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The Right to Freedom of Religion in the Italian Experience of Secularism

ABSTRACT



Nell'esperienza italiana, il principio di laicità va misurato con gli altri principi e diritti della Carta Costituzionale, tenuto nel dovuto conto il relativo favore con il quale la Carta considera il fenomeno religioso nel suo complesso. In primo luogo, è agevole osservare che il motivo religioso allegato dall'autore di una determinata pratica non qualifica, di per sé, la pratica in questione quale esercizio del suo diritto alla libertà religiosa. Inoltre, l'ampiezza del diritto all'esposizione dei simboli religiosi nell'ambiente o nell'abbigliamento dei fedeli – aspetto della libertà religiosa che forma oggetto del presente lavoro – varia in funzione delle circostanze del caso.

Nell'interpretazione del principio di laicità, simboli quali il crocifisso e il velo femminile non sono del resto qualificati strettamente come “simboli religiosi” dall'ordinamento italiano. Adottando una prospettiva storica, si evidenzia come il loro significato trascenda la religione per esprimere un'eredità culturale senz'altro radicata. Anche per questa ragione, l'ordinamento non ha espresso una scelta categorica verso la tolleranza o l'intolleranza del simbolo religioso, motivando piuttosto le scelte operate *ad hoc* per un dato caso di specie, sulla ponderazione dei diritti e degli interessi in gioco, in modo da attuare il miglior bilanciamento possibile tra libertà religiosa, autonomia privata, funzione sociale della religione, pluralismo, uguaglianza e dignità umana. Esigenze simili sono

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** Responsabile scientifica presso l'Istituto Svizzero di Diritto Comparato di Losanna, autrice dei paragrafi da 1 a 2.3 e da 3 a 4.1.2. La ricerca dell'autrice presenta in una versione originale, interamente rivista e aggiornata, temi esplorati in occasione di uno studio comparativo sulla legislazione in materia di simboli religiosi realizzato nel 2015 sotto la direzione dell'Istituto svizzero di diritto comparato.

esprese dalla Corte Europea dei Diritti dell'Uomo che valuta i casi di violazione del diritto alla libertà religiosa da parte dei poteri pubblici dando particolare rilievo all'esistenza o meno di forme, subdole o manifeste, di indottrinamento religioso.



Italian secularism measures religious precepts in respect to the Italian Constitution, a Charter that shows a favourable attitude towards religious practices. The present paper focuses on the exhibition of religious symbols in public buildings as schools, courts and prisons, on the concealment of female faces by a veil, and on the wearing of weapons on religious grounds. The Italian Consiglio di Stato has stated that the need to respect religious freedom does not include the right to live in a sterile environment. In addition, the crucifix and the female veil are not characterized as purely "religious symbols" because they derive from customary practices and because their meaning transcends religion and expresses a rooted cultural heritage. In this respect, the Italian legal order is not categorically tolerant nor unconditionally intolerant towards these symbols but relies on case-by-case analysis of the circumstances that allow the best possible balance between religious freedom, private autonomy, pluralism, equality, human dignity, and the social function of religion. Along the same line, the European Court of Human Rights has mainly focused on the existence of subtle or explicit forms of religious indoctrination in order to assess whether, in a given case, public authorities have impaired individual rights to religious freedom.

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*THE RIGHT TO FREEDOM OF RELIGION
IN THE ITALIAN EXPERIENCE OF SECULARISM*

Sommario: 1. The Evolution of Secularism in Italy in a Nutshell. – 2. The Display of Religious Symbols in Public Buildings and in Spaces Accessible to the Public. – 2.1 Public Schools. – 2.2 Judicial Courts. – 2.3 Polling Stations. – 2.4 The Religious Symbols in Places of Detention; the Exposure Right. – 3. Scope of the Right of Freedom of Religion. – 3.1 The Asserted Overlapping Between the Historical and Religious Meaning of the Crucifix. – 3.2 Display of the Crucifix and Indoctrination. – 3.3. The Grand Chamber's View on the Crucifix in classrooms. – 4. Religious Clothing. – 4.1. Rules on the Full Female Veil. – 4.1.1. Italian Practice on the Female Veil: The Limits of the «Free Choice», Human Dignity and Equality of Men and Women. – 4.1.2. A Brief Anthology of the European Court of Human Rights' Decisions on the Female Veil. – 4.2. The Kirpan. – 5. Conclusions.

1. The Evolution of Secularism in Italy in a Nutshell

Certain European States like Switzerland ask their citizen to declare their religious affiliation as part of their identity.¹ In Italy, a common understanding of the principle of separation between the State and the Church prevents the Italian census (ISTAT) from including questions on religious affiliation in its periodical statistical questionnaires distributed to citizens. These data are classified as «sensitive» and private.² In 2011 and 2012, however, for the first time ISTAT realised a statistical survey collecting information «on a number of aspects affecting living conditions and the integration

¹ See the document *Sources relatives aux données statistiques de l'OFS sur les religions* on line in French at <https://www.bfs.admin.ch/bfs/fr/home/statistiques/population/langues-religions/religions.assetdetail.1900342.html> (08.05.2017).

² A. FERRARI, S. FERRARI, *Religion and the Secular State: The Italian Case*, <http://www.iclrs.org/content/blurb/files/Italy.pdf> (last accessed on 08.05.2017: unless explicitly stated, the websites quoted in this report were accessed on 05.07.2017).

process of Foreign nationals in Italy», including their religious affiliation.³ Even though, comprehensive figures on religious affiliation of Italian citizens and residents are unavailable.

