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Final Report

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Abbreviations

In this report the following abbreviations are used: DeGIP = Denmark, Greece, Italy and Portugal; E&L = Egypt and Lebanon; ECtHR = European Court of Human Rights; RE = religious education; RM = religious minority; RO = religious organization; WT = Western Thrace. The countries taken into consideration in the research are indicated with the expression ReMinEm countries.

¹ The materials on which this project is based can be accessed at <https://atlasminorityrights.eu/reminem>. The ReMinEm project is linked to the project "Atlas of Religious or Belief Minority Rights", devoted to mapping and measuring religious/belief minority rights in the European Union countries. For this reason, this report contains some references to materials published in the Atlas website (<https://atlasminorityrights.eu>).

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1. Executive Summary and Key Findings

by Silvio Ferrari

1.1 Executive Summary

The research compares the rights of RMs in some European and Middle Eastern countries and reveals some significant differences that highlight the need for policy and legal reforms.

In E&L, religion-based personal laws give recognized RMs the right to regulate marriage and family relations according to their own norms but accentuate the differences among RMs and do not adequately protect the rights of non-recognized ones. In the DeGIP countries, the regulation of marriage and family through the same rules for all individuals regardless of their religious beliefs ensures a high level of equal treatment but sometimes restricts the RM right to publicly manifest their identity. In both groups of countries, religious education in public schools is provided through the teaching of one or more specific religions (teaching *of* religions). This points to the need, particularly strong in E&L, to expand the number of RMs who can teach their doctrine in public schools. Moreover, in all ReMinEm countries it is advisable to accompany the teaching of particular religions with teaching that enables students to acquire knowledge and information about all religions present in their country (teaching *about* religions).

Faith-based private schools have a prominent place in all ReMinEm countries, but in E&L the right to open and manage them is limited to recognized RMs, generating significant discrimination to the detriment of all other RMs.

While respecting the different religious and cultural traditions of these two groups of countries, the research points to some policy and legal reforms that would guarantee RMs the right to participate in public life and develop their identity without creating discrimination.

1.2 Key Findings

a) *General*

1. The main difference between DeGIP countries and E&L is the almost complete disappearance in the former of religion-based personal laws that exist in the latter.
2. Provided they comply with international human rights standards, religion-based personal laws in force in E&L can promote the rights of religious minorities. However, if access to personal laws is limited to a small number of RMs, unjustified disparities may be generated, particularly to the detriment of unrecognized RMs.
3. In E&L it is impossible to perform some fundamental acts of a person's life in a form independent of religious rules. As a result, members of unrecognized RMs are forced to perform them according to the rules of a religion that is not their own.
4. Legal systems that regulate these fundamental acts through uniform laws that are independent from citizens' religious affiliation can better promote RM identity if they recognize the right to perform such acts in a way that corresponds to the rules of their religion when these rules do not contradict fundamental principles of the state's legal system.

5. In countries that provide for different legal regulation of recognized and unrecognized RMs, members of the latter do not always enjoy the individual rights of freedom of conscience and religion that must be granted to each person regardless of religious affiliation.

b) Marriage and family

6. Civil marriage is regulated by the law of DeGIP countries but is not provided for in the legal systems of E&L, contrary to the existing international standards in this field.
7. In the DeGIP countries, RM members can celebrate a marriage according to the rules of their religion that is valid under state law, if some conditions are met. In E&L, this right is denied to members of unrecognized RMs.
8. In the DeGIP countries the dissolution and annulment of marriages celebrated by RM members can only be decreed by a state authority. In Lebanon, the dissolution or annulment of marriages celebrated by members of a recognized RM can only be pronounced by the respective religious authority.
9. In the DeGIP countries, inheritance, child custody, and adoption are governed by state rules that are independent of the religious affiliation of the involved parties. In E&L inheritance, custody, and (with some specificities) adoption rules are different according to the religion of the parties.
10. In the DeGIP countries, differences in religion between spouses are irrelevant to the celebration of a marriage that is valid for the state; in E&L a marriage between individuals of different religions may be celebrated only if it is permitted by the norms of the respective religion.

c) Public and Faith-Based Private Schools

11. In all ReMinEm countries RE is part of the instruction provided by public schools and is given through a system of teaching *of* religions; the system of teaching *about* religions is only (and partially) followed in Denmark (the difference between the two systems is explained on p. 16).
12. In many ReMinEm countries some minority religions cannot be taught and, where the teaching is possible, it is subject to important restrictions that do not apply to majority religions.
13. In no ReMinEm country the teaching of a particular religion can be imposed on students who do not wish to receive it except in Egypt where, contrary to international standards, students are not entitled to opt out from RE.
14. In the ReMinEm countries RM symbols cannot be officially displayed in public schools, with few and limited exceptions.
15. The right to open and manage faith-based private schools is granted to all RMs in the DeGIP countries, only to the recognized ones in E&L.

2. Introduction

by Silvio Ferrari

2.1 The Research Question

This project compares the legal and political systems of protection and promotion of religious minority (RM) rights in some European and Middle East countries. These countries are characterized by very different cultural backgrounds, religious traditions, political systems, and social conditions. These differences are reflected in the way the two rights that underlie the protection and promotion of minorities are combined: the *right to be equal* to other citizens, and thus not to be discriminated against because of one's religious beliefs, and the *right to be different* from other citizens and thus to be able to develop one's specific cultural and religious identity. In Middle East countries the emphasis has traditionally been on the latter of these rights; in contemporary Europe, however, it falls more on the former. A clear indication of this is the demise in Europe of the religion-based personal rights systems that continue to be applied in many Middle East countries. Since the promotion of minorities requires that both rights (that of being equal and that of being different) be respected, the central issue becomes how to ensure the promotion of cultural and religious diversity without creating discrimination. To answer this question, which is at the heart of the ReMinEm project, it is helpful to examine and compare the different political strategies and legal regulations that have been born out of each country's cultural and religious traditions. As might be expected, these strategies and regulations are not the same; given the differences between them, it is important to assess whether and to what extent they are compatible with the international standards set for the protection and promotion of RM rights.

This assessment requires an analytic and pragmatic approach, comparing the concrete results of the application of these strategies and regulations on the specific rights to which members of each RM are entitled. In other words, instead of asking whether, in the field of education or marriage and family relations, one system of uniform law is abstractly preferable to another that accords relevance to each individual's religious affiliation, it is more productive to ask which of the two systems best protects and promotes the rights of RM members in relation to specific issues: teaching of religion at school, celebration of marriage, financial relations between spouses, and so on. Only such an analytical approach makes it possible to accurately identify the legal areas where international standards are met, those where they are not (and where, therefore, reforms are needed), and those where different legal regulations are acceptable.

Such an analysis has not yet been undertaken and the ReMinEm project aims to carry it out, thereby providing data, information and knowledge for the political and legal reforms that are needed to guarantee RM rights.

2.2 The Research Fields (Policy Areas, Countries and RMs)

The ReMinEm project compares the rights of RMs in two policy areas: education, both in public schools and in faith-based private schools, and marriage and family relations. These areas of inquiry were chosen because they are particularly relevant to the protection and promotion of RM rights.

They also sharply highlight the differences between the legal systems of the European and Middle Eastern countries considered in the research.

These policy areas have been analyzed in relation to two Middle Eastern and four European countries. The chosen countries reflect the variety of religious and cultural traditions in the Euro-mediterranean space: one country with a Muslim majority (Egypt), two countries with a Catholic majority (Italy and Portugal), one with an Orthodox Christian majority (Greece), and one country (Lebanon) where Christians and Muslims coexist on a substantially equal footing. Finally, we added a European country outside the Mediterranean region, Denmark, to include a nation with a Protestant majority in the research.

In each of these countries different RMs have been taken into consideration, since the religious community that is a minority in one country may be the majority in another. In Italy and Portugal, Protestant, Orthodox Christian, Jewish, and Muslim minorities were taken into account, along with Jehovah's Witnesses; in Denmark, this list was altered to include Catholics instead of Protestants (the majority religion); and in Greece, where the majority religion is Orthodox Christianity, Catholics and Protestants were included among the minorities. In Lebanon, the Ahmadis, Alawites, Syriac Christians and Jehovah's Witnesses were selected, and in Egypt the Ahmadis, the Bahai's, the Copts and the Shia Muslims. Again, an attempt was made to cover old and new, large and small religious organizations so as to reflect the diversity that exists in the countries covered by the research. All these RMs represent a group of people gathered in common membership who constitute less than half of the population of a state and who are bound together by the intent to preserve and advance their religion. This definition of RM has been adopted both in the Atlas and in the ReMinEm project and is explained in more details in the section Methodology of the page About in the Atlas of religious or belief minority rights website (<https://atlasminorityrights.eu>).

For statistics regarding the number of adherents of each religious minority, ReMinEm makes use of the data provided by the World Religion Database.

