

Commentary

Commentary on protecting linguistic and religious minorities:- Looking for synergies among legal instruments

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OVERVIEW

Within European history, language and religion have traditionally been the two main cultural markers of collective identities. They have also been the two most prominent articulating factors at play in the majority-minority game. Although other elements like ethnicity, indigenous culture or nationality have also played an important role, they have normally been related to some extent to religious or linguistic differences at the same time.

Nevertheless, when it comes to a legal and political analysis, language and religion work very differently as factors for determining groups or minorities. Their dynamics and evolution show important differences. On the one hand, this is a result of their different connection with the polity or public sphere. On the other hand, it is also a consequence of the different role that it is played by language and religion as identity markers. While religion and differences related to religious affiliation or traditions entail a more substantive element of differentiation, potentially concerning fundamental issues, values and beliefs, languages and other identity elements related to them (like alphabets, dialects or glossonyms...), point out to more instrumental aspects. If religious beliefs include the substance, languages do not normally include a fundamental ideological difference, but the way or instrument through which these differences can be expressed and shared.

The forms of protection of linguistic and religious diversity and minorities have developed in parallel and basically separated ways so far. Instruments and mechanisms seeking to protect linguistic and religious minorities are different and I try to analyse in this paper whether and how the usual forms of protection of linguistic diversity and linguistic minorities can be useful for the management of religious-based diversity or minorities. As a general idea, it can be stated that linguistic

diversity management draws more inspiration from religious diversity management techniques than the reverse. However, certain number of legal or political tools so far applied to the linguistic diversity protection could also have a role to play in the protection of religious diversity and minorities. Determining the list of possible mechanisms in this respect fills a gap in the doctrine about protection of minorities and opens the door to further analysis of synergies and future evolution of a more inclusive legal management of cultural diversity.

Transferring techniques or instruments for the protection of linguistic to religious diversity and vice versa is, however, a challenging exercise. In the applicability of linguistic minority protection techniques to the religious domain, the application of official status and the principle of territoriality have to be ruled out. On the contrary, other possibilities are open to further elaboration. Thus, the possibility to develop specific rights in the religious realm that could be declared and recognized nationally or internationally, including the adoption of positive measures to implement or guarantee them. Also, the development of generic rights, understanding religion as a part of the essential content of a right when it is enjoyed or exercised by a person whose religious identity is not the same as the majority's. This option also includes instruments deriving from the put in practice of the principle of non-discrimination, like reasonable accommodation or a multicultural clause.

CONCLUSION

Finally, there is the option of considering religions as a cultural heritage and its corresponding need to be protected, through the adoption of concrete actions by the public authorities in benefit for the believers of those (minority) religions. On top of that, it would be relevant to import the debates on linguistic justice also to the field of religious diversity. Cultural justice constitutes in this respect a pending subject for a more consistent and comprehensive protection of human rights in modern societies.

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