Art. 5 of the Royal Decree recognized the right to leave the Community, because this could be exercised only in case of conversion to another religion or a declaration of the will to be no longer regarded as a Jew: in both cases, a public profession of faith was necessary(15). This judgment prompted a change in the relationship between Jews and the Community's institutions, marking the passage from a "belonging by law" to the "right of belonging". The new statute of the Union of the Italian Jewish Communities made membership to the Community (with the rights and duties that this implied) voluntary, but — consistently with Jewish law, history and tradition — continued to rely on *halachah* to define who is a Jew, as well as to identify the composition of each Community through the territorial criterion of residence (Dazzetti 2024, pp. 14–15).

In the European space, some constitutions — like the Italian one — recognize RBOs' right to autonomy within the limits of the law: this is the case of Croatia (Art. 41.2), Germany (Art. 137.3 WRV), Romania (Art. 29.3) and Serbia (Art. 44.2). Others do not specify any limitation clause,

(14) Published in "Official Gazette of the Kingdom of Italy» no. 11 of 15 January 1931.

(15) The text of the judgment is available at https://giurcost.org/decisioni/1984/0239s-84.html.

for example Hungary (Art. VII.3), Ireland (Art. 44.2.5), Lithuania (Art. 43.4), Portugal (Art. 41.4) and Slovenia (Art. 7.2). However, no country conceives this right as non–derogable. In democratic States, RBOs are entitled to a number of rights (those that have emerged historically as intrinsic to the notion of fundamental freedoms), but this never means that autonomy can be furthered to the point of breaching in particular criminal law or other constitutional principles. In fact, in the European space, only one form of autonomy can be found that is not consistent with European standards of human rights protection. Mount Athos is a self—governing part of the Greek State, under the direct jurisdiction of the Ecumenical Patriarchate of Constantinople. It consists of 20 monasteries. All persons admitted to a monastery as monks or novices acquire Greek citizenship *ipso jure*. The whole territory of the peninsula is exempted from expropriation. Its legal status has been preserved for 1,600 years, confirmed by Ottoman rulers, international treaties, the Greek constitutions of 1822 and 1927, and protected by Art. 105 of the current constitution. Mount Athos's legal regime is very peculiar: no women are allowed to enter its territory; men need a special permission to visit it; non–Orthodox Christian persons, Orthodox schismatics or monks who do not belong to any of the twenty monasteries are prohibited from dwelling there; freedom of association is not recognized; only commercial activities that provide monks with the strictly necessary goods are allowed (Cardia 2003, pp. 48–55; Margiotta Broglio 1997, pp. 107–109; Papastathis 2014, pp. 273–292; Papastathis 2010, pp. 361–362). Because Mount Athos's legal regime breached the fundamental freedoms of the European Community, Greece's accession in 1981 required a declaration on this matter.

> Recognizing that the special status granted to Mount Athos, as guaranteed by Article 105 of the Hellenic constitution, is justified exclusively on grounds of a spiritual and religious nature, the Community will ensure that this status is taken into account in the application and subsequent preparation of provisions of Community law, in particular in relation to customs franchise privileges, tax exemptions and the right of establishment[16].

(16) *Documents concerning the accession of the Hellenic Republic to the European Communities. Final act. Joint declaration concerning Mount Athos*, 28 May 1979, in "Official Gazette" L291 of 19 November 1979.

Although this exception was justified on religious grounds, it should be stressed that Mount Athos consists of a small community of monks with no prospects of demographic expansion, and that no similar form of autonomy could be recognized to a larger religious group or to any RM.

The notion of RBOs' doctrinal and organizational autonomy includes some specific rights, whose recognition is the product of historical struggles. Three, in particular, are relevant for present purposes: the rights to designate religious leaders, to obtain legal personality and to own property.

Over the course of history, the State has claimed the right to designate/appoint (or to participate in the designation/appointment of) religious leaders. This is not an issue relegated to the realm of history, as shown by the signing of the Provisional Agreement between the Holy See and the People's Republic of China on the appointment of bishops on 22 September 2018(17). This specific right is recognized both by a number of European constitutions(18) as well as by the ECtHR case law, which has addressed the issue of "minorities within a minority":

> it is possible that tension is created in situations where a religious or any other community becomes divided, [but the Court] considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other(19).

A Member State of the Council of Europe is not required "to take measures to ensure that religious communities remain or are brought under a unified leadership"(20), because pluralism, "which has been

(17) The text of the communiqué is available at https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/09/22/0673/01468.html#IN. See also Spadaro 2018; Valente 2018.

(18) See the constitutions of Belgium (Art. 21.1), Germany (Art. 137.3 WRV), Luxembourg (Art. 22), Slovakia (Art. 24.3) and the Czech Republic's Charter of Fundamental Rights and Freedoms, declared a part of the State's constitutional order (Art. 16.2).

(19) ECtHR, *Serif v. Greece*, application no. 38178/97, 14 December 1999, para. 53.

(20) ECtHR, *Serif v. Greece*, para. 52. In this sense, see also *Hasan and Chaush v. Bulgaria*, application no. 30985/96, 26 October 2000, para. 78 ("State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the

dearly won over the centuries", is "indissociable from a democratic society"[21]. In its case law, the ECtHR has noted that, in some countries, ministers of worship (including those of RMs) may act as public officials or perform acts that can obtain civil effects (such as the celebration of religious weddings or the issuance of a religious court's decision). It has also accepted that

> In such circumstances, it could be argued that it is in the public interest for the State to take special measures to protect from deceit those whose legal relationships can be affected by the acts of religious ministers. However, the Court does not consider it necessary to decide this issue, which does not arise in the applicant's case[22].