However, it is acknowledged that a large majority of the Italian population professes the Catholic religion, Muslims are considered to be the second major religion present in contemporary Italy (one million followers), and Christians Orthodox, Jehovah's Witnesses, Jews and Valdensians are widely represented.

The presence of Muslim in Italy is recent, whereas Jews and Valdensians have been present from centuries in the country, even though always as a small minority (50.000 followers).

Both religious groups have enjoyed civil rights since 1848, when King *Carlo Alberto di Savoia* signed *Lettere Patenti* in favour of Valdensians and shortly after in favour of Jews.⁴

During the same year, a first general expression of secularism led to the 1848 Statute named «Law Sineo», in force since the Italian unification of 1861 and enacting the *motto* «*libera Chiesa in libero Stato*». The law is «the starting point of anti-discrimination law in Italy»⁵, since it states «difference in religious membership does not justify any exception in the enjoyment of political and civil rights and in the admissibility to civil and military offices».⁶

Another major step towards Secularism was the signature of the Lateran Pacts of 1929, putting an end to the dispute between the then new-born Italian State and the Catholic Church, designing their reciprocal rights and duties and establishing the territorial borders of the Vatican

³ The survey was conducted in the framework of a wider one on the «Condition and Social Integration of Foreign Citizens» and provides precise figures on the religious affiliation and practices of foreigners living in Italy. The results of the statistical survey and the explanatory document are available on line (08.05.2017) at <https://www.istat.it/it/files/2015/10/Religione-tra-gli-stranieri.pdf?title=Religione+tra+i+cittadini+stranieri+-+02%2Fott%2F2015+-+Testo+integrale.pdf> and the methodological explanation accompanying the survey: https://www.istat.it/it/files/2015/10/NotaMetodologica_Statistica-Report_Religione.pdf?title=Religione+tra+i+cittadini+stranieri+-+02%2Fott%2F2015+-+Nota+metodologica.pdf.

⁴ See B. DI PORTO, *Valdesi ed Ebrei, le due storiche minoranze religiose dal Risorgimento alla Repubblica*, in *La Rassegna Mensile di Israel*, Vol. 64, No. 1, 1998, pp. 7-12.

⁵ See M. VENTURA, *Religion and Discrimination Law in Italy*, *European Consortium for Church and State Research*, Oxford Conference, 29 September – 2 October 2011, on line at <http://www.law.cf.ac.uk/clr/research/Oxford%20-%20Italy.pdf>.

⁶ *Ibidem*.

State.⁷ The Pacts were modified through an agreement signed on February 18th, 1984.⁸

After the Second World War, the «*Assemblea Costituente*», formed by leading Catholic and Marxist philosophers,⁹ wrote the Italian Constitution of the new republican State, including the principle of secularism voiced by the catholic components and opposed to the proclamation of atheism and the prohibition of religious practices, present in the constitutions of many socialist States.

The principle of Secularism is expressed by the following articles of the Italian Constitution:

“Art. 7: The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are regulated by the Lateran pacts. Amendments to such Pacts, which are accepted by both parties, shall not require the procedure of constitutional amendments.

Art. 8: All religious denominations are equally free before the law. Denominations other than Catholicism have the right to self-organization according to their own statutes, provided these do not conflict with Italian law. Their relations with the State are regulated by law, based on agreements with their respective representatives.

⁷ See M. VENTURA, *Italy*, Wolters Kluwers, 2013, pp. 33 ff. on *The clash with the Roman Catholic Church in the Liberal Age*.

⁸ The whole regime is governed, on the Italian side, by the following laws: Law 1929 n. 810 «Esecuzione del Trattato, dei quattro allegati annessi e del Concordato, sottoscritti a Roma tra la Santa Sede e l'Italia l'11 febbraio 1929»; Law 1929 n. 847 «Disposizioni per l'applicazione del Concordato dell'11 febbraio 1929 fra la Santa Sede e l'Italia, nella parte relativa al matrimonio»; Law 1985 n. 121 «Ratifica ed esecuzione dell'Accordo, con Protocollo addizionale, firmato a Roma il 18 febbraio 1984, che apporta modificazioni al Concordato lateranense dell'11 febbraio 1929, tra la Repubblica italiana e la Santa Sede»; Law 1985 n. 222, «Disposizioni sugli enti e beni ecclesiastici in Italia e per il sostentamento del clero cattolico in servizio nelle diocesi».

⁹ Especially, Giorgio La Pira and Giuseppe Dossetti, working with the marxist philosopher Lelio Bassi, all appointed by the leader of the Christian Democrats Aldo Moro and the leader of the Communist Party Palmiro Togliatti. See A. BARBERA, *La laicità come metodo*, Final text of the report presented at the first meeting of *Il Cortile dei Gentili. Spazio di dialogo fra credenti e non credenti*, Università di Bologna – Pontificium Consilium de Cultura Bologna, Aula Magna di Santa Lucia, 12 febbraio 2011, in *Forum di Quaderni Costituzionali*.

http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0269_barbera.pdf.

Art. 19: Anyone is entitled 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, provided they are not offensive to public morality.

