Unit K15: Socio-cultural code: Resource and potential for conflict intervention

1.   Summary

Because the socio-cultural code not only prescribes the possibilities for action, but also contains conflict resolution approaches and conflict regulation possibilities, it is also a potential for conflict intervention.

2.   The socio-cultural code as a resource and potential for conflict intervention

The socio-cultural code provides possibilities for action in most areas of life. This raises the question of the extent to which the socio-cultural code can also be used as a resource or potential for intervention in conflicts.

2.1   The socio-cultural code in code-immanent conflicts

Although every code provides conflict regulation possibilities, conflict situations occur again and again even within the scope of validity of a code, in which the code-specific regulation mechanisms fail.

Case study: Inheritance dispute
One of the classic areas of regulation of socio-cultural codes is the regulation of inheritance disputes. In Swiss reality, the law clearly regulates the procedure and claims in inheritance cases. Decedents can - e.g. by will - (co-)determine who should inherit and how much. On the other hand, the law specifies certain minimum inheritance shares, e.g. for direct descendants. Many religions - e.g. Islam or Baha'ism - know sophisticated regulations in inheritance situations. Nevertheless, inheritance disputes occur time and again.

If the existing resolution mechanisms and rules of behavior prove to be insufficient or unsuccessful, new regulatory mechanisms are developed or existing ones are updated. If this does not succeed or no longer succeeds - especially in the case of a frequently occurring conflict situation - there is a risk that the socio-cultural code in question will disappear or be replaced by another, more efficient code. Seen in this light, the efficiency of a code is

proven, among other things, by whether it succeeds in resolving existing difficulties and conflicts.

In conflicts in which all parties to the conflict refer to the same socio-cultural code, the following possibilities exist.

- All conflict resolution mechanisms provided for by the relevant code are applied or consulted. These may be conciliation or mediation procedures.

- Former or no longer used conflict regulation mechanisms are used. New conflict regulation mechanisms are developed from the code - e.g. through analogy procedures - which are accepted by all conflict parties. A classic procedure for this would be mediation.

- A special case of code-immanent procedures are compulsory arbitration procedures, e.g. in the case of private litigation in Switzerland, the proceedings before the justice of the peace.

- Each code also has an additional potential to develop new - e.g. analogous - solutions or regulatory mechanisms based on the historically grown empirical knowledge of the code. Seen in this light, there is often considerable creative scope for developing new code-immanent regulatory mechanisms. However, the problem of acceptance arises for such newly developed conflict control mechanisms.

2.2   Cross-code conflict situations

Codes do not only refer to the way of acting and behaving, but also to the perception and the world view. It is not uncommon for two people to use the same term, but for it to mean something very different in their socio-cultural code.

Sociocultural Code and the Changing Meaning of Terms
During a stay in Russia in 1984, I was discussing Western and Russian films with a Russian student. When I said that Russian films were all so "moral" - I meant somewhat ironically the publicly propagated and penetratingly presented moral evaluation, which seemed to me more like political propaganda - my counterpart began to beam and replied - assuming that I had meant this positively and as a criticism of immoral Western film - "Yes, morality is an essential component of Russian society!" This incident shows once again that a message can take on a completely different meaning due to a change in context. This fact does not have a serious effect in everyday life, because - in spite of often ambiguous standardization or

coding - the meaning of the message is obviously understood to a greater extent - but only to a greater extent. But the meaning or connotation of a term - especially in politics - can also turn 180 degrees depending on the context: For example, most parties in increasingly impoverished Latin America call themselves "revolutionary" - such as the conservative ruling party in Mexico, the "Partido Revolucionario Institucional" or the strongly right-wing National Revolutionary Movement (MNR) in Bolivia, while in conservative Switzerland "revolutionary" is almost considered something indecent by a large part of the population - unless it is about technical innovations!
Source: Jäggi 1988:45, slightly edited.

In conflicts in which the conflicting parties do not refer to the same reference code, the following possibilities for action and intervention exist:

- Translation of the different meanings of central terms and concepts: This creates the prerequisite that all conflict parties understand the same or, better, a semantic (= meaningful) equivalent in their context of meaning under the term in question. This enables the parties to understand the conflict logic from the perspective of the other party.

