

## **RELIGIOUS PLURALISM**

By Paolo Naso

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Our Constitution recognizes and defends the right to freedom of religion and worship, both in private and in public. However, the full application of these constitutional principles and rules has been influenced by the legacy of the legislation on the admitted denominations and a number of subsequent interventions which have not always been linear and consistent, and which have limited the free exercise of religious freedom, especially in recently formed communities that are mainly composed of immigrants. Some serious effects produced by such a situation are illustrated in the period considered in this Report.

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Various episodes that occurred in our country have revealed the criticalities affecting some rules and the negative effects of an anachronistic and anti-constitutional interpretation of the relationship between the State and the individual religious denominations, which is sometimes confessional and discriminatory in nature. The main criticalities highlighted by our survey concern the opening of new places of worship , the recognition of and the room of manoeuvring afforded to the ministers of different denominations, and the participation of religious representatives in the public debate – namely, their access to local institutions or to media.

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These difficulties are compounded by the strategy of some political forces such as Lega Nord (Northern League), which have organized political campaigns to restrict the freedom of religion of immigrant communities - especially the Islamic one - that are openly in contrast with the principles guaranteeing and protecting religious freedom as enshrined in our Constitution.

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## Focus.

In following the news reports on the rights related to religious freedom, some issues are recurring: first of all the one concerning places of worship, which impacts every religious community but is particularly important when dealing with mosques; another complex and cross-cutting issue concerns the recognition of ministers of religious denominations; also some practices are a delicate and cross-cutting matter (burials, food precepts), including clothing (headscarf), the carrying of ritual objects (kirpan - the traditional knife with a curved blade - for Sikhs); another issue is related to some cases of explicit intolerance on religious grounds which, although limited, cannot be neglected; they will be illustrated more specifically in another section of the Report. Conversely, no “cases related” to a very controversial issue, also in the recent past, concerning blood transfusion for Jehovah’s witnesses, occurred in the period under consideration.

The many criticalities we have detected are largely due to a kind of “original sin”, namely the fact that the “legislation on ecclesiastic matters which was elaborated between 1920s and 1930s has been maintained more or less unchanged ... throughout a large part of the life of the Republic”<sup>1</sup>. Therefore, the important constitutional guarantees concerning equality before the law with no distinction of religion (art.3), the equal freedom of religious denominations (art. 8), their right to organise themselves in accordance with their statutes (art.8), the right to private or public worship (art. 19) are influenced and limited by these almost century-old rules which were set forth in a political and cultural period when the trend was to limit rather than recognise freedom of religion. From this standpoint, we fully share the conclusion drawn by a legal scholar such as Sara Domianello, who recently observed that Italian legislators neglect “the adaptation (in compliance with the Constitution) and the

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<sup>1</sup> Giuseppe Casuscelli, “Il pluralismo in materia religiosa nell’attuazione della Costituzione ad opera del legislatore repubblicano”, in Sara Domianello, (ed.), *Diritto e religione in Italia, Rapporto sulla salvaguardia della libertà religiosa in regime di pluralismo confessionale e culturale*, I Mulino, 2012, p. 23

updating (in the light of social changes) of all the special sources of unilateral legislation on religious freedom... whether consisting in the revision or the enactment of implementing laws... with a view to executing agreements or MoUs stipulated according to articles 7 and 8 of the Constitution”.<sup>2</sup>

The result is an “unfinished path”<sup>3</sup>, which on every turn reveals inconsistencies and criticalities that are generally detected only by the persons who are directly concerned - in this case minority religious communities - and by a small group of experts who, following their civil passion, their professional duty or juridical competences, deal more closely with the difficult dynamics of religious pluralism in Italy. Within this framework, some appropriate judgments, specific legislative actions, even the good practices we have observed during our analysis are just a patch put on a worn-out cloth that must be replaced by a new and resistant fabric, consistent with the cultural and religious changes that occurred in the Italian society in the last years as well as with our Constitution and the guidelines issued by the European Union also in this area.

## **“Steeplechase” Rights. Facts**

In the present chapter, organised into general items, we will report some news<sup>4</sup> which illustrate how these issues are still open and sometimes cause major criticalities in the enjoyment of the rights related to religious freedoms - especially when, as is the case with migrants, they go hand in hand with a legal status that is both fragile and uncertain as indicated in another section of this Report.

According to our interpretation, these rights, even though they are formally guaranteed by the Constitution, are “hindered” by the persistence of a regulatory framework dating back to the fascist period

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2 Sara Domianello, *Prospetto riassuntivo*, p. 250.

3 Alessandro Ferrari, *La libertà religiosa. Un percorso incompiuto*, Carocci, 2012

4 Except where specified otherwise, news are taken from ANSA archives.

and by new rules that are intentionally aimed at influencing the full exercise of religious freedom especially by immigrant communities that have been established more recently. A further obstacle is represented by a culture of religious pluralism that is still uncertain and limited by a bias in favour of the majority denomination; this is probably due to the history of such denomination and its being peculiarly rooted in the Italian society, yet it is in contrast with the supreme principle of the secular nature of the State that has been repeatedly affirmed by the Constitutional Court<sup>5</sup>.

**PLACES OF WORSHIP.** The criticalities related to the places of worship can be divided into two groups: places of worship “to be opened”, encountering the resistance and opposition by some municipal authorities or some sectors of the public opinion; and places of worship that have been “closed” or have been the subject of initiatives or campaigns aimed at their closure.