Art. 20: 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.”¹⁰

In order to implement art. 8, the Italian Government has set a Committee with the task of preparing agreements with religious authorities, as well as a Committee with the task of studying, informing and making any proposal aiming at implementing the constitutional principles of freedom of conscience, religion and belief.¹¹

The Italian Republic recognizes religious authorities through agreement with religious representatives. The most important one is the one that regulates the relations between the Italian State and the Catholic State (*Concordato*, 1929, renewed in 1984).¹² The agreements with other religious denominations are subject to the previous recognition of their legal personality by the *Ministero dell'Interno*.¹³

Up to now, the Italian government has signed the following *intese*:

Religion	Date of Agreement	Law ratifying the agreement
Tavola valdese	21 February 1984	Law 449/1984
	25 January 1993 (modified)	Law 409/1993
	4 April 2007	Law 68/2009
Assemblee di Dio in Italia (ADI)	29 December 1986	Law 517/1988

¹⁰ https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

¹¹ <http://www.governo.it/Presidenza/USRI/confessioni/commissioni.html#1>.

¹² http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19290211_patti-lateranensi_it.html; http://www.governo.it/Presidenza/USRI/confessioni/accordo_indice.html#1.

¹³ See para 2.4. of Law 1929, n. 1159 (03.05.2017).

Unione delle Chiese Cristiane Avventiste del 7° giorno	29 December 1986	Law 516/1988
	6 November 1996 (modified)	Law 637/1996
	4 April 2007	Law 67/2009
Unione Comunità Ebraiche in Italia (UCEI)	27 February 1987	Law 101/1989
	6 November 1996 (modified)	Law 638/1996
Unione Cristiana Evangelica Battista d'Italia (UCEBI)	29 March 1993 16 July 2010 (modified)	Law 116/1995 Law n.34/12
Chiesa Evangelica Luterana in Italia (CELI)	20 April 1993	Law 520/1995
Sacra Arcidiocesi ortodossa d'Italia ed Esarcato per l'Europa Meridionale	4 April 2007	Law n. 126/12
Chiesa di Gesù Cristo dei Santi degli ultimi giorni	4 April 2007	Law n. 127/12
Chiesa Apostolica in Italia	4 April 2007	Law n. 128/12
Unione Buddhista italiana (UBI)	4 April 2007	Law n. 245/12
Unione Induista Italiana	4 April 2007	Law n. 246/12
Istituto Buddhista Italiano Soka Gakkai (IBISG)	27 June 2015	Law n. 130/2016

The absence of Islam is due to the lack of universally recognised representatives invested with legal personality and capable to negotiate agreements with the Italian government.¹⁴

¹⁴ A. FERRARI, S. FERRARI (note 3) 438 and in Note 41, observe «All religions that have concluded an *intesa* have had to adapt their organization to the dualistic model of Western Christianity, which involves stressing the distinction between religious or holy people and activities on the one hand and people and activities without such qualifications. The “confessional” model adopted by the Jewish communities to conclude the *intesa* is an interesting example, and it will also be very interesting to see what will be the choice of the Muslim community. In 2005 the Ministry of Interior created a consultative body, the Council for Italian Islam, whose members were selected by the Minister himself. This body has to face many problems and especially 1) the fact that the its task was far from homogeneous, concerning matters connected to immigration and integration that did not regard only Muslims; and 2) the fact that this (implicit) governmental

2. The Display of Religious symbols in Public Buildings and in Spaces Accessible to the Public

The Catholic Church has governed the central part of the Italian peninsula – with great variations in its geographical extent – for over a thousand years, from the eighth century until the dissolution of the Catholic State in 1870. It had a central role in the public sphere even outside those boundaries.

Until the second half of the nineteenth century, family law found its sources in Canon law and the registers of births, marriages, deaths were kept by Church ministers; public education and the whole welfare system was entirely organized by Catholic institutions. Secular congregations of catholic believers as the “*confraternite*” provided various services of assistance to the sick poor people.

As a consequence, a large majority of Italian public buildings display religious signs, symbols and images related to the Catholic faith. These religious signs and symbols are often enshrined in beautiful and valuable pieces of art or even in frescos in walls. However, the display of religious symbols and signs in paintings, sculptures and buildings has never raised, up to now, any legal problem in connection with the exercise of religious freedom and secularism. No statutory provision deal with these topics.

The only exception concern the display of the crucifix as a piece of furniture of classrooms and courtrooms. The Italian provisions regarding display of the crucifix are different according to the function of the public building where the crucifix is displayed.

2.1. Public Schools

The display of the crucifix in public Italian schools is as old as public schools are.

The Act of November 13, 1859, n. 3725 introduced compulsory public education in Italy, confined religious education to primary and middle

selection of the Islamic representatives was in conflict with the Constitution that forbids public authorities to select the leaders of religious organizations. In any case, since 2008 this Council stop to be called».

school and suppressed religious education in high schools. The law was implemented with the King's Decree of September 15th, 1860, n. 4336, whose art. 140 prescribed that the crucifix be part of the furniture of classrooms.¹⁵

Subsequently, a King's Decree of February 6, 1908, n. 150 also provided for the display of a crucifix in each classroom.

These rules are no longer in force, but they are reproduced with no substantial change in the following rules, that are still in force:

- Article 118 of the King's Decree of April 30th, 1924, n. 965, regulating institutes of secondary education. Chapter XII, under the title 'premises and furniture of schools', provides: every "middle school" (a school for pupils from 10 to 14 years old) displays the national flag; in every classroom, the image of the crucifix and the portrait of the King are displayed";
- Article 119 of the King's Decree of April 26th, 1928, n. 1297, regulating primary schools, provides that the furniture of each school class include the crucifix.