2.3 The Methodology

The ReMinEm data and information have been collected through two sets of questionnaires concerning the rights enjoyed by RMs in the following policy areas: marriage and family, public and faith-based private schools. The first set has been sent to legal experts in the countries considered in the research. Their responses provide a reliable, analytical, exhaustive, and in-depth picture of the rights enjoyed by RMs in each country. The second set of questionnaires, focused on the de facto implementation of these rights, was sent to the RM representatives in the same countries. Their answers give an insight into the extent to which the members of each RM feel they are being discriminated against. Each response was checked by the ReMinEm team to ensure that the legal experts and RM representatives correctly understood the questions and replied in a manner consistent with the responses given by the experts and representatives in the other countries. Each response was also double-checked against each country's legal provisions and other available information. When ambiguity was found or doubts arose, the ReMinEm team asked the experts and representatives for additional information and, when further investigation was needed, consulted other experts.

The replies to the legal questionnaire (and the legal experts' comments, when some clarifications were needed) have been collected in three tables which make it possible to compare at a glance the

legal provisions in force in each country. The comparative tables are available at the page *Policy areas* of the ReMinEm website (<https://atlasminorityrights.eu/reminem>).

2.4 The Benchmark (International Standards)

The information collected through the questionnaires was analyzed against the benchmark consisting of the international standards for the protection of religious freedom (OHCHR, International standards on freedom of religion or belief) and the promotion of minority rights (OHCHR, Minority Rights: International Standards and Guidance for Implementation). Particular attention has been paid to the historical, political, legal, cultural and religious context in which these international standards are to be applied. The ReMinEm project is founded on the belief that the elaboration of the international standards should be conceived as a bottom-up process. This process starts from the knowledge of the history and characteristics of each country, by identifying the elements that, once properly developed, can meet the requirements of universality underlying international standards in a way that is peculiar to each nation. For this reason, relevant regional conventions were also considered. They are the European Convention of Human Rights (ECHR), the Arab Charter on Human Rights (ACHR), the African Charter on Human and Peoples' Rights (ACHPR), the African Charter on the rights and welfare of the child (ACRWC). The international standards applicable to each area of the project are indicated in more details in the *Policy areas* page of the ReMinEm website (<https://atlasminorityrights.eu/reminem>).

2.5 Selected References

The full list of bibliographical references is available in the ReMinEm website (<https://atlasminorityrights.eu/reminem>).

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3. Marriage and Family: Legal and Sociological Analysis

3.1 Introduction

By Rossella Bottoni and Silvio Ferrari

Religion has historically been a major factor determining the definition of marriage and family. The legal regulations and social norms within each state regarding this area are typically influenced by the majority's religious traditions. This influence has affected and still affects RMs, where their specific notions differ from the majority's.

Marriage and family are considered intrinsically linked, as the basic units composing society. As such, they have a great importance in all the countries considered in the ReMinEm research, which nevertheless are characterized by significant differences concerning the understanding of what marriage and family are – not least because of the divergences among the majority religions, as well as the outcomes of the processes of legal and social secularization.

Marriage and family involve the most private aspects of human life but, at the same time, they have a fundamental collective dimension as one of the foundations of society and, in some instances, also as pillars of communitarian identity. The latter is especially applicable to countries characterized by personal status laws based on religion. This research has considered the possible obstacles posed to the celebration of rites marking entry into a religious community, as they determine the subjection to religion-based personal law status, and the impact of such laws on vulnerable groups within RMs, such as women and children in relation to polygamous marriages, dowry, inheritance and child custody in particular.

3.2 The DeGIP Countries

By Silvia Baldassarre, Valeria Fabretti and Deborah Iannotti

a) Celebration and validity of marriage

In the DeGIP countries it is possible to celebrate a civil marriage irrespective of the religion of the spouses. Civil marriages are entirely regulated by state law and religion does not play any role in their legal regulation. In these countries it is also possible to perform a religious marriage that is valid for the state if certain conditions are fulfilled. The members of all the concerned RMs can celebrate religious marriages that are valid for the state (or, in a few cases, perform religious rites that integrate the civil marriage) in Denmark, Greece and Italy. However, Jehovah's Witnesses and Muslims (of whatever denomination) in Italy must comply with more restrictive rules than other RMs, since their ministers responsible for celebrating marriages must have been previously approved by public authorities (Art. 3 of Law no. 1159/29). If otherwise they have not been approved, the state does not consider marriages they celebrate to be valid. In Portugal, the ROs must comply with the requirement of "being rooted" in the country (Art. 19 of the Law no. 16/2001) in order to celebrate religious marriages that are valid for the state, and this is not the case of Orthodox Christians.

According to the RM representatives, the question of the civil recognition of religious marriages is an important issue for the daily lives of communities' members. The RM representatives who responded to the sociological questionnaires have asserted that obtaining a state license might result

in long bureaucratic processes that substantially result in a discrimination for those minorities which do not have sufficient resources to carry them out. In Greece and in Italy Muslims do not perform an official religious ceremony but rather opt for a blessing by the local Imam of the civil marriage. A number of respondents in Portugal, Greece and Denmark have expressed support for a system of personal status laws that entitles RMs to apply their own regulations concerning the celebration and annulment of marriage, divorce, and dowry management.

The conditions prescribed by the DeGIP countries' legal systems prevent the recognition of civil effect to religious polygamous marriages and marriages between underage people, even if they have reached marriageable age according to their religion. This also applies to WT, where Muslim marriages are regulated by Islamic law, but even in this case constitutional principles must be respected. Thus, a polygamous marriage or a marriage of underage people which is valid according to Islamic law is not such for the state. Regarding the celebration of gender-neutral marriages, there are divergences within the DeGIP countries. If they have introduced gender-neutral civil marriage – and this is the case of Denmark (Law no. 87 of 29 January 2019) and Portugal (Law no. 9 of 31 May 2010) – ROs (including RMs) can celebrate a marriage of a same-sex couple valid for the state. It should be noted that this is a possibility – not an obligation – dependent on each RO's doctrinal rules in this matter. By contrast, if civil marriage is not gender-neutral (and this is the case of Greece and Italy), the marriage of a same-sex couple celebrated by a RO (including a RM) cannot obtain civil effects. None of the DeGIP countries has legal rules preventing the celebration of mixed marriages, that is, marriages between individuals affiliated to different ROs.

Some respondents to the sociological questionnaires have affirmed that mixed marriages are frowned upon at a societal level.

b) Dissolution and annulment of marriage

In Denmark and Greece, the dissolution and/or annulment of a religious marriage with civil effects requires an act of the civil authority: no decision of religious bodies in this matter is relevant in the state legal system. This applies also to Italy and Portugal, where nevertheless there are different legal regulations for the annulment of marriages celebrated according to the rites of the Catholic Church, which is the majority religious organization.

c) Inheritance and dowry

In the DeGIP countries, inheritance matters are governed by state law, regardless of the religious affiliation of the deceased. For the Muslim minority in the WT, there is an ongoing debate about the application of Islamic law in this matter, or at least about the possibility to freely choose between the application of state or Islamic law. At this regard, the ECtHR stated that "Refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification" (*Molla Sali v. Greece*, application no. 20452/14, judgment of 19 December 2018, § 157). Under a newly approved law of 15 January 2018, the jurisdiction of the *mufti* has become the exception: he may exercise jurisdiction in this matter only if both parties file an application to this end.

Dowry is not regulated by state law and religious rules have no relevance in the state legal system, with the only exception of WT.

d) Rites to enter a religious community

Affiliation to a religious community often takes place through the celebration of religious rites (e.g. baptism, male circumcision). None of the DeGIP countries place obstacles to the celebration of such rites, although in Denmark the circumcision of male children has been the subject of a lively debate.

e) Children's rights

Children born of religious marriages, whether recognized or not by the state, enjoy the same rights. With the exception of WT, where Islamic law applies in matters of child custody of Muslims, religion is not a relevant factor when a judge must decide on adoption or child custody, unless it is relevant to the best interest of the child which is the guiding principle in these matters.

However, some respondents to the sociological questionnaire have asserted that in court proceedings religious diversity might result in an obstacle. For Muslims in Denmark, there is an assumed fear than in any legal proceeding for child custody in a mixed marriage, the judge would benefit the parent whose religion allies with the country's majority. The same fear is expressed by the representatives of Jehovah's Witnesses in Italy, who have also affirmed that sometimes negative prejudices are shown by the social workers involved in adoption proceedings, based on the idea that Jehovah's Witnesses teachings are detrimental to the free development of the child. Muslim respondents have reported that adoption by Muslim family is discouraged or frowned upon in the DeGIP countries. Indeed, adoption is prohibited in Islam, and it is important to stress that the *kafala* system has to be seen as sponsorship of a non-biological child rather than a naturalization process in the Western sense. According to the Islamic representative in Denmark, Muslim communities in the country may face problems when trying to adopt from their country of origin, since the state requires them to adopt locally, whereas the Muslim respondent in Italy has pointed out that there is an urgent need for reflection on the respect for the religious freedom of Muslim children adopted in the country by families with different or no religion.

3.3 Egypt and Lebanon

By Ana Maria Daou, Joe Hammoura and Ishaq Ibrahim

a) Celebration and validity of marriage

In E&L there is no civil marriage. This matter is regulated by religion-based personal status laws. However, not all RMs may validly celebrate a marriage under their own religious law. In both countries, only recognized RMs can do so.

