

Italy: The Paradise and the Hell of Minorities¹

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ABSTRACT. The author deals with the legislative framework related to minorities in Italy. In the Italian Constitution, written in 1948, we can find two paragraphs related to minorities. It is argued that essential change in legislation in Italy occurred in 1999 when a general state law was passed. This provided forms and models of protection not only for the biggest groups but also for the smaller ones. So there is now a specific provision for Albanians, Catalonians, Germans, Greeks, Croatians, Friulani, Ladini, Occitani, and Sardi. The chosen criteria is a territorial one. This law promotes trans-border and inter-regional cooperation as the most qualified instrument to reinforce and to protect cultural identities from the risk of assimilation by the predominant cultures. It is argued that the problem is still very thorny. Italy, like most other Western countries, experiences the phenomenon of substantial migration. It is discussed whether it is possible to speak about minorities also in reference to migrants, refugees, and asylum seekers.

Key words: MINORITIES, MIGRANTS, LEGAL STATUS, CULTURAL IDENTITY, MINORITY RIGHTS.

Problematic concept of minority

The concept of minority is particularly difficult and complex. In general, we can observe that a minority is a group of persons with some elements of distinction from the other people. It is possible to belong to a minority-group as an old person or as a young one, as an adult or as a child, as a rich person or as a poor. The elements of distinctions can be the most various.

But on the juridical level, it is not possible to take in consideration every group as a minority with distinctions. A minority group is considerable only if and when the juridical framework contains a specific means of its protection. With the term minority, in our model, we generally consider groups of people united by race, language, or religion that are different from the predominant

¹ I am particularly grateful to my Professor and friend Elisabetta Palici di Suni, who has brought me to discover this important field of studies and to Professor Natalija Kasatkina who has organised the international seminar "Perceptions of European Integration: The Ethnic Dimension of Civic Life" in Vilnius in November 2003.

elements. Quoting a popular definition of an Italian jurist (Capotorti 1992: 107-108, Capotorti 1979: §568), we can say that a minority is a small group with particular ethnic, religious, or linguistic characteristics, different from those ones of the majority population. This definition can be completed (Greppi 2003: 705) by specifying that a minority is that segment of the permanent population of a state which shares a culture and tradition and which does not want to be confused and not distinguished from the other part of the predominant population.

In the political arena and in democratic and representative systems, the recognition of specific rights to a minority is in general an exception to the general and common principle of majority. The minorities in parliament are important only on the base of numerical analysis; they try to become a majority to predominate over other political groups.

If we want to trace some differences among the different kinds of minorities, we can reach some of these points. This is, I think, the most important difference if we compare other minorities with the political minorities: the linguistic, racial, and religious minorities don't want to be assimilated or to become majority. They fight to preserve their peculiarities and their culture. Jellinek observed that "the German of today can't be the Slav of tomorrow; if this thing occurs, he will be generally scorned" (Jellinek 1898).

The concept of minority is a relative definition. It changes during the history, it is anchored at historical, political and social factors, which can be modified during centuries. The premise of the majority principle is equality; the premise of minority protection is diversity. However, the general principle of minority protection is always, in the juridical field, a derogation either of the majority principle or of the equality principle.

Protection of minorities in the Italian Constitution

In the Italian Constitution, written in 1948, we can find two articles which can have a relation to minorities: Article 3 and Article 6. Article 3 contains the provision of the equality principle, specifying that all *citizens* have the same social dignity and that they are equal in front of the law, without any distinction of sex, *race, language, religion*, political opinion, personal or social condition. As we can see, there are some important words, some key words, which I underlined. First of all, the article tells us that formal equality is recognised for citizens, but how about people, like Roma, who are not citizens? How about asylum seekers or refugees? Nothing is said. To find some answers to our thorny questions, we must continue to read this article. At the second paragraph, we can read that it is a specific task of the republic to remove all the obstacles that limit *freedom* and *equality* of *citizens* and that don't allow the full development of the human

person and the effective participation of every worker in the political, economic, and social organisation of the country.