The question of the extent to which a State may legitimately intervene in the designation/appointment of RBOs' leaders performing civil functions remains nevertheless topical. An interesting case took place in Alsace–Moselle. The 1905 Law of Separation of Churches and State does not apply to those provinces, which are still regulated according to the Napoleonic system of *cultes reconnus* ("recognized cults"). Under this regime, French authorities have wider powers of intervention than in the rest of France (and in most Europe). Jewish communities are organized into three consistories (Upper Rhine, Lower Rhine and Moselle), which perform administrative functions, such as the organization of worship and the administration of synagogues. The

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community to come together under a single leadership against its own wishes would likewise constitute an interference with freedom of religion"); *Agga v. Greece*, application nos. 50776/99 and 52912/99, 17 October 2002, para. 59 ("the Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership"); *Supreme Holy Council of the Muslim Community v. Bulgaria*, application no. 39023/97, 16 December 2004, para. 96 ("The Court reiterates […] that in democratic societies the State does not need in principle to take measures to ensure that religious communities remain or are brought under a unified leadership. […] State measures favouring a particular leader of a divided religious community or seeking to compel the community, or part of it, to place itself under a single leadership against its will would constitute an infringement of the freedom of religion").

(21) ECtHR, *Serif v. Greece*, para. 49.

(22) ECtHR, *Serif v. Greece*, para. 50. See also *Agga v. Greece*, para. 57.

members of each consistory, democratically elected by the community, are appointed by a decree of the Prime Minister. In 2006, the Jewish Consistory of Lower Rhine excluded the eligibility of Janine Elkouby, as a woman. She applied to the administrative court of Strasbourg. The court heard the case because consistories are regarded as public bodies and, as such, they are subject to the jurisdiction of administrative courts. The judges ordered the registration of Janine Elkouby on the electoral roll for the elections of the consistory, on the grounds of *a)* the principle of equality regardless of sex and the related prohibition to discrimination, and *b)* of the circumstance that the eligibility of a lay member (performing temporal, and not spiritual, functions) had been admitted both by the National Consistory and by the consistories of other departments. In 2007, Janine Elkouby won the first round with 58% of the votes (see Messner 2019, p. 215).

The recognition of the right to obtain legal personality is a very important aspect of RBOs' organizational autonomy. In all times and places (in Western European countries during the liberal age, in Central–Eastern European countries during the communist age, in numerous non–European countries nowadays), RBOs have been deprived of legal personality. Only a few European constitutions expressly recognize this right[23], but all Member States of the Council of Europe have the positive obligation to respect it, consistently with the ECtHR case law. Without legal personality a RBO may not enter into legal relations, conclude contracts, acquire property, hire the necessary ministers of worship and is not entitled to judicial protection of its assets. In some contexts, it cannot operate, its religious leaders cannot take divine service or perform pastoral work for believers in prisons and hospitals, and its members cannot meet to practice their religion[24]. An illegitimate refusal to recognize legal personality amounts to a violation not only of Art. 9 ECHR (right to freedom of thought, conscience and religion) but also of Art. 11 ECHR (right to association):

(23) See the constitutions of Albania (Art. 10.6), Andorra (Art. 11.3), Germany (Art. 137.4 WRV) and Lithuania (Art. 43.2).

(24) ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova,* application no. 45701/99, 13 December 2001, para. 105; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, application no. 40825/98, 31 July 2008, para. 57.

> religious communities traditionally and universally exist in the form of organised structures. […]. Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable(25).

Under European standards of human rights protection, a State has two obligations. The first one is the provision of a framework under which RBOs, which wish so and which comply with the prescribed legal requirements, can obtain legal personality. Without it, they simply cannot exist before the State and within the State's legal system. According to the country concerned, legal personality can take the form of moral entity, religious society, registered religious community, simple association, cultural association, diocesan association, charity, congregation, corporation with public rights, and so on. All of them need nevertheless to comply with the second requirement, which is the provision of a legal status allowing RBOs to structure themselves internally as prescribed by their doctrinal principles. This means, for example, that a hierarchical Church should not be forced to organize itself as a democratic one, and it may not be compelled to apply a majoritarian principle to decision–making or to the election of its religious leaders.

All Member States of the Council of Europe comply with the abovementioned standards, with the exception of the Republic of Türkiye, which does not recognize any form at all of legal personality to RBOs. In principle this applies to Islam, as well, but its needs are largely satisfied by the Presidency of Religious Affairs (Venice Commission 2010,

(25) ECtHR, *Hasan and Chaush v. Bulgaria*, para. 62.

para. 34). This lack constitutes the greatest violation of Turkish non–Muslim communities' rights. In fact, RMs — which, as noted, enjoyed great administrative and jurisdictional autonomy in the Ottoman Empire and were almost like "States within the State" — were reduced to a condition of legal non–existence in the passage from a multiethnic confessionist Empire to a national(ist) secular Republic. The weight of history and the role of nationalism in the Republic of Türkiye's official ideology have led to treat non–Muslims as second–class citizens and to suspect them of having a feeling of belonging different from, if not opposite, to national identity and liable to undermine the State's internal stability and unity. It must be stressed that the international community has its own share of responsibility, because it helped to strengthen the misperception according to which non–Muslims were not genuine Turks. The idea that non–Muslims had a different feeling of national belonging found its first, dramatic application in the 1923 Convention for the Compulsory Population Exchange between Greece and Turkey, which was negotiated under the aegis of the League of Nations. However, as noted by Bernard Lewis

> If we take the terms "Greek" and "Turk" in their Western and not in their Middle Eastern connotations, then the famous exchange of population between Greece and Turkey was not a repatriation of Greeks to Greece and of Turks to Turkey but a deportation of Christian Turks from Turkey to Greece and a deportation of Muslim Greeks from Greece to Turkey (Lewis 1993, pp. 142–143).