In Egypt, there are many laws regulating personal status affairs. They are mainly religion-based and historically date back to the 'Liberal Period' in the first half of the 20th century. At that time, laws recognized the existence and rights of different RMs such as Baha'is and Jehovah's Witnesses. While Sharia courts regulated matters of personal status for Muslims, denominational courts and religious councils managed personal status issues for non-Muslims. However, the promulgation of Law no.

462 issued on 21 September 1955 abolished the plurality of judicial bodies and established 'Family Courts' as the competent authority to settle all personal status disputes, provided that laws and regulations of each denomination are applied. In case of disagreement, Islamic Sharia takes precedence. Thus, personal status laws in Egypt can now be divided into two different groups: the first includes special laws that apply to individuals according to their religion or denomination in matters related to marriage and divorce (a general one for all Muslims and 14 others for different denominations) while the second determines matters related to annulment and child custody. The principles of the latter are derived from Islamic Sharia. Only members of recognized RMs (like Copts) can validly marry under their own religious law. Ahmadis, Baha'is and Shia Muslims – being non-recognized RMs – are subject to Sunni Islamic law. Marriages where just one spouse is Muslim are only allowed if the husband is Muslim and the wife is either Christian or Jewish ('People of the Book'). Mixed marriages between Christians of two different denominations require that one of the spouses convert to the other's denomination in order for the marriage to be valid. It should be noted that conversion is not a requirement of the Lebanese state. However, individuals are required to declare that they are from a different Christian denomination when they apply for their marriage licenses. Non-baptized persons are allowed to marry in a Christian Church if they obtain the necessary dispensation from the religious authority.

In Lebanon, Alawites and Syriac Christians are recognized RMs. Thus, they enjoy rights like any other recognized religious group in terms of having their own personal status laws and their own religious courts to implement it. On the other hand, both Ahmadis and Jehovah's Witnesses are not legally recognized, which means that they are not entitled to many of the rights that other groups are granted. Therefore, there are no major differences when comparing the situation of Alawites and Syriacs, just like there is no significant difference when comparing the situation of Ahmadis and Jehovah's witnesses in Lebanon. However, when the situation of the two recognized RMs is compared with that of the two unrecognized ones, a clear fault line emerges. For instance, while Alawite and Syriac religious institutions can perform marriages that are automatically validated by state authorities, adherents to the Ahmadi faith and Jehovah's Witnesses cannot perform valid marriages. They can either marry according to their original religious affiliation (if they are converts) or the religious affiliation featured on their personal civil documents (adopted willingly or forcefully, simply because it is compulsory to have a stated affiliation). They can also perform a civil marriage abroad, which can be legally registered in Lebanon.

In E&L, interviewed representatives underlined the importance of having a state-recognized, uniform personal status law, applied to all and derived from their religious teachings, values and beliefs, to regulate matters related to marriage, divorce, custody, and inheritance equally. This does not constitute an official statement from religious institutions represented above; however, it does inform the series of conclusions and recommendations presented in the following sections.

b) Dissolution and annulment of marriage

The same logic is applied in the case of dissolution and/or annulment of marriages. In Egypt these matters are settled through religious laws. While Muslim and Christian laws and regulations govern matters in cases where both spouses are respectively Muslims and Christians, Sunni Islamic law is usually applied in the event of a difference of religion or denomination between the spouses. It also regulates dissolution and/or annulment of marriage of members of non-recognized RMs (like Ahmadis, Baha'is and Shia Muslims).

In Lebanon, the Alawite and Syriac religious minorities can easily dissolve and/or annul marriages in their own respective courts, while Ahmadis and Jehovah's Witnesses must appeal to the courts of affiliations featured on their ID cards (in cases where they performed a marriage according to their original affiliation) or appeal to the state's courts in cases where they performed a civil marriage abroad and registered it subsequently in Lebanon.

c) Inheritance and dowry

In Egypt, Ahmadis, Baha'is and Shia Muslims – being non-recognized RMs – are subject to Sunni Islamic succession law. The law of the Copts – a recognized RM – stipulates special rules derived from the Bible, which nevertheless can be applied by the courts only if the heirs agree on their application. Where there are disagreements between the heirs, Islamic Sharia is applied. With regards to dowry, the interested party (member of a recognized RM) can decide whether this is to be regulated by state law or religious law. Under the 1938 Regulation of the Coptic Orthodox Church, dowry is not one of the pillars of marriage (that is, marriages can be performed with or without a dowry).

In Lebanon, legal rules related to inheritance are codified in separate laws. The 1959 Inheritance Law for Non-Muslims regulates Christian religious marriages (including those of Syriac Christians) and all civil marriages contracted abroad (including those of Ahmadis and Jehovah's Witnesses if performed outside of Lebanon). On the other hand, the inheritance law for Muslims (Sharia Law) regulates all Muslim religious marriages (including those of Alawites) – as interpreted by the different denominational groups. Dowry is regulated by religious law, and only concerns the religious authority: the related decisions and rules have no civil effects.

d) Rites to enter a religious community

The obstacles placed by Egypt to RM manifestation of religious freedom in public, the building of places of worship, the public dissemination of their beliefs, and the organization of public events impair the right to perform the rites to enter a non-recognized religious community.

In Lebanon, Alawites and Syriac Christians – being recognized RMs – can freely practice their own rites. As regards non-recognized RMs, the obstacles and/or restrictions in many cases stem from social norms and grassroots hostility. In fact, according to the law, Ahmadis and Jehovah's Witnesses cannot practice their rites because they are non-recognized RMs, but in most cases they are allowed to do so in private by the state authority even if it is against the law. In any case, the rites performed by Ahmadi and Jehovah's Witnesses have no civil effects. Many who change their religious affiliation do so in secret.

e) Children's rights

In Egypt, religion is a relevant element when courts choose the spouse to whom children are to be entrusted in case of dissolution of marriage. Case law shows some bias against Ahmadis, Bahai's, Shia Muslims, and even Copts. Case law also shows some bias against Copts. The child's ability to distinguish the tenets of his/her own religion from the others and the fear that the child learns the teachings of other religions are two criteria mentioned and used to deprive Christian mothers married to Muslims of custody. As regards adoption, this is forbidden for all under Islamic law, although

there are special regulations providing for an exception for Christians. As on other issues, Ahmadis, Baha'is and Shia Muslims – being non-recognized RMs – are subject to Sunni Islamic law and, thus, are subject to the prohibition of adoption. However, in this case, there is a convergence with the stance of Shia Muslims, who do not allow adoption, too.

In Lebanon, too, religion is a relevant element in cases of child custody. In mixed marriages, the religious court to which the husband (and not the wife) belongs decides to whom the children should be entrusted. Generally speaking, a court affiliated to the same religion as the father will rule in favor of the latter. Other elements unrelated to religion are taken into consideration, such as socio-economic status, moral and ethical behavior, and so on. Case law shows some bias against members of non-recognized RMs (Ahmadis and Jehovah's Witnesses) and sometimes also against members of recognized RMs (Alawites and Syriac Christians). Since the Ahmadis and the Jehovah's Witnesses are non-recognized RMs they do not have their own religious courts. In the case of a mixed marriage where the wife belongs to one of these minorities, if the case is held in the court affiliated to the religion of the husband, then the judges take religion into account and base their ruling on two main arguments: 1) as children follow the religion of their father, it is better for children to be brought up in an environment where that religion is followed, and 2) it is better for them to be educated in the tenets of a legally recognized religion. The same can happen with Alawite and Syriac Christian women, but not as frequently as with Ahmadis and Jehovah's Witnesses. Adoption is not allowed in Muslim community, including Alawites. As regards Ahmadis and Jehovah's Witnesses, whether they can adopt or not depends on the stated religion on their ID cards.

3.4 Comparative Remarks

By Rossella Bottoni and Silvio Ferrari

- a) *Personal laws*. Nowhere in Europe (except in WT) is family law regulated through religion-based systems of personal laws, whereas such systems are in place in E&L. The impact that this difference has on promoting RM identity becomes evident if the two systems are examined in light of the relationship between *right to be equal* and *right to be different* (see the section *The research question* at the beginning of this report). In Europe, RM members are included in the social fabric of a country through the extensive application of the *right to be equal*: to attain equal treatment among people of different religious affiliation, no or very little legal relevance is given to the religion professed by each individual in matters like the celebration and dissolution of a marriage, inheritance, adoption and so on. The rules are the same for all citizens, irrespective of their religious affiliation. In many Middle East countries, including E&L, RM members participate in public life through the extensive implementation of the *right to be different*: this implies that religious affiliation has an impact on the state rules that govern the most important aspects of family law. Applicable rules are different according to the religious affiliation of each individual. There are exceptions both in Europe and in the Middle East countries, but the two different trends are rather evident.
- b) *Civil marriage*. The distance between European and Middle Eastern countries is further underlined by the fact that the citizens of the DeGIP states are entitled to perform a civil marriage while this right is not available to the citizens of E&L. They may perform a marriage only according to the rules of their religion. Citizens professing no religion or a religion that is not recognized by the state cannot conclude a legally valid marriage unless they perform it abroad and seek its domestic recognition under the rules of private international law.

