Linguistic minorities and the Italian Constitution: is article 6 still current?

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Abstract Deutsch

Der Beitrag konzentriert sich auf Artikel 6 der italienischen Verfassung und zielt darauf ab, erstens zu prüfen, ob dieser Grundsatz, der von der Verfassungsgebenden Versammlung für die so genannten nationalen Minderheiten, die traditionell in genau definierten geografischen Gebieten leben, konzipiert wurde, immer noch für den Zweck des Schutzes und der Förderung des sprachlichen und kulturellen Erbes dieser und ähnlicher Gruppen (so genannte historische oder autochthone sprachliche Minderheiten) als gültig angesehen werden kann. Zweitens wird in dem Beitrag geprüft, ob Artikel 6 evolutionär ausgelegt werden kann, d. h. ob er auch andere, noch nicht rechtlich anerkannte Sprachgruppen einschließt, die sich von traditionellen oder territorialen Minderheiten unterscheiden. Die Schlussfolgerung ist, dass Artikel 6 immer noch aktuell ist und offen für Interpretationen ist, die weitere Arten von Minderheiten einschließen können.

Abstract English

The contribution is focused on article 6 of the Italian Constitution and aims at testing, firstly, whether this principle, conceived by the Constituent Assembly for so-called national minorities, traditionally living in well-defined geographical areas, can still be considered valid for the purpose of protecting and promoting the linguistic and cultural heritages of those and similar groups (so-called historical or autochthonous linguistic minorities). Secondly, the contribution tries to check whether article 6 can be interpreted in an evolutionary manner, i.e. including other not yet legally recognised linguistic groups, different from traditional or territorial minorities. The conclusion is that article 6 is still current and open to interpretations that can include further types of minorities.

1. Introduction

Without prejudice to its formal character as a *Fundamental Principle* of the Italian Constitution, a reflection on the current significance of article 6 (*The Republic protects linguistic minorities with appropriate laws*) requires examination of at least two questions.

In first place, it is necessary to ascertain whether this principle, conceived by the Constituent Assembly for so-called national minorities, traditionally living in well-defined geographical areas, can still be considered valid for the purpose of protecting and promoting the linguistic and cultural heritages of those and similar groups (so-called historical or autochthonous linguistic minorities). In second place, if we set aside the original and historical interpretation, it is worth investigating whether article 6 can be interpreted in an evolutionary manner, i.e. including other

not yet legally recognised linguistic groups, different from traditional or territorial minorities.

Our analysis involves finding answers to the following questions. Why did the Constituent Assembly decide to protect linguistic minorities by including a specific measure among the *Fundamental Principles* of the Constitution? What linguistic minorities did the drafters have in mind when they approved article 6? How and to what minority situations has article 6 been applied?

In the light of the above, it will be possible to assess whether or not that provision is still applicable and whether there is room for an open interpretation that can include further types of minorities. To do so, it will be useful to review the interpretations proposed by legal doctrine and the indications offered by the Constitutional Court and established international trends.

2. The novelty of a provision to protect linguistic minorities in the context of the *fundamental principles* of the Italian Constitution

Until the mid-twentieth century, it was uncommon to find explicit reference to the protection of minorities (linguistic, ethnic, national) in the texts of European Constitutions.[1] When the Constituent Assembly approved the Italian Constitution on 22nd December 1947, article 6 was therefore one of very few constitutional provisions to pay express attention to the protection of linguistic minorities. A brief reconstruction of the debate leading to adoption of this measure appears in the next section.[2] Here let us underline that in writing article 6, the drafters anticipated what was to develop some time later in the context of the international community and European bodies (CSCE-OSCE, Council of Europe and to a lesser extent the European Community/Union), variously involved in protection of the principle of non-discrimination and of fundamental rights, including minority rights.

Indeed, when the UN was formed after WW2, merely negative protection based on the principle of non-discrimination and the guarantee of individual human rights prevailed, as shown by the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (1948), which were practically of the same period as the Italian Constitution. Protection of minorities ended up being implicit in the proclamation of basic human rights and the formal principle of equality before the law without distinction of language or nationality (article 2 Declaration of Human Rights), leaving it to individual States to pass laws to protect specific minority groups. Similar intent was evident in the context of the Council of Europe, founded in 1949 to promote human rights, democracy and the rule of law on the

1 Among exceptions, see the Austrian Constitution 1920, while the Swiss Constitution 1874 and the Belgian Constitution 1831 included provisions concerning official languages but not minority communities as such.

