

CULTURAL TRAITS

AS DEFINING ELEMENTS OF MINORITY GROUPS

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Abstract: Integration policies are intended to have the dual aim of providing immigrants with the means to function in the society where they live and develop their potential, while preserving their cultural and ethnic identity, and familiarising the non-immigrant population with the rights of immigrants, their culture, traditions and needs. Integration also appears in documents specifically directed at the protection of traditional national minorities. This paper looks to identify the main cultural traits that define minorities in the institutional language and that are relevant for these integration policies. Language and religion emerge as a widely recognised identity factors in this respect. Other possible cultural identity factors gather around the idea of ethnicity, being more difficult to determine.

Keywords: Culture, Human Rights, International Law, Integration, Language, Religion, Ethnicity, Minorities

Summary: I. INTRODUCTION. THE CULTURAL PERSPECTIVE OF INTEGRATION; II. CULTURAL DIVERSITY AND MINORITIES; III. DISTINCTIVE CULTURAL TRAITS OF MINORITIES; IV. CULTURAL TRAITS AND THEIR DYNAMICS; IV.1. Linguistic traits; IV.2. Religious traits; IV.3. Ethnic traits. The third (cultural) space; IV.4. Dynamic cultural traits: evolution and interaction; V. CONCLUSION.

I. INTRODUCTION. THE CULTURAL PERSPECTIVE OF INTEGRATION

The aim of this paper is to identify the main cultural traits that define minorities in the institutional language and that are relevant for integration policies. The assumption is that there are several cohesive cultural elements that bring together collective identities and have an impact on integration processes. Two of these elements, language and religion, are widely recognised as such, while other similarly relevant cultural traits are more difficult to determine. In any case, the various dynamics that give rise to these cultural traits make their public governance extremely complex and their social impact varies, as can be seen in later papers in this volume.

All European societies have gone through profound social transformations in the last decades. Among the main factors characterising the new social paradigm is the increasing level of cultural diversity, caused mainly by recent population movements. In this context, integration is understood as a two-sided process and as the capacity of

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people to live together with full respect for the dignity of everyone, the common good, pluralism and diversity, non-violence and solidarity, as well as their ability to participate in social, cultural, economic and political life (Council of Europe, 2008: 11). As for Integration policies, these are intended to have “the dual aim of providing immigrants with the means to function in the society where they live and develop their potential, while preserving their cultural and ethnic identity, and familiarising the non-immigrant population with the rights of immigrants, their culture, traditions and needs” (Council of Europe, 2003: para.7) (OSCE, 2012). It should be noted that the aim of integration also appears in documents specifically directed at the protection of national minorities, such as the Framework Convention for the Protection of National Minorities (hereinafter, FCNM)².

Managing cultural diversity is recognised as a horizontal task that involves a variety of players and contexts and includes both legal standards (human rights law) and policy measures. Indeed, the relevance of this dimension is that the cultural elements that shape collective identities determine the ownership and enjoyment of human rights. It is not possible to build a framework that respects human rights without considering the cultural identity of individuals and groups, especially if they are a minority in their respective policy fields³. In this regard, the nation-state has been a powerful factor in cultural and identity homogenisation. Any European state which has enjoyed a relatively long period of independence for many decades is now much more linguistically, religiously and nationally homogenous than a century ago, such that the map of collective identities in Europe is now much closer to the political boundaries of states than ever before (Magosci, 1995: 130-148). In any of the European democratic societies there are dominant cultural parameters, as they are widespread or traditional. This usually leads to the temptation to understand “integration” using these dominant parameters rather than making mainstream society itself aware of its diversity. The current trend to provide a cultural dimension to integration that is being explicitly or implicitly adopted by several countries around us falls within this line. As De Lucas points out, States are replacing enforceable legal and political conditions to access citizenship through the priority of the socio-cultural dimension (De Lucas, 2010: 12).

The very idea of respect and guarantee of basic human rights, which is the basis of any democratic system today, is precisely to set limits to this numerical rule. A democracy understood solely as a rule of majorities does not resolve issues related to respecting the identity of minorities. Democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved (Council of Europe, 2008: 25). Already in the nineteenth century, De Tocqueville warned of the risk of formal

² FCNM refers to Integration in arts 5 and 6 and its explanatory report). (All this is in line with the EU 2005 Common Agenda for Integration: framework developed by the European Commission for the integration of third-country nationals in the EU based on the so-called Common Basic Principles on Integration (CBPs, 2004).

³ This is accurately expressed in the UNESCO Declaration on Cultural Diversity of 3 March 2001, Article 4.

democracy becoming a “tyranny of the majority” (De Tocqueville 1863, 330-335)⁴. All this justifies an analysis that takes into consideration the cultural variables that make up collective identities and the political tension always existing between majorities and minorities. This requires defining the concept of minority itself based on the cultural traits that can help to determine it.

II. CULTURAL DIVERSITY AND MINORITIES

The idea of cultural diversity evidently leads us to the notion of culture, a complex and polysemic concept that is difficult to understand (Prieto De Pedro, 2006: 23-36). Culture is often defined by referring to such various attributes as history, language, religion, traditions, the economic system, the arts, the governance model or the laws. Indeed, there are myriad definitions of "culture" in social sciences, sometimes so broad that they make the concept useless because it is identified with society as a whole, blurring any distinction between culture, institutions or social structure (Polavieja, 2015: 167). Polavieja distinguishes two major conceptualisations of culture; one understands culture as a repository of preferences, values, beliefs and identities that influence and determine individuals' behaviour (culture as motivation); the other approach sees culture as a repertoire of justifications, competences and practices that individuals use to make sense of their actions (Polavieja, 2015: 167).

However, our focus here is not on all the possible dimensions of the concept of culture, but only on those that directly lead to the construction of collective identities that in turn result in a political game between majority and minorities. My aim is therefore to identify the cultural elements that provide the basis for building these identities that give rise to an asymmetric and politically relevant diversity. In practice, cultural diversity involves the coexistence of majorities and minorities, which implies the need to define these cultural-based minorities whose integration we wish to ensure.