- c) *State-recognized religious marriages.* In the ReMinEm countries the members of some RMs can perform a marriage according to the rules of their religion and this marriage is valid for the state. However, while in Europe the civil effects of this marriage are always conditional on the respect of some rules such as the minimum age of the spouses, the monogamous nature of the union and so on, this is not the case in Lebanon (where minimum age and polygamy are regulated by the RM provisions) and, to a lesser extent, in Egypt.
- d) *Polygamous and under-age marriages.* The DeGIP countries forbid polygamous and under-age marriages, while are divided about same-sex marriages. In E&L same-sex marriages are forbidden and, in Egypt, under-age marriages as well while polygamous marriages are allowed or forbidden according to the religion of the spouses.
- e) *Inter-religious marriages.* In the DeGIP countries marriages between people of different faith are always allowed, irrespective of the religion of the spouses and the rules of their religion. In E&L, religiously mixed marriages can be performed only if the laws of the religion professed by the spouses allow the celebration of such marriages.
- f) *Dissolution of marriage.* The DeGIP countries do not recognize legal validity to RM tribunals' decisions concerning the dissolution of marriages concluded according to their rites: all marriages can be dissolved only by a state court or administrative authority (this rule does not fully apply to Catholic marriages in Italy and Portugal; however in these countries the Catholic religion is the majority one). In Lebanon the dissolution of a marriage can be decreed by the religious authority without any state intervention, while in Egypt, the picture is more complex: for the Christian minorities the dissolution of marriage is decreed by state courts but an individual cannot remarry if the dissolution is not recognized by his/her Church.
- g) *Inheritance.* Concerning inheritance there is a clear divide between the DeGIP countries, where inheritance is regulated independently from the religion of the deceased, and E&L, where there are different laws regulating inheritance according to the individuals' religion (Lebanon) or inheritance is regulated according to Islamic law which allows the inheritance of the members of some RMs to be regulated by their own religious rules (Egypt).
- h) *Rites of passage.* In the DeGIP countries RMs do not face any obstacle to performing the rites of passage marking an individual's joining the RM: their performance is not dependent on the RM legal recognition. In E&L unrecognized RMs do not enjoy individual rights that are part of freedom of religion.
- i) *Adoption.* In the DeGIP countries, coherently with the trend to secularize family law, adoption is regulated by state law and the religion of the adoptive parents and of the adopted child does not play any role (unless it is indirectly relevant as a contributing factor in determining the best interest of the adopted child, which is the guiding principle in this field). In Lebanon the opposite trend prevails and adoption is regulated according to the rules of the different religious communities. In Egypt adoption is not allowed.

4. Public and Faith-Based Private Schools: Legal and Sociological Analysis

4.1 Introduction

By Rossella Bottoni and Silvio Ferrari

This part of the report discusses the recognition of RM rights in the educational sphere, focusing on both public schools and faith-based private schools. Public schools are schools “whose organization, financing and management are primarily the responsibility of, or under the primary oversight of, a public body (state, regional, municipal, etc.)” (ODIHR Advisory Council of Experts on Freedom of Religion or Belief, *Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools*, Warsaw, OSCE/ODIHR, 2007, p. 20). Private schools are those that are “not operated by a public authority but controlled and managed, whether for profit or not, by a private body (e.g. non-governmental organisation, religious body, special interest group, foundation or business enterprise)” (UNESCO, *Global Education Monitoring Report 2021/2: Non-state actors in education: Who chooses? Who loses?*, Paris, UNESCO, 2021, p. 33). Some of these private schools provide an education based on the principles of a particular religion: in this report they are called “faith-based private schools”.

Despite a variety of hybrid solutions, in the public schools of the DeGIP countries religious education is imparted mainly in accordance with two models. In the first case students can choose to attend the teaching of a particular religion, which is taught by members of that religious tradition and/or under the supervision of institutions representing it. The expression “teaching of religions” has been used to describe this system. In the second case students obtain information and knowledge about different religions and beliefs and about the role they play in the historical, cultural and social development of a nation. This teaching is usually provided under the supervision of state authorities and is subject to the rules that apply to other teachings provided in public schools. The expression “teaching about religions” has been used to describe this system. Although the dividing line between these two approaches to RE is often blurred, the distinction is meaningful because it reflects different conceptions of the educational role of public schools. In the first case, the school is considered primarily as an institution serving families and students: if they ask to be educated in a specific religious tradition, public schools must do everything they can to provide this. In the second case, the school is seen as an institution that has the task to serve society as a whole: if social changes require a wider knowledge of the different religions that exist in a country, the school must meet this need. Both approaches are worthy of attention. “Teaching about religions” provides students with information and knowledge that are increasingly needed in societies that have long been multi-religious or where there are significant religious minorities. “Teaching of religions” allows students to deepen the knowledge of their own religious tradition, thus helping to safeguard and promote the identity of RMs.

4.2 The DeGIP Countries

By Silvia Baldassarre, Valeria Fabretti and Deborah Iannotti

4.2.1 Public Schools

a) *RE in public schools*

Both models are represented in the DeGIP countries.

The first model – teaching of religions – is followed in Italy, Portugal and Greece and focuses on teaching one or more specific religions. In these countries only some of the RMs considered in the research have the right to teach their religion in public schools. In Italy, pursuant to the conclusion of a bilateral agreement with the state, Jews, Protestants and Orthodox (beside other RMs not considered in this research) have the right, upon request of the students, their families or school authorities, to send to schools their representatives to provide notions about Judaism or, in the case of Orthodox and Protestants, the “religious fact and its implications”. Jehovah’s Witnesses and Muslims, who have not entered into an agreement with the state, do not have this right: they can only obtain, when certain conditions are met, the availability of some school rooms where religious instruction can be provided. In Greece, no RM teaches its religion in public schools except in WT minority schools, where Islam is taught. In Portugal, all registered religious communities have the right to teach their religion and among them all the RMs taken into consideration in this research (Jehovah’s Witnesses, Jewish and Muslim communities, Orthodox Christians, and Protestants). Textbooks and syllabus contents are chosen by RMs, sometimes in collaboration with state and school authorities. RMs have the right to choose the teachers, whose salaries are paid by the state, with the exception of Italy, where they are paid by the RMs themselves. In accordance with international standards, Italy, Portugal and Greece guarantee students the right not to attend religious instruction. Students who take advantage of this right are not required to take an alternative course, except in Portugal. It should be noted that the public schools of these three countries the teaching of the majority religion (Orthodox in Greece, Catholic in Italy and Portugal) is always included in the curriculum; students are entitled to opt out from it.

The second model – teaching about religions – is followed by Denmark with some peculiarities. This country has a mixed system where the early years are devoted to the study of the Christian religion, with a focus on the Lutheran tradition, and the later years to the study of other religions and beliefs. Curriculum, syllabus, textbooks and teachers are chosen by the school authorities without involving RM representatives. Teachers are paid by the state. In Denmark the right to exemption applies to the teaching *of* religions (in the school years in which this teaching is provided), not to the teaching *about* religions (consistently with international standards, which do not require an exemption from this type of course).

In Denmark and Portugal RE is provided within the school timetable, for one or two hours a week; in Italy, where RMs can provide religious instruction upon request, there is no definite schedule. Finally, in these countries, education in citizenship and living together is provided for, but in Italy only as a transversal subject.

RM representatives have listed a number of critical issues concerning RE in public schools. In Italy the status of their religious teaching in public schools is not equal to that of a proper “teaching of religion” course, as the teaching of Catholic religion is. These educational activities are not actually implemented in Italian schools, and they should be included in the extracurricular schedule of the

school. Some respondents have underlined that students experience problems in opting out from the teaching of Catholic religion, since many schools lack spaces available to students who do wish to not follow this teaching. According to the Protestant respondent in Italy, this was even more the case during the pandemic of Covid-19, when schools particularly suffered from organizational and teaching difficulties. In Greece, the Muslim respondent has emphasized the need to offer families and students a choice for the teaching of Islam in the country's public schools. The same has been affirmed by the Catholic respondent. At the same time, it should be noted that – considering the DeGIP countries as a whole – most of the RM respondents do not consider important to teach their own religion in public schools. They would rather prefer to confine their religious teaching to their faith-based private schools rather than being allowed to teach their tenets in public schools. However, in the majority of the cases, they have expressed a preference for the “teaching about religions” formula because non-denominational training of teachers would have the positive impact of neutralizing dominant views and would allow plurality to be taught without biased representations and with more historical depth. The lack of systematic teaching about religions is especially lamented by several RMs in Greece and Italy. Here, in particular, the Muslim respondent has emphasized the importance of objective teaching that prevents the spread of negative views on Islam and has insisted on the need to define a neutral teaching method and teacher training in this regard.