2 A direct precedent of article 6 of the Constitution was article 62 of the Albertine Statute that made Italian the official language with French for parliamentary debate. The latter fell into disuse.

continent after the tragedy of WW2 and as a reaction to totalitarian regimes. With the ECHR of 1950, the Council of Europe banned discrimination on grounds that included language and belonging to a national minority (article 14), without dictating measures in favour of communities having features distinguishing them from the rest of the population.

Internationally, the prevalently individualist approach to solving minority questions did not change substantially although, starting in the 1960s, a collective dimension of the rights enjoyed by persons belonging to minorities was progressively admitted. At the same time, the need for positive protection began to be felt and was expressed as an invitation to States to commit to eliminating or reducing disadvantages often afflicting components of minority communities. A significant measure in this sense was article 27 of the International Covenant on Civil and Political Rights of 1966 (ratified in Italy with law no. 881/1977) which establishes that:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture, to profess and practise their religion, or to use their language.

This was the first clause at international level to contemplate positive protection and, despite its prudent formulation, it implies that members of minorities can expect State intervention to defend the maintenance of their cultural, religious and linguistic identities.

In the above comparative and international context, why did the Constituent Assembly make the singular and innovative decision (for its time) of paying specific attention to linguistic minorities? We must consider that when the democratic republic finally arose from the ruins of WW2 and the collapse of Fascism, recovery of the institutions of the liberal tradition and the primacy of the human person with respect to the State made it impossible to ignore the existence and need for protection of social structures – including communities with languages and cultures different from Italian – in which the individual personality could manifest and develop. Thus, the drafters of the Constitution acted on the basis of an autonomous awareness, rather than under pressure of external forces or foreign powers, to give importance to "linguistic minorities" by dedicating article 6 to the commitment of the State to provide appropriate protection measures in their favour. In other words, the constitutional guarantee of social and linguistic pluralism had to do with the evolution of the State and a new conception of the needs of human being.

In this view, article 6 is closely related to other provisions which are also included in the part of the Constitution devoted to *Fundamental Principles* (arts. 1–12). Thus, in reaction to the individualistic nineteenth century conception, which did not tolerate or encourage manifestations of social pluralism, article 6 is ideally linked to the principle of protection of inviolable human rights in social structures in which personality can unfold (article 2), among which minority linguistic groups certainly belong. Moreover article 3 bans discrimination for linguistic and other reasons and assigns the Republic the task of removing economic and social obstacles to the effective equality of its citizens. On this topic, part of the doctrine

discerned a possible specification of article 3 in article 6, in the double sense of formal and substantial equality (article 3, para. 1 and para. 2)[3] and natural extension of the freedom of expression (article 21). However, another part of the doctrine reads article 6 as the premise for introducing specific provisions and derogations from article 3, such as those that envisage a catalogue of linguistic rights and minority-language public-use rights to protect the distinguishing features of alloglot group members, who however know, understand and speak Italian.[4]

In any case, there are other constitutional provisions that can link up to the purpose of protecting linguistic minorities and contribute to its realisation. Once the Constituent Assembly had progressed beyond the original approach, which conceived protection of minority situations in alternative to the creation of special-statute regions, article 6 can be read in combination with the rule assigning the promotion and realization of the principles of local autonomy and decentralisation (article 5) to the Republic as a whole. A link with article 6 can also be found in the provision attributing the promotion of the development of culture and the protection of the historical and artistic heritage of the nation to the Republic (article 9), which includes the linguistic and cultural heritage of linguistic minorities. Indeed, minority idioms are undoubtedly immaterial cultural goods, identity symbols and elements distinctive of a social group, to protect and use in family and public life.

Here it is worth specifying, also in relation to what emerged from the Constituent Assembly, that all the provisions mentioned above as being directly linked to the principle of protection of linguistic minorities, including article 6, use the word "Republic" to describe the subject charged with protecting, recognising and promoting minority communities, human rights in social groups, local government and historical-artistic heritage. It is also the task of the Republic to remove economic and social obstacles to the enjoyment of fundamental rights and equality. If "Republic" – at least as used in article 6 – was interpreted by the Constituent Assembly in a narrow sense, i.e. with regard to the central institutions of the State (Parliament, government, public administration), in the course of time the need has arisen to accept a wider sense of the word. The term "Republic", found in the provisions mentioned above, should be interpreted as explicative of the State in all its ramifications, including regional ones, since the protection of linguistic minorities is a principle, a behavioural directive, a "programmatic rule", i.e. with an aim, the achievement of which is first of all, but not solely, the task of the Parliament (Constitutional Court judgement no. 62/1992). Indeed, all public offices, according to their competences, are charged with actuating it, and the "appropriate laws" of protection referred to in article 6 are not necessarily and exclusively State laws but also regional laws and State and regional administrative acts.