Although this issue concerns all denominations, the debate is especially widespread and harsh with regard to Islamic centres - commonly defined as mosques even though the term is not always correct.<sup>6</sup>

It is estimated that in Italy there are between 600 and 800 Islamic centres, with some peaks in Veneto (106), Lombardy (92), Emilia Romagna (84), Piedmont (67)<sup>7</sup>.

In 2013 the debate focused on the opening of new mosques, some of which in important Italian cities including Milan, Brescia, Genoa, Parma, Florence, Pisa, Cinisello Balsamo, Crema, Lecco, Gallarate, Gardone, Rovereto, Monfalcone, Crema, Forlì: two smaller towns

<sup>5</sup> According to the wording used in a well-known decision, various constitutional articles ( 7, 8 and 20) contribute “ to configure the supreme principle of the secular nature of the State, which is one of the aspects of the form of State as outlined by the Constitution of the Republic. The secular nature of the State as defined in arts. 2, 3, 7, 8, 19 and 20 of the Constitution does not imply the indifference of the State vis-à-vis religions, but rather the protection afforded by the State to ensure freedom of religion within a framework of religious and cultural pluralism”, Decision of the Constitutional Court No. 203 of 12 April 1989.

<sup>6</sup> Besides the one in Rome at “Monte Antenne”, only the mosques of Segrate (MI), Catania and Colle Val d’Elsa (SI) - to be inaugurated soon - can be considered as mosques *stricto sensu*. These buildings have a courtyard for ablutions, a large prayer hall and a minaret “which anyway does not seem to represent a fundamental element for European and Italian Muslims.... In Italy, and more in general in Europe, worship places are musallayat (plural of musallah), a term traditionally used to indicate an open space where the prayer takes place during the two most important celebrations [but which] are mostly the result of a long lasting attempt by Muslims to find, along their history of migrants, places and time for salat jama’ia (community prayer)”. K. Rhazzali and M. Equizi, I musulmani e i loro luoghi di culto, in E. Pace, Le religioni nell’Italia che cambia. Mappe e bussole, Carocci 2013, p. 57 and 58.

<sup>7</sup> Quoted above, p. 62

should also be mentioned here, namely Bondeno (Ferrara) and Lavis (Trento). Whilst in all these cases most municipal authorities gave their green light, the Northern League's approach was one of unconditional opposition - Islam being allegedly "anti-constitutional" by nature. It was often the case that such opposition was accounted for by ideological arguments and went as far as to take initiatives that are fully outside the scope of constitutional principles - for instance, authoritative local representatives of the Northern League proposed a "Register of Muslims". We would also like to mention two cases that were not mainstream, at Albenga and Varallo Sesia, where Northern League Mayors attended the inauguration of an Islamic centre. However, the reason given for their participation was, at least in the latter case, quite revealing: "In this way we won't see them idling about in groups of 10 or 15 in bars".

In a number of other cases, organised groups from the Northern League's political area (but not only) claimed, and sometimes were granted by local authorities, for the shutting down orders: this was the case - to quote just a few examples - of the mosque in Trento, for which the Northern League requested "immediate closure" in 2012, and those of Brescia and Turin.

Systematic and widespread initiatives against mosques have been promoted also in places where the Northern League is definitely a minority political group, and they relied on the same arguments and operational pattern. This clearly shows that one has to do with a carefully thought out political campaign whereby the evocative issue of the "mosque" is flagged as a shattering element of the cultural, social and religious life of local communities, as something "alien" that is liable accordingly to introduce components that might undermine public order and affect citizens' safety and security.

The effects of such a campaign, from the point of view of the right to religious freedom, are evident and three-fold. First of all, they disseminate biased views vis-à-vis Islam, whose internal declinations and articulations are ignored and which is described as

a monolith that cannot be integrated into Italian society. Secondly, this campaign produces a distorted comprehension of fundamental constitutional rights which, in the case of Islam, end up being denied in the name of the alleged social danger represented by Islamic centres: thus, the risk is that an opinion could prevail according to which the freedom of expression of Muslim communities should be considered as a “separate” matter that cannot be ascribed to rules and principles generally applied to other religious groups. Thirdly, such a campaign has had an impact on rules and regulations: its most important result concerns a paragraph of a Regional Law in Lombardy (No. 12, section 52, paragraph 3a): it prevents changing the intended use of buildings for purposes of worship, thus depriving religious communities of the possibility of buying buildings and adapting them to safety rules, applying for their use for religious purposes and dedicating them to whatever use, be they churches, mosques, prayer rooms, meditation and spirituality centres, in full compliance with the law. This is clearly a violation of the right to worship in public and the media have reported the cases of many churches and mosques that have been closed in pursuance of such a rule.

According to the Council of State, “local authorities must allow all religious denominations to freely exercise their activities, also by identifying suitable areas to accommodate their members” and municipal authorities may not fail to “pay attention to any requests to this effect, whose aim is that of enabling the substantive, effective exercise of the right to religious freedom, which is guaranteed by the Constitution, not only in the application phase, but also beforehand, i.e. when planning the allocation of a given area to specific purposes.”

**RELIGIOUS MINISTERS.** The rules for the recognition of non-Catholic ministers contained in the legislation on the “admitted denominations” - which will be described later on in this Report - set out a procedure starting from the application to be lodged with any Prefecture, then going through the assessment of such application by competent bodies, and finally, in case it is accepted, to a Decree

by the Ministry of the Interior.