It must be noted that the compliance with European standards of human rights protection implies neither the recognition of a special legal status to RMs as such, nor the obligation to grant them the same legal status as the majority religion. It only requires the provision of some basic legal instruments to safeguard RMs against arbitrary *interference* and *abuse by public authorities.* It also goes without saying that the Republic of Türkiye (or any other State) is not obliged to recognize legal personality to every single RM asking for it. The Venice Commission has stressed that there may be restrictions on granting legal personality but, in this matter, States have a limited margin of

appreciation. Restrictions are justified only by convincing and compelling reasons, consistently with the limitations prescribed by Arts. 9 and 11 ECHR. This is the case of activities that are harmful to public safety or to the population, or infringe upon the rights and freedoms of the adherents of the RM concerned, or do not respect the principles of a democratic state. However, the Republic of Türkiye denies legal personality to *all* RMs, which — in any case — are small, peaceful and do not threaten public order (Venice Commission 2010, paras. 62–65).

Generally speaking, violations to the right to obtain legal personality may be found when State authorities think that a RM poses a threat to the notion of national identity rather than an actual challenge to laws in force. For example, the community of Jehovah's Witnesses was denied legal personality for decades by Austrian authorities, on the grounds inter alia of the RM's refusal to military service or any form of alternative service for conscientious objectors, to participation in local community life and elections and to certain types of medical treatment such as blood transfusions(26).

The recognition of legal personality has been historically linked to the right to own property. Over the course of history, RBOs have been deprived of legal personality, so that the State could confiscate and become the legal owner of their properties. Very few European constitutions expressly recognize this right(27) but — consistently with the ECtHR case law on this matter(28) — all Member States of the Council of Europe are bound to respect it.

(26) ECtHR, *Religionsgemeinschaft der Zeugen Jehovas and Others v Austria*, para. 26.

(27) See the constitutions of Albania (Art. 10.6), Germany (Art. 138.2 WRV), Ireland (Art. 44.2.5 and Art. 44.2.6), Italy (Art. 20), Poland (Art. 53.2), Romania (Art. 44.4) and the Austrian Fundamental Law Concerning the General Rights of Citizens, designated as constitutional law (Art. 15).

(28) The ECtHR has examined a number of cases on the issue of seized property restitution or compensation, some of which had the Republic of Türkiye as respondent State. See inter alia *Fener Rum Erkek Lisesi Vakfı v. Turkey*, application no. 34478/97, 9 January 2007; *Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey*, application no. 14340/05, 8 July 2008; *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey*, application no. 36165/02, 16 December 2008; *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarligi Vakfı Yönetim Kurulu v. Turkey*, application no. 1480/03, 16 December 2008; *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı v. Turkey*, application nos. 37639/03, 37655/03, 26736/04 and 42670/04, 3 March 2009; *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı v. Turkey (no. 2)*, application nos. 37646/03, 37665/03, 37992/03, 37993/03, 37996/03, 37998/03, 37999/03 and 38000/03, 6 October 2009.

The contemporary European model of autonomy, described above, applies to all RBOs and not only to RMs, as already noted. In fact, autonomy — as understood in the European space — is related to the respect for RM rights, and not to their promotion. Respect ensures that the rights recognized by State laws or international norms are not violated. In particular, it entails the prohibition of individuals' discrimination on the ground of their belonging to a RM, and it prevents RM members from being deprived of rights that are recognized to the members of the majority religion or to the majority of the population. Promotion requires something more, that is, the putting into place of the conditions that foster the development of RMs' identity as much as their participation in the country's social, cultural and political life. In other words, respect for RM rights consists in the recognition of the "standard package of rights" that everybody is entitled to in contemporary democracies (such as the rights to designate religious leaders, to obtain legal personality and to own property), whereas promotion means additional faculties, which are specifically recognized to RMs and/or their members(29).

Looking at the mechanisms to promote RM rights in the European space, Silvio Ferrari has distinguished between individual– and community–oriented strategies. While the two types of strategies can coexist and combine in different ways within the same national territory, it is often possible to identify the main trend prevailing in a country or in a region (Ferrari 2016, p. 10). Member States of the Council of Europe favor individual–oriented strategies, which

> give the precedence to the rights and freedoms of individuals in a framework dominated by the notions of equality and non–discrimination. […] States […] try to accommodate some specific religious rules within the State legal system, but are far from recognizing an autonomous or semi–autonomous religious legal order. […]. The State legal system does not give them the power to regulate entire areas of human affairs (Ferrari 2016, pp. 10 and 15–16).

Recognition of religious rules takes place through different legal techniques. Some are specific to State–religions relations, such as the enactment of laws on freedom of religion or religious associations, and the

(29) See https://atlasminorityrights.eu/about/Methodology.php.

signing of bilateral agreements with the representatives of RMs (Ferrari 2016, p. 17). Spain has employed both techniques[30]. In Italy, according to Art. 8(3) of the constitution, the relationships between religious denominations other than the Catholic Church and the State "are regulated by law on the basis of agreements (*intese*) with the respective representatives". This seems a suitable instrument to promote RMs' special rights and to address their specific needs. For example, Law no. 101 of 8 March 1989, which approves the *intesa* between the Italian State and the Union of Italian Jewish Communities, stipulates special rules for the observance of the Shabbat (Art. 4), recognizes Jewish holidays (Art. 5), as well as Jews' right to swear an oath with their head covered, if they wish so, and to slaughter animals in accordance with their own rules and tradition (Art. 6)[31].