In this sense, like the other constitutional provisions mentioned above, article 6 is not just a fundamental principle of the legal system and the formal Constitution, but also a «supreme "principle" of the material Constitution and as such cannot

3 Alessandro Pizzorusso, Il pluralismo linguistico in Italia fra Stato nazionale e autonomie regionali (Pacini 1975), at 36 ff.

4 Elisabetta Palici di Suni Prat, Intorno alle minoranze (Giappichelli 2002), at 15 ff.

be derogated even by laws that are formally of a constitutional nature».[5] In other words, the provision of article 6 is an implicit limit to the reform of the Constitution, because any changes to that principle could lead to a change in the form of the State and could produce a dangerous alteration of the democratic, liberal and pluralistic values on which the Italian legal system is based.

For its part, the Constitutional Court has stated that article 6 «is situated at the point of intersection of other principles, sometimes defined as "supreme", that unfailingly and necessarily qualify the laws in force» (judgement no. 15/1996), including the principles of pluralism and equality. On various occasions (most recently in judgement no. 210/2018) it has also underlined that the fundamental principle of protection of linguistic minorities «marks "an overturning of great political and cultural importance with respect to the nationalistic attitude manifested by Fascism" (judgement no. 15/1996) and is aimed "at the conscious care and valorisation of heritages of collective sensitivity, alive and living in the experience of the speakers of the language, even if only in diffused, numerically minor communities" (judgement no. 170/2010)» (judgement no. 210/2018). In the light of these considerations, still in the 1990s, the Court urged the legislator to give full implementation to article 6, with the proviso that the protection of minorities had to be balanced with other equally important constitutional values and that the particular guarantees of minority groups had to be tempered with the general legal system (e.g. judgements no. 233/1994, 213/1998, 159/2009), excluding extension of linguistic rights by recourse to interpretation by analogy (e.g. judgement no. 261/1995).

3. The drafting of article 6 and its implementation

When the Constituent Assembly decided to introduce the principle of protection of linguistic minorities, it had almost exclusively national minorities in mind, namely the French-, German- and Slovenian-speaking communities living along the Alpine arch, who had shown separatist leanings. Since these communities were faced with serious problems of social coexistence, their regions, Aosta Valley, Trentino-Alto Adige and Friuli-Venezia Giulia, were accorded special autonomy. Why was attention limited to these three linguistic groups, when there were many long-standing alloglot groups on national territory? It is necessary to take a step back in order to find an explanation.

Although there was no exact data on the number of speakers of minority languages,[6] the report produced by the so-called Forti Commission,[7] before the Constituent Assembly began its work, recognised the following:

5 Alessandro Pizzorusso, 'Articolo 6', in Giuseppe Branca (ed.), Commentario della Costituzione (Zanichelli-Il Foro Italiano 1975), 305.

6 It is currently estimated that Italian citizens belonging to "recognised linguistic minorities" (see infra) number 2,500,000–3,000,000.

7 Report to the Constituent Assembly by the first Subcommission "Constitutional Problems", a commission for studies regarding reorganisation of the State, instituted by the Ministry for the Constituent in the autumn of 1945 and directed by Prof. Ugo Forti.

> "… the limits of the problem of ethnic minorities in Italy are clear. More than 150,000 persons live in linguistic islands [...] disseminated among the Italian-speaking population. They have been settled for many generations and are only differentiated from the surrounding population by their original traditional spoken language, that they have kept alive among themselves without obstacles, claims or problems, a language often no more characteristic than a dialect, which is distinguished in daily life from the common language. As in the case of speakers of a dialect, the use of Italian is familiar to them for all external and public relations […] Minority groups that speak French, German and Slovenian, living along the Alpine arch and near borders with States having those languages as national language, are a distinct category [...] The areas where they live are mixed language areas in which there is natural and historical contact between nationalities. This poses the problem of protecting their natural rights and of new peaceful resolution of a situation that has been and is potentially a cause of friction, whereas it can and must become a link that unites. This gives the problem of minorities in Italy the character of a problem of conciliation, coexistence and peace that makes it fascinating and worthy of closer consideration than its limited size and local importance would seem to warrant"[8] (my translation).

Therefore:

> The history of the linguistic minorities in the first category is without particular features and is more a curiosity of folklore and study than a situation with special needs, since it does not raise any current problem, whereas the history of groups of the second category is worthy of brief mention (my translation).