This last consideration deserves special attention. While the majority of RM respondents have affirmed to be strongly inclined to enroll their children in public schools, they have also recognized that these schools are one of the primary places of potential discrimination as students (and teachers) are often regarded as part of a minority and, therefore, not part of the core nation according to nationalist narratives. As a consequence, they may find themselves facing nationalist tropes and xenophobic argumentations that also entail the manifestation of a religious sentiment. Students of Christian minorities might face the accusation of not being the “right kind of Christians”, Jewish students might face antisemitic accusations most of the time deeply entrenched in the nationalist rhetoric, and Muslim students Islamophobic comments that, among other things, depict Islam as a radical religion compared to Christianity. The biased depiction of RM beliefs displayed by xenophobic and nationalist individuals may result in a substantial discrimination of RM students and teachers. The lack of proper training of teachers and school staff is regarded as one of the main reasons why RM parents and leaders do not consider the public school system as a safe place for RM pupils and students. The fueling of a non-objective depiction of the RMs, often in a folk and biased way, ends up touching upon racist and conspiracy theories, which ascribe to minorities the cause of the problems in society.

b) Religious symbols in public schools

In the DeGIP countries, the right to wear religious symbols at school is recognized to all students, regardless of their religion. As for teachers, there is a difference between Denmark and the other countries: in the former they cannot wear religious symbols, whereas they are allowed in Greece, Italy and Portugal.

With regard to the official display of religious symbols in public schools, in the DeGip countries there is no ban, but this translates into different outcomes. In Denmark, despite the absence of a ban, religious symbols are not displayed, while in the other countries only the symbols of the majority religion are displayed: Christian symbols in Greece, the crucifix in Italy and – if there is no opposition from parents and students – in Portugal.

c) *Right to abstain from teaching and school attendance on religious holidays*

Concerning this right, a distinction must be made between teachers and students.

In Greece and Denmark teachers are not allowed to abstain from giving lessons on occasion of the festivities of their religion; in Italy this right is recognized only to teachers of the RMs who have an agreement with the state (therefore not to Muslims and Jehovah's Witnesses), and in Portugal to the teachers of all RMs considered in research.

With regard to students, in Denmark they cannot abstain from attending classes on the festivities of their religion; in Greece this right is recognized only to Catholics, Jews and Muslims (not to Jehovah's Witnesses and Protestants); in Italy it is recognized only to members of RMs who have entered into an agreement with the state (Protestants, Orthodox Christians and Jews, not Muslims and Jehovah's Witnesses), and in Portugal to the students of all RMs considered in the research.

d) *Students' right to obtain food that is not forbidden by religious rules*

In the DeGIP countries, school canteens do not have the obligation to provide food that is conform to religious dietary rules (for example kosher or halal food for Jewish or Muslim students). However, canteens usually make it possible to obtain food which is not forbidden by religious dietary rules, either by providing particular (i.e. vegetarian) menus or by allowing students to eat food brought from home. In Italy, national school guidelines specify that school canteens must offer the possibility of specific meals that respect the ethical/cultural/religious needs of students.

For the majority of RM respondents whose religion prescribes dietary rules, the right to obtain proper food in school for pupils is of utmost importance and some of them denounce weak respect of this right by the public schools' management. This is the case of Jehovah's Witnesses and Christian Orthodox in Portugal and of Muslims in Italy. This lack of consideration is considered by the RM respondents a form of discrimination.

4.2.2 Faith-Based Private Schools

In the DeGIP countries, there are no significant differences with regard to the legal regulation of the following issues:

- *The opening of faith-based private schools.* Generally speaking, RMs can open faith-based private schools and, in particular, all RMs considered in this research can do so. It should be noted that the general rules concerning all private schools apply to faith-based ones. In Italy, RMs that have entered into an agreement with the state (including Jews, Orthodox Christians and Protestants) have been recognized the specific right to open faith-based private schools, whereas Muslims and Jehovah's Witnesses may only open a faith-based private school under the general legislation on private schools.

- *The awarding of state-recognized diplomas.* RMs faith-based private schools can give their students diplomas that are recognized by the state, provided that the requirements prescribed by law are complied with. In Greece, they have to teach the same syllabus as public schools, although extra courses may be added. In Italy, the school concerned must have been recognized ('scuola paritaria').

- *The choice and appointment of teachers.* RMs faith-based private schools are free to choose and appoint their teachers without any state intervention. Compliance with constitutional principles as well as with rules on academic qualifications is required.

Some differences can be noted between Denmark, Italy and Portugal on the one hand, and Greece on the other one, with regard to:

- *The dismissal of teachers whose behavior does not conform to the principles of the faith-based private school.* Generally speaking, in the first group of countries teachers in private schools (including faith-based ones) can be dismissed if they do not conform their behavior to the principles of the school. Consistently with the European Court of Human Right's case law, the dismissal must be necessary and proportional to the role of the teacher, whose right to respect for private life may not be violated. By contrast, in Greece teachers may not be dismissed.

- *The choice of syllabus and textbooks.* In Denmark, Italy and Portugal faith-based private schools are free to choose the syllabus and the textbooks, in Greece they are not. Nevertheless, in the first group of countries autonomy is not absolute. These schools must still have an educational project complying with constitutional principles and a curriculum consistent with the requirements prescribed by law.

Finally, significant differences have emerged among the DeGIP countries in relation to:

- *The right to refuse the admission of students (e.g. because of a different professed religion).* In Denmark and Greece faith-based private schools are free to refuse the admission of students, although in the case of Denmark the issue is much debated. In Italy, a faith-based private school that has been recognized ('scuola paritaria') may not reject the admission of students, including students professing a different religion. In Portugal, this freedom depends on the type of faith-based private schools and on the agreement they may or may not have with the state, but generally speaking refusal of admission must be well grounded.

- *The legal regulation of public funding.* In both Denmark and Italy faith-based private schools receive public funding as private schools and not because of their religious orientation. However, in Denmark all the RMs concerned receive public funding (75% of the costs), whereas in Italy only Jews, Orthodox Christians and Protestants have opened private schools and, thus, obtain public subsidies. In Portugal, only some types of faith-based private schools receive public funding, that is, those that have signed an agreement with the state in areas in which the public school system is deemed insufficient. Finally, in Greece, none of the RMs concerned receive public funding, with the exception of WT minority schools for Greek citizens of Muslim religion (which, as noted, may not formally be regarded as faith-based private schools).

4.3 Egypt and Lebanon

By Ana Maria Daou, Joe Hammoura and Ishaq Ibrahim

4.3.1 Public Schools

a) RE in public schools

In E&L, religion is taught in public schools as a specific school subject. However, only the religion of the recognized RMs can be taught (Copts in Egypt, and Alawites and Syriac Christians in Lebanon).

In Egypt, Christian students from various denominations study Christianity, while Muslim students study Islam. Moreover, all students are taught common subjects that include notions on Islamic religion, such as the Arabic language, which focuses on a large number of Islamic religious texts from the Qur'an and Prophetic Hadiths. These subjects do not contain any reference to Christianity or religions other than Islam. The Egyptian Ministry of Education is responsible for developing and approving RE curricula and chooses a group of experts to carry out this task. It is customary for the Ministry to choose a number of Christian experts and teachers to develop Christian RE curricula, and Muslim experts and teachers from the dominant Sunni denomination to do the same for the Islamic teaching curricula, under the supervision of the Curriculum Development Department.

The situation in Lebanon is somewhat different. The Ministry does not issue any RE curriculum and leaves the task to the respective religious communities to develop their own. RE curricula are therefore not centralized and are developed either by religious institutions, by the schools themselves, or by the teachers and their respective coordinators.

All interviewed representatives of the selected religious communities believe that RE in schools is of great importance. However, they all agree that it should be provided in a systematic way. Furthermore, representatives of non-recognized RMs in both Lebanon and Egypt agree on the existence of different cases of discrimination against their students and teachers, and one of the most critical ones concerns the content of the school curricula.

As mentioned, non-recognized RMs (Ahmadis, Baha'is and Shia Muslims in Egypt, and Ahmadis and Jehovah's Witnesses in Lebanon) are not allowed to teach their beliefs in schools. In order to overcome these restrictions, religious groups often open cultural and religious centers to empower their communities and disseminate their beliefs. However, these centers can be subject to closure according to laws, but this is rarely the case as RMs are granted freedom (albeit limited) to practice their faith.

Respondents of all RMs in Lebanon and Egypt – except for Syriacs in Lebanon – have stated that parents are usually oriented towards enrolling their children in religiously-mixed schools. In the case of non-recognized RMs, this might be interpreted as a consequence of the fact that they do not have their own schools to enroll their children in. However, all RMs have highlighted the importance of teaching students about different faiths in schools and having an inclusive curriculum that focuses on common public life values that stem from different religious beliefs. This is considered a way to help students overcome fear from the other, which usually stems from lack of knowledge of other beliefs, and decrease the level of hatred, discrimination, and intolerance.

b) Religious symbols in public schools

In E&L, students and teachers can wear religious symbols, although in the former some schools have special restrictions such as the prohibition to wear conspicuous accessories (not necessarily religious). However, over the past few years, both students and teachers – especially if members of non-recognized RMs – have faced problems with wearing religious symbols.