As mentioned above, the level of cultural diversity in Europe over the last hundred years has decreased. Whereas a century ago most Europeans lived in a culturally diverse context, the nation state has since emerged as a powerful agent of national homogenisation of its citizens, thus reducing the demographic impact of traditional minorities. However, population movements and the emergence of new technologies have worked in the opposite direction, increasing the cultural diversity in our societies. Today the debate on diversity management occurs within the framework of a Europe divided into state societies with a clearly dominant national, linguistic or religious identity, which in turn have created supranational structures on the protection of rights. Within this framework, much more homogeneous than one hundred years ago, the debates on the protection of traditional minorities converge with the demands for the accommodation of new identities without a historical tradition on the continent – but comprising a large number of people – which are often referred to as new minorities.

⁴ Previously, John Adams (*A Defence of the Constitutions of Government of the United States of America*, 1788), and Edmund Burke (*Reflections on the Revolution in France*, 1790) had already referred to this same concept.

Both realities are and should be considered in our analysis as a means of expressing cultural diversity, even if state or international practice pays still very limited attention to the fate of new minorities⁵.

The concept of minority refers to a relative idea that is built through comparison. A legal definition in this sense must be constructed from political compromises and on very diverse social experiences (Koubi, 1995: 251). Defining minorities has proved to be one of the most complicated legal tasks for both international and domestic institutions. Given the variety of situations that may affect minorities, it is not possible to establish a common definition (Palermo and Woelk, 2008: 16). The lack of a legally binding definition causes significant problems in the identification of the potential minorities and in the implementation of protection measures when they are needed.

A high number of authors from the legal and political doctrine have tried to define the concept of minority from very different contexts and angles (Ruiz Vieyetz, 2014a: 14-17), including systematic feedback to the European Charter for Regional and Minority Languages (hereinafter, ECHRML) and the FCNM.

From a literal point of view, the term *minority* can be used to designate any group of people identified around a specific characteristic that would account for less than half of the individuals within a given field of reference. In this regard, we can discuss many different types of social minorities. However, in terms of International Law and Politics, the expression “Protection of Minorities” traditionally refers to a well-defined subject area that is directly related to several cultural expressions that lead or may lead to strong collective identities. For instance, “the EU touches on many different situations of persons belonging to minorities. Persons belonging to linguistic, ethnic or national minorities, third-country nationals who immigrate to the EU, or immigrants who are long-term residents, may all perceive that they belong to a minority group” (EU Agency for Fundamental Rights, 2011: 17). Therefore, certain objective elements that are the basis of the implicit definition of minorities converge.

Limiting the scope of the term “minority” to the field of culture and identity is not only operationally useful to delimit the playing field. It also has a substantive explanation and its *raison d’être*. Drawing a distinction between what are here referred to as cultural elements and other factors eventually leading to discrimination is, therefore, more than justified.

In fact, a clear distinction should be made between the concepts of “national identity” and “prevailing/dominant (social) reality”. Starting from the premise of the division of Europe into States (basically nation-States), we use the term minorities to refer to those groups that differ from most of the population of the State due to

⁵ For instance, UN Committee on Economic, Social and Cultural Rights also makes a clear distinction between “minorities” and “migrants” in its General Comment No. 21, “Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)” (doc. E/C.12/GC/21, of 21 December 2009). Available at <http://www2.ohchr.org/english/bodies/cescr/> However, an opposite view is that of the UN Human Rights Committee: see footnote 24.

“cultural” traits that are precisely those that shape a (majority) national identity. This does not mean that we cannot talk about minorities in a broader profane sense, since any group representing less than half of the population, differentiated based on a clear, relevant distinguishing feature, can be considered a minority. However, reserving the concept for cultural traits makes perfect sense.

On the one hand, we should exclude those differences that are not relevant to the definition of public policies (eyes colour, for instance), and surely do not shape collective identities. The second step is to distinguish between types of differences that are indeed politically relevant. This is the most complicated aspect, whereby cultural elements in a strict sense differ from one another, precisely due to the impact they have on the construction of collective identities. In fact, such significant factors as gender, age, sexual orientation or functional ability are key to the exercise of rights and should therefore have a bearing on public policies. In this regard, a group with a sexual orientation differing from that of the majority of the population could be considered a minority, as is the case of a generational group or another type of group distinguished by their different functional capabilities. These groups are especially concerned about not being discriminated in the exercise of their rights, which will require adaptation or inclusion policies related to their realities. However, these demands are not defined against a majority national identity but against a prevailing social reality. These are not factors that identify majority society against other European societies. They are ineffective when it comes to identifying or distinguishing the different European societies because they do not affect the design of the State or the public space, in the same way as strictly cultural factors, which do shape national identity and differentiate one national society from another. And this difference should be considered when defining the technical concept of minority.

In fact, no European society identifies itself as such with a specific generation, gender or sexual orientation. There is a specific prevailing sexual orientation across all European societies, which is basically the same in all of them. The possible “sexual orientation minorities” are not confronted with a “national identity” but with a “majority social reality”, or one that prevails in a historical moment and against which they deserve to exercise their rights on an equal footing. The majority reality that forms the backbone of our social structures across all European countries is that of a society conceived from the standpoint of a working-age, heterosexual adult male with full functional capabilities. The sectors that do not match this majority or prevailing filter for one reason or another are potentially at risk of discrimination and the factors that differentiate them are certainly relevant to public policies on human rights.

However, by cultural elements as relevant factors of collective identity, we mean those that are confronted with or differ from majority cultural elements that shape the respective national identity. The aim is not only to broaden or expand a majority reality (to fight against the possible exclusion of other social realities) but to allow for the coexistence of collective identities that differ from that endorsed by the majority society against other countries (thus avoiding the tendency to assimilation that occurs in any political entity). European countries are not distinguished by sexual orientation but by

language, religious and cultural traditions or related ethnic and symbolic elements. Thus, the technical concept of minority is limited to these realities where minority difference is proclaimed against majority “national identity” and not so much against a “prevailing social reality”. These wide-ranging factors have very different dynamics (and counter-dynamics: exclusion against assimilation), as is the full range of collective identities they comprise, and the legal solutions that both categories deserve or require. Obviously, this technical distinction does not exclude the concurrence of different factors of possible discrimination against the same individuals.