- Mutual identification and clarification of central and relevant code-specific views, behavioral rules and meanings. This procedure also aims at improving mutual understanding: Only when I am able to comprehend the code of my opponent, I can understand why he behaves in a certain way at a certain point in time. I also learn to distinguish code-specific and thus obligatory attitudes or behaviors from individual positions or opinions: While the latter may be changeable, the former may be an expression of strong social pressure that can make compromise almost impossible or at least very difficult. (However, the reverse is also possible: If the code allows greater freedom of choice and action, but this is not used due to personal stubbornness, solutions can also be very difficult to find). Furthermore, the code of the opponent may offer alternative solution strategies that I can also use or refer to.

- Choosing an overarching reference code accepted by all parties to the conflict: This is especially obvious when the conflict parties refer to codes that are diametrically opposed to each other. Such a code could be, for example, an overarching negotiating practice or the invocation of a recognized authority (e.g. human rights court). In these cases, however, the problem is that the overarching code must actually be accepted by the parties involved. There is little point in appealing to the

European Commission of Human Rights, for example, if one party considers it not to have jurisdiction. Even if the plaintiff or applicant is proven right, this is only of use if the other party submits to the judgment.

On the legal level, various problems arise in conflict situations in which the parties involved refer to different socio-cultural codes. Walter Kälin (2000:24) points out that even in Western occidental states intracultural conflicts can very quickly take on an intercultural character if the parties to the conflict refer to different value systems. This also applies to conflicts between the dominant culture and "dissident" subcultures.

Conflicts between different value orientations
In this sense, the fundamental rights dispute over Christian sects in traditionally Christian countries is also a cultural conflict. These conflicts differ from disputes within cultures in that they do not revolve around the question of the correct view of a value system accepted by all those involved, but around the minority's claim to have a right to be different. This sharpens the view that disputes within Western European cultural traditions can also take on features of intercultural conflicts: It seems significant, for example, that the first disputes about polygamy and about the exemption of girls from physical education because of religious dress codes in German-speaking countries had nothing to do with Islam, but stemmed from corresponding desires of Christian sects. The demarcation between different types of cultural conflicts is thus often difficult; ... What is decisive is that it is a matter of fundamental rights disputes in which those involved in legal proceedings themselves choose the cultural discourse and explicitly assert cultural differences.
Source: Kälin 2000:24.

On the legal level, Walter Kälin (2000:94-96) has distinguished six categories of disputes over fundamental rights issues:

1)   Bipolar conflicts over state restrictions on liberty: In this case, the state and private individuals face each other directly. The issues at stake are questions such as: May a cult or may certain acts of worship be prohibited. In such questions, courts may find themselves in the position of having to decide what the content of a religious dogma is.

2)   Multipolar conflicts over state restrictions on freedom: This involves several private parties, each with different interests. Corresponding questions can be: Does "the state have to allow a father who does not want to send his daughter to swimming

lessons, even if the daughter and mother want the opposite? May or must the wearing of the Islamic headscarf be forbidden in schools if it is to be feared that other pupils or their parents will regard it as a provocation?" (Kälin 2000:94). This raises the question of when the state should intervene to protect individuals. A complex balancing of the various interests at stake is required.

3) Conflicts over the dispensation of state duties: This can be about dispensing from school instruction in individual subjects or on individual days of instruction (holidays). It may also be about whether the state can exempt a devout Sikh from wearing a helmet on a motorcycle, even if wearing a helmet is required by law. If the application of principles of legal equality is not sufficient, considerations of protection and recognition of cultural identity must be made.

4) Conflicts over state benefits: These include questions of whether the state must provide Muslims with their own cemetery, whether prisoners in institutions have a right to be cared for by religious clergy, etc. In practice, there is a tendency today to recognize certain claims to benefits from fundamental rights in the sense of protecting minorities.