As mentioned, representatives of non-recognized RMs in E&L agree on the existence of different cases of discrimination against their students and teachers, and the display of religious symbols is among the most critical ones.

c) Right to abstain from teaching and school attendance on religious holidays

In Egypt, teachers and students can refrain respectively from giving and attending classes on occasion of the festivities of their religion.

In Lebanon, public schools close in festivities officially recognized by the state. These are Christmas, St-Maroun's Day, Adha, Achoura, Easter, Armenian Christmas, etc.; in other words – the main feast days of the majority of recognized RMs. In specific religious festivities (not recognized by the state as public holidays), teachers and students do not have the right to refrain from giving and attending classes, since this would create major organizational problems for all schools. However, teachers and students can make use of individual holidays. Teachers may also refrain from giving classes if authorized by their school director. In some cases, teachers from different religious affiliations switch in taking off-days according to the dates of each other's festivity days, ensuring that teaching activities are not disrupted.

d) Students' right to obtain food that is not forbidden by religious rules

In a number of Egyptian governorates, state-owned public schools distribute a small optional snack (which takes necessary dietary requirements and restrictions into consideration) while students can bring their own food from home or buy it from the school canteen or nearby markets.

The situation is similar in Lebanon. During Lent or Ramadan, students are given the chance to abstain from eating. In some cases, both teachers and students are asked not to eat publicly during fasting periods.

4.3.2 Faith-Based Private Schools

In E&L, only recognized RMs can open and manage faith-based private schools.

In Egypt, Copt institutions are responsible for selecting and appointing their own officials (the director and his/her deputies, the superintendent, and the supervisors) and teachers, as well as setting internal regulations and codes of conduct. They are then obliged to notify the Ministry of Education with the names of appointed officials and teachers and adhere to the curricula approved by the Ministry. The government does not support these schools, as they are private institutions that depend on their own revenue and the donations they might receive.

Likewise, both Alawites and Christian Syriacs in Lebanon are legally allowed to establish and manage their own schools. Because the curriculum of religious teaching is not centralized, schools have the choice to develop their own – according to their own values and objectives. The Lebanese state, through its different ministries, financially supports different establishments that fit various aid criteria, most of which are religion-based institutions (including aid for educational institutions, and other specific areas such as elderly care facilities, hospitals, etc.). The state does not specify to which faith-based private schools or institutions the financial support is granted leaving this decision to the leaders of each RM. Schools are also sometimes granted financial support from local or international donors. Furthermore, semi-free private schools in Lebanon impose little or no tuition and are sometimes supported by internal and external donations.

In Lebanon, the teaching of the RMs religion differs according to the school, especially in religiously-mixed areas, while in areas with a clear majority, schools usually teach the religion of that majority. Furthermore, school administrations provide certain leeway for students enrolled in schools with a religious background different than the school's one. Occasionally, some Catholic schools offer alternative Muslim religious education sessions for non-Christian students during religion classes.

Regarding religious symbols, there have been reports over the past few years that in Lebanon both students and teachers in faith-based private schools – just like in public ones – have faced problems with wearing them.

4.4 Comparative Remarks

By Rossella Bottoni and Silvio Ferrari

4.4.1 Public Schools

- a) *RE in the ReMinEm countries.* In all the ReMinEm countries RE is part of the instruction provided by public schools. This fact indicates that the ReMinEm countries consider RE a component of the educational process of the younger generation and deem it appropriate to facilitate its teaching by providing school facilities and, often, financial resources.
- b) *Teaching of and about religions.* If we apply to the field of RE in public schools the distinction between “right to be different” and “right to be equal” mentioned in the section “The research question” of this report, the first right seems to prevail almost everywhere over the second. With the partial exception of Denmark, a system of “teaching of religions” is adopted everywhere, based on the principle that each student has the right to receive information and knowledge about his/her religion. The right to be equal would lead instead toward the system of “teaching about religions”, in which all students, regardless of their religion, receive the same information and knowledge about all religions present in their country. The first model is followed in Italy, Portugal, Greece, Egypt, and Lebanon. Denmark adopts a mixed system in which Christianity (particularly in the Lutheran form) is taught in the first school years and other religions in the last; teachers are chosen and appointed by school authorities without involving religious authorities in their selection.
- c) *Teaching of religion and inclusion.* The system of “teaching of religions”, however, needs to be applied in a more inclusive manner. In too many ReMinEm countries this teaching is provided only for the majority religion and a small number of RMs. Only in Portugal do all registered religious organizations have the right to teach their religion in public schools; at the opposite extreme, in Greece, no minority religion can be taught in these schools, with the limited exception of WT, where the Muslim religion can be taught in minority schools. If we consider the RMs taken into consideration in this research, in Egypt only one minority religion (Coptic) can be taught, in Lebanon two (Syriac Christian and Alawite), in Italy three (Protestant, Orthodox Christian and Jewish), in Denmark (in the school years where the “teaching of religions” system is adopted) two (Catholic and Orthodox Christian, which are included in the teaching of Christendom). But in no country (with the exception of Portugal) is it possible to teach in public schools all the minority religions considered in this research. This situation generates disparities that can easily translate into discrimination and points to a deficiency that countries where a system of “teaching of religions” is in force should remedy. Without a reform of the legal system, this deficiency makes it impossible to guarantee

a sufficient level of inclusion of RMs in the social and cultural life of a country and, in the most serious cases, causes unjustified differences that result in discrimination.

- d) *The right to opt out.* According to international standards, the teaching of a particular religion should not be imposed on students who do not wish to receive it. It is necessary in other words that students are accorded the right to be exempted, if they wish, from the teaching of religions. This right is recognized in all the ReMinEm countries with the exception of Egypt, raising questions regarding the respect of the right to religious freedom in this country.
- e) *Teaching on citizenship and living together.* If education on citizenship and living together is not provided, this may undermine the respect and promotion of religious diversity as students are not familiar with the framework of rights and duties shared by all citizens within which cultural and religious diversity must be maintained. For this reason, it seems advisable to introduce this teaching in countries, such as Italy, where it is not yet provided in a systematic way.
- f) *Religious symbols.* On the issue of religious symbols worn by teachers and students there is a difference between Denmark and the other countries. In the latter, teachers and students are allowed to wear religious symbols at school; in Denmark this right is granted to students but not to teachers. Another difference concerns the students and teachers who enjoy this right: all in Italy, Portugal, Greece and, limited to students, Denmark; only Copts in Egypt and Syriac Christians and Alawites in Lebanon (where, however, students and teachers of other RMs frequently wear religious symbols, even though this would be forbidden). In the latter countries religious freedom and equal treatment may be at stake: the lack of state recognition of some minority religions precludes their members from enjoying not only collective but also individual rights that are instead recognized to members of other religions. Also in relation to the religious symbols officially displayed in public schools, there is a clear distinction between Denmark (where they are not displayed) and all the other countries, where it is possible to display them (in Lebanon, the display of these symbols is forbidden, but most schools do not respect this prohibition). In Greece, Italy and Portugal, however, it is possible to display only the symbols of the majority religion (in Portugal only if the students or their parents do not object) and in Egypt only those of the Coptic religion. The same problems of equal treatment indicated in the previous paragraph also arise in these cases.
- g) *Religious holidays.* The right to refrain from teaching and school attendance on religious holidays is not recognized, neither to teachers nor to students, in two very different countries, Denmark and Lebanon. In other countries the right is recognized, but with different extensions: to all registered RMs in Portugal, to Catholics, Jews and Muslims in Greece, to RMs that have stipulated an agreement with the state in Italy (including Protestants, Orthodox Christians and Jews, but not Muslims or Jehovah's Witnesses), and only to Copts in Egypt. The same questions concerning equal treatment noted above also arise in this case.
- h) *Religious dietary rules.* In no country is there an actual right of students to receive food not prohibited by their own religious rules in school canteens, but in all of them public schools try to meet students' requests by providing special menus or allowing students to eat food brought from home.