The objective nature of the cultural elements, to a greater or lesser extent, also makes the existence or presence of minorities less dependent on their being recognised by the State in which they reside (EU Agency for Fundamental Rights, 2011: 8). The definition of those distinctive cultural traits can be made through several simultaneous methods.

III. DISTINCTIVE CULTURAL TRAITS OF MINORITIES

The distinctive cultural traits of minorities in terms of integration policies may be determined through three complementary methods: examining the adjectives that accompany the word *minority* in major legal or policy documents; systematising the features or aspects that appear in key reports on the subject; and comparing the elements contained in various legal definitions of minorities.

1) Adjectives that usually accompany the noun *minority* in key legal or policy documents

Within the field of international law, the concept of Minority was introduced in several international treaties between the seventeenth and nineteenth centuries. In that first period, the most frequently mentioned category of minority was by far that of Religious Minorities (Ruiz Vieyetz, 1999: 12). After WWI, and under the mandate of the League of Nations, official documents referred to the formula “racial, linguistic and religious minorities”. After WWII, the word racial was substituted by ethnic and therefore the UN started using the three-fold formula “ethnic, linguistic and religious minorities”, which was also incorporated into Article 27 of the International Covenant on Civil and Political Rights (hereinafter, ICCPR). Only in 1992, the United Nations Assembly adopted a Declaration on the rights of members of “National or Ethnic, Linguistic and Religious Minorities”. At the regional level, however, as soon as in 1950 the concept National Minority was introduced in the European Convention on Human Rights, and later used in the framework of the OSCE; in 1995, the FCNM was adopted.

Thus, when international legal texts refer to minorities, this noun is generally accompanied by one of these four adjectives: religious, linguistic, national and ethnic. This last concept replaces that of racial minority, widely used until the mid-twentieth century. The four categories are far from being mutually exclusive, but they provide an important basis for understanding what regional or global institutions refer to when they

use this term. Hence, the concept *Minority* refers to groups of people who differ from the majority of the population of the State in some of their ethnic, linguistic, religious or national characteristics.

A panoramic view of the European Constitutions today in force reinforces this conclusion, since we will find the same categories of minorities. “National Minorities” is included in 10 European constitutions⁶, as it is the expression “Ethnic Minorities” (including similarly ethnic groups or ethnic communities)⁷, while “Linguistic Minorities” is used in just 3 constitutions⁸ and “Religious Minorities” (including religious communities and religious groups) appears in 7 constitutions⁹. Finally, the Constitution of Belgium is the only one that includes a reference to “Philosophical and Ideological Minorities”. Also, the Charter of Fundamental Rights of the European Union refers in its Article 22 to “cultural, religious and linguistic diversity”. Therefore, the number of categories of minorities included in international or constitutional texts is reduced, pointing to elements such as religion, language, ethnicity and nationality.

2) Traits or aspects contained in key European documents on the subject

The analysis of reports or plans that refer to the protection of minorities or the management of cultural diversity also points in this direction. In this regard, the “White paper on Intercultural Dialogue” (Council of Europe, 2008) or the report on “Respect for and protection of persons belonging to minorities” (EU Agency for Fundamental Rights, 2011) may be regarded as reference documents, in addition to the set of reports issued by the European Commission against Racism and Intolerance (hereinafter, ECRI) or the Advisory Committee (hereinafter, AC) of the FCNM.

The EU Agency for Fundamental Rights report (EU Agency for Fundamental Rights, 2011) is clear in highlighting that it includes “persons belonging to ethnic minorities as well as persons belonging to linguistic and national minorities” but not groups or identities generated by sexual orientation (EU Agency for Fundamental Rights, 2011: 9). The report devotes more attention to linguistic aspects (EU Agency for Fundamental Rights, 2011: 65-72), than to religion (EU Agency for Fundamental Rights, 2011: 57-61). The situation of Roma communities is also shown, as they are defined by one or several of these elements, and that of foreign immigrant communities.

About the White Paper, the linguistic and religious aspects also accompany other less homogenous factors. The documents produced by ECRI and AC of FCNM contain numerous references to ethnic or nationality differences, and to religious or linguistic

⁶ Poland (art. 35), Czech Republic (art. 25 Charter of Rights), Slovakia (art. 33-34), Hungary (art. 32 and 68), Croatia (art. 15), Serbia (art. 47-57 Charter of Rights), Albania (art. 20), Romania (art. 6 and 32), Ukraine (art. 10-11 and 53) and Armenia (art. 37).

⁷ Estonia (art. 50), Latvia (art. 114), Poland (art. 35), Czech Republic (art. 25 Charter of Rights), Hungary (art. 32 and 68), Sweden (ch. 1, art. 2.4). Slovakia (art. 33-34), Lithuania (art. 37), Slovenia (art. 61 and 64) and Belarus (art. 14).

⁸ Italy (art. 6), Sweden (ch. 1, art. 2.4) and Austria (art. 8).

⁹ Swedish Instrument of Government (ch. 1, art. 2.4). Croatia (art. 41), Serbia (art. 27 Charter of Rights), Albania (art. 10), Macedonia (art. 19), Bulgaria (art. 13) and Cyprus (art. 2).

aspects, thus confirming that focus is placed on the same set of cultural traits in the framework of European institutions.

3) Cultural traits that appear in several legal definitions of minorities

Although the attempts to find an internationally accepted definition of minority have failed so far, several States have decided to formulate their own definition of this concept. This may have happened either in adopting specific domestic legislation on the rights of national minorities, or in drafting declarations when ratifying the FCNM. A total of 12 European countries include in their legal framework a definition of the term “national minority”: Hungary¹⁰, Luxembourg¹¹, Estonia¹², Austria¹³, Switzerland¹⁴, Czech Republic¹⁵, Moldova¹⁶, Serbia¹⁷, Croatia¹⁸, Bosnia-Herzegovina¹⁹, Poland²⁰ and Latvia²¹. Two additional definitions can be added, provided by the Parliamentary Assembly of the Council of Europe in the Recommendations 1134²² and 1201²³.