More recent ministerial acts confirm that the crucifix is part of the furniture of classrooms: namely the Act of the Ministry of Education of Oct. 19th, 1967, n. 367/2527 (Buildings and furniture of primary schools) and the Directive of the Minister of Education of Oct. 3rd, 2002, n. 2666 and annexed Note n. 2667.

These rules have been brought in front of the Italian Supreme Administrative Court: the *Consiglio di Stato* and led to three main rulings of the Court.

A first ruling was delivered on April 27th, 1988, n. 63/88, upon request of the Italian Ministry of Education. In this ruling the *Consiglio di Stato* affirms that the Italian rules on the display of the crucifix in public schools are compatible with the Italian Constitution and with the *Patti Lateranensi* and the subsequent agreement signed at Palazzo Madama in 1983.

A second ruling, in the same line, was given by the Sezione VI, 13 February 2006, n. 556 to decide the case introduced by Ms. *Lautsi* in

¹⁵ G. SEVERINI, *Libertà Religiosa e uso dei simboli religiosi*, in *Rivista Italiana di Diritto Pubblico Comunitario*, fasc.1, 2015, at 49 f.f.

order to fulfil the rule of the exhaustion of domestic remedies and enable a recourse to the ECHR.¹⁶ Ms. Lautsi, an atheist, pretended that the display of the crucifix in the public school attended by her children interfered with her right to raise her children according to her philosophical ideas. However, the school, the administrative district court (TAR Veneto) and then the *Consiglio di Stato* rejected her instances (see also *infra* at. 3.2.).

A third ruling, confirming the former, was delivered on 15th February 2006, n. 4575/03 2482/04, on extraordinary appeal to the President of the Italian Republic introduced by the Union of the Atheists and Rationalists Agnostics (in Italian UAAR) and Mr. Giorgio Villella as legal representative of the Union.

In this ruling, the *Consiglio* affirms that the display of the crucifix does not interfere with secularism since it is a passive display linked to the Italian historical roots and it does not aim at any religious indoctrination.

Meanwhile, the rules on the display of the crucifix had also been brought in front of the Italian Constitutional Court. However, with the decision 15 December 2004, n. 389, the Constitutional Court declared its lack of jurisdiction due to the non-statutory nature of the rules providing for the display of the crucifix.

Eventually, the second ruling of the *Consiglio di Stato* mentioned above led to two decisions by the ECHR. The first one on Nov. 3, 2009 stating that the display of the crucifix in classrooms:

- Infringes the right of parents to educate their children according to their religious and philosophical beliefs
- Violates the right of pupils to believe or not to believe;
- Violates the neutrality that public authorities must observe in the exercise of public functions.

The second one, a decision of 8 March 2011 by the Grand Chamber, reverses these conclusions.

It states that the States have a margin of appreciation only limited by the ban of any religious indoctrination in respect of Article 2, Protocol. 1 of the European Convention of Human Rights and Fundamental Freedoms.

¹⁶ Foro it. 2006, III, 181 and the comment by A. Travi, “Simboli religiosi e giudice amministrativo”.

2.2. Judicial Courts

The display of the crucifix in Courtrooms has no legal basis, as explicitly acknowledged by the Minister of Internal Affairs with a note n. n. 5160 / M / 1 of Oct. 5, 1984.¹⁷

In practice, however, the crucifix is indeed part of the furniture of Italian Court rooms and that is by virtue of an act of the Minister of Justice of May 29th, 1926, n. 2134/1867 (“Placement of crucifixes in courtrooms”), which states:

“I prescribe that in courtrooms, on the bench of judges and next to the effigy of His Majesty the King, the crucifix be reinstalled, according to our tradition. The revered symbol shall be a solemn warning of truth and justice. The Administrative officers of the courts shall make arrangements with the municipalities so to ensure that the above prescription is executed with care and artistic skill, as it is appropriate to the high function of justice.”

In some cases, the crucifix is integrated in the furniture of courts itself. In one case, a judge, Hon. Luigi Tosti, refused to carry out his office in a court where there was a crucifix and asked to carry out his office in a courtroom without crucifix or at least to have exposed the Jewish menorah in addition to the crucifix. The case was brought in front of the *Consiglio Superiore della Magistratura* (hereinafter CSM), in Italy the competent authority for disciplinary sanctions against judges.

On 23 November 2006, the CSM stated that the display of the crucifix in courtrooms has no legal basis and appears to be in conflict with the constitutional principle of secularism as well as with the principle of freedom of conscience and religion.¹⁸

Moreover, the criminal section of the Italian High Court of Justice considered that the refusal to carry out his office by the judge did not integrate the crime of “*omissione di atti d’ufficio*”.¹⁹

¹⁷ In response to a question from the Ministry of Justice (Prot. 612 / 14.4 of 29 May 1984) on the maintenance of the crucifix in the courtrooms.

¹⁸ CSM, Sezione disciplinare; ordinanza 23 novembre 2006, Foro it. , 2007, III, 589.

¹⁹ Cassazione penale sez. VI 17 February 2009 n. 28482.

However, the refusal to carry out his office persisted despite the availability for Hon. Tosti of a courtroom without crucifix.

Thus, a subsequent decision of 25 May 2010 by the CSM removed the judge from his functions, regardless of his claim to have the crucifix removed from all of the courtrooms and not only from the one where he would be holding hearings.