Since 2012, following an opinion given by the Council of State upon request by the Central Department for Religious Affairs concerning the objective criteria for the recognition of ministers- an issue that will be better illustrated in the chapter on regulations - more restrictive criteria have been applied: in particular the community for whose recognition a minister applies must include a minimum of 500 members. Consequently, dozens of applications have been rejected, especially those coming from Evangelical churches.

A paradox is that of the International Evangelical Church (CEVI), a Pentecostal denomination formed by the merger of the International Evangelical Church and the Missionary Association (CEIMA) founded at the end of the 1950s by the American missionary John McTernan. In 2012, CEVI, some ministers of which had been officially recognised by the Ministry at the time CEIAM was still active, was granted legal recognition as a “religious body” according to the law on the “admitted denominations”: an important step forward from a juridical viewpoint. However, since CEVI was “a new denomination”, and CEIAM was about to end its activities, all “former CEIAM” ministers had to apply once again for their accreditation. But by that time the opinion of the Council of State had been issued and therefore those religious ministers from CEIAM who had already been recognised as such were denied the passage to CEVI because they led communities of less than 500 members.

As to the Muslim community, given the high number of its members, it is striking that, as stated also by some influential “opinions” asked for by the Ministry of the Interior, there are no ‘approved’ ministers, neither are there any applications lodged by the community” whereas, as stated in the text, the ministerial approval of some Muslim ministers could, for example, “enhance the transparency of the assistance service in custodial institutions” and “highlight the religious dimension of community activities”.

As far as access to hospitals and penitentiaries is concerned, various

news report about the difficulties encountered by religious ministers of denominations for which no agreements are in place; the situation can get actually worse if incorrect or misleading information is reported by the press, perhaps to shed light on this problem, which sometimes ends up aggravating the problem rather than contributing to solve it – for instance, by relying on the provisions that allow for the access of “chaplains” of different denominations.

**CLOTHING, OBJECTS AND RITUALS** As far as Muslim cemeteries are concerned, the Italian legislation provides for the possibility, in the planning schemes of burial grounds, “to reserve some specific, separate spaces for the burial of corpses of individuals belonging to a religion other than the Catholic one.”<sup>8</sup> In the case of Islam, such a possibility represents a ritual prescription, hence Muslim representatives have applied consistently for “Islamic” areas in cemeteries.

As has been the case for mosques, this issue is un-problematic per se since the law allows setting apart areas reserved for specific religious denominations; however, a symbolic dispute has arisen under the strong impulse given by the Northern League. Among the various cases, one can mention those in Bergamo, Bolzano, Pordenone, Rovereto.

Another complex issue concerns the Muslim headscarf - more correctly the hijab - but also the niqab covering the whole face except for a slit over the eyes, the much rarer burqa where a net covers also that slit, and the chador, usually worn by Iranian women. In 2011, the then Minister of the Interior Maroni had requested the opinion of the “Italian Islam Committee”. In their document, the Committee’s representatives recommended, in case a regulation was issued, to “avoid any references to religion or to Islam<sup>9</sup>”. The new piece of legislation was first approved by the Parliamentary Committee

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8 Presidential Decree No. 285 of 10 September 1990, art. 100

9 The full text is available at [www.interno.it](http://www.interno.it)

for Constitutional Affairs on 2 August 2011, but the immediately subsequent collapse of the Berlusconi government and the calling of a general election put an end to the legislative process.

Within the context of the recurring controversies on this issue, news have been reported on abuse and sometimes attacks against women wearing the Islamic headscarf: cases have been reported in Padua and Monterotondo (Rome). There have been episodes of school bullying against veiled girls and vice versa, against women who were accused of not wearing the headscarf.

In 2012, the State's prosecutor's office in Turin temporarily settled the dispute: they dismissed the case of an Egyptian woman living at Chivasso who had been reported to the police because she moved about in town wearing a Burqa. The Court decided that the woman's conduct was legitimate since the cloth "represents a sign of respect, according to a widespread interpretation, for the principles of the Islamic religion", but also stated that for identification purposes, the face must be uncovered.

When dealing with such a complex issue, given that the right to wear the Islamic headscarf is - in terms of rights - on a par with the right not to wear it, trivial observations and comments are useless just like ideological attitudes that, as shown by the ongoing debate in France, do not help find a compromise among different and complex needs.

A similar example to that of the "Islamic headscarf" is the one concerning the Sikh turban, one of the community's five ritual obligations (kalsa): even though this apparel does not involve any identification or safety issues, in the past some "incidents" occurred in the airports, and the Ministry of Foreign Affairs had to deal with them; and a problem exists concerning the impossibility to wear a helmet when riding a motorbike. A Sikh was fined in Treviso because he was wearing a non-homologated helmet - indeed, in order to wear it over the turban, the Sikh had taken off its protective material.

Another ritual article of the Sikh tradition is the kirpan, a ceremonial knife that every Sikh man is supposed to carry in order to express his constant battle for the good and morality against evil forces and injustice, both at personal and social level. The knife is rather small, the curved blade is generally blunt and when given this knife, young Sikh are taught it must not be considered as a weapon to do harm. All over Europe, the Sikh community claims the right to carry the kirpan, by underlining its religious and non-violent character; recently, a Sikh delegation obtained a symbolic success, as they entered the European Parliament carrying this ritual article.

In Italy no violent events or threats linked to the kirpan have been reported, but this issue represents one of the main obstacles for the legal recognition of the Sikh community. So far, the various solutions proposed to replace the real object by a symbolic one - by soldering the blade to the sheath or replacing the metal blade by a plastic or wooden one - have not been accepted by the Sikh community.