As we can see, the main core of this second paragraph is what the doctrine defines as “substantial equality”. The aim of the provision is rather a protection of the principle of equality and anti-discrimination than tutorship of minorities. It is no simple coincidence that law no. 122 of the 26 April 1993², which contains urgent measures against racial, ethnic, and religious discrimination, refers to Article 3 of the Constitution.

There is a specific article of the Constitution, Article 6, which contains a specific provision with reference to minorities. The paragraph affirms that “the Republic protects linguistic minorities enacting specific rules”. According to some authors (Pizzorusso 1963: 306), this provision would be the specification either of the substantial or of the formal principle of equality. This comment can not be shared (see Palici di Suni 2002: 15, Piergigli 2003: 11) because what we can observe is that Article 6 of the Constitution contains a specific model of minority protection. It provides that specific rules and provisions can be issued only for linguistic minorities. Basically, what Article 6 protects is the right of these groups to use and to cultivate their mother tongue, giving schools where students can learn and use this language and permitting the use of this language with public offices and authorities. For example, there is an important provision in the criminal procedure code, Article 109, which affirms the right of a person to be questioned in the process in his/her mother-language, although speaks the Italian language.

The principle of the protection of linguistic minorities aims to defend diversity, to protect the use of a different language, ensuring the development of the culture (Albanese 1991: 331)³ and traditions related to that language. On this perspective, it is easy to conclude that Article 6 of the Constitution is addressed to the members of minority groups and that Article 3 (equality principle) is addressed to an individual person, with an anti-discrimination aim.

² See Ainis, M., Martines, T. (2001) *Codice costituzionale*. Bari: GLF Editori Laterza. P. 62. The commentaries of these authors can be very useful to understand the framework of this Law. Both of them observe that the aim of this Law is to protect people against all sort of discrimination but not to protect people against the destruction of their culture and tradition as it must be for linguistic minorities.

³ According to this author, the protection of linguistic minorities refers much more to the protection of the value of culture, than to the protection of a linguistic group. Accepting this interpretation, we can also consider a relation between article 6 and article 9 of the Constitution. Article 9 affirms that the Republic promotes the development of culture and scientific research.

Different minorities: The super-protected minorities. Their recognition and the role of the Constitutional Court

Some authors⁴ have determined that the authors of the Constitution did not clarify the concept of what a linguistic minority could be. Only the following interpretation of the Constitutional Court has given lots of precious contributions to defend the framework traced out by the Constitution. The system that has been created through the different opinions of the constitutional judges has two main pillars: on one side, we can find the protection of the recognised minorities or super-protected minorities⁵; on the other side, we can find many minority groups without specific protection of their language and culture on a constitutional level. It is what is referred to with the expression “unrecognised linguistic minorities”. These groups, which are situated either in the regions at the borders of Italy and other countries or in the country itself, have not received specific protection from the state laws⁶. They have only received in some moments and in some areas a specific protection from the laws of the region where they settled. Without recognition, the linguistic minority was only in a sort of pre-judicial situation, without the possibility of enjoying a specific measure of protection.

The concept of recognition was underlined in a famous decision of the Constitutional Court. The case was related to the status of the Slovenian minority in Friuli Venezia Giulia, a region near the border of Italy and Slovenia. This minority claimed the right to use the Slovenian language in front of juridical authorities in the province of Trieste. The Constitutional Court⁷ argued that a recognised minority got this status only with the fulfilment of specific international duties, with the adoption of constitutional domestic rules and with the respect of special regional statutes. The most common cases that were discussed were about the right to use the mother tongue in front of juridical authorities. The judge also added that only state legislation could provide rules of protection of linguistic minorities because only Article 6 of the Constitution was the pillar of reference.

This definition of the topic was absolutely narrow and distorted because it limited the protection to the strongest minorities, forgetting that, in the meantime, some regions have enacted specific measures for the protection of linguistic

⁴ For a complete summary of the different opinions about the content of Constitutional article 6 see *Dossier Provvedimento, la tutela delle minoranze linguistiche. Normativa statale e regionale*, n. 121/II, XI legislatura, marzo 1993, *Camera dei Deputati, Servizio Studi*. P. 19 and followings.