The Italian High court, sitting in civil plenary session,²⁰ upheld the second decision stating that the refusal of the judge to carry his functions in courtrooms where no crucifix was displayed was unjustified.

2. 3. Polling Stations

The crucifix is also often displayed in polling stations, given that in most cases school classrooms are used as polling stations and, as already observed, crucifixes are part of the school classroom's furniture.

Political debates were frequent, since the crucifix – as a catholic symbol – could influence the choice of pious people and favour catholic parties, especially during the times where the “Christian democrats” was the first party in Italy.

No statutory provision prescribes the display or the ban of the display of the crucifix. Case law shows that the presence of the crucifix is not compulsory nor forbidden.

The *Corte d'Appello di Perugia*, 10 April 2006, has stressed that the removal of the crucifix by the president of the polling station is perfectly legitimate in order to preserve neutrality of the polling station. Similarly, a decision by the Criminal Section of the Italian *Corte di Cassazione* has characterized as perfectly legitimate the refusal of an officer of a polling station to perform its functions in the presence of a crucifix.²¹ However, it is not forbidden to leave the crucifix where it is during polling operations: the *Tribunale di Napoli* (29 November 2003; 31 March 2005),²² and *Bologna* (24 March 2005),²³ have rejected claims for the removal of the crucifix from

²⁰ Cassazione, SS.UU., March 14, 2011, n. 5924 on line at http://www.giurcost.org/casi_scelti/Cass.sent.5924-2011.htm.

²¹ Cassazione Pen., 1 March 2000, n. 439 Montagnana, *Giurisprudenza costituzionale*, 2000, p. 1121 ff. and the comment by G. Di Cosino “Simboli religiosi nei locali pubblici: le mobili frontiere dell'obiezione di coscienza” at 1131.

²² Foro it. 2005, I, 1575.

²³ Dir. famiglia 2006, 1, 151: “Non è verosimile che un non-simbolo, quale è il crocifisso

polling stations, grounded on the potential impairment of the neutral character that polling stations must have.

2.4. The Religious Symbols in Places of Detention; The Exposure Right

The principle of secularism is fully realized even in detention facilities²⁴, from which the subjects are partially limited in the exercise of certain freedoms.

The presence of the subject person²⁵, which is fully part of “all” announced in the Article 19, constitute the reason to check the degree of application of constitutional principles, in the continuous search for limits that the same facility requires to be safeguarded.

The possibility for a detainee to get full satisfaction of constitutional rights must be seen within the prison context, in which are highlighted not only the provisions on structural criteria, safety and order in the first place, but it must also be considered the same needs of the other inmates, which act in the same physical space.

It should be noted that the issue of religious symbols in places of detention has become especially significant because the prison population underwent changes in the last twenty years, during which the inmates who profess Islamic faithful increased exponentially²⁶.

The relevant legislation, the law 354 of 1975²⁷ and the DPR 230 of 2000²⁸, establishes very clearly the “conditioned” rights, however the same requires an application that can find different ways of operating.

per i non cristiani e per i non credenti possa per essi avere una qualche influenza negativa, o costituire una remora psicologica riguardo all'espressione del voto od ai convincimenti religiosi e, men che meno, provocare un turbamento dell'animo tale da privare, in tutto o in parte, il votante delle sue capacità morali, critiche e di giudizio”.

²⁴ Issue 2-2015 *The rights of prisoners*, in *costituzionalismo.it*, line journal.

²⁵ In which we include those sentenced, inmates and defendants.

²⁶ The Department of Prison Administration to 30/11/2016, noted a prison population of 55,251 persons, of whom 29,000 have declared their membership of the Catholic faith and in 6000 the Muslim. See. A. CUCINIELLO, *Islam in Italian prisons*, ISMU Foundation, Milan, 2016, in <http://www.ismu.org/2016/10/lislam-nelle-carceri-italiane/>.

²⁷ L. July 26, 1975, n. 354, *On the penitentiary regulations and enforcement of measures involving deprivation or limit freedom*, (ord. penit.) In G.U. August 9, 1975, n. 212, SO, L. 10 October 1986, n. 663, *Amendments to the law on the penitentiary and on the execution of custodial measures and limiting freedoms*, in G.U. 16 October 1986 n. 241, S.O.

²⁸ D.P.R. 5 June 2000, n. 230, *Regulations on the provisions concerning the penitentiary*

The recognized fundamental right is the right to religious freedom which finds expression not only in the freedom to practice one's faith but also to be educated into it and to practice the cult²⁹. The proposed framework opens a series of commitments and obligations for the prison administration to allow the effective enjoyment and pursuit of the recognized right. The prison regulation strengthens this condition and clarifies the leeway. In particular, it provides the right to participate in rituals of its own confession and to practice the cult.

With reference to the object of our analysis, the religious symbols, prisoners and internees are permitted to "expose their own images and symbols of their religion in the individual room or in their assigned area in the common room"³⁰.

and on measures which deprive or limit freedom, (reg. esec.), in G.U. n. 195 of August 22, 2000, S.O.

²⁹ L. 354/1975, Art. 26, *Religion and cult practices*.

Prisoners and internees are free to profess their own religion, to educate themselves in it and to practice the cult.

In institutions it has ensured the celebration of the rites of Catholic worship. Each institute is involved at least one chaplain.

The members other than the Catholic religion have the right to receive, at their request, the assistance of ministers of their religion and celebrate the rites. This last was amended by art. 8, L. 10 October 1986, n. 663.