Finally, media have reported on some disrespectful attitudes, violence and acts of vandalism that, apart from the sometimes minor effects they concretely produced, impact on the life of communities that feel unaccepted or even rejected.

Within this framework, anti-Semitism is still a cause for concern. The Observatory on anti-Jewish Prejudice, set up within the Jewish Documentation Centre of Milan, reported a 40% increase in 2012 compared to 2011; it is mostly a matter of cyber hate, expressed and amplified by the web, and it has the typical contents of anti-Semitic propaganda: the economic and financial power of the Jewish lobby, "Nazism" towards Palestinians, control over the media, revisionist propaganda. There have been also different cases: among the most serious ones are those brought to light by an investigation carried out in Naples into some far-right organisations including Casa Pound, responsible for attitudes and speeches "full of hatred" against Jews but also against "the Arabs" in general.

On the other hand, there is an interplay between anti-Semitism

and Islamophobia, which end up giving rise to undistinguishable violence - as shown by some sentences issued for crimes related to “incitement to discrimination and violence for racial, ethnic and religious reasons”.

Leaders of the Jewish community have often insisted on the need to be alert on anti-Semitism; as to the Muslim community, its representatives have voiced to President Napolitano their deep concern for “(intentional or unintentional) attitudes vis-à-vis those citizens belonging to Islam”.

**CONCLUSIONS.** The main obstacles to a full enjoyment of the rights linked to religious freedom derive from different factors. The first one is the manifest obsolescence of the legislation on the “admitted denominations.” Even though the provisions that are most blatantly in contrast with the principles set out in the Constitutional Charter have been amended by the Constitutional Court, the overall legislative framework is geared to limiting the rights to religious freedom rather than guaranteeing them, and to controlling places and modalities for the free exercise of religious freedom rather than providing a clear-cut framework to ensure religious pluralism. This criticality appears very clearly with reference to a number of aspects such as: the appointment of religious ministers recognised by the Ministry of the Interior; the rationale and the procedures for the “legal recognition” of denominations; the discriminatory effects produced by such recognition vis-à-vis the denominations that have not been granted recognition.

A second limiting factor concerns the application of the existing rules: the latter are sometimes unknown to decentralised Prefectures or other institutional agencies, whilst at times they are applied according to restrictive and exclusion-oriented criteria. Hence such rules, instead of representing an instrument to safeguard rights, become less important or have no impact at all on the enjoyment of rights.

The third factor has a political dimension and concerns the action and

strategy of some parties – first and foremost, the Northern League – that have based their electoral marketing on the limitation or even denial of the rights to religious freedom for those communities defined as “immigrant communities”. This strategy - implemented through public opinion campaigns and, when the political force is in power, through administrative measures - results into a seriously distorted understanding and interpretation of constitutional rights; therefore, the tendency is to consider as “common sense” that a religion may enjoy more rights than other religions and some religious denominations may even be excluded from the rights that are instead afforded to other denominations - based on an ideological assumption whereby they “may not be integrated” within the democratic system.

The joint action of these three factors - concerning respectively legislation, application and politics – gives rise to a critical situation, which calls for a systematic approach as described in the paragraph on recommendations.

## **Discrimination and Violence**

### **21 April 2012 Varallo Sesia (VC)**

Immigrants: The Mayor, a member of the Northern League, opens an Islamic centre,

### **23 June 2012. Brescia**

Mosque in via Bonardi: The Northern League says “no” with a demonstration, BS news.it, protests are organised also in the province: Northern League: there will be no mosques in Cologne.

### **11 July 2012. Milan. Places of worship.**

Declaration by Lepore, a Northern League representative: Mosques in Milan; the Mayor Pisapia as an Islam Muezzin: “Our Mayor is more Islamic than Muslims themselves

and does all his best to put his flag, pardon, his ideological minaret on Milan's Cathedral. The Northern League is ready to immediately call upon all citizens to ensure the protection of the founding values of our society.”

### **21 May 2012 Brescia**

The Council of State overturned the first-instance judgement and allowed re-opening the Islamic centre which had been closed under the Northern League's pressure in 2011 by the municipal authorities of centre-right, who had declared the place unfit for use and seized the premises of the mosque in Viale Piave; the Regional Administrative Court (TAR), seised by the centre's representatives, had confirmed its closure.

### **27 July 2012. Rome**

Neighbourhood of Tor Pignattara, beatings and insults after Ramadan. Some young people from Bangladesh were attacked; stones were thrown against the Islamic centre of via Serbelloni in Rome.

### **13 September 2012**

Bergamo. Islamic cemetery, the Northern League opposes its construction.

### **14 September 2012 Reggio Emilia**

Earthquake. Manfredini (Northern League), Islamic food is an expensive whim.

This was reported to be the reaction by the head of the Northern League at the Region, Mauro Manfredini, following the request for halal food to the victims of the earthquake who had found refuge under the tents mounted by the administration.

**15 September 2012. Trento.**

**Disputes over the building of mosques.** Northern League, close them

**3 October 2012. ANSA**

On charges of assault and battery against his wife because of the chador, a Tunisian man was reported to the police.

**16 November 2012 Cinisello Balsamo**

Torch-light procession organised by the Northern League on November 17th, against the Mosque in Cinisello.