However, the Italian system of *intese* (up to now signed with 13 RMs[32]) has never developed into a mechanism to promote RM rights. Bilateral agreements, far from regulating the special needs of the RMs concerned, have merely extended the prerogatives once reserved only to the Catholic Church to a small number of RMs. *Intese* have been criticized for resulting in "photocopy–agreements"[33], which have invariably reproduced almost the same text. In doing so, they have included general rights of religious freedom, which should have been recognized to all religious denominations existing and operating in Italy by virtue of

(30) Organic Law of Religious Freedom no. 7/1980 of 5 July 1980, in "Boletín Eclesiástico del Estado" no. 117 of 24 July 1980. Under Art. 7.1 of this law, "The State, taking account of the religious beliefs existing in Spanish society, shall establish, as appropriate, Co–operation Agreements or Conventions with the Churches, Faiths or Religious Communities enrolled in the Registry where warranted by their notorious influence in Spanish society, due to their domain or number of followers. Such Agreements shall, in any case, be subject to approval by an Act of Parliament". For a general treatment, see Martínez–Torrón 2018.

(31) Published in "Official Gazette of the Italian Republic" no. 69 of 23 March 1989.

(32) See https://presidenza.governo.it/USRI/confessioni/intese_indice.html#2. They are: – nine Christian denominations (some of which are unions, federations or associations). In chronological order: 1) the Waldensian and Methodist Churches, 2) the Pentecostal Churches, 3) the Seventh–day Adventist Churches, 4) the Baptist Churches, 5) the Evangelical–Lutheran Church, 6) the Orthodox Churches under the jurisdiction of the Ecumenical Patriarch of Constantinople; 7) the Church of Jesus Christ of Latter–day Saints (Mormons); 8) the Apostolic Church, 9) the Church of England; – the Union of Italian Jewish Communities; – two unions representing respectively Hindu and Buddhist associations, schools and centers and, last but not least, a separate Buddhist entity – Soka Gakkai Buddhist Institute.

(33) See inter alia Albisetti 2012, p. 6; Alicino 2013.

a law on religious freedom[34]. Furthermore, by offering a set of opportunities in a sort of pre–established package, bilateral agreements have proved unfit to suit all RMs and to address their specific needs. Suffice it to mention the public financing system, through which the Catholic Church and the RMs having an *intesa* can be allocated (along with the State) a share of the 0,08% of the tax on natural persons' income (see inter alia Durisotto 2009). Access to it was offered to all RMs negotiating a bilateral agreement, including those whose ecclesiological doctrine rejects the very same notion of public funding of religious denominations. The paradigmatic example is the Waldensian Church, which maintains that it must live on the faithful's offerings and be financially independent from the State in order not to be conditioned by it; public money must serve the State's institutional aims, which do not include direct and indirect financing of religious denominations (Long and Di Porto 1998, p. 44). This is the reason why the stipulation on the 0,08% funding system was not included in the agreement signed with *Tavola Valdese* (representing the Waldensian and Methodist Churches) and entered into force in 1984. This position later changed, and in 1993 an amendment to the bilateral agreement was signed, in order to provide *Tavola Valdese* with access to the 0,08% funding system (Long and Di Porto 1998, pp. 52–57). However, that money would not be used to support the clergy (which is one of the uses made by the Catholic Church and other RMs), but it would benefit society at large through social, care, humanitarian and cultural interventions in Italy and abroad[35]. This is the same choice made by the Pentecostal Churches, the Seventh–day Adventist Churches, the Baptist Churches and the Union of Italian Jewish Communities, which do not use their own shares to financially support their own clergy and religious leaders[36].

(34) However, the Italian legal system lacks such a law. This is called the "mother" of all lacks by Ferrari 2013, p. 96. No attempt has so far succeeded in abrogating the obsolete and severely outdated law and decree on admitted cults, and in substituting it with a new regulation suited to face the new challenges posed by the evolution of time and society. See Tozzi, Macri and Parisi 2010; De Gregorio 2013.

(35) Art. 4 of Law no. 409 of 5 October 1993, integrating the agreement between the Government of the Italian Republic and *Tavola Valdese* in application of Art. 8(3) of the constitution, in "Official Gazette of the Italian Republic" no. 239 of 11 October 1993. See also www.ottopermillevaldese.org.

(36) See https://presidenza.governo.it/USRI/confessioni/ottoxmille.html.

Other techniques of individual–oriented strategies are not specific to State–religions relations but are of general use. This is the case of the tools of international private law. States may give effect to religious rules, which are valid in the legal system of another State, concerning for example a religious marriage validly celebrated abroad, or a divorce or nullity declared abroad, within the limits of public order. Another technique is the exemption from laws of general application (Ferrari 2016, p. 17), such as the derogation from the compulsory requirement of previous stunning in the case of religious slaughter(37) or of wearing a safety helmet while driving a motorcycle or at the workplace(38). The granting of exemptions is not problem–free. Because they concern RMs' practices, which as such are not socially shared, they tend to be highly debated. The issue is not public discussion, which is always beneficial in a democratic society, but the emergence of disturbing legal arguments based on a "West versus non–West" approach. For example, in a case concerning the denial of an exemption for a *kirpan*–wearing Sikh, the Italian Court of Cassation made the controversial statement that "there is an essential obligation for the immigrant to conform his/her values to those of the Western world, into which he/she freely chooses to fit"(39). It goes without saying that "immigrant" is not necessarily a person unfamiliar with Western values. Furthermore, it has been ignored that the Western world includes the United Kingdom, where an exemption from the general prohibition to carry the *kirpan* in the public space has been granted to Sikhs(40), as well as the United States of America, where the right to keep and bear arms is even protected by the Bill of Rights(41). Last

(37) This concerns in particular Jewish and Muslim communities. See Recital 18 and Art. 4(4) of the Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, in "Official Journal of the European Union" L303 of 18 November 2009.