⁵ This expression was first time used by E. Palici di Suni (2002).

⁶ In Italy, there are two levels of legislation: one is the state level and the other is the regional level. The second is capsuled within the general principles traced out by state legislation.

⁷ See the famous decisions 28/1982 and 62/1992. Available at: <http://www.cortecostituzionale.it> in the section “sentenze”.

minorities situated in their territories. The most remarkable doctrine⁸ has observed that it is possible to distinguish five phases for the realisation of the principle of minority protection. We can summarise this opinion with this scheme:

1. first phase: protection of super-protected minorities in the Aosta Valley and Trentino Alto Adige,
2. second phase: wider protection of other groups, through the generalisation of Article 6 of the Constitution,
3. third phase: regional legislation begins to enact specific rules for the linguistic minorities situated in those areas,
4. fourth phase: elaboration of the new concept of “new minorities”. It is an attempt to also consider immigrants, the asylum seekers, and refugees as minority groups,
5. fifth phase: enactment of a general law (*Raumgesetz*) for the protection of historical linguistic minorities. This law, 482/1999, would give uniform protection (with some levels of diversity between the super-protected minorities and the other minorities) to different linguistic groups historically present in Italy.

Protection of historical minorities

As we have seen referring to Article 6 of the Constitution and to the interpretations given during the first moment of its application, there was a specific protection only for some linguistic groups, mainly based in Aosta Valley and Trentino Alto Adige. It is necessary to wait till 1999 to find the first general state law, 482/1999⁹, that provides uniform forms and models of protection not only for the linguistic minorities of the Alpine arch, but also for many other important groups that have been forgotten by the state legislation. The most important rules of this law are:

1. Article 1 which affirms that it is a specific duty of the Republic to promote and to defend Italian culture and language.
2. Article 2 which draws a specific catalogue of other languages, cultures, and ethnic groups that the Republic must defend. The list contains a provision about these groups: Albanian, Catalanian, German, Greek, Slovenian, Croatian, French, French-Provençal, Friulano, Ladino, Occitano, and Sardinian-speaking groups. Table 1 (below) summarises some characteristics of these groups, so as to build a little atlas of them (see Palici di Suni 2000: 85).

⁸ See, Palici di Suni, E. (2003) “La tutela giuridica delle minoranze fra Stato e regioni in Italia”. In: *La tutela giuridica delle minoranze*, cit., p. 149 and following.

⁹ For a specific comment on this law, see Palici di Suni, E. (2000) “La legge italiana sulla tutela delle minoranze linguistiche storiche nel quadro europeo”. In: *Dir. pubbl. comp. Eur.* I. P. 101.

TABLE 1. Minority groups protected by the republic as foreseen by the law in 1999

Minority	Place of settlement	Spoken-language	Brief history
Albanians (Arbëreshe)	South of Italy, in the regions of Puglia, Molise, Abruzzi, Basilicata, Sicily	Albanian It is peculiar that this group has preserved its traditional religion much more than its language	They came to Italy in XV century, as soldiers or exiled peasants from their country occupied by Ottomans
Catalonians	Sardinia, in the town of Alghero	Catalonian	In Italy since 1353, a military presidium from Catalonia occupied the town
Germans	In the region of Trentino Alto Adige, in particular in the town of Bolzen	German	Came through the Alps. Protected by a bilingual model
Greeks	Salentina Peninsula, Puglia, in 9 centres; Calabria, in the province of Reggio	Griko dialect	Magna Grecia colonisation in VII and VIII century
Slovenians	In the region of Friuli Venezia Giulia	Slovenian	Came from the very near Yugoslavia, particularly after the second world war
Croatians	In the region of Molise	Croatian	Some Slavs migrated in XVI century to that area
French	In the region of Aosta Valley	French	Came through the Alps. There is a model of linguistic separatism
Franco-Provençals	In the region of Puglia, near Faeto and Celle S. Vito	Patois	In 1200 some soldiers from Anjou came here
Ladini	Province of Bolzen and Trento, Region of Veneto, province of Belluno	Ladino	A very little group which is a minority of minorities between German and Italian groups
Occitani	In Piedmont, in some valleys near Cuneo, near the town of Pinerolo and in Calabria	Occitano	In 1200 some Waldenses came here to escape the Inquisition
Sardi	Sardinia	Sardo, a neolatin language but with different dialects	Particularly preserving their ethnic identity
Walser	In the region of Aosta Valley, near Pink Mountain and in Piedmont, in Sesia Valley and near Novara	A sort of German dialect	A minority of minorities, between French and Italian groups of Aosta Valley