This Article was repealed by 299, Legislative Decree no. 30 May 2002, n. 113 and art. 299 DPR 30 May 2002, n. 115, with the date indicated in art. 302 of the same decree. Subsequently, following the adjustments made by Press December 6th, 2002 (G.U. December 6, 2002, n. 286), the new formulation of the above items 299 does not provide for such a repeal.

³⁰ D.P.R. 230/2000, Art. 58. *Manifestations of religious freedom*

1. Prisoners and internees are entitled to participate in the rites of their religion provided they are compatible with the order and security of the institution and not contrary to law, according to the provisions of this Article.

2. Is allowed to prisoners and internees who wish to exhibit, in their own individual room or in their own space in the room belonging to more places, images and symbols of their religion.

3. It's possible, during leisure time, to individual prisoners and internees to worship in their religious profession, provided that is expressed not in harassing behaviour for the community.

4. For the celebration of the rites of Catholic worship, each school is equipped with one or more chapels in relation to the needs of the religious service. Until the entry into force of the implementing provisions of the cartel referred to in Article 11, paragraph 2, of the agreement, with additional Protocol signed in Rome on 18 February 1984, the agreement amending the Lateran Concordat of 11 February 1929 between the Italian Republic and the Holy See, ratified and implemented by the law of 25 March 1985 n. 121, the practice of worship, education and spiritual assistance of the Catholics are insured by one or more chaplains in connection with the same needs, institutions in which they operate as chaplains, in charge of

The legal provisions recognizes to the detainees to express themselves through objects that refer to their faith and that are the expression of it and grants the manifestation of the spirituality, so that the prison environment, in particular the cell, can become a place in which carry out their own personality.

This process is carried out not only providing the possibility to hang sacred images on the wall, from crucifix to icons, but also finds fulfillment in owning and using properties suitable for the cult. We can mention the sacred texts, prayer rug, bells or ritual dresses³¹.

For the aspect that concerns the possibility to enrich their space with images considered sacred, there are no particular problems³², since the action is left to the full autonomy of the detainees in the relationship with their peers in the management of their own spaces.

Issues may arise instead in the ways these objects are introduced into the prison facility and their protection during the ordinary living activities in prison, such as the control of the cells.

About the former, particular attention is given to written texts. Here two conditions arises. The first relating to the language used in the texts. In fact, the lack of preparation of the personnel involved, whether the text is in its original language or translated, could serve as basis for the text to

coordinating the religious service is entrusted to a of them from the regional prison superintendent, or, in the case of institutions for minors, the juvenile rehabilitation center director, the inspector heard chaplains.

5. For religious instruction in devotional practices of members of other religious denominations, even in the absence of ministers, the institution's management provides suitable premises.

6. The school administration, to ensure the detainees and internees who request them, education and spiritual assistance, as well as the celebration of the rites of faiths other than Catholicism, makes use of the ministers indicated those religious denominations whose relations with the Italian state are regulated by law; also it makes use of the ministers indicated to that end by the Ministry of the Interior; may, however, have recourse, even outside of the above cases, the provisions of Article 17, second paragraph, of the law.

³¹ Since not all prisons have an internal regulation governing the practical aspects of intramural life, it recollects with service orders. With this tool the discipline Director different situations. We can cite the case of accepted books, which must be free of hard cover to prevent the concealment of illegal objects or substances, the use or not of clothing with hood, for issues also linked to personal recognition, the number of animals it is allowed to keep, up to the economic value of particular moral or sentimental value objects.

³² It should be noted the work *Religious assistance in prison. Rights and right to worship in prisons of Lazio*, Report of research, October 2012, CSPA, Documentation Centre for the Study of Religions and Political Institutions in Post-Secular Society, University of Rome Tor Vergata.

become a tool for fundamentalist propaganda, especially if brought from the outside. The other condition is related to the staff that introduces these texts, the ministers or volunteers. It could be resolved through the provision of texts purchased directly by the prison administration and consulted in the library, but it's an option difficult to achieve³³, both for the number of copies purchased and the plurality of texts that should be available in place.

As to the latter, relating to the prison activity, the degree of intervention of prison officers on the same objects should be evaluated, even the mere inspection of places of detention may involve contact with the objects causing the loss of sacredness for the mere fact of being touched with "impure" hands. The fact that the religious observance takes place in a prison environment must not make us lose sight of the special conditions in which the rights are exercising.

The religious symbolism is also achieved through the right to wear clothing or accessory that expresses its own religious beliefs, or constitutes an element of faith to prove membership.

This is regulated by art. 7 of law n° 354/75 and by art. 9 and 10 of Presidential Decree n° 230/2000³⁴. The provisions take into account both

³³ It should be noted that the text should still have the hard cover, to prevent the concealment of objects.

³⁴ Art. 7. *Clothing and equipment*

Each subject is equipped with linens, clothing and use effects in sufficient quantity, in good state of repair and cleanliness and which will ensure the satisfaction of normal living needs.

The dress is a plain fabric and decorous manner.

And it allowed the working outfit when it became necessary by the activity.

The defendants and sentenced to prison terms of less than one year can wear clothing of their property, provided they are clean and affordable. The suit provided to defendants still needs to be different from that of convicted persons and internees.

Prisoners and internees may be allowed to make use of the kit of their property and items of particular moral or sentimental value.