(38) This concerns in particular turban–wearing Sikhs. In the United Kingdom, an exemption was granted by the Motor–Cycles Crash Helmets (Religious Exemption Act) 1976, Sections 11 and 12 of the Employment Act 1989 (limited to construction sites) and by Section 6 of the Deregulation Act 2015 (extending it to any workplace, including any private dwelling, vehicle, aircraft, installation or moveable structure).

(39) Judgment no. 24084 of 15 May 2017. Text available at https://www.astrid-online.it/static/upload/sent/sentenza-15-maggio-2017-cassazione-integrale.pdf.

(40) Section 47 of the Offensive Weapons Act 2019.

(41) The Second Amendment to the United States constitution reads: "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear

and definitely not least, everybody — citizens and foreigners alike — are bound to respect the law, and not "Western values". The reference to the "values of the Western world" is "strongly evocative, but indeed very vague and undefined". At the same time, this expression is very precise in excluding "a typically "Western" value […]: cultural and religious pluralism" (Negri 2017, p. 247). Similar "us–versus–them" arguments were raised in the context of the controversy over male ritual circumcision that inflamed German public and political debate in 2012 (Günzel 2013, p. 207; see also Angelucci 2018). As highlighted by some scholars, the very same conceptualization of a religion–based exemption right can have detrimental effects on RMs.

> It is [a] misunderstanding that the right to religious freedom creates a privilege for individuals or groups of individuals that relieves them of the obligation to obey generally applicable laws. […]. Whosoever denounces "religious privileges" must ask himself what kind of "privileges" he deems legitimate and what role he attributes to fundamental rights if not as a safeguard against governmentally imposed homogeneity (Germann and Wackernagel 2015, pp. 462–464).

This is not to say that promotion of RM rights should be unlimited, but protection may not be limited to traditional practices. If rights were recognized only to individuals or groups behaving in a familiar way or according to a majoritarian consensus, "society would become a homogenous group as an imagined extension of the "self". Founding state, politics, and law on such a concept of homogeneity has an infamous record" (Germann and Wackernagel 2015, p. 468).

Moving on to community–oriented strategies, they

> favor group rights and collective religious freedom, giving a lesser position to individual rights and equal treatment of citizens. […]. Individual rights may be limited as a consequence of group membership, and the emphasis is placed more on the respect of religious diversity than on the protection of citizens' equality, irrespective of their religious convictions (Ferrari 2016, p. 10).

arms, shall not be infringed" (https://www.senate.gov/civics/constitution_item/constitution.htm).

One example is the recognition of minority rights[42], which is the least common strategy in the European space, because it raises the issue of the recognition of heteronomous legal rules, that is, rules whose origin is attributed to an external authority, regarded as superior to human beings, and posing a challenge to the State's monopoly of law (Ferrari 2016, pp. 8–9). Nevertheless, it is not incompatible with European standards of human rights protection, as highlighted by the case of the Greek region of Western Thrace.

Under Art. 45 of the abovementioned Treaty of Lausanne, "The rights conferred by the provisions of the present Section on the non–Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory". They include measures permitting the settlement of questions concerning its family law or personal status, in accordance with its customs (Art. 42.1). This arrangement is in force only in Western Thrace, which is divided into three districts (Komotini, Xanthi and Didymoteiho). Each of them elects a *mufti*, who is formally appointed by the State. The *mufti* is assigned multiple tasks: he represents the respective Muslim community before civil authorities; he interprets Islamic law and is responsible for the administration of mosques and religious properties, the appointment of ministers of worship and the supervision of Islamic schools and teaching of religion; he performs public functions — such as judicial ones — and, because of this, he is regarded as a public official, and his salary is paid by the State. As a judge, he decides certain disputes of family and inheritance law. *Mufti* adjudication has been claimed to be of central importance for the preservation of Muslim minority identity in Western Thrace, but it has also raised serious concerns about the protection of vulnerable subjects, such as women. Problems have been (and still are) not only substantive (in particular, gender inequality in family and succession law), but also procedural: the hearings before the *mufti* do not require representation by lawyers; the Islamic law that he applies is not codified; he is not required to issue a written decision with justification (Cavalcanti 2023, pp. 311–370; Tsavousoglou 2015, pp. 244–258).

(42) This is linked to the broader issue of legal pluralism. See Romano 1945; Toniatti 2024; Tamanaha 2008.

Until recently, although in principle the parties could choose between the civil court and the *mufti* court, very often the former referred cases filed with it back to the *mufti*, regarded as the exclusively competent jurisdictional organ. In 2014, Ms. Molla Sali applied to the ECtHR alleging a violation of Art. 6.1 ECHR (right to a fair hearing) taken alone and in conjunction with Art. 14 ECHR (prohibition of discrimination) and Art. 1 of Protocol No. 1 (protection of property), complaining that Greek authorities had applied Islamic law rather than the Greek civil code to her husband's will, thus depriving her of three–quarters of her inheritance. The ECtHR decided not to examine the case in the perspective of the right to a fair trial — and this approach has been rightfully criticized by scholars who have noted that, in this way, the judges have avoided entering into the most problematic aspect of the minority right system in force in Western Thrace (Kalampakou 2019, pp. 6–7; Miccichè 2020, p. 20). In the end, they have found unanimously a violation of Art. 14 ECHR read in conjunction with Art. 1 P–1: the State may not

> take on the role of guarantor of the minority identity of a specific population group to the detriment of the right of that group's members to choose not to belong to it or not to follow its practices and rules.

Refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self–identification(43).

This right

> must be respected both by the other members of the minority and by the State itself. That is supported by Article 3 § 1 of the Council of Europe Framework Convention for the Protection of National Minorities which provides as follows: "no disadvantage shall result from this choice or from the exercise of the rights which are connected

(43) ECtHR, *Molla Sali v. Greece*, application no. 20452/14, 19 December 2018, paras. 156–157. See also Miccichè 2020; Marotta 2021; Berger 2020; Cranmer 2018; Fokas 2021; McGoldrick 2019; Koumoutzis and Papastylianos 2019; Leigh 2019; Tsavousoglou 2019.