3. Article 3 underlines that the populations and the local institutions must cooperate to enact specific rules to protect these groups. It is now specific duty of the province, instead of the region, to work with the populations of the areas in which these groups are situated to enforce measures of protection and promotion and to circumscribe the areas in which they are situated. The criteria chosen by legislation is a territorial one. A minority must have the ability to use its mother tongue in the territory where it is situated and not just anywhere. This choice is due to financial implication of the problem.
4. Articles 6, 7, 8, and 9 grant “the right of using minority languages”. This right has a very wide dimension because it is considered in different situations and places. It is permitted in front of public national authorities, in front of local authorities and offices, and in front of jurisdictional authorities, in the toponymy. The linguistic rights must be also seen as the right to receive education in the mother tongue, the right to consider this language as a second but complementary subject of education from the primary school to the university, and the right to do research in this language. The right to receive information on TV and on the radio in this language is also provided. The state must also give financial aid to cultural, artistic, scientific, recreational, and sports, initiatives to promote the development of cultural relations among the different groups. On a political level, it is the specific duty of the government to support the political representation in parliament of the candidates who are members of minorities.

It is necessary to express a positive opinion about this new law (see Piergigli 2000: 623). First of all, it is the first document which protects not only the populations situated nearby the Alpine arch, but also the other historical populations that settled in various areas long ago. Second, it is the legitimation of the local power's intervention where no local statutes contain specific provision to protect these groups. I believe that there is also another important profile to consider. This law takes note of the principle sanctioned by the Council of Europe in the second paragraph of Article 18 of the Framework Convention for the Protection of National Minorities, which recognises in the promotion of cross-border and inter-regional cooperation the most qualified instrument to reinforce and to protect the different linguistic and cultural identities from the risk of the assimilation by the predominant cultures.

The new minorities and their thorny protection

In Italy, as in most Western European countries, it is not possible to speak about minorities without making some remarks about the phenomenon of migration.

I do not wish to mix or to create confusion between the two subjects, and I have tried to keep the two spheres separated. When we consider the Italian situation, we must define the topic of minorities in terms of linguistic minorities. It is not possible, in fact, to speak about ethnic minorities, because these people with different languages or origins are considered completely Italian. They have been part of the Italian population for many centuries. They continue to cultivate their language as a cultural value or as a tradition, but they do not feel like a separate ethnic group in a separate area of the nation¹⁰.

Anyway, the very high flow of people coming from Africa and Asia has created a big debate about the topic. The core of the problem is this one: is it also possible to speak about minorities in reference to the people who come from these places of the world? Is it right to call Gypsies and nomadic people minorities?

Some interpreters (see De Vergottini 1995: 9) have observed that it is not possible to exclude from the protection guaranteed by Article 6 of the Constitution such a large number of people because this is a new problem that was not foreseeable when the Constitution was written. Some authors (see Melica 1996: 156) have observed that the problems of these new immigrants are somewhat different from the problems of linguistic minorities. Their most common problems are related to the opportunity of finding work and a place to live while the problems of minorities are connected to the protection of language and culture. In the general law on linguistic minorities, it is clearly expressed that this law is not related to protecting the languages of the immigrants. As we can see, it would be better to separate the two levels.

Anyway, it is not the case to forget the jurisprudence of the Committee on Human Rights at the United Nations, which constantly refers to a wider concept of minority. According to this committee, “minority” can also include migrants and visitors with some elements of cultural, religious, and linguistic identity. It is a new way to study the topic also in terms of categories.