All these legal definitions include, among their basic elements, the endorsement of ethnic, linguistic, religious, cultural or national characteristics, which distinguish them from the rest of the population, as well as the requirement that the members have the nationality or citizenship of the State of residence. From the comparison of the 14 definitions, we can conclude that there is in Europe certain degree of agreement on the elements of the concept of national minority. Different authors defend that it does exist an implicit definition of national minority at the European level (Verstichel, 2008: 155, Gonzalez Hidalgo and Ruiz-Vieytez, 2012: 50-51; Smihula, 2009: 50, Pentassuglia, 2002: 56-74).

¹⁰ Hungary: Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, of 10 July 1993, Article 1.2.

¹¹ Luxembourg: Declaration contained in a letter from the Permanent Representative of Luxembourg, dated 18 July 1995, handed to the Secretary General at the time of signature of FCNM, on 20 July 1995.

¹² Estonia: Declaration contained in the instrument of ratification of FCNM, deposited on 6 January 1997.

¹³ Austria: Declaration contained in the instrument of ratification of FCNM, deposited on 31 March 1998.

¹⁴ Switzerland: Declaration contained in the instrument of ratification of FCNM, deposited on 21 October 1998.

¹⁵ Czech Republic: 273 Act On Rights Of Members Of National Minorities And Amendments Of Some Acts, of July 10, 2001, Article 2.1.

¹⁶ Moldova: Law of the Republic of Moldova on the Rights of Persons Belonging to National Minorities and the Legal Status of their Organizations, of 4 September 2001, Article 1.

¹⁷ Serbia (Federal Republic of Yugoslavia): Law on Protection of Rights and Freedoms of National Minorities, of 27 February 2002, Article 2.

¹⁸ Croatia: The Constitutional Act on the Rights of National Minorities in the Republic of Croatia, of 13 December 2002, Article 5.

¹⁹ Bosnia and Herzegovina: Law on Rights of National Minorities, of 1 April 2003, Article 3.

²⁰ Poland: The Regional Language, National and Ethnic Minorities Act, of 6 January 2005, article 2.

²¹ Latvia: Declaration contained in the instrument of ratification of FCNM, deposited on 6 June 2005.

²² Recommendation 1134 of the Parliamentary Assembly of the Council of Europe, adopted on 1 October 1990, on the Rights of Minorities.

²³ Recommendation 1201 of the Parliamentary Assembly of the Council of Europe, adopted on 1 February 1993, on the Rights of Minorities.

Deepening the analysis, the concrete cultural factors of identity that appear in these definitions can be organised according to the following list (Ruiz Vieytez, 2014b: 205-207):

1. Linguistic element (language, mother language or linguistic characteristics): present in 13 out of 14 definitions (all but that of Bosnia-Herzegovina).
2. Religious element (religion, confession, religious characteristics): included in 9 out of 14 definitions.
3. Ethnic element (ethnic characteristics, common ethnic origin, ethnic culture, ethnic affiliation): mentioned in 9 out of 14 definitions.
4. Cultural element (culture, cultural characteristics, ethnic culture): mentioned in 13 out of 14 definitions (all but that of Luxembourg).
5. Other elements mentioned: Traditions (5 definitions), Common origin (3 definitions), Costumes and History (1 definition).

From this comparison, it may easily be concluded that the most repeated elements are those referring to language, religion, ethnicity and “culture”. This last concept should be understood as extending beyond the previously mentioned elements and it may also cover other elements that appear less frequently, such as traditions, customs, origin or history.

The three-parallel analyses performed reveal that there are two cultural factors that are clearly present in the shaping of the minorities whose integration is promoted. These are language and religion. At the same time, there are other kind of cultural elements that are more difficult to pinpoint with respect to the idea of ethnicity. This additional cultural factor is more difficult to define as ethnicity is not an easily identifiable element a priori and yet it appears repeatedly in the studied documents, assuming that language and religion do not exhaust the entire cultural space that should be kept in mind in designing integration policies. This area may be referred to as "third cultural space" or “third cultural element”, although it is evident from the outset that it consists of an open set of cultural sub-elements, other than language and religion, which wholly or partly form what is termed as ethnicity. It is therefore necessary to develop a better, more accurate definition of this third cultural space.

Finally, the question arises as to whether a legal element as that required by most of the definitions referred to, namely, nationality or state citizenship should also come into play. The fact that immigrant populations are included in the reports on minorities and that they are the main focus in our analysis of integration policies reinforces this reasonable doubt. It is with good reason that the term ‘ethnic minorities’ is mostly identified with the immigrant communities residing in the country. And, obviously, the presence of new minorities is one of the greatest challenges facing integration policies. Therefore, we might want to consider to what extent citizenship is a defining element. In other words, the question is whether legal nationality could be regarded as a culture-based element.

The debate about inclusion or exclusion of non-citizens or recent immigrants from the category of minority, or national minority, is not a new discussion. Already in the inter-war period, the Permanent Court of International Justice stated that non-citizens could benefit from the protection of the minority treaties, although in that moment the concept of national minority was not used²⁴. Some international instruments on the protection of national minorities do not require the legal nationality of the State to be recognised as a member of these groups, and this idea was also highlighted by the United Nations Human Rights Committee in its General Comment No. 23²⁵. Even in Europe, there is “a large number of positions expressed by various bodies at both international and European level were in the sense that citizenship requirement should no longer represent a sine-qua-non condition for defining the national minority” (Aurescu, 2007: 153). This position is partially based on the Report of Venice Commission on Non-citizens and Minority Rights²⁶. In fact, one of the most important problems faced by the AC or the OSCE High Commissioner on National Minorities has been the exclusion in certain countries of significant minorities of the population because their members were not given the nationality of a new independent State²⁷. According to Hofmann, and following the standpoint of the AC, the FCNM can be applied to the new minorities in many of its articles (Hofmann, 2005: 17) and indeed, this seems to be the dominant trend today, both at the institutional and doctrinal level.