This approach, that could be defined as asymmetric, is not evident in the text of article 6, but was presumably why, in future years, the two types of minorities were the object of different legal approaches. The sensibility of the state and regional legislator towards the *linguistic peninsulas* of northern Italy manifested as progressive approval of laws of protection and promotion, whereas its attitude towards the *linguistic islands* scattered elsewhere in Italy remained one of substantial indifference. Particularly protected for the historical, political and legal reasons pointed out by the Forti Commission and the Constituent Assembly, the former coincided with the three alloglot communities of the special-statute regions of northern Italy, whereas the latter were all the others. This is not to deny or underestimate the objective diversity of the minority situations, but rather to underline that the findings of the Forti Commission were echoed not only in the Constituent debate, but also in subsequent developments of Italian law: profound and detailed for the national minorities; practically inexistent, at least until the end of the twentieth century, for all the other alloglot groups.

What was the passage from the work of the Forti Commission to approval of article 6 by the Constituent Assembly? The present article 6 of the Constitution arises from an amendment (article 108-*bis*) presented to the Constituent Assembly by the deputy Tristano Codignola. That amendment was debated in an animated manner in the session of 1st July 1947. According to its proponent, article 108-*bis* ought to have been part of the Title concerned with regional provisions, replacing

8 Ibid., at 179–180.

the provision on the institution of special-statute border regions, where the need to protect ethnic and linguistic minorities was evident, and not part of the *Fundamental Principles* of the Constitution. According to article 108-*bis,* «The Republic guarantees the full and free development, in the framework of the Constitution, of the ethnic and linguistic minorities existing in State territory [...]».

As mentioned, after lively debate during which it was pointed out that an *ad hoc* provision was useless because there was already the principle of non-discrimination on the basis of language, article 108-*bis* was reformulated with several amendments and without the adjective "ethnic", becoming the article 6 that we know today. It was not until the final coordination of the text that the provision was moved and became one of the *Fundamental Principles* of the Constitution.

For many years, its application was exclusive to national linguistic minorities. The attention of the parliament was dedicated exclusively to these minorities – earning them the epithet "super-protected"[9] – not organically but through a variegated and fragmented complex of provisions disseminated in the special statutes of Aosta Valley and Trentino-Alto Adige, as well as in legislative decrees of the government for the implementation of the same statutes and in state normative acts dictated for certain issues. In other words, special laws were drafted for specific recognised linguistic minorities in place of a general law.

Therefore, the different approach to borderland linguistic minorities and the so-called linguistic islands, while without foundation in article 6, unfolded in the phase of implementation of the constitutional precept and in the case-law of the Constitutional Court.

Indeed the Constitutional Court contributed with its jurisprudence to the distinction between *recognised* and *unrecognised* linguistic minorities, thus offering support to the ambiguous attitude of the parliament for many years, i.e. that of favouring the former and substantially ignoring the latter. On what basis did the Court draw this line between types of minorities, a demarcation that remained solid in the doctrine and the law at least until the end of the 20th century? The fulfilment of specific international obligations and the adoption of internal laws of constitutional rank were the pre-requisites for attributing the status of recognised linguistic minority, and implicitly for classifying linguistic groups into first and second class minorities, as it were, in the constitutional case-law. So, while the recognised minorities were only those granted the provisions of special statutes and international law, the other linguistic communities to whom these legal requisites did not apply by virtue of their different historical, political and constitutional vicissitudes, did not enjoy the same attention. The foundation of their protection therefore had to be sought in the general provision of article 6, which however remained long without realization by the national legislator. Indeed, also in the recent jurisprudence of the Constitutional Court, only the parliament can recognise linguistic minorities and accord their members some degree of linguistic rights.

9 Palici di Suni Prat, supra note 4, at 33ff.

4. Law no. 482/1999 for the protection of historical linguistic minorities

In this scenario, characterised by asymmetric protection for recognised and unrecognised linguistic minorities, and different degrees of protection for recognised minorities,[10] law no. 482/1999 entitled "*Provisions to protect the historical linguistic minorities*", was enacted. Adopted after a long and stormy parliamentary procedure, begun in the second half of the 1970s, it was the first general law with which parliament implemented article 6 and the «general principles established by European and international bodies» (article 2). It provides the common premises for the provision of a legal statute that can be accommodated by local powers and it concerns *all* the linguistic minorities *explicitly listed* (twelve linguistic groups), including minority populations of the Alpine arch, already with their own special protection measures for the reasons explained by the Constituent Assembly. The aim of the law was not to make the legal treatment of now formally recognised minorities uniform, since there are objective differences between the various groups. Rather, parliament aimed to dictate common general principles of minority protection, while further initiatives could be taken by State institutions and the regions, though the latter cannot broaden the catalogue of historical minorities or the languages accorded protection, as specified by the Constitutional Court.