**24 January 2013 Naples**

Blitz against far-right groups. I must rape that Jew, ANSA

**28 January 2013. Milan.**

Holocaust Remembrance Day: increasing episodes of swastikas and insults

**30 January 2013. European Parliament**

Sikhs win and exercise right to wear kirpan in European Parliament

**14 April 2013 Treviso**

Modified helmet in order to wear the turban, Police fine a Sikh man.

**3 May 2013 Rome.**

Islam: Islamic community to President Napolitano: we feel hostility

**21 May 2013 Crema.**

Islam and mosque, the Northern League collects signatures and speaks to Magdi Allam

**7 June. Anti-Semitism on the web:**

the attempt was made to set up an armed group. In fact, the investigations found violent language towards Jews, immigrants

and Muslims the sentenced defendants wanted to present with” a nice bleeding pork head “

### **11 June 2013 Turin.**

Immigration: Public Prosecutor’s Office in Turin, wearing the burka is legitimate

### **6 July 2013. Turin**

The Northern League protested regarding the mosque in via Genova (Lingotto area),” This is not integration. The Northern League says no to the mosque in via Genova”.

### **16 July 2013 Rome.**

In reaction to a declaration by the President of the Chamber of Deputies Laura Boldrini on the Miss Italia show, senator Gian Marco Centinaio (Northern League) wonders whether Ms Boldrini preferred Miss Burqa

### **13 August 2013 Parma.**

“A solution... which favours Muslims and is to the detriment of Parma’s inhabitants”: this can be read in a communication by the regional and municipal Secretaries of the Northern League, Fabio Rainieri and Andrea Zorandi and by the provincial Commissioner Maurizio Campari,

### **14 August 2013 Avignon, (France)**

An architect from Como wrote on a wall in Avignon “Mohamed the Prophet was a pig”.

### **Regulatory Aspects.**

As far as the relationship between the State and the different religious denominations is concerned, the Italian legislation is made up of a high number of laws and provisions that are not always consistent and do not manage to protect a religious pluralism which appears to be, also in Italy, increasingly wider in scope and complex.

## THE CONSTITUTIONAL CHARTER

contains various articles on the right to the freedom of religion and establishes the “inviolable rights of the person, both as an individual and in the social groups where human personality is expressed.” (Art. 2) and the equal social dignity of its citizens with no distinction of “religion” (art. 3); it guarantees the same freedom to all religions before the law and their right to “self-organisation according to their own statutes. Their relations with the State are regulated by law, based on agreements with their respective representatives” (art. 8); it affirms the right to “to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private”. (art. 19); and specifies that “No special limitation or tax burden may be imposed on the establishment, legal capacity or activities of any organisation on the ground of its religious nature or its religious or confessional aims”. (art. 20)

As is well known, the specific issue of the relationships between the State and the Catholic church is dealt with in a specific article, which recognises that they are both “independent and sovereign, each within its own sphere”, and it also officially recognises the Lateran Pacts (art. 7). Therefore, under the Concordat contained in the above mentioned Pacts, article 7 implicitly grants the Catholic church some specific concessions, among which the most important one is the confessional religious teaching in state schools which is paid by the State but carried out by teachers selected by diocesan authorities.

**AGREEMENTS.** For the religions “other than the Catholic one” - a conventional expression which recalls obsolete notions of privileges applying to Italy’s majority religion as opposed to the undifferentiated world of the “other religions” - article 8 has strategic importance since it is the legal tool affording the greatest protection to religious freedom, the recognition of ministers, the enhancement of cultural

heritage; last but not least, it gives access to the distribution of funds from the “Eight per Thousand” scheme (compulsory devolvement of tax revenue)<sup>10</sup>. The practice implemented so far, even though article 8 does not provide anything in this regard, is that a religious denomination must first obtain legal recognition in order to negotiate an agreement with the State. These general principles must be read and interpreted also in the light of some judgements given by the Constitutional Court <sup>11</sup> which provide a framework for the right to religious freedom as part of a notion of secularism that is different from the “monist one which is in competition with other values and with the cultures of other religions, a type of secularism that is ready to accept other principles corresponding to the different identities in our society<sup>12</sup>”, an “active”, “positive”, “layered”<sup>13</sup> type of secularism - to quote the many definitions devised.

LEGISLATION ON THE ADMITTED DENOMINATIONS. Whilst Constitutional articles and principles are available, the general legislative framework on the “admitted denominations” has remained more or less unchanged since 1929-1930. That framework was approved within the context of the consolidation of the fascist regime and only a few rules that were openly anti-constitutional have been repealed so far. Law 1159/1929 and the relevant implementing regulation (Royal Decree 28/2/1930 No. 289) set out the criteria to confer legal personality on religious non-Catholic denominations and to appoint ministers authorized to celebrate religious marriages having civil effects or to provide spiritual assistance in hospitals, penitentiaries and armed forces.

This legislation represents the main reference for those denominations

10 As of today, six Evangelical churches have signed an official agreement with the Italian State: the Waldensian Church (Union of the Methodist and Waldensian Churches), the Union of Seventh-Day Adventist Churches, the Assemblies of God in Italy, the Christian Evangelical Baptist Union of Italy, the Evangelical Lutheran Church and the Apostolic Church in Italy; the Union of Jewish Communities in Italy; the Sacred Orthodox Archdiocese of Italy - Exarchate of Southern Europe, which indeed does not have any jurisdiction over the increasingly numerous Romanian Orthodox believers; and finally the Church of Jesus-Christ of the Latter-Day Saints (Mormons), the Italian Buddhist Union and the Italian Hindu Union. Out of all these entities, only the Church of Jesus-Christ of the Latter-Day Saints (Mormons) has decided not to accede to the distribution of funds derived from the Eight per thousand scheme.