Thus, one of the most controversial issues today in defining “national” minorities lies on the tension between old and new minorities and the potential exclusion of the former from the implicit definition. The requirement of citizenship in all the definitions reflects the will of European governments to exclude new minorities from the benefits of instruments like the FCNM (Verstichel, 2008: 144-151). There is a real debate today on the rights that can be enjoyed by the members of old or new minorities (Medda, 2015: 5). Medda makes a distinction between Old and New minorities, noting that the already mentioned cultural elements are present in old minority groups, whereas new groups respond to recent immigration processes (Medda, 2015: 3). However, immigrant groups usually have cultural differences that distinguish them from the rest of the population, forming a separate identity. In cases where these

²⁴ Permanent Court of International Justice, Acquisition of Polish Nationality, Advisory Opinion of 15 September 1923, *Collection of advisory opinions*, Series B, No. 7. September 15th, 1923: “The term minority seems to include inhabitants who differ from the population in race, language or religion, that is to say, amongst others, inhabitants of this territory of non-Polish origin, whether they are Polish nationals or not (p. 1).

²⁵ United Nations, Human Rights Committee, *General Comment No. 23, Article 27 - Rights of minorities* HRI/GEN /1/Rev.7 p.183 (1994). “5.1. Under the terms of Article 27, the persons to be protected are those belonging to a minority group and who share in common a culture, a religion and a language. Those terms also indicate that for the protection of these persons is not required to be citizens of the State Party in which they live or are (...) 5.2. Article 27 confers rights on persons belonging to minorities which “exist” in a State party (...). Just as they need not be nationals or citizens, they need not be permanent residents”.

²⁶ European Commission for Democracy through Law (Venice Commission), *Report on Non-Citizens and Minority Rights*, adopted by the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006), doc. CDL-AD(2007) 001.

²⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Estonia*, doc. ACFC/INF/OP/I (2002)005, adopted on 14 September 2001, paragraph 17.

elements are not present, the cultural difference will not be so relevant in their integration process and other legal, social or urban aspects involved in that process should also be considered. However, it may be admitted that national membership can contribute to a certain extent to identifying cultural minorities, provided that other cultural traits also come into play.

All in all, membership in a political community can be sometimes a cultural trait that helps to identify a minority. This would result in several traits that we have called third cultural space, although it is sometimes related to differences on the level of other more evident cultural factors such as linguistic or religious differences. From a strictly integration perspective concerning minority cultural groups, the legal nationality of their members is not a relevant factor; the cultural differences of both nationals and foreign citizens should be borne in mind in designing integration policies.

IV. CULTURAL TRAITS AND THEIR DYNAMICS

Language and religion, understood in a very broad sense, have been key elements to differentiate collective identities, and especially those of minority groups, throughout European history. Other elements that form what we have called the third cultural space (ethnicity, geography, history, phenotypic traits or lifestyles) always seem to coexist to some extent with religious or linguistic aspects. At least in Europe, it is noteworthy that religion and language have been more significant factors than identity differentiation. As Williams underlines, religion is “the primary evolutionary universal” within “the human capacity to create and transmit culture”. However, to “operate effectively”, religion “must be implemented in action systems and must therefore involve communication via the secondary primary evolutionary universal, language” (Williams 1992: 53). “Religion and language are to be considered as anthropological constants in the evolution of mankind” (Darquennes/Wim Vandebussche, 2011: 5).

IV.1. Linguistic traits

In Europe, language has been considered the most common, definitive basis of national identity (Hannum, 1996: 458). Whereas in the early Modern Era the main factor of community identity was religion, in the nineteenth century, language began to emerge as a determining factor of membership (Petschen, 1990: 41). Language, according to Obieta, is the main creation of a group as part of the culture; it is the record and synthesis of the main historical experiences that reflect the lifestyle of a community that takes shape over time (Obieta, 1985: 39). For most people and human groups, language is a key element of one’s identity (Patten, 2003: 313; O’Reilly, 2003: 20; Blake, 2003: 213). Its loss, atrophy, unequal status or decline are a source of personal and collective trauma and may cause, directly or indirectly, social conflicts (Kontra, 1999: 281).

Today there are about 200 sovereign states on the planet and the number of modern languages is considered to be around 6000 (Breton, 2003: 15). This imbalance gives an initial idea of the difficulty involved in the public organisation of the use of languages. The

political community cannot avoid defining itself linguistically, since language is a key element for the purpose of carrying out the duties of any State (Rubio-Marin, 2003: 55; Patten, 2003: 296), but the idea of monolingual nation-States is a threat to the current linguistic plurality (Kymlicka and Patten, 2003: 10).

Language is a complex reality that encompasses not only a set of communicative variables but also symbolic, political and identity variables. Language, as any other cultural trait, has aspects or manifestations that are difficult to define objectively and compare. Even a seemingly basic fact, such as that of setting out everyone's language, can be very complex, considering the combination of personal, social and psychological factors that operate on it. Therefore, we tend to identify an individual's language with that of their parents (together or separately), but this language (or languages) may in turn differ from the language spoken in their families; the language they know best; the language they use the most in their daily lives; the language they feel most identified with; or the language with which others identify them (Kontra, 1999: 285). The choice of one or another of these possibilities is indeed a question of identity, whereby an individual may become a member of a majority or a minority. It may also occur that a specific language does no longer play a communicative role and yet it maintains its cohesive nature as a key element of a group's identity. That is, some sectors of the population may consider themselves strongly attached to a language that is only spoken by other group members. This is the case with many linguistic minorities, both traditional and immigrant groups, for whom the memory of their tongue remains a factor of cohesion and identity through other artistic, symbolic, festive functions, etc.

Likewise, linguistic factors have complex internal dynamics that also affect collective identity ties and the sense of belonging. In many cases, the very existence of the group is defended by the existence of a distinct language. In this regard, the distinction between languages and dialects comes into play, not responding so much to purely scientific facts as to political and symbolic options (May, 2003: 128; Nic Craith, 2003: 61). After all, many of the languages we identify in Europe today are but the standardisation of former dialects which benefited from the institutionalisation of a specific form of state policy (Letzburger, Norwegian, Macedonian...) and vice versa, a significant number of languages are not recognised as such for failure to have their own political entities (Asturian, Ruthenian, Scots...) ²⁸.