> to that choice". The right to free self–identification is not a right specific to the Framework Convention. It is the "cornerstone" of international law on the protection of minorities in general. This applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of protection of minorities(44).

Despite the different legal contexts, it may be argued that the argument grounding the ECtHR's judgment was the same as the conclusion reached by the Italian Constitutional Court in 1984 concerning Art. 4 of the Royal Decree no. 1731/1930. In Greece, on 15 January 2018 — before the ECtHR's decision but after the filing of the application — a law was enacted in order to grant the right to each party to seek justice before domestic courts, and in accordance with Greek substantive and procedural law. The jurisdiction of the *mufti* becomes the exception: he may exercise jurisdiction only if both parties file an application for this cause. Once the case is submitted to the *mufti*, the jurisdiction of national courts is irrevocably excluded (Koumoutzis 2021, pp. 170–184). Rules regulating a more structured procedure before the *mufti* have yet to be drafted.

4. The southern shore of the Mediterranean Sea and RMs' autonomy

This section does not aim to treat in a detailed way RMs' autonomy in the countries of the southern shore of the Mediterranean Sea, but to highlight some specific aspects of Algeria, Egypt and Lebanon, compared with the contemporary models of autonomy discussed above. The findings presented here are largely drawn from the final reports of two one–year projects, linked to the *Atlas of Religious or Belief Minority Rights*(45). The ReMinEm project on RMs in the Euro–mediterranean

(44) ECtHR, *Molla Sali v. Greece*, para. 157.

(45) Both projects have been realized with the support of the Unit for Analysis, Policy Planning, Statistics and Historical Documentation – Directorate General for Public and Cultural Diplomacy of the Italian Ministry of Foreign Affairs and International Cooperation, in accordance with Article 23bis of the Decree of the President of the Italian Republic 18/1967. The views expressed in the final reports are solely those of the authors and do not necessarily reflect the views of the Ministry of Foreign Affairs and International Cooperation.

space has studied inter alia two countries with religion–based personal laws: Egypt as a Muslim–majority country, and Lebanon whose legal system was designed at a time when Christians and Muslims coexisted on a substantially equal footing (ReMinEm Project 2022, pp. 4 and 7)[46]. The MiReDiaDe project on RMs and dialogue for democracy has continued the ReMinEm research, by extending the analysis inter alia to Algeria, a Muslim–majority country, which — unlike Egypt — has adopted a territorial law system (MiReDiaDe Project 2023, p. 4). As a part of both projects, representatives of the RMs concerned were sent a questionnaire or interviewed, so that they could offer an insight into the extent to which their members perceive of being discriminated against.

In Egypt and Lebanon, recognized RMs enjoy a large autonomy in such fields as marriage and family law, and education. Their members can marry according to their respective religious rites and rules. These marriages are regarded as valid by the State, which allows to a certain extent the application of religious law also to the dissolution of marriages and to the regulation of inheritance and dowry. Recognized RMs can also open and manage faith–based private schools[47]. Religious rules do not face the same stigma as in the European space, and this model of autonomy positively promotes the development of recognized RMs' identity. There are nevertheless some faults. At the institutional level, there exists a sharp distinction between recognized RMs (e.g., Copts in Egypt, and Alawites and Syriac Christians in Lebanon) and non–recognized RMs (e.g. Baha'is and Shia Muslims in Egypt, Jehovah's Witnesses in Lebanon, and Ahmadis in both countries). Recognition does not only imply opportunities — such as the possibility to regulate matters related to personal status according to one's own religious rules — but it affects the enjoyment of the most basic rights of religious freedom. Non–recognized RMs have no legal personality and their rights to have places of worship and faith–based private schools, to

(46) No official census of the country's population has been conducted since 1932. See US Department of State 2023.

(47) These are schools "in which, irrespective of whether it may receive degrees of support (including financial support) from public sources, matters of organization, financing and management are primarily the responsibility of the school itself, or of a non–public sponsoring body" (ODIHR 2007, p. 20, fn. 4).

celebrate rites and to manifest their religious identity are severely limited. Furthermore, unlike the Member States of the Council of Europe, Egypt and Lebanon do not recognize civil forms of celebration and dissolution of marriage, regulation of inheritance, and so on. This leads to another serious fault, concerning the individual level: members of non–recognized RMs may not resort to civil marriage and dissolution and, therefore, are subject to the rules of a different religion. More generally, Egypt and Lebanon do not recognize the right to free self–identification — which, in the European space, has been devised as the balancing principle between a RM's right to autonomy and their members' right to self–determination. This means that Egypt and Lebanon, unlike Western Thrace, do not provide RMs' members with an opt–out mechanism. It is only possible to pass from one religion–based personal law to another, and even this passage is not always possible: conversion may be hampered by public authorities or — in the case of conversion to the religion of a non–recognized RM or adoption of an atheistic or agnosticistic worldview — one remains subject to the same legal regulation. It should be noted that this is a problem for members of both recognized and non–recognized RMs: the former have to accept the rules and perform the rites of the religion they were born into, even when they have ceased professing it; the latter are subject to the law of a religion they have never professed. Last but not least, the lack of a civil regulation of marriage and family law impairs the right to marry somebody belonging to another religion (ReMinEm Project 2022, pp. 26–28): as known, numerous religious traditions prohibit or discourage religiously mixed marriages (see Bottoni and Ferrari 2019, part IV). At this regard, the interviewed representatives of the RMs in Egypt and Lebanon

> underlined the importance of having a state–recognized, uniform personal status law, applied to all and derived from their religious teachings, values and beliefs, to regulate matters related to marriage, divorce, custody, and inheritance equally. This does not constitute an official statement from religious institutions […]; however, it does inform the series of conclusions and recommendations presented [in the report] (ReMinEm Project 2022, p. 12).