The legal and linguistic scholarship[11] advanced various questions regarding the criteria used by the legislator to draw up the list. In first place, the reference to *populations* [...] and to *those speaking* [...] [«Albanian, Catalan, Germanic, Greek, Slovenian and Croatian populations and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sard» (article 2)] seems aimed at creating a demarcation, but without affecting the regime of protection, between social groups having their own ethnic-linguistic characters on one hand and minority idioms of an essentially linguistic-cultural profile on the other: a sort of hierarchy without any reasonable legal or socio-linguistic justification. In second place, leaving aside the question of the distinction between languages and dialects, the list includes (for the purposes of uniformity) linguistic varieties with different levels of standardisation: some even without any linguistic code of reference (e.g. Occitan), others have a code but only in theory (e.g. Albanian, Greek, Croatian), while others

10 For example, the protection regimes of the French-speaking minority of the Aosta Valley and the German-speaking minority of South Tyrol are different from that of the Slovenian minority in Venezia Giulia. Suffice it to say that French and German languages only are granted the same official status of Italian in the regions, respectively, of Aosta Valley and Trentino-Alto Adige.

11 Francesco Palermo, 'Verso l'attuazione dell'articolo 6 della Costituzione. La legge quadro sulle minoranze linguistiche storiche' [1998] 3 Informator 24; Valeria Piergigli, Lingue minoritarie e identità culturali (Giuffré 2001), at 180; Jens Woelk, 'Il rispetto della diversità: la tutela delle minoranze linguistiche', in Carlo Casonato (ed.), Lezioni sui principi fondamentali della Costituzione (Giappichelli 2010), at 195; Lino Panzeri, La tutela dei diritti linguistici nella Repubblica delle autonomie (Giuffré 2016), at 77ff.; Fiorenzo Toso, Le minoranze linguistiche in Italia (Mulino 2008), at 41ff.

cannot be called "minority languages" but rather "regional languages" due to their geographical distribution (e.g. Friulian and Sard). There are also gaps. As emerges from the title and the list, which is to be considered definite, law no. 482/1999 purposely does not concern immigrant minorities or Roma population. The latter was included in preparatory bills but was excluded from the final draft of the law. For all these situations, the fundamental reason for exclusion resides in the absence of autochthony, due to their dissemination on national territory, and in the case of the minorities composed of migrants, due also to the fact that they are new and without any historical bond to well-defined geographical areas. In fact, the law links positive protection of recognised linguistic minorities to their geographical roots and links enjoyment of specific linguistic and cultural rights to previously defined traditional areas of settlement. The catalogue of linguistic rights is quite elaborate. The minority language can be used: in infant, primary and lower secondary schools, for teaching and as a subject, at the request of parents and in observation of scholastic autonomy, with the option of adding further initiatives for valorisation and research at university level (arts. 4–6); in meetings of administrative bodies, subject to immediate translation into Italian for those who do not know the language (article 7); for the publication of official acts of the State, the regions, local government and non-regional bodies, although the text in Italian is the only one with legal value (article 8); in relations with local government (except with the armed forces and police) and before the "giudici di pace" (article 9); in topographic indications (article 10), whereas for the restoration of surnames that have been changed, appropriate documentation is necessary (article 11). In the *media*, the State is obliged to ensure protection of linguistic minorities in the areas where they belong: regions involved can pay special attention to this in radio and television programmes (article 12).

In 1999, once the indifferent agnostic attitude, uncongenial for a democratic and pluralist legal system such as the Italian one, had been overcome, with a certain delay and with some grey areas with respect to the expectations of the Constituent Assembly, the legislator not only confirmed the programmatic provision of article 6, but also the other associated constitutional values, passing the task of completing the provisions, thus outlined, to the government and ministries (e.g. concerning education and the media: arts. 5 and 12) and to local government (municipal councils, provinces and regions).

Moreover, law no. 482/1999 belongs in the framework of regional laws, begun in previous decades and aimed not only at protecting regional linguistic heritages, but also (at least since the 1990s) at defining certain public uses of languages in the areas of settlement of the corresponding minorities.[12] In other words, within the limits allowed them by the Constitution, the regional legislators helped open the way to the State legislator, also by virtue of the interpretation of article 6 (and the enlargement of the term "Republic") proposed by the Constitutional Court in

12 See the laws of Veneto 73/1994; Piedmont 30/1979, 26/1990 and 37/1997; Basilicata 16/1998, amended by law 40/1998 and law 17/2004; Molise 15/1997; Sicily 26/1998; Sardinia 26/1997; Aosta Valley 47/1998; Friuli-Venezia Giulia 15/1996.

the early 1980s.[13] The Court was no longer disposed to interpret the protection of linguistic minorities as being a question for the State, but rather as a "fundamental principle" of constitutional law, to which all subjects of the Republic are bound to contribute. This is how the premise for continuing to impede regional competences from acting in this field came to an end.