11 Reference can be made in particular to decision 203/1989 which states that “the principle of the secular nature of the State as per arts. 2,3,7,8,18 and 20 of the Constitution does not imply an indifference by the State vis-à-vis religions, but rather the protection afforded by the State to ensure religious freedom within a context of religious and cultural pluralism”; and to decision 334/1996 which affirms that the right to freedom of expression “is vested both in believers and in non-believers, be they atheists or agnostics.”

12 N. Colaianni, *Diritto pubblico delle religioni. Eguaglianze e differenze nello Stato costituzionale*, Il Mulino, Bologna 2012, p. 51

13 P. Naso, *Laicità*, Emi, Bologna 2005

that have entered into no official agreement with the Italian State as provided for in art. 8 of the Constitution. Therefore, non-Catholic denominations may be recognised as legal entities by a Presidential Decree upon the request by the Ministry of the Interior, and after receiving the opinions by the Council of State and the Council of the Ministries (Law 1159/1929, art. 2). This is a complex and burdensome procedure which, in the past decades, brought about the recognition of less than fifty confessional entities: apart from those long recognised as such (Waldensians, Opera Brethren, various evangelical churches of Swiss or German origins, a number of orthodox churches) and those denominations that have an official agreement with the State, in the post-WWII period the following have officially been recognised according to Law 1159/1929: 15 evangelical institutions, 5 orthodox churches, 4 Buddhist institutions, Jehovah's Witnesses and two more millenarian churches, 2 Christian Science centres, two Hindu centres, one Baha'i; as to Islam, the second religion in Italy in terms of members, the only recognised entity is the cultural Islamic Centre of Italy which manages the "Great Mosque" of Rome.

The Sikh community - numbering approximately 80,000 members, which recently opened important temples - *gurdwara* - especially in Northern Italy<sup>14</sup> - is not yet recognised.

"RECOGNISED" MINISTERS. A further example of the layered approach mentioned above is provided by the denominations that are not legally recognised but have ministers "whose appointment has been approved" by the Ministry of the Interior: such a recognition authorises them to celebrate religious marriages with civil effects and to offer spiritual assistance in protected places such as schools, hospitals, penitentiaries. However, these denominations are merely associations from the State's viewpoint, thus encountering evident difficulties in finding their place in the public space and fully exercising the right to freely profess their religious beliefs and celebrating their rites in public (art. 19).

However, a recent opinion issued by the Council of State (No. 561 of 2/2/2012) imposed a restriction on these appointments by indicating that “the members of the given denomination for which approval of a minister’s appointment has been requested should be in the range of 500 persons as distributed into the different age groups”. The logic for such threshold is that “the smallest territorial structure of the Catholic church is the parish” whose average population is 500 units, and for smaller groups the “Catholic church keeps the building where public worship is held in use but does not appoint any incumbent”. The text of the opinion by the Council of State does not provide data and documents to substantiate the argument regarding this practice; above all, one can hardly grasp why the organisational model - in this case the ecclesiological one - of a particular religion, although it is the majority one in a given country, should be extended to other religious denominations - which are free to organise themselves by adopting different parameters and procedures. This opinion, if endorsed, will also have a discriminatory effect on the religious ministers who have applied for recognition after the publishing of the Council of State’s opinion. Finally, this opinion has produced other effects by modifying consolidated practices that, through the recognition of the religious ministers, strengthened the freedom of action and of religion of small denominations that were more vulnerable in terms of legal safeguards.

**WITHOUT UMBRELLA.** A final piece in this legislative puzzle consists in yet another layer, i.e. that of the communities of believers that not only lack “recognised” religious ministers, but are also composed entirely of immigrants. This is the case of hundreds of evangelical churches of Nigerian, Ghanaian, Philippine, Latin American origin but also of Sikh and other smaller religious groups that are organised in simple associations. Even though their statutory aim is only or mainly of a religious nature, from a juridical point of view they are merely associations and lack the juridical guarantees - the different large and small umbrellas described so far - that are afforded to the “consolidated” religious denominations also by

way of the activity of “recognised” religious ministers. They are certainly protected by the Constitution, but it is clear that the scope of action and public recognition of these communities - within the existing legislative framework - are seriously jeopardised.

Being aware of this loophole, the Minister for International Cooperation and Integration promoted the “Permanent Conference of Religions, Culture and Integration” in 2012 - as a forum open to the participation of representatives from the different religious communities, independently of their legal status. It is worth underlying that the opening of the “Conference” coincided with the conclusion of the works of the “Italian Islam Committee” set up by Minister Maroni in 2012, which had replaced the Council for Islam set up by Minister Pisanu in 2005 and then confirmed by Minister Amato in 2006. In that period, when the “Islamic case” was considered as a separate matter from the more general issue of religious freedom, some “opinions” had been asked by Minister Maroni from a number of experts concerning “burqa, niqab, places of worship, appointment and training for imams, mixed marriages<sup>15</sup>”. These opinions were meant to serve as a basis for new laws, which however never came to be due to the evolution of the political framework.

In 2013, Prime Minister Enrico Letta entrusted the Minister for Integration, Cécile Kyenge, with the task of guiding the interreligious dialogue, thus showing his intention to keep a communication channel open with the various religious communities according to the informal and inclusive approach inaugurated by Minister Ricciardi.