In Algeria, as mentioned, there exist no religion–based systems of personal law. Furthermore, only civil marriage is valid. Religious marriages can be celebrated (after the performance of the civil wedding), but they cannot obtain civil effects (MiReDiaDe Project 2023, p. 13). Under international standards of human rights protection, there is no positive obligation to provide RMs with the possibility to perform a religious marriage according to their own rites, having the same legal validity of a civil marriage, if certain conditions established by state law are respected. However, this is an important form of promotion of RM rights[48]. In the European space, only some States (such as Croatia, Denmark, Finland, Italy, Norway, the Republic of Cyprus, Poland, Portugal, Spain, Sweden and the UK) recognize civil effects to religious marriage, whereas others (e.g. Austria, Belgium, Estonia, France, Germany, Hungary, the Netherlands, Romania, Switzerland and Türkiye) only recognize civil marriage. In the latter group of countries, the celebration of a religious wedding is not prohibited, but this may not be recognized civil effects. Besides, some States stipulate that religious wedding (if celebrated) must follow civil marriage (see European Consortium for Church and State Research, 1993). Although in principle Algeria's position is the same as those European States where only civil marriage is valid, there is one important difference that affects RM rights. In Algeria, the regulation of marriage, family and inheritance is deeply influenced by the Islamic legal tradition. As a consequence, members of RMs find themselves subject to the rules of a religion other

(48) According to the UN Human Rights Committee (1990, para. 4), "the right to freedom of thought, conscience and religion implies that the legislation of each State should provide for the possibility of both religious and civil marriages. In the Committee's view, however, for a State to require that a marriage, which is celebrated in accordance with religious rites, be conducted, affirmed or registered also under civil law is not incompatible with the [International] Covenant [on Civil and Political Rights]". At the European level, Art. 9(1) of the European Convention on Human Rights "does not go so far as to require Contracting States to grant religious marriages equal status and equal legal consequences to civil marriage" (Registry of the European Court of Human Rights 2022c, para. 180). "When it comes to the procedural limitations, States can require marriage to be contracted as a civil marriage, but they are free to recognize religious marriage according to their national laws. […]. An obligation to contract a marriage in accordance with forms prescribed by law rather than a particular religious ritual is not a refusal of the right to marry […]. At the same time, States remain free to exercise discretion to recognise a religious marriage" (Registry of the European Court of Human Rights 2022a, paras. 6–8).

than their own. For example, men belonging to any RM as well as women belonging to a religion other than Christianity or Judaism may not have a Muslim spouse; non–Muslims may not inherit from a deceased Muslim (MiReDiaDe Project 2023, pp. 14–16). As stressed by the RMs' interviewed representatives in Algeria,

> Both Catholics and Evangelical Protestants face problems concerning the recognition of the dissolution of their marriage by the state. Moreover, the Algerian inheritance law clashes with some principles of their Churches. In the context of divorce, Christians can hardly obtain custody of their children. In addition, they cannot adopt children, as Algerian law does not permit adoption (MiReDiaDe Project 2023, p. 14).

It may be argued that even in the European States the majority religion (i.e., Christianity) has had a paramount role in the legal definition of marriage and family, and that this influence has had and still has an impact on the rights of those RMs whose specific notions of marriage and family are different from the majority's ones. In fact, when revolutionary France introduced civil marriage on 20 September 1792, it secularized the institution of marriage as regulated by Canon law and it confirmed the procedural requirements of the Catholic Church, which had been established in the Council of Trent, such as the publication of banns and the presence of witnesses (Dittgen 1997, p. 312). But despite its roots, civil marriage has strengthened the principle of equality before the law as well as the right to religious freedom. By making the spouses' religion or belief irrelevant, it has enabled everybody to marry without having to accept the rites of a religion, which they do not profess (Cardia 2003, p. 191). It has also made it possible for two persons of different religions or beliefs to enter into a legal union. Furthermore, the institution of civil marriage has acquired over time a number of features diverging from or even breaching Canon law. Suffice it to mention divorce and gender–neutral marriage.

Education is less sensitive to the application of religious rules than marriage and family, but in this field, too, there exist notable differences between Algeria and the European States. In the former, RMs may not open or manage faith–based private schools (MiReDiaDe Project

2023, p. 6), which the RMs' interviewed representatives have highlighted as a significant problem.

> Although representatives of Catholic and Evangelical Churches are keen to incorporate their religious teachings into school curricula, their desire cannot be fulfilled. In Algeria, from elementary to high schools, only Islamic doctrines are taught. Since 1990, Islamic education has become an obligatory subject for obtaining a diploma. Christians cannot open their own private schools where they would be able to teach their tenets. In public schools, Christian students and teachers always face discrimination due to their religious beliefs and symbols. These students do not have the right to opt out of Islamic teachings. Due to these reasons, Catholics and Evangelical protestants expressed dissatisfaction regarding the ways in which religions are taught at the Algerian schools (MiReDiaDe Project 2023, p. 23).

By contrast, in the European space, the right to open faith–based private schools is widely recognized not only to national minorities that have the right to promote their own identity(49), but also to parents who have the right to educate their children according to their own religion or belief(50), to religious denominations that have the right to pursue their mission(51) and, more generally, to all natural and legal per-

(49) See for example Art. 79.1 of the Serbian constitution: "Members of national minorities shall have a right to […] found private educational institutions […], in accordance with the law".