5) Conflicts over discrimination: In contrast to the other four cases, here the affected minority member does not invoke fundamental rights to protect his or her own way of life, which differs from that of the majority, but rather claims disadvantage or discrimination precisely because of the fundamental rights that place everyone on an equal footing. In this context, it must be legally clarified whether "such ethnic-culturally based disparagements are mere cases of application of the violation of the requirement of equality of rights or whether they possess peculiarities that call for specific treatment under fundamental rights. Discrimination can be direct, in that legislation and practice treat people unequally on the basis of proscribed characteristics; indirect discrimination can be spoken of when a neutrally formulated rule that applies equally to all has the effect of disproportionately disadvantaging members of a group with certain racial, ethnic or religious characteristics" (Kälin 2000:96).

6) Conflicts over the scope of duties to protect: These include duties to protect against encroachments of areas protected by fundamental rights. Questions can be, for

example: What is to be done when parents have their daughters circumcised or force them into arranged marriages?

Precisely because the law is nothing other than a sophisticated socio-cultural code that has evolved over centuries, with the possibility of sanctions, it is worthwhile to consult legal experience and legal know-how.

2.3   Possibilities of intervention in case of code-specific violence

Ethnically motivated acts of violence that are (co-)influenced by a socio-cultural code can have the following causes:

1)   the violent act is directly due to a socio-cultural code,

2)   the violent act is the consequence of a socio-culturally coded behavior (= indirect causation by a socio-cultural code), or

3)   the violent act is the result of incompatible socio-cultural codes of one or more participants.

What are the possible interventions in these situations?

To 1):

In this case, it should be clarified in detail which alternative conflict regulation mechanisms and possibilities are provided for by the code in question. It is often advantageous to enlist the services of a respected person who is recognized in the context of the code concerned as a mediator or contact person. This person can intervene - often at short notice - in accordance with the code. If a certain conflict situation arises again and again, one should consider whether there are possibilities to change the reference code in such a way that the way in which the conflict is carried out is modified (e.g. in the direction of less violence). This is most likely to work for subcultures or small groups with a group-specific special code. However, such - e.g. pedagogical - intervention strategies are usually only effective in the longer term.

Re 2):

In such cases, two basic intervention options exist: First, attempts can be made to replace the socio-culturally coded behavior that leads to violence with other behaviors - and, if possible, with other alternative behaviors provided by the corresponding code. If this is successful, the violence is likely to be avoided in the long term. On the other hand, an attempt can be made to focus attention on the violent consequences of the corresponding behavior in order to uncouple the socio-culturally coded behavior from the violent consequences. However, this approach is certainly the more demanding one - and presupposes a high degree of willingness to reflect on the part of those affected. In both cases, the involvement and participation of recognized representatives of the corresponding socio-cultural code are crucial.

Re 3):

In the case of incompatible codes as the cause of violence, the following possibilities exist:

- Longer-term change of one or both codes,

- Elaboration of functionally and semantically equivalent bridge terms between both codes in order to develop a direct translation possibility, as well as

- Establishment of an overarching reference code.

While the third option can also be effective in the short term, the second option is more likely to be effective in the medium term and the first in the long term.

3.   Control Questions

1.   Why can't a code permanently refrain from regulating or resolving a - frequent - conflict situation?

2.   What are the four possible ways of settling a conflict when all parties to the conflict refer to the same reference code?

3.   Which three behavioral or intervention approaches exist in principle in cross-code conflicts?

4.   What are the six categories of cross-cultural or cross-code conflicts from the perspective of fundamental rights (according to Kälin)?

5.   What intervention options exist for the three types of ethnically motivated and code-

pendent violence?

4.   Links

Menschenrechte Schweiz MERS - Netzwerk Menschenrechtsbildung
www.humanrights.ch

Internationale Gesellschaft für Menschenrechte
http://www.igfm.de

Wie hoch muss das sozio-kulturelle Existenzminimum sein, um damit menschenwürdig leben zu können?
Dr. Christiane David und Torsten Koplin
http://www.rosalux.de/fileadmin/rls_uploads/pdfs/Themen/Sozialpolitik/RLS_120305.pdf

What is female genital mutilation (FMG) and where does it happen?
https://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen

Female genital mutilation (FGM) frequently asked questions - See more at:
http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#sthash.I2CiRLJP.dpuf

„Missverständnisse sind normal" Ali El Hashash
http://www.plurilingua.ch/media/publications/2014_Presse-LimAliElHashash_de.pdf

5.   Literature Cited and Further Literature

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