4.4.2 Faith-Based Private Schools

- i) *Opening and managing faith-based private schools.* There is a difference between the DeGIP countries on the one side, and E&L, on the other, as concerns the opening and management of faith-based private schools. In the former, all RMs enjoy this right. This is also the case of Italy, where RMs that have entered into a bilateral agreement with the state (a category which includes Jews, Orthodox Christians and Protestants) have been recognized the specific right to open faith-based private schools, whereas Muslims and Jehovah's Witnesses may only open a faith-based private school under the general legislation on private schools. By contrast, in E&L this right is only granted to recognized RMs. This difference may be explained with the following considerations. In Europe, generally speaking, general legal rules apply to all private schools (including faith-based ones, which are not perceived of as needing a special regulation). Even in Italy, Jews, Orthodox Christians and Protestants – despite a special recognition – remain subject to the general legislation on private schools. Further, according to the European standards of human rights protection as established by the ECtHR case law, the right to open and manage private schools (including faith-based ones) is generally recognized to everybody – natural and legal persons, that is, a very broad category including parents, ROs and national minorities based on language, ethnicity or religion. This right may be specifically recognized to RMs, but it is not reserved only to them. This, in principle, allows the opening of a faith-based private school by a group of people (e.g. parents) affiliated to a RM, regardless of whether the latter is legally recognized or not. By contrast, in E&L, the exercise of this right depends strictly on the RM legal status (recognized or not) because the general legal framework is characterized by religion-based personal status laws. The inclusion in this system allows RMs to exercise a number of rights (not only the opening and management of faith-based private schools), whereas outside it RMs have very limited possibilities to manifest and develop their own distinct identity.
- j) *Autonomy of faith-based private schools.* In all ReMinEm countries, once a RM is allowed to open and manage a faith-based private school, then the latter can give its students diplomas that are recognized by the state, is free to choose and appoint its teachers with either limited or no state intervention, and – with the exception of Greece – can dismiss them if their behavior does not conform to the school's principles. In other areas, there are again differences between the ReMinEm countries, but there is not a clear distinction between the DeGIP countries and E&L. The divergences are better explained by national specificities than by the adherence to a general model of state-religion relationships. The right to reject the admission of students (for example on the ground of the different religion they profess) is recognized for all faith-based private schools in Denmark, Greece and Lebanon, for none in Italy and Egypt, and only for some types in Portugal. The right to choose the syllabus and textbooks is recognized for all such schools in Denmark, Italy, Portugal, Egypt and Lebanon (although autonomy is not absolute), and for none in Greece. The state or public institutions financially support the schools of all RMs concerned in Denmark, only of the recognized RMs in E&L, and of no RMs in Greece. Only some types of schools are financially supported in Italy (i.e. only those having the status of 'scuola paritaria') and in Portugal (i.e. only those that have signed an agreement and satisfy a need in an area where public education is insufficient).

5. Conclusions and Recommendations

by Rossella Bottoni

The promotion of RMs rests on two rights: the *right to be equal* and the *right to be different*. Both are based on the assumption that difference is not a negative element, which must be erased pursuant to a notion of parity conducive to assimilation, but a positive factor that has to be protected and promoted, because there cannot be democracy without pluralism. However, how far should the recognition of religious diversity go? What balance should be achieved between the right to equality and the right to difference?

Legal and social approaches emphasizing the right to equality do entail the prohibition of discrimination on religious grounds. In no contemporary democracy would it be admissible to deprive members of RMs of their civil and political rights, as it happened in the past, merely on the ground of a difference of religion. However, these approaches tend to be ill-disposed toward the recognition of the possibility for RM members to regulate entire areas of their life according to their religious rules. In fact, this is regarded as a threat to the state's monopoly of law and makes the promotion of RM rights more challenging than that of ethnic or linguistic minorities which do not raise the issue of the recognition of heteronomous legal rules, the origin of which are attributed to an external authority regarded as superior to human lawmakers. In principle, this applies also to majority ROs, but the important role that historically they have had in shaping not only the legal system but also the national identity results in a stronger opposition to (real or alleged) non-traditional religious rules. This is the context characterizing the legal regulation of marriage and family in the DeGIP countries.

All the DeGIP countries' legal system provide for civil marriage. This institution has strengthened the protection of the right to equality. By making the spouses' religion irrelevant, it has enabled everybody to marry without having to accept the rules and perform the rites of a religion, which they do not profess or even reject. Also, whereas numerous religious traditions prohibit or discourage religiously mixed marriages, civil marriage allows marriage between people belonging to different religions. At the same time, all the DeGIP countries recognize civil effects to marriages celebrated according to the rules not only of the majority religion, but also of a number of RMs. This does not mean that a marriage valid according to, say, Jewish or Islamic law would be automatically valid also in the state legal system of the DeGIP countries. Religious marriages can be legally recognized only insofar as they do not breach fundamental principles, inter alia on the minimum age of the spouses and the monogamous nature of the union. Some academic, political and social circles strongly oppose the application of religious rules even in a limited context like that of the celebration and validity of religious marriages, and claim that the right to equality entails the subjection of everybody to rules that are neutral i.e. independent of religion. But this idea of neutrality seems to be closer to myth than to reality. In fact, one may not neglect the paramount influence of Christianity – the majority religion in all the DeGIP countries – and of its legal regulation of marriage on state legal rules. Civil marriage itself originated from Christian marriage and, despite the processes of legal and social secularization, is still influenced by its origins.

Concerning the other issues taken into consideration in this part of the ReMinEm research, in the DeGIP countries the dissolution of marriage and the regulation of inheritance remain under the monopoly of state law, whereas dowry is today irrelevant in the state legal system. Because of the recognition of both the right to equality and the right to religious freedom, conversion is not legally regulated (again, in the state legal system), which in turn results in the RMs freedom to celebrate the rites required to enter a religion. However, in this area some practices have become hotly debated, as is the case of children's male circumcision in Denmark. This is one of the instances where the existence of an ontological opposition is often invoked between human-made (i.e., allegedly rational) legal rules, and God-prescribed (i.e. allegedly irrational) religious precepts. In controversies over child custody, religious principles are irrelevant: what matters is their practical impact on the child(ren)'s physical and moral health. This is another area, however, where legal experts and RM representatives have noted the existence of some bias in case law against RMs regarded as non-traditional or following principles and practices not shared by the majority of society.

The right to be different requires that all individuals are able to regulate these same legal relations (marriage, divorce, adoption etc.) according to the norms of their own religion, and that the acts so performed should be valid for the state legal system, at least as long as they do not conflict with any of its fundamental principles. This right is promoted by legal and social approaches renouncing to subject everybody to the same legal rules and allowing the existence of autonomous or semi-autonomous legal orders in the same time-space context. This is the case of the religion-based personal status laws in force in E&L. Neither country recognizes civil marriage, and (with the specifications noted below) individuals may only marry according to the rites and rules of their religion. These marriages are regarded as valid by the state, which also recognizes RMs a certain competence in their dissolution and the possibility to regulate inheritance and dowry according to their own religious rules. In this system, religious rules do not face the stigma existing in the DeGIP countries. However, this system has three main faults, all of which badly affect the enjoyment of the right to equality (understood as prohibition of religious discrimination).

The first fault originates from the distinct difference between recognized and non-recognized RMs. Legal recognition does not simply carry opportunities, benefits and privileges, but determines the most basic aspects of the life of a RM member. In E&L, members of non-recognized RMs are not only excluded from the enjoyment of the right to decide all or most matters related to their personal status, but they are also strongly limited in their ability to manifest their religious identity, to celebrate rites (including those required to enter a religious community), to have places of worship and other forms of public visibility, to establish associations and institutions that would be vital to strengthen their influence on the political, social and cultural sphere. In controversies over child custody, case law shows bias against members of non-recognized RMs (but sometimes also against those of recognized RMs). The second fault is the absence of any civil forms of celebration and dissolution of marriage, regulation of inheritance, and so on. Such civil alternatives would allow members of non-recognized RMs to avoid subjection to the rules of a religion to which they do not belong, as it happens in a system where they are not allowed to apply their own religious norms, and where no civil marriage, civil divorce, and so on exist. The third fault concerns the issue of the protection of the minorities within RMs and of vulnerable groups. The emphasis given to group rights and collective religious freedom obscures more strictly individual manifestations of religious freedom, like the expression of religiously heterodox views and conversion to another religion. Women are a vulnerable group: a good number of religious rules ground men's prevalence over women, and female inferiority is enhanced by the lack – as noted – of an alternative legal system guaranteeing the right to equality to everybody, regardless of their religion (or sex). The issue of the protection of women's

rights is especially relevant in all discussions concerning polygamy and its recognition by the state legal system.

In light of these critical remarks, and in order to better guarantee RMs right to equality, it is advisable for E&L to make the right to obtain legal personality more accessible to RMs⁰ and independent from the enjoyment of some basic human rights (which must be recognized to everybody), and to reform marriage and family law so that members of RMs (and more generally all individuals) can choose between regulating their family relationship in a religious or civil form. The latter solution has been adopted in WT, the only region in Europe where a minority rights system exists (limited to Greek nationals of Muslim religion). Despite some inconsistencies in its application (as highlighted by the ECtHR in the case *Molla Sali v. Greece*), this system seems to be the one achieving the best balance between right to be equal and right to be different, where religion-based personal status laws are in force.

Education is less sensitive to the application of RM religious rules than marriage and family. This can explain why, at least concerning public schools, the differences between the DeGIP countries and E&L are less evident. In all ReMinEm countries, RE is part of the instruction provided by public schools – a finding which illustrates the importance of RE as a component of the educational process for younger generations. With the partial exception of Denmark, all the countries concerned have adopted a system of “teaching *of* religions” than the system of “teaching *about* religions” (which is followed in other European countries). In most cases, public schools teach education on citizenship and living together and allow students (and, in fewer cases, teachers) to wear religious symbols. Only in some cases do public schools recognize the right to refrain from teaching and attending school on religious holidays. No ReMinEm country explicitly guarantees the students’ right to receive food which is not prohibited by their own religious rules in school canteens, although all public schools follow the principle of accommodation either by providing special menus or by allowing students to bring food from home. In all countries except Egypt, RM students are entitled to opt out from the teaching of a religion that is not their own. These relatively small differences do not tend to follow a European vs. Middle Eastern pattern – like in the case of marriage and family. The divergences are better explained by national specificities than by the adherence to a regional model of state-religion relationships.