(50) Under Art. 2 P–1 ECHR "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions". This right is guaranteed by a number of European constitutions, too, and most notably by the Irish one: "1. The state acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children. 2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the state. 3.1. The state shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the state, or to any particular type of school designated by the state. […]. 4. The state shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation" (Art. 42).

(51) See for example Art. 44.2 of the Serbian constitution: "Churches and religious communities shall be equal and free […] to establish and manage religious schools […], in accordance with the law".

sons[52]. However, according to the ECtHR case law, States may not be required to subsidize private schools (Registry of the European Court of Human Rights 2022b, para. 3). As regards the teaching of religion in public schools, the European States enjoy a wide margin of appreciation: they may include both denominational and non–denominational teachings of religion[53] in the curriculum of public schools (or none of them). The only limit that they may not exceed is the prohibition of indoctrination. In fact, they have the positive obligation to provide an adequate scheme of exemption from the attendance of the denominational teaching of religion (that is, the majority religion) in public schools[54], which in particular does not force parents to disclose their religion or belief in order to have their children exempted[55]. Lack of promotion of RM rights is more likely to occur as regards the teaching of minority religions in public schools. This possibility is offered in a very selective way, although some European countries are more inclusive than others[56].

5. Concluding remarks

With the exception of Algeria, all examined models promoted (in the past) and promote (today) RM rights to some extent. Those prevailing in the European space do so in the context of a territorial law system,

(52) See for example Art. 27.6 of the Spanish constitution: "The right of individuals and legal entities to set up educational centers is recognized. provided they respect constitutional principles".

(53) Denominational teaching is the teaching *of* religions, that is, "the teaching of a particular religion, which is taught by members of that religious tradition and/or under the supervision of institutions representing it". Non–denominational teaching of religion is the teaching *about* religions, that is, "information and knowledge about different religions and beliefs and about the role they play in the historical, cultural and social development of a nation. This teaching is usually provided under the supervision of state authorities and is subject to the rules that apply to other teachings provided in public schools" (ReMinEm Project 2022, p. 16. See also MiReDiaDe Project 2023, p. 17).

(54) See ECtHR, *Folgero and Others v. Norway*, application no. 15472/02, 29 June 2007; *Hasan and Eylem Zengin v. Turkey*, application no. 1448/04, 9 October 2007; *Mansur Yalçın and Others v. Turkey*, application no. 21163/11, 16 September 2014.

(55) See ECtHR, *Papageorgiou and Others v. Greece*, application no. 4762/18 & 6140/18, 31 October 2019.

(56) See https://atlasminorityrights.eu/areas/Rbms-rights-in-public-schools.php.

thus excluding the right to apply one's own religious rules in specific fields of law (typically, family law) and to have the related controversies judged by one's own religious courts. This is not to say that religion–based personal law systems are incompatible with European standards of human rights protection. However, they are the exception, and not the rule, in the Western legal tradition. In fact, only one of such systems can be found in the European space. The ECtHR has found the minority right system in force in Western Thrace consistent with the ECHR insofar as it recognizes the right of the individuals belonging to the Muslim minority to free self–identification. This position mirrors that of the UN Special Rapporteur on minority issues, who included the individual's freedom of choice ("A person can freely belong […]") in the notion of minority. By contrast, the Ottoman experience as well as contemporary Egypt and Lebanon are characterized by the promotion of RM rights within a system of religion–based personal laws, without recognizing the right to free self–identification. This lack is less relevant in the context of the Ottoman Empire, but today it is not consistent with international standards of human rights protection.

One flaw characterizing all examined models of promotion of RM rights is the selective character of the measures adopted. However, with the partial exception of Türkiye, the Member States of the Council of Europe understand autonomy mostly in terms of respect of some basic rights (such as those to designate religious leaders, to obtain legal personality and to own property), which must be recognized to all RMs (indeed, to all RBOs), while selectively conferring a number of privileges, advantages and benefits (for example, public funding). In Lebanon and Egypt there is a greater divide within RMs: those that are recognized enjoy a greater level of promotion than some majority religions in the European space, but non–recognized ones are not even entitled to the basic rights that the ECtHR has identified as the core of the notion of autonomy.

International standards of human rights protection are not the only relevant element to determine whether the examined models of autonomy actually promote RMs rights. RMs' preferences need to be taken into account, too. In order to do so, one must first acknowledge that RMs may have different needs. In fact, they do not only have a different

doctrinal background, which influences the way of conceiving of the relationship with the State and the public authorities (suffice it to think of the Italian example of the Waldensian Church and the Union of the Italian Jewish Communities). RMs also go through different historical experiences, which are very much culture–specific and dependent on a given national context. Political, cultural, social, economic and — not last — legal developments are exogenous factors impacting on the type of autonomy RMs claim. Whereas the diversity among RMs explains why they desire different forms of autonomy, it may not be overlooked that the same RM may changes its preferences over time, as highlighted by the case of *Tavola Valdese*'s position concerning the access to the 0,08% funding system. This leads to a final remark. Interestingly, there are some forms of promotion that do not meet some RMs' needs. As mentioned, the interviewed representatives of the RMs (even the recognized ones) in Egypt and Lebanon call for a uniform personal status law.

The forms of autonomy better promoting RMs rights seem to be those devised in those States, which are aware of the necessity to have a dynamic approach, and which are prepared to adjust and revise instruments of promotion over time when historical–legal conditions change or when RMs develop different preferences. Protection can be practical and effective only when some approaches are avoided, in particular the conferral of privileges in too a selective way, the provision of a homogenizing package of benefits and advantages that does not take the differences among RMs into account, and the denial of the basic rights of autonomy, that is, the possibility for the individual to enter into a civil marriage and to be exempted from the compulsory teaching of religion, and for the community to obtain legal personality.

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