The same identity dynamics sometimes occurs regarding the use of language names. Language names are often particularly sensitive in cases where linguistic unity or plurality is under discussion or, in other words, there is reluctance to admit the existence of certain minorities. The controversy over language names usually occurs in parallel to that already mentioned between languages and dialects, or to reduce the cultural nature of some specific political projects. In Europe there are particularly striking cases, such as the separation of Serbo-Croatian language into three languages, the alternative use of

²⁸ Perhaps the best way to express the difference between language and dialect from a political point of view is the phrase coined by Marshal Hubert Lyautey (1854-1934): "A language is a dialect with an army and a navy".

Valencian versus Catalan, Moldavian versus Romanian, Ruthenian versus Ukrainian, or Yezidi versus Kurdish.

Finally, another important element that affects the relationship between language and identity is the spelling or alphabet used for writing. In addition to being written means of expression for languages, alphabets have historically played a key role in the field of religion. It can therefore be considered that the great liturgical languages in Europe have been Latin for Catholic Christianity, Greek and Slavonic for the Orthodox Christianity, Arabic for Islam, Hebrew for Judaism and Armenian for Armenian Christianity, the main alphabets in force today corresponding to each of them. This identification of alphabets with language and religion has made the former become a factor of identity and a differentiation factor between groups. Thus, there are groups that despite having the same language, use different alphabets for religious reasons (Serbians and Croatians; Ruthenians and Ukrainians; Finnish and Karelians), or with political decisions related to the use of alphabets as part of identity policies²⁹.

IV.2. Religious traits

Religions have been an important source of cultural diversity throughout history (Lane and Ersson, 2002: 144). Social evolution has radically changed the public role of religions in modern European societies, highly secularised today compared to previous periods in history. However, this does not lessen the significance of the religious fact in the definition of collective identities, since the dominant religion has strongly determined cultural evolution in each context. It must be understood that, by including religion as an objective element of identity in the case of minorities, we are in turn referring to the religious affiliation or tradition. In this sense, this continues to have an undeniable bearing even though specific religious practices may have fallen into disuse.³⁰ Indeed, religious differences express a whole series of cultural symbols and elements that possibly go far beyond the transcendental beliefs of their followers: religious symbols, social events, educational curricula, management of public spaces, notions of family life, scheduling of festivities, etc.

The instruments for the protection of human rights lack a definition of the term “religion”. However, freedom of religion or belief is guaranteed as an individual freedom, either alone or in community with others (for example, in Article 18 of the Universal Declaration of Human Rights, or in Article 18 of the ICCPR). Religion has historically been a major issue in international relations. Between the seventeenth and nineteenth centuries a few agreements were signed in Europe, whose purpose was to

²⁹ The decision adopted in 1938 by the Soviet Union on the use of the Cyrillic alphabet was imposed on almost all languages of the Union; the Turkey of *Kemal Atatürk* (1881-1938), who adopted the Latin alphabet to replace the Arabic script in 1928; the Republic of Moldova after its independence, when the Latin alphabet was adopted again; the decision adopted by the authorities of the Autonomous Republic of Tatarstan not to use the Cyrillic alphabet.

³⁰ The UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, refers particularly to religion-identity-minorities on Part III of the 2012 annual Report on freedom of religion or belief, submitted to the Human Rights Council (doc. (A/HRC/22/51, of 24 December 2012). Available at http://www.ohchr.org/Documents/Issues/Religion/A.HRC.22.51_English.pdf

legally guarantee the freedom of religion in some contexts (Ruiz Vieyetz 1999: 16). During the League of Nations period, several treaties forced several European States to create mechanisms to protect religious minorities (Contreras, 2004: 59). The right to freedom of thought, conscience, religion and belief remained one of the fundamental rights under the United Nations system and in 1981, the General Assembly adopted the Declaration on the Elimination of all forms of Intolerance and Discrimination based on Religion or Belief³¹.

It is also relevant to mention that religion is a complex phenomenon. In this regard, religion is not only a specific organised belief system or a social experience of transcendence but also a huge variety of rites, beliefs, organisations, cultural expressions or traditions that are associated with a religious base³². The European Court of Human Rights recognizes that it is not possible to find a common and unique conception of religion within European societies, and that the impact of external manifestations of religious beliefs may vary significantly in different times and contexts³³. It is equally important to acknowledge the increasing diversity of religious communities or groups, and the relationships that may be established among them, given the growing complexity of identities because of syncretistic trends, the fusion of traditions or the emergence of new spiritual movements. Finally, we must also consider the new phenomena of “believing without belonging” and “belonging without believing” pointed out by Davie (Davie, 2000) and Hervieu-Léger (Hervieu-Léger, 1993).

As is the case with languages, religions have identity problems in themselves, as it is often difficult to determine whether a specific set of religious beliefs or practices are a religion or they derive from a larger religious unit. By worship we understand the set of acts and procedures to express and manifest religious beliefs in community³⁴. In this regard, worship is an external manifestation, and as such, an experience with a highly collective component and hence, an element of identity for many communities. In the case of human groups sharing the same basic religion, cultural differences may be the distinctive and differentiating factor in their context. Thus, the differences of worship would complement the religious affiliations that have traditionally served to distinguish minorities. In turn, these differences of worship may be due to the existence

³¹ United Nations, General Assembly, Resolution 36/55 “Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief”, 25 November 1981.

³² The Human Rights Committee of the United Nations has warned that today it is necessary to progressively broaden the idea of religion to accommodate new phenomena and expressions that do not match the great traditional religious facts. Human Rights Committee, *The right to freedom of thought, conscience and religion (Article 18) (General Comment no. 22)*, adopted on 30 July 1993 (UN Doc CCPR/C/21/rev.1/Add.4), paragraph 2.

³³ European Court of Human Rights, *Leyla Sahin v. Turkey*, judgment of 10 November 2005, paragraph 109; *Refah Partisi v. Turkey*, judgment of 13 February 2003.

³⁴ The Human Rights Committee of the United Nations states that "the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols and the observance of holidays and days of rest". Human Rights Committee, *General Comment 22 of the Committee of Human Rights: The right to freedom of thought, conscience and religion (Article 18)*, 30 July 30 1993: UN document CCPR/C/21/ rev.1/Add.4, paragraph 4.

of a different church organisation affecting that minority in question, or the use of its own religious ritual.