Within this context of so-called friendly policies, one should mention a project of the Central Directorate for Religious Affairs - Department for Civil Freedoms and Immigration of the Ministry of the Interior: in 2013 a research/action was conducted and a Vademecum was produced aiming at highlighting and enhancing the social function of religious communities within the context of

the integration processes promoted and funded by the EU through the European Integration Fund (IEF)<sup>16</sup>.

MUNICIPAL AND REGIONAL RULES. Partly in order to overcome the abovementioned criticalities, some municipalities set up consultative bodies or other bodies to encourage dialogue with the religious communities making up the general framework of religious pluralism in Italy: the first one was Rome, which set up the Council of Religions in 2002<sup>17</sup> as a result of a specific policy which was subsequently abandoned after the election of Mayor Gianni Alemanno in 2008. Other municipalities where similar bodies were set up include Genoa, La Spezia and, more recently, Milan. In the capital town of Lombardy, a Forum of Religions was already active which had been promoted and set up by the main religious communities of the city. In 2012, the municipal administration, under Mayor Pisapia, created a Register of Religions which should pave the way to a permanent conference for the promotion of dialogue and cooperation initiatives among the different “religious souls” of Milan and for addressing complex issues such as the location and availability of places of worship or the respect for the various religious rules within the context of public services<sup>18</sup>.

These initiatives fit in well with the policies of social cohesion, integration and dialogue that are strongly supported by the European Union<sup>19</sup>; still, due to their local character and their being the result of the political determination of a single Mayor or local administration, they do not attain a “systemic dimension” and thus their effectiveness is ultimately compromised.

On the other hand, the absence of “strong” statutory rules to protect the public activity of those religious denominations for

<sup>16</sup> Central Directorate for Religious Affairs - Department of Civil Freedoms and Immigration of the Ministry of the Interior, Religions, Dialogue, Integration, Com Nuovi Tempi-Idos 2013

<sup>17</sup> The Agreement Protocol between the Municipality and the various religions, in Roma delle religioni-The Rome of Religions, EDUP, Roma 2004

<sup>18</sup> Decisions No. 1444 of 6th July 2012 and No. 2475 of 30th November 2012, in [www.comune.milano.it/albopretorio](http://www.comune.milano.it/albopretorio)

<sup>19</sup> Reference can be made, inter alia, to the basic common Principles of 2004, the Agenda for Integration adopted by the EU in 2005 and the Handbook for integration approved in 2010; these texts can be found at [www.ec.europa.eu](http://www.ec.europa.eu)

which no agreement is in place as well as the ongoing public debate on religions which often drifts towards disputes on immigration, have set the stage for a number of initiatives that go in the opposite direction compared to the inclusive approach underlying those described above. The most evident case has to do with a paragraph in the Regional Law on territory of Lombardy, according to which:” modifications to the intended use of a building, even when they do not involve building works, with a view to the establishment of places of worship [...] are subject to building permits”<sup>20</sup>.

In other words, within the context of a general law on land use, a principle is established which prevents a religious community from buying a building, even if it complies with the safety rules, and using it as a place of worship.

This measure allowed some local authorities to “shut down” places of worship - Islamic centres for prayer but also a number of evangelical churches - thus *ipso facto* preventing freedom of worship as guaranteed by the Constitution both in private and in public (art. 19)<sup>21</sup>.

To conclude this summary overview, it can be affirmed that the multi-layered rules and regulations on the right to freedom of religion are fraught with several criticalities, the most important one being, in our opinion, the permanence of the legislation on “admitted denominations”: as well as being out-dated, such legislation proved unable to fully protect constitutional rights and is not equal to the needs of a new, more substantial and multifaceted type of religious pluralism that is making its way also in Italy.

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20 Regional Law (Lombardy) No. 12 of 11 March 2005, Section 53, para. 3 a

21 Closed (under the law) 23 churches, Corriere della Sera 25 January 2013

## **2012: AN “EXCEPTIONAL” YEAR.**

Within the above mentioned general framework, one should point out that 2012 was a highly peculiar year since in the space of just a few months a number of laws were finally approved concerning agreements with various religious denominations that had been pending for years before Parliament. If one considers the timeline for the approval of these laws, one will notice that the enactment process was exceptionally shortened.

The longest waiting period was that of the agreement with the Italian Buddhist Union, which started negotiations with the governmental committee on 14 March 1997 and undersigned a draft on 21 October 1999 with the undersecretary to the Prime Minister’s Office, Franco Bassanini. The Italian government, led by Massimo D’Alema, collapsed two months later and the draft was not voted. On 22 March of the following year, Prime Minister D’Alema, heading a new cabinet, signed the text of the agreement with the Buddhist Union together with the one concerning the congregation of Jehovah’s Witnesses; however, the latter was harshly opposed by high-level politicians in the majority group such as Lamberto Dini, Rosi Bindi, Sergio Mattarella, Ombretta Fumagalli Carulli. This veto placed ultimately on the agreement with Jehovah’s Witnesses had an immediate negative impact on the one with the Buddhist Union, so that the relevant measure remained pending until 2007 when President Prodi, this time after gaining full governmental support, signed again the agreement text on 4 April 2007. The collapse of Mr. Prodi’s government and the influence of the Northern League in the new government led by Silvio Berlusconi, which was essentially contrary to any agreements with Buddhists, left the agreement in a limbo for the whole legislature.