When law no. 482/1999 came into force, the activism of the regional legislator continued in ordinary[14] and special-statute regions,[15] with the adoption of provisions aimed at protecting, conserving and developing the ethnic, linguistic, historical and cultural identity of alloglot populations.

5. Article 6 as an open clause: the contribution of the constitutional court and the trends of international law

At this point, the framework of laws could now be considered complete: the fundamental principle of article 6 had finally been implemented and all linguistic minorities in national territory have legal recognition and protection, and none can be ignored. This is not exactly true.

The general law cited above is only concerned with the protection of historical minorities, i.e. those with traditional roots in Italy, ignoring disseminated communities, such as Roma groups, which are no less worthy of attention, not to mention the so-called new minorities, which have formed in Italy as in other economically developed countries as a result of massive migration from extra-European countries, especially in recent decades. On this subject, international bodies underline the appropriateness of broadening the notion of linguistic minority to include not only citizens belonging to communities whose language and culture are different from those of the majority of the population, but also those, irrespective of citizenship, who reside legally in the territory of a given State and with the help of the public institutions wish to be fully integrated in the host society, without losing their legacy of linguistic, cultural and identity values.

When the drafters of the Constitution set out to write what would become article 6, their first thought was for national minorities, while the needs of linguistic islands, not yet fully discerned, remained in the background.

However, experience has shown that also for minorities different from French, German and Slovenian, requests for protection have a basis in the same constitutional provision, despite the fact that the legal treatment cannot be the same but

13 For example, judgements no. 312/1983 and no. 289/1987.

14 See the laws of Piedmont 11/2009, abrogated by law 11/2018; Campania 14/2004; Apulia 5/2012; Calabria 15/2003. Moreover, during the last 20 years, on the basis of the reformed art. 123 of the Constitution, ordinary regions gave themselves new statutes, some of which contain precise reference to minority protection, or more generically to regional linguistic diversities (Apulia, Molise, Veneto, Calabria, Piedmont, Campania, Lombardy, Liguria).

15 See the laws of Friuli-Venezia Giulia 26 and 29/2007, and 20/2009; of the Province of Trento 5/2006 and 6/2008; of Sardinia 22/2018.

has to consider the characteristics and conformation of the different linguistic groups. In other words, the principle of protection enshrined in article 6 is not directed at predetermined types of linguistic minorities; rather, the possibly unintentional far-sightedness of the drafters was such as to permit an eventual open interpretation of that provision, which has become the basis of the legal protection of as many as twelve linguistic groups and twelve idioms.

The rich potential of article 6 probably still has more to offer. Indeed, in first place there seems to be no doubt of the fact that the need to protect long-settled communities will remain, both with reference to the national minorities of the three special-statute regions in northern Italy,[16] and also with regard to the historical minorities listed by law no. 482/1999. Though differently modulated, for the components of all these groups, the sense of belonging and sharing a legacy of identity values is in fact still alive, as the laws produced by the regions (both ordinary and with special statute) to protect the languages and cultures of autochthonous minorities continue to demonstrate. If anything, one could imagine a future broadening of at least some of the positive actions envisaged by said State law to include linguistic variations neglected despite their solid link to places and a sense of community among their speakers, as for example Piedmontese, Tabarchino (Sardinia) and the Gallo-Italic idioms of southern Italy, recognition of which has been the subject of various bills. Moreover, it would be important to regulate the situation of Roma groups, which continue to remain without legal protection under State legislation. The eventual ratification of the European Charter of Regional or Minority Languages[17] could help focus on languages and the corresponding minority identities that were intentionally or otherwise omitted from the text of law no. 482/1999.

In second place, an extensive interpretation of article 6, besides being considered admissible by the abundant legal doctrine,[18] seems to emerge from the juris-

16 For example, let us consider the bilingual re-denomination of the statutes of "Trentino-Alto Adige/Südtirol" and the "Valle d'Aosta/Vallée d'Aoste" in the text of article 116, para. 1 of the Constitution, as amended in 2001. Besides having a Constitutional foundation, the historical particularity of certain regions is based on specific prior cultural, linguistic and geographic factors. See Annamaria Poggi, Il regionalismo italiano ancora alla ricerca del "modello plurale" delineato in Costituzione [2020] 1 Federalismi.it at 10ff.

17 The Charter was adopted by the Council of Europe in 1992 and came into force in 1998. Italy signed it in 2000, but has yet to ratify it.