Art. 9. *Clothing and equipment*

1. The objects that make up the bed kit, items of clothing and underwear, as well as other use effects that the administration is required to pay to prisoners and internees, are given, with specific reference to their quality charts, divided by men and women, established by ministerial decree.

2. The leaders and the effects mentioned above have appropriate properties with the changing seasons and the particular climatic conditions of the areas where institutions are located: their quantity must allow exchange that guarantees good cleaning and storage conditions.

3. For each boss or effect is expected in the duration of use.

4. The administration replaces, even before the expiry of the term, leaders and deterior-

a plan that highlights the requirement for the prison administration to provide the clothing needed to ensure “normal demands of life”³⁵, and a personal plan, that grants freedom to dress clothes when the penalty conditions are met. It remains the condition necessary that the dress should be made of solid color, fabric and decorous appearance, however, garments that are “affordable”.

The items of special moral and sentimental value may be allowed, provided that they don’t have substantial economic value and don’t prove to be incompatible with “the orderly conduct of the outdoors”.

It is noted that the Supreme Court judgment³⁶ based on an order of the Supervisory judge who allowed to a prisoner subjected to the system of art. 41-*bis* ord. penit., to receive and hold particularly expensive clothing and

rated effects. If the anticipated deterioration is attributable to the prisoner or interned, they must compensate the damage.

5. The institution’s health requires qualitative and quantitative changes in the bed kit, of laundry items and apparel related to particular needs of individual subjects.

6. Minors dress, however, civilian garb.

7. The personal laundry items and apparel as well as the effects of use delivered to detainees and internees are noted, with subsequent changes in a card, a copy of which is kept by the person and another guarded by management and sent after a transfer.

8. The institute care direction for each detainee and internee, after cleaning, be restored own clothes.

9. The detainees and internees, who make use of clothing and personal equipment belonging to them which can not be washed with normal procedures used to those provided administration, must do so at their own expense.

10. The Administration shall provide civilian clothing to dimittendi, when they do not do so at their own expense in conditions.

Art. 10. Equipment and personal property

1. The Rules of Procedure shall determine the cases in which prisoners and internees may be allowed to make use of their property and equipment also it requires what are the effects kit that can be used.

2. It’s ensured a laundry service for prisoners and internees can access, even at their own expense.

3. It’s admitted the possession of a special moral or sentimental value objects should not have a significant economic value and are not inconsistent with the orderly conduct of life in an institute.

³⁵ It’s curious that the legislator uses this terminology, which finds expression in the text only on another occasion about the penitentiary buildings must be equipped to carry out as well as locals for personal living needs, including local common activities. The expression does not create an obligation on the part of the administration to provide “religious” clothing, but could include the failure obligation to impose a boss that is contrary to the religious needs expressed by the prisoner, internee or the accused.

³⁶ Corte di Cassazione, Sezione Penale, n. 42605 of 2013.

accessories³⁷ of luxurious type. Given the special status of those who are subjected to this kind of treatment also linked with the symbolism related to a criminal nature hierarchy, the judges highlighted that the staff apparel is subject to the same criteria as for personal items, so “they should not have high economic value and should not be incompatible with the orderly conduct of the institution’s life”.

Similar considerations could be made with the use of the accessories which have the same characteristics described above for clothing and for personal items³⁸.

To complete the analysis, we must also mention the *Charter of values, citizenship and integration*³⁹, in particular the Article 1⁴⁰ and 25⁴¹, in which a great deal of attention is paid to religious symbols, the Recommendation of the Committee of Ministers of 10 October 2012⁴² on foreign prisoners that emphasises that “the detainees have the right to practice or change their religion or belief, and are protected from any constraint in this regard”⁴³ and the *Charter of rights and duties of detainees and internees*⁴⁴.

³⁷ It may be noted that the provisions of the internal regulations, nor the 2011 Circular from the Department financial administration, provide for a maximum number of animals per person.

³⁸ Since Regulation penitentiary institute internal Milano Opera, is expected as clothing admitted “coat, jackets, vests, and of modest value duvets; bathrobes; underwear; Single layer plaid and cotton bedspread; thin belts with small buckle single layer; footwear not lower gym or walking; plastic slippers and shower; track suits, large and small towels; pajamas winter and summer; summer costumes (shorts, Bermuda shorts and T-shirts), summer jackets; books and magazines available for sale outdoors, glasses (all clothing with no hood and no belt) “and how various kinds allowed” eyeglasses and necklaces and bracelets made of thin rubber”.

³⁹ Decree of the Ministero dell’Interno of 23 April 2007, published in the G.U. of 15 June 2007.

⁴⁰ “1. The Italian is committed because every person from the first moment is on Italian territory would enjoy the fundamental rights, regardless of sex, ethnicity, religion and social condition. [...]”.

⁴¹ “25. Basis of its religious and cultural tradition, Italy respects the symbols and signs of all religions. No one can be offended by the signs and symbols of a religion different from his [...]”.

⁴² Recommendation CM / Rec (2012).

⁴³ Thus article 30.1.

⁴⁴ Annex to the Ministero della Giustizia of 5 December 2012, in implementation of the DPR June 5, 2012, n. 136, in which the contents of the *Charter* in Article was established. 69 paragraph 2 of Presidential Decree 30 June 2000, n. 230, as amended by art. 1 of the DPR June 5, 2012, n. 136.