The most significant difference between the DeGIP countries and E&L concerns the right to open and manage faith-based private schools. This right is recognized to all RMs concerned in the former group and only to recognized RMs in the latter. Once a school has been opened by a RM, it enjoys great autonomy. In all the ReMinEm countries, it can give legally recognized diplomas to its students and choose and appoint its teachers without or with limited state intervention. In most of them, faith-based private schools can choose the syllabus and the textbooks and dismiss teachers if they do not conform their behavior to the school’s principles. Only in some countries, they have the right to reject the admission of students (for example on the ground of the different religion they profess) and are financially supported by the state or by public institutions.

Despite the accent placed on the right to difference in most of the education-related issues examined above, this area, too, is characterized by a tension between the right to be equal and the right to be different. Regardless of specific national peculiarities, all ReMinEm countries are characterized by a selective process by which only a limited number of RMs are given more and better opportunities to develop their distinctive religious identity. In some instances, all RMs concerned are entitled to a certain right but, in practice, social pressure and discrimination prevents some of them from exercising it. In any case, the result is a gap between two groups of RMs: the most advantaged ones

and the less favored ones. Their exclusion significantly limits their right to equality, understood as equal right to be different.

In E&L, the disadvantaged RMs are those without legal recognition. This requires, as already noted in relation to marriage and family, facilitating their attainment of the legal personality and granting the right to exercise educational rights to all RMs – recognized or not.

Other measures to remedy the gap apply to all ReMinEm countries. Where a system of teaching(s) of religion exists and it is not possible to integrate it with a system of teaching about religions, the former should be made accessible to all RMs – instead of the majority RO alone or a selected number of RMs. Consistently with the international standards of human rights protection, this teaching should not be made compulsory to those who belong to a different religion. The principle of exemption should apply also to the segments of other courses, where indoctrination of the majority RO (instead of the transmission of information about it in an objective, critical and pluralist manner) takes place in a transversal way. The parallel introduction of a teaching about religions is also advisable, in order to enhance the knowledge and, thus, the acceptance of difference. For the same reason, education on citizenship and living together should be introduced or increased in schools (especially public ones). The thorny issue of the wearing and display of religious symbols should be regulated so as to respect the equal right of RM members to be different – that is, avoiding unjustified, unnecessary and disproportionate differences in treatment. All RMs complying with religiously neutral requirements established by law must have their right to open and manage faith-based private schools recognized. The state has no obligation to fund them according to the international standards of human rights protection, but it should avoid a selective approach among RMs if it decides to financially support their schools.

To sum up, the accent placed on the right to be equal or that to be different produces the greatest differences in the field of marriage and family. In all the policy areas examined in this research, no system is the best one in absolute terms: even those that seem to better protect and promote RM rights can be improved. There is no universal ‘recipe’, mixing perfectly the rights to equality and to difference, which can be applied everywhere: national and local conditions – produced by different historical, social, cultural, political and even economic characteristics – can cause a solution to fail in one country, despite having been successful elsewhere. There are nevertheless some minimum levels of protection that need to be recognized by each and every country according to the international standards of human rights protection, including the introduction of civil marriage, the prohibition of indoctrination and the promotion of pluralism in education.

6. Policy Reflections and Messages by Fabio Petito

In recent years, European governments have renewed their focus on the protection of RM rights at home and, more innovatively, abroad, by strengthening their foreign policy tools, global advocacy efforts and international coordination to protect freedom of religion or belief (FoRB). The Italian government has recently institutionalized this increasingly active policy area within foreign policy by creating its first ever Special Envoy for FoRB Protection and Interreligious Dialogue. While the Special Envoy's mandate is global in its geographical scope, it is realistic to assume that the greater Mediterranean region is likely to be its area of major engagement, given both Italy's geopolitical influence and role of cultural mediator in its southern periphery and the fact that the issue of religious pluralism and RM rights are central to the broader equation of stability and peace in the Euro-mediterranean space.

Against this background, detailed evaluation and monitoring of the legal and social developments that can affect the respect for FoRB – such as the evaluation and monitoring provided by this ReMinEm project – provides a sound and necessary basis of data and knowledge to inform the work of government, as well as public opinion, in this sensitive area. A comparative analysis of RM rights and FoRB arrangements which seriously considers the historical, legal and religious contexts is an appropriate way to support government officials, religious actors and other FoRB national stakeholders in exploring innovative strategies to advance the protection of RM rights and FoRB and bring forward new legal reform at national levels.

In this respect, the approach of this research seems in line with the new emphasis of the Italian government: moving away from an advocacy driven FoRB-promotion foreign policy approach and focussing more on the mutual reinforcing dynamics between FoRB and interreligious dialogue. Furthermore, the assumptions that the North and South shore of the Mediterranean face similar challenges in different forms and that the flow of policy-relevant knowledge can also take a South-North direction, opens the possibility for policy dialogues where better understanding and policy improvements can take place “from within” through contextual analysis, mutual learning, and cross-cultural exchanges.

Overall, in terms of policy recommendations, the findings of ReMinEm confirm the continuing persistence of religious discrimination in the region and therefore the need for a reinvigorated policy focus on the rights of RMs and the promotion of FoRB in the Euro-mediterranean space. The two areas analysed in the project – family law and education – are among the policy and legal areas intersecting with the rights of RMs where traditionally governments tend to maintain strong control. Therefore, rather than discussing specific recommendations in terms of foreign policymaking, it is more useful to think in terms of the broader implications and messages of this analysis for policy makers.

The comparison between family law systems in the selected European and the southern Mediterranean countries makes clear that, as far as RM rights in the latter are concerned, the fact that family law is regulated through religion-based systems of personal law makes it very challenging to guarantee a sufficient level of inclusion of RMs in the social and cultural life of a country (see for example the data on the celebration and dissolution of marriage and regulation of inheritance). This shows a

radical point of difference with Europe and the EU member countries, and is an important reminder of the different nature of the state development and its legal system in the South and the difficulty of any foreign policy action or engagement that does not factor in this radical historical/legal difference. In this respect, two policy options seem possible: in the short term, the call for the respect of the relevant international human rights standards, including the protection of the fundamental human right of FoRB and the introduction of a form of civil marriage especially to protect non-recognized RMs; long term, a strategy of soft cultural and research engagement might be an option that European governments could support, by facilitating the development “from within” of new legal and religious jurisprudence more in line with the European standard of protection of RMs in the field of family and marriage law.

The second areas of analysis – RM rights in the educational sector – is a more promising one for foreign policy action, even if it must be acknowledged that, again, governments tend to regard education as a crucial sphere of domestic policy and do not welcome external interference and pressures. In a context where societal polarization and discrimination linked to religion appear to be on the rise globally, including in Europe, the teaching *about* religions seems to be more and more central to the broader education on citizenship and living together. It is increasingly needed in schools so that the younger generation is educated against religious prejudices and stereotypes and becomes familiar with the framework of rights and duties shared by all citizens within which cultural and religious diversity must be maintained and can flourish for the common good.

Teaching *of* and *about* religion and the promotion of pluralism in education are important conceptual and legal preconditions for the development of the emerging discourse around full or inclusive citizenship in the wider Mediterranean region. This development has been most evident across the Middle East and North Africa. The growth of inclusive citizenship as a model of political development is the result of several intersecting dynamics, including the evolving response to violence against religious minorities in the region, the development of a new discourse on religious freedom and pluralism, and the political and social dynamics introduced by the Arab Spring and its aftermath. Indeed, as violence against RMs throughout the Middle East increased in intensity and in public awareness, especially the brutality of the Islamic State in 2014-2018, important religious authorities across the Muslim world forcefully spoke out in their defense (see the 2016 Marrakesh Declaration and the 2019 Document on Human Fraternity signed by Pope Francis and the Grand Imam of Al-Azhar Ahmad Al-Tayyib)

European governments, including Italy, are interested in supporting this trend and in strengthening strategies to combat religious intolerance and promote inclusive societies in the southern Mediterranean region. Ministries of Foreign Affairs and International Development should establish funding for the implementation of educational programming on the ground, linking also to other relevant policy agendas such as the Sustainable Development Goals. Evidence seems to suggest that for maximum impact to foster social cohesion across religious minority-majority lines, governments should partner with religious actors and support interreligious collaboration on the ground in the fields such as educational programmes and social action. In general, governments should facilitate and support interreligious initiatives, for examples through the provision of facilities and infrastructure, while remaining impartial and not seeking to influence religious doctrine or to further a different political agenda.

The promotion of new models of managing religious diversity is an imperative both in the North and the South of the Mediterranean. Promoting religious pluralism in the educational sector is crucial to develop basic commitments to the rights and liberties of citizens and their equality under the rule of

law, which also includes paying particular attention to cultural and religious diversity and seeking the more active inclusion of the various “others” in public life, whether those others represent socially marginalized or religiously different groups.

Finally, the empirical findings and comparative analysis of ReMinEm demonstrate the complexities of this important area of human rights and foreign policy engagement and confirm the case for improving the religious and FoRB literacy of the government officials working in this field through specifically designed policy-oriented guidelines and training programmes.