IV.3. Ethnic traits. The third (cultural) space

As seen above, international documents include references not only to religious or linguistic minorities but also to ethnic and national groups. Considering that the adjective *national* tries to make a distinction between new minorities and traditional ones, it is yet to be determined what cultural traits can be included in the adjective *ethnic*, which we have called the third cultural space. Following the wording of Article 27 of the ICCPR, the members of ethnic minorities have the right to “enjoy their own culture”, beyond the religious or linguistic parameters that expressly referred to in this article. It could be inferred from this that what characterises an ethnic group is a distinctive culture that should consist of something other than linguistic and religious traits.

What other cultural traits or factors can be considered in this third space? The adjective *ethnic* refers to a concept that is difficult to define. The term *ethnicity* has been traditionally understood as a group of human beings that have some somatic, linguistic or cultural affinities, but the distinction between the concept of ethnicity and those of cultural people or nation is not always clearly defined. There are no international legal or political documents that offer a definition of ethnicity or expressions like "ethnic groups", "ethnic minorities" or "ethnic communities". What is clear is that the term *ethnicity* has been used since the end of World War II to replace that of race with regards to minorities. Therefore, the references to “racial minorities” in international documents prior to 1939 became references to “ethnic minorities” as of 1945. It also appears that this replacement broadens its meaning with respect to visible minorities by phenotypic aspects, but without clarifying the approximate scope of this extension.

However, there are still certain formal contexts where the term *race* is still valid. The most relevant international legal instrument in this regard is the Convention on the Elimination of All Forms of Racial Discrimination³⁵. Both Article I of the Convention and the Committee on the Elimination of Racial Discrimination in their general recommendations³⁶ use the term *race* when applying criteria for the identification of potentially discriminated human groups. The other terms used are skin colour, descent or ethnic or national origin that differ from the majority. There may also be references to racial groups or minorities in some national legislations like that of Britain. It is undeniable that today there may still exist groups discriminated against on the grounds of their physical characteristics, but this is not, strictly speaking, a question of managing minorities in terms of multiculturalism, but of recognising civil rights to all people equally. In this sense, this may justify affirmative action policies to restore structural inequalities. However, the cultural perspective would only be present insofar as the physical elements or their history may have caused the emergence of other specific

³⁵ Convention adopted by the United Nations General Assembly on 21 December 1965.

³⁶ See, for example, the General Recommendation No. 8, of 1990, and the General Recommendation No. 24, of 1998.

cultural products of the group that do serve their own inner identity and against third parties.

As discussed earlier, almost all cultural differences that are used to identify minorities are currently linked in the European context to some kind of linguistic (including variations related to language names or alphabets) or religious (including liturgical or ecclesiastical variations) difference. In addition, culture manifests itself in many forms, including peculiar lifestyles associated with the use of natural resources or land use, especially in the case of indigenous peoples. This is recognised by the UN Human Rights Committee, for whom the right to enjoy one's own culture may include traditional activities like fishing, hunting and the right to live in reserves or environments protected by the Law³⁷ for persons belonging to minorities. In the case of the European Convention on Human Rights, which does not include any article on the specific protection of minority rights, the European Court of Human Rights understood that the “traditional lifestyle” of minorities can be comprehended in the content of the right to private and family life recognised in Article 8 of the above Convention³⁸. This recognition may be particularly relevant for minorities that lack a defined territorial base such as the Roma population.

In most cases, included the so-called indigenous peoples, non-territorial minorities or the some of the so-called new minorities, the recognition of traditional cultural practices, lifestyles or peculiar modes of production is linked to religious traditions, or to the existence of languages that are exclusive to these groups. However, this productive (traditional economic activities) or celebrative (including external expressions such as clothing, food-related rituals, festivals and social events, artistic expressions, etc.) aspects can easily be associated with the third cultural space.

In addition, other aspects or factors that can help to strengthen the identity of a specific minority group should not be left aside. These are usually aspects that make up the symbolism or the collective thinking of the group. These factors are generally derived from geographical or historical elements. The geographical circumstances where a territorial minority lives are sometimes a factor that helps to create or strengthen collective identities (Hooson, 1994). The geographical features that may be relevant in

³⁷ United Nations Human Rights Committee, *General Comment 23 on Article 27*, of 6 April 1994, UN document CCPR/C/21/Rev.1/Add.5, paragraph 7. *"With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law (...)"* This argument also appears in many cases elucidated by the same Committee under the optional protocol: *Kitok v. Sweden* (Communication No. 197/1985), Views adopted 27 July 1988, CCPR/C/33/D/197/1985, paragraph 9.2 ; *Lubicon Lake Band v. Canada* (Communication 167/1984) Views of 26 March 1990, CCPR/C/38/D/167/1984, section 32.2; *Diergaardt and others v. Namibia* (Communication No. 760/1997), Views of 25 July 2000, CCPR/C/69/D/760/1997, section 10.6; *Apirana Mahuika and others v. New Zealand* (communication No. 547/1993), Views of 27 October 2000, CCPR/C/70/D/547/1993, section 9.3; *Lansman and Muotkatunturi Herdsmen's Committee v. Finland* (Communication No. 1023/2001), Views of 17 March 2005, CCPR/C/83/D/1023/2001, paragraph 10.1.

³⁸ *Vid. Buckley v. the United Kingdom*, judgment of 25 September 1996, Reports 1996-IV.

this regard are varied (orography, hydrography, natural features, climate, ecosystems, political and administrative divisions) and they usually play an important symbolic role. For immigrant communities, the very geographical distance from their place or origin is a factor of cohesion and belonging to the minority group.

Furthermore, the historical belonging of a territory or population to a political entity other than the current one is a memory that can serve as a cohesive element for the respective community. In this regard, it is a historical element linked to a political geography factor. Since political spaces and borders are key elements to creating or strengthening collective identities, past political boundaries may have contributed to the emergence or development of identities that are now in a minority situation. In any case, it can be seen here that the historical element always accompanies other objective differentiation factors.