Mario Ricca (2003: 33) has recognised a new category of rights. Speaking of personal identity, conscience rights, and multiculturalism, Ricca has observed that these rights are a sort of linguistic channel to transfer some aspects of the private life to communication and to public spheres.

Nowadays fundamental rights are based in single societies of different nations. Otherwise, it is not possible to forget that every single society is a part of the world and global society. That’s why, the best German doctrine (see Häberle 2003: 95) speaks about world status¹¹ and the dimensions of these rights.

¹⁰ There are two possibilities for minority groups: one is the secession of the area where they are situated and the other one is the integration into the state. In Italy the second option has prevailed since Italy is considered a regional state.

¹¹ The Author uses a Latin expression *status mundialis* referring to these rights.

Conclusions

It was observed that the essential element of linguistic minorities is territory. We cannot extend the same category of protection for migrants due to the fact that immigrants and refugees to Italy from the different parts of the world do not settle in a specific and determined area. Immigrants and refugees, as a rule, do not aim to protect their language, they prefer to learn the official language of the country of residence. They need the new language to find work and to be integrated into schools and into society in general. The general problem is different. It is much more a question of integrating them and offering some courses in the official language than protecting their original language.

There is a tendency observable among immigrants and refugees not to participate in the social life, at least at the beginning of their life in our country: they do not send their children to school, the women stay at home, and ghettos appear. Therefore a number of political and social activists are convinced that it would be better to have a good anti-discrimination law favourable to the personal protection of immigrants and refugees than a general law for minorities and immigrants. The first step is related to giving them the opportunity to integrate, paying special attention to children. The data (see Morozzo 2002: 29) we have are very significant. In 2000, there were 249,851 children of immigrants who decided to join their parents in Italy. This trend is bound to grow. It is time to begin considering them not only as permanent guests but as citizens of tomorrow (Peano 2002: 113).

Thinking about the future, it is very important to grant new immigrants and refugees not only the right of participation in economic field, but also in the political arena. There is now a proposal to give them the right to elect the members of the city council. This could be a good beginning to give them a sort of civic status as participants in the systems of protection of their rights, so as not to create a paradise for some little minorities and a hell for the biggest ones.

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ITALIJA: MAŽUMŲ ROJUS IR PRAGARAS

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SANTRAUKA. Autorės teigimu, mažumos sąvoka ir samprata yra sudėtinga ir kompleksinė. Egzistuoja daug mažumos apibrėžimų, šiai kategorijai priskiriama įvairių elementų. Teisiniame lygmenyje kaip mažuma suvokiami žmonės, kuriuos sieja rasė, kalba, religija ir jie skiriasi nuo valstybėje dominuojančios daugumos. Šios grupės nariai nenori supanašėti su gyventojų dauguma, o siekia išsaugoti savo kultūros bruožus ir ypatumus. Šiame straipsnyje autorė apžvelgia, kaip Italijoje kito su mažumomis susiję įstatymai ir jų priėmimo procedūros. 1948 m. Italijos Konstitucijoje yra du mažumoms skirti paragrafai. O vienas esminių pokyčių šalies įstatymų leidyboje buvo 1999 m. valstybės įstatymas dėl mažumų, kuris apibrėžė, kaip apsaugoti ne tik didžiųjų, bet ir mažesniųjų etninių grupių teises bei laisves. Taigi Italijoje egzistuoja specifinės teisinės nuostatos albanų, katalonų, vokiečių, graikų, kroatų ir kitų mažumų atžvilgiu. Tačiau mažumų problema išlieka opi, nes Italijoje, kaip ir kitose Vakarų Europos šalyse, atsiranda naujų mažumų grupių, kurias sudaro pabėgėliai ir prieglobsčio prašantys asmenys. Autorė diskutuoja, ar tikslinga būtų naujuosius imigrantus traktuoti kaip mažumas.

Gauta 2004 metų rugsėjį
Įteikta spaudai 2004 metų gruodį