But in 2012 a new window opened up during the ‘technical’ government headed by Mario Monti, which also included Andrea Ricciardi as the Minister for International Cooperation and Integration. Thanks to his long-standing experience in the field of

interreligious dialogue promoted by the Sant'Egidio Community, the new Minister was keen to address this issue and, more in general, the issue of religious freedom for the new communities that have joined the national scenario over the years. Furthermore, the bipartisan engagement of some politicians such as Lucio Malan (PDL) and Stefano Ceccanti (PD), and the strong determination of the rapporteur in the Parliamentary Committee for Constitutional Affairs, Roberto Zaccaria, contributed to the positive outcome of a procedure that lasted as many as fifteen years.

The set of agreements approved in 2012 includes also those with the Sacred Orthodox Archdiocese of Italy - Exarchate for Southern Europe, the Church of Jesus-Christ of the Latter-Day Saints (Mormons), the Italian Apostolic Church and the Italian Hindu Union - all of them signed on 4 April 2007.

However, the Agreement with Jehovah's Witnesses is still pending, despite authoritative institutional opinions underlining that it goes hand in hand with the one regarding the Buddhist Union "as a way to respond, in the light of the more general orientation on religious freedom, to the complex issues underlying an Agreement with two religious and spiritual phenomena that gave rise, though in different respects, to new and complex problems"<sup>22</sup>.

Another law approved by Parliament in 2012 is the one amending the agreement with the Baptist Evangelical Christian Union of Italy (UCEBI), which was signed in 2010. The amendment concerns the Eight per thousand scheme: in 2008, this denomination changed its previous orientation and decided to accede to the Eight per thousand scheme and also participate in the distribution of the share from unspecified preferences – i.e. the share resulting from the failure to specify beneficiaries among the available competitors (State and other religious denominations) in the annual tax returns.

In 2013 no major regulatory innovations were brought about, nor

<sup>22</sup> Francesco Pizzetti, The agreements with other denominations, with particular regard to the experience, as President of the Committee for the Agreements, of the negotiations with the Buddhists and Jehovah's Witnesses, in A. Nardini and G. Di Nucci (eds.), From the 1984 agreement to the Bill on religious freedom. Fifteen years of politics and ecclesiastic legislation, Presidency of the Council of Ministers, Department of institutional Affairs and Relationships with Religious Confessions, Rome 2001, p. 311

are there bills in Parliament concerning religious freedoms or aimed at repealing the legislation on admitted denominations. However, reference should be made, in concluding, to a recent decision of the Court of Cassation<sup>23</sup> which might give rise to some interesting and significant developments in the public debate on this matter. For the sake of simplicity, one might say that the *Unione Atei Agnostici e Razionalisti* (Atheists', Agnostics' and Rationalists' Union) (UAAR) has the right to appeal TAR (Regional Administrative Court) against the government's refusal to start negotiations for an Agreement. The question behind the legal issue is thus the following: may a non-religious or downright anti-religious organisation be afforded the same legal protection as is guaranteed to religious denominations, including a legal recognition agreement? Francesco Margiotta Broglio made a good point when he affirmed that this decision "raised the question of the status of organised atheism in Italy"<sup>24</sup>.

Whilst this may be found a thorny issue in the Italian context, at European level things are different as shown by article 53 of the European constitutional Treaty which, referring to the "status of churches and non-confessional organisations" affirms that the Union "is respectful [...] of the status that, according to national laws, philosophical and non-confessional organisations enjoy" and, as is the case with religious denominations, it has an "open, transparent and regular dialogue" with them. Therefore, the analyses and the public debate on the rights to religious freedom are bound to increasingly take place in the wider as well as more inclusive framework of the principles and rights related to freedom of conscience.

## **Recommendations**

1. Repealing the law on admitted denominations and developing new legislation that should rest on the following essential pillars: the Constitution; the rights acquired by the various denominations; European directives, starting from the recent Guidelines by the Council of Europe for the promotion and

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23 Judgement No. 16305 of 28 June 2013

24 F. Margiotta Broglio, *Anche gli atei diventano una Chiesa. Stessi diritti delle altre confessioni?*, *Corriere della Sera*, 29 June 2013

protection of the right to religion and belief (Luxembourg 24 June 2013).

2. Starting negotiations with the consolidated Islamic representations (UCOII, Centro culturale Islamico and associated centres, COREIS) to explore the possibility of a framework agreement to the benefit of Islam in Italy which, as shown by all the statistics, is the second largest religious community in Italy in terms of its members.
3. Expeditiously approving an Agreement with Jehovah's Witnesses in Parliament.
4. Ensuring access, by the various denominations, to State-owned radio and television, requiring RAI to adopt collaboration protocols with the representatives of the different religious communities in order to ensure an adequate and qualified presence of the various denominations in programmes dealing with religious topics or morally sensitive issues.
5. Testing other mechanisms to allow the presence of religions at school, other than the teaching of the Catholic religion. These projects should be conceived within the schools that intend to carry them out and might be developed in collaboration with Universities, associations and experts of the religious denominations (starting from the model developed by the Interreligious Conference of Rome).
6. Setting up a multi-Ministry permanent structure similar to the permanent forum of religions, cultures and integration, which will have an operational function and will be accordingly provided with the necessary resources to promote policies of multi-religious and multi-cultural integration and cohesion.
7. Setting up local inter-religious conferences at the Prefectures in order to foster multi-religious and multi-cultural cohesion and integration