IV.4. Dynamic cultural traits: evolution and interaction

In the analysis of each of the cultural traits that define minorities, we have noted that these traits are not static. It is difficult to define the third space that we included under the ethnicity or culture category, as it is challenging to determine languages and religions, dialects, alphabets, specific worships, church organisations, syncretic beliefs, etc. And all this considering that these factors are in constant evolution and transformation. Talking about identities that are defined by culture and its importance in managing integration policies does not mean reifying cultures or considering them unmovable realities.

Similarly, it should be borne in mind that individuals may belong to more than one cultural group at a time (Polavieja, 2015: 170), and that it is necessary to relate the micro and macro levels of culture dimensions to understand these phenomena. Identities in general, particularly those culturally-based, exist and evolve by comparison (Polavieja, 2015: 172; Ruiz Vieytez, 2014c: 22). This requires highlighting the dynamic nature of these elements and the differences in their practical operation. All this makes it more difficult to manage them but does not lessen its importance.

On the one hand, we are presented with a changing evolutionary dynamic. History teaches us that diversity is not a new feature, not even in Europe. European societies have always been plural from a linguistic, religious or ethnic perspective, but the strength of these factors has been uneven across different periods of our recent history. In the Early Modern Age, religion was by far the main factor of European identity but, over time, the collective identities especially supported by languages increasingly shifted the importance of religious differences in public debate. With the secularisation process, it appeared that faith-based identities lost their political relevance in Europe for good. However, recent population movements and other social changes have caused religion to acquire high public visibility again.

On the other hand, these major cultural factors also have large differences in their social and political operationalization. Moreover, they show significant differences

in the way they are displayed in the public sphere and hence, in terms of their relationship with integration policies. These differences may result from anthropological, sociological or legal reasons. Simplifying the scheme, below is a list of some among the two most clear identity factors:

1. In our political context, one of the requirements of a modern democratic State is neutrality in matters of religion. Indeed, this contrasts with the impossible linguistic neutrality of today's public apparatus, which officially chooses one or several specific languages.

2. In our cultural context, religion is a contingent element in people's lives, even if it is extended to any kind of spiritual experience and it is not a relevant element in their way of being for all people. On the contrary, today language is necessary for anyone, whether one or another.

3. One same person can speak several languages and even feel emotionally close to more than one language. On the contrary, we usually understand that one person has a specific religious affiliation, regardless of whether this responds to a more classic version of a tradition, or a syncretic amalgam of beliefs or practices of various traditions.

4. According to some interpretations, language is by definition an instrument of socialisation that can only be shared interpersonally, while religion is more related to the private or intimate sphere of the human being. This difference, however, is severely questioned by others, who understand religion as an essentially collective phenomenon.

5. Apparently, languages have a more compact territorial base, or at least an original reference territory, a linguistic domain, whereas in the case of religions it is blurred. This does not mean that religions cannot be mapped, but the legitimacy of the religious claim is not so linked to the territory as the linguistic claim (apart from very specific areas or places that hold a sacred value such as shrines, monasteries, mountains, rivers or other objects).

6. In today's politically dominant discourse, there is a tendency to highlight the wealth of linguistic diversity as a (European) common cultural heritage. However, this positive assessment of all languages gives way to much more reserved positions in the field of religion. It is difficult to find general positive assessments for all religions and, in some cases, even for only one of them. Something similar can be said regarding the consideration of the intrinsic equality of all languages or all religions.

7. In many Western societies, linguistic diversity evokes a traditional diversity (linguistic minorities, regional languages...), while religious diversity mainly evokes immigration and new minorities.

8. Under International Law (and Comparative Constitutional Law), freedom of religion is clearly designed as a universally recognised human right, as well as a right of the members of religious minorities. However, regarding language, there is not a comparable right to language, beyond the rights (very generic in nature) of linguistic minorities. There is no freedom of language ("right to a language" instead of "right to the language") in the same way as there is as freedom of religion, which alters the position of both elements in the political and regulatory game.

These operational differences between the religious fact and the linguistic fact explain that, despite both being strong socialisation and differentiation factors, their legal and political treatment cannot be equal. However, this should not make us forget that the foundation of their protection is that they both affect the interpretation of a significant number of fundamental rights that form the backbone of collective identities.

All in all, the cultural traits that define minorities also evolve and interact with one another. Both linguistic and religious factors can help consolidate the elements of the so-called third space and vice versa. We mentioned this fact when we referred to visibility (through phenotypic traits or clothing), historical, geographical or even legal (such as the failure to hold the nationality of the State of residence) elements. These factors themselves, which may not help to define a collective identity, become relevant in conjunction with linguistic traits (even the memory of extinct languages) or religious tradition (even through phenomena such as belonging without believing). Therefore, its definition will always be considered relative and contingent.

V. CONCLUSION

The aim of this first paper has been to better identify the main cultural traits that define minorities and affect their dynamics of integration. The identity and cultural integration dimension deals with the linguistic, ethnic and religious diversity of European societies, considering it as a crucial factor for integration processes. An analysis of political and legal documents has led us to conclude that the most significant cultural traits can be grouped into three major groups. On the one hand, those aspects related to or derived from religion or religious tradition. Secondly, there appear linguistically-based products or elements. Then, there is a less defined third space that comprises other cultural expressions not strictly related to language or religion, but that serves to shape or strengthen collective identities. Within this third space, the migrant status (which can in turn be considered from the geographical or legal perspective) may be a cultural factor itself that usually accompanies and reinforces the above. Finally, we have argued that the relationship of all these factors is dynamic and complex and, therefore, it cannot be defined in a static or closed way.

In any case, understanding integration and human rights protection is related to different cultural views. In turn, some elements that shape cultural identities (religions, languages, lifestyles...) may become part of the exercise of these same rights. Cultural diversity is therefore extremely important when addressing or designing integration policies or strategies based on the extension of human rights to all people. All this confirms the importance of properly assessing cultural events in public policies, by easing traditional parameters to enable the incorporation of an increasing number of identities. The subsequent papers examine the different scenarios regarding the integration of traditional and new minorities, by addressing the cultural factors that shape their distinct identities.

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