18 … beginning with the studies of Alessandro Pizzorusso, see Valeria Piergigli, Rileggendo l'opera di Alessandro Pizzorusso sulle minoranze linguistiche: le "nuove minoranze" tra identità e integrazione [2019] 1 Nomos – Le attualità nel diritto 1ff. See also Paolo Bonetti, Prime note sulla tutela costituzionale contro il razzismo e la xenofobia [1994] 1 Rivista trimestrale diritto pubblico p. 21–22; Giuseppe de Vergottini, 'Verso una nuova definizione del concetto di minoranza' [1995] 1–2 Regione e governo locale 21; Adele Anzon Demmig, 'La Corte «apre» a nuove minoranze' [2011] 2 Giurisprudenza costituzionale 1309–1310; Matteo Cosulich, 'Lingue straniere e lingue minoritarie nell'ordinamento repubblicano' [2012] 3 Quaderni regionali 143–144; Chiara Galbersanini, 'La tutela delle nuove minoranze linguistiche: un'interpretazione evolutiva dell'art. 6 Cost.?' [2014] 3 Rivista AIC 7–8; Giovanni Poggeschi, 'Diritti linguis-

prudence of the Constitutional Court since the law of 1999. In substance, according to the constitutional judge, the concept of "ethnic minority" is not limited to what the drafters of the Constitution imagined or what the legislator identified in 1999, since the linguistic pluralism accepted by the Italian legal system ought to admit recognition and protection of all voluntary, restricted communities, differentiated from the rest of the national population, consisting of persons who share the same language and a legacy of historical and cultural values. The reasoning of the Constitutional Court, especially in judgements no. 170/2010 and no. 88/2011, does not show an intention to limit the minorities to historical ones or to those composed solely of citizens. Rather, in more than one passage of its case-law, the Court allows glimpses of an extensive interpretation of the notion of "linguistic minority" and refers to «communities necessarily restricted and differentiated, which spontaneously brings together people who speak the same language, different from the common language, and who therefore preserve and express specific and particular ways of feeling, living and coexisting» (judgement no. 170/2010). In the perspective of a development in the interpretation of article 6, the constitutional judge ruled that law no. 482/1999 «does not establish the last word on forms of recognition in support of linguistic pluralism, but to the contrary, refers exclusively to the protection of historical linguistic minorities» (judgement no. 88/2011), in the near future allowing room for a linguistic policy, more sensitive to the needs of alloglot groups and to idioms different from those so far protected. Hypothetically, the broad notion of "minority" offered by the Court (judgement no. 170/2010) could also include groups of non-citizens, such as regular settled migrants and their descendants, who under the present legislation cannot become Italian citizens until they come of age. In confirmation of this opening, the Court recently recognised that «the protection of linguistic minorities referred to in article 6 of the Constitution is considered the paradigmatic expression of a broader and more articulated guarantee of identities and cultural pluralism, the principles of which must be considered applicable to all minorities, whether religious, ethnic or national, not solely linguistic» (judgement no. 81/2018).

In conclusion, if when it debated what later became article 6, the Constituent Assembly had in mind essentially "national minorities" of borderland areas, and certainly could not imagine the so-called new minorities since Italy was then a country of emigration, experience shows that the provision has been extended to other historical minorities and there is nothing to say that in principle it could not also apply to non-autochthonous linguistic minorities. Thus, once it is ascertained that the new minorities are social groups characterised by a shared sense of community and a consolidated aggregating "immigrant language",[19] the absence of citizenship should not be an obstacle to recognition of forms of linguistic protection.

tici (La lingua come strumento del diritto e la lingua quale oggetto della regolamentazione giuridica)' [2015] Digesto discipline pubblicistiche, Aggiornamento, 115; Lino Panzeri, supra note 11, at 309.

19 See Carla Bagna, Sabrina Machetti, Massimo Vedovelli, 'Italiano e lingue immigrate: verso un plurilinguismo consapevole o verso varietà di contatto?', in Giuliano Bernini, Piera Molinelli, Ada Valentini (eds), Ecologia linguistica. Atti del XXXVI congresso

This is indeed the trend that emerges from the positions taken by various international bodies in charge of consultancy and monitoring of the protection of minorities, including in implementation of treaties and conventions, ranging from the general comment of the UN Committee on Human Rights[20] to opinions more recently expressed by the so-called Venice Commission of the Council of Europe and the Advisory Committee on the Framework Convention for the Protection of National Minorities of 1995 (ratified by Italy with law no. 302/1997), and to the reports of the High Commissioner on National Minorities under the OSCE system. From their assessments, it emerges unanimously that the minority situations worthy of attention are not limited to national or autochthonous minorities, since the measures of protection and promotion, formally dictated for members of national, ethnic or linguistic minorities, can extend to communities of immigrants, despite the fact that they formed more recently and are not composed of citizens of the State. In the approach of international bodies, the requisite of *citizenship* is replaced by that of *residence* and even by simple *temporary presence* in the host country; thus, migrant workers and foreigners who find themselves temporarily in a country and who are members of groups that share the same language, culture or religion, cannot be denied the rights envisaged by article 27 of the said International Covenant on Civil and Political Rights, such as freedom to meet, to associate and to express themselves.[21]

In an increasingly globalised and interconnected social and legal space, this interpretation, though not without problems of practical implementation, seems potentially suited to offering protection in situations that have remained excluded or poorly protected. The main difficulty of this broadening of perspectives is clearly linked to the impossibility of automatically extending the legal statute prepared for "historical minorities" to "new minorities", since the latter, even ignoring their absence of Italian citizenship, have needs and aspirations different from, or only partly overlapping with those of the former. For minorities consisting of migrants and their families, the protection of cultural specificities and provision of protection, if necessary modulated on personal rather than territorial criteria, is accompanied by precise requirements of social, linguistic and cultural integration in the host region.

These are two apparently antithetical and certainly ambitious objectives, but they are actually two sides of the same coin. Indeed, an effective integration process cannot be separated from promotion of the linguistic and cultural identity of a community and its members. On this topic, the consolidated text on immigration (legislative decree no. 286/1998) names schools as the place where under-age foreigners are hosted, namely the ideal place to learn Italian, as well as to preserve

internazionale di studi della Società di linguistica italiana (Bergamo, 26.–28.9.2002) (Bulzoni 2003), at 203; Vincenzo Orioles, 'Modelli di tutela a confronto: promuovere la ricerca e la formazione o assecondare la deriva burocratica?', in Carlo Consani, Paola Desideri (eds), Minoranze linguistiche. Prospettive, strumenti, territori (Carocci 2007) at 331.

20 UN Committee, General Comment, 8.4.1994, no. 23.

21 Ibid., §§ 5.1 and 5.2

their culture and language of origin through activities that educate children to respect each other and to enjoy cultural exchange (article 38, para. 3).

The Court of Justice of Luxembourg[22] has on several occasions expressed its opinion on the applicability of linguistic rights to citizens of the European Union, as such extraneous to Italian autochthonous minorities, and recent regulations for Trentino-Alto Adige/Südtirol, originally formulated for German- or Ladin-speaking Italian citizens, have gone even further. The State legislator established that irrespective «of their nationality, residence, address or headquarters», all physical and legal persons can use German or Ladin in their interactions with public offices and legal authorities in the Province of Bolzano (article 1-*bis* legislative decree no. 574/1988, modified by legislative decree no. 186/2015). With regard to interactions with the legal authorities, interested parties can make their declarations and depositions in German before ordinary, administrative, accounting and tax courts (article 24, legislative decree cit.). The fact that the text no longer uses the term "citizens" but "persons" or "interested parties" suggests that these protection measures may soon also be considered applicable to foreigners (EU and extra-EU citizens) who need to interact with public officers in the Province of Bolzano.[23]

Recognising and managing diversity are objectives that the institutions, at local, national and international levels, and communities as a whole need to make, in a sustained coordinated effort, to pursue in the endeavour to build an effectively open, inclusive and intercultural society. This is certainly a delicate and arduous task, considering the dynamic and changing nature of the social context. However, it is necessary, today more than ever, to maintain the values of equality and democracy, as well as the principles of the rule of law and pluralism, including linguistic and cultural, on which the Italian Constitution is based and by which the European Union claims to be inspired. An appeal to article 6 of the Constitution still seems necessary today in the endeavour to conjugate the profound and complex changes in contemporary society with the fundamental values of diversity and of cultural and linguistic pluralism.

22 Intervening in defence of equal treatment and free movement of EU citizens, the Court of Justice admitted, for example extension of the national law on penal and civil procedure protecting alloglot minorities in favour of EU citizens who were circulating or staying temporarily in Italian territory (i.e. Case C-274/96 Horst Otto Bickel v. Ulrich Franz [1998]; Case C-322/13, Ulrike Elfriede Grauel Rüffer v. Katerina Pokorná [2014]). Vice versa, the same Court held that the requirement that EU citizens, who were able to demonstrate the language skills with other certificates, produce a specific bilingual certificate (so-called "patentino di bilinguismo") in order to participate in public competitions in the Province of Bolzano, was disproportionate to the objective pursued, and therefore illegitimate [Case C-281/98, Roman Angonese v. Cassa di Risparmio (2000)].

23 Stefania Baroncelli, 'Il ruolo chiave delle Regioni a Statuto speciale nella promozione dei diritti linguistici', in Paolo Caretti, Giuseppe Mobilio (eds), La lingua come fattore di integrazione sociale e politica (Giappichelli 2016) at 174–175.

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