3. Scope of the Right of Freedom of Religion

3.1. The Asserted Overlapping between the Historical and Religious Meaning of the Crucifix

The Italian experience of secularism, as regards to the display of the crucifix, has been famously tested with the right of freedom of religion, protected, *inter alia*, by art. 9 of the European Covenant of Human Rights,⁴⁵ in the context of the case *Lautsi v. Italy*.⁴⁶

In this respect, Italian Courts have put forward the idea that the crucifix is more than solely a religious symbol and that, for non-believers, is a reminder of the influence of Christianity in the shaping of the European civilization. The principle of secularism itself seems to find roots on the saying attributed to Jesus Christ: «Render unto Caesar the things that are Caesar's, and unto God the things that are God's» calling for a separation between the political and the spiritual spheres.⁴⁷

According to the *Consiglio di Stato*, in the perspective of non-believers the crucifix is «*the symbol of civilization and Christian culture, in its historical roots, as a universal value, regardless of any specific religious belief*». In addition, the *Consiglio di Stato* has explicitly stated that the 1948 Constitution of the Italian Republic, in guaranteeing religious freedom and equality of treatment to all religions, does not prevent the display of the crucifix, which is part of the Italian historical heritage. In this respect, the message spread by the crucifix does not refer to a specific religion but to a common heritage. The displaying of the crucifix in classrooms – states the *Consiglio di Stato* – is thus compatible with secularism because secularism is not at odds with religion.

⁴⁵ See also art. 18 of the Universal Declaration of Human Rights, proclaimed by the UN General Assembly in Paris on December 10th, 1948 (G.A.Res.217A): “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”.

⁴⁶ Application n. 30814/06 to the ECHR, decided on November 3rd, 2009 by the Chamber and reversed with the decision by the Grand Chamber March 18th, 2011. All available in the official database of the ECHR (HUDOC) at [http://hudoc.echr.coe.int/eng# \(03.05.2017\)](http://hudoc.echr.coe.int/eng# (03.05.2017)).

⁴⁷ Απόδοτε οὖν τὰ Καίσαρος Καίσαρι καὶ τὰ τοῦ Θεοῦ τῷ Θεῷ Mt 22, 15-22; Mc 12, 13-17; Lc 20, 20-26. See, *e multis*, O. CULMANN, *Dio e Cesare*, Roma, AVE, 1996, O. FUMAGALLI CARULLI, “A Cesare ciò che è di Cesare, a Dio ciò che è di Dio”. *Laicità dello Stato e libertà delle Chiese*, Vita e Pensiero, Milano, 2006.

Secularism means, in this perspective, that each State has a neutral attitude and does not interfere with religion, recognizing the independence of any religious sphere. It also means that the State explicitly acknowledges the existence of religious authorities and the historical importance of religious thought in the construction of the European legal culture. In practice, the display of the crucifix equates the display of other symbols of the Italian national identity.

It has been pointed out that many European flags display a cross: among these, the British flag that contains three crosses, based on three important saints of Christian tradition and in Turkey, the flag displays a symbol of the Islamic religion, without interfering with the secularism imposed by Atatürk. To the same extent, the presence of the Italian and European flags in buildings is not considered as possibly discriminating foreign residents.⁴⁸

3.2. Display of the Crucifix and Indoctrination

In the aforementioned decision, the *Consiglio di Stato* stresses that the presence of the crucifix in the classroom does not force pupils or teachers to express their beliefs in religious matters.⁴⁹

The synthesis on the different European interpretations of secularism, in the translated words of the *Consiglio di Stato*, reads as follows:

«So there is no doubt that secularism is to be understood in different ways, and in particular:

- in a way it is understood in the legal order of Great Britain – a secular Sovereign State, although closely bound to the Church of England, which has allowed the secular legislator to dictate standards in matters that are internal to the church itself (a relatively recent example is the law on women priests);

⁴⁸ G. SEVERINI, *Libertà Religiosa e uso dei simboli religiosi*, in *Rivista Italiana di Diritto Pubblico Comunitario*, fasc.1, 2015, p. 49 ss. observes: “La *Union flag*, o *Union jack*, reca le croci di San Giorgio (Inghilterra), Sant’Andrea (Scozia) e San Patrizio (Irlanda del Nord). La bandiera già ottomana della Turchia, Stato del Consiglio d’Europa, reca la mezzaluna con una stella: simbolo che da circa cinquecento anni è percepito come della religione islamica e che è rimasto fermo con la laicizzazione di Atatürk”.

⁴⁹ Consiglio di Stato, April 27th, 1988, n. 63/88, see: <http://www.giurcost.org/decisioni/2008/0063s-08.html>.

- in a different way is that principle understood in the French legal order – where secularism, sanctioned in Art. 2 of the Constitution of 1958), is a goal that the State pursues, and in fact has often pursued, with “mortification” (*mortificazione*) of the independence of organizational confessions (*lois Combes*) and of any free individual expression of religious faith (law on the display of religious symbols);
- in an even different way in the federal United States of America – in which the although rigid separation between the State and religious faiths, imposed by the First Amendment to the federal Constitution, does not prevent a diffused pietism in civil society, whose roots may be found in the religious tradition of the Pilgrim Fathers, and whose expressions are multiple and even institutional – e.g. the explicit religious declaration in the banknotes – “in God we trust” -; the large support – through fiscal provisions concerning any financial aid to religious confessions and their charitable activities (social, educational, etc.) in the framework of the typical liberal private-horizon of the American society);
- and in another way, finally, it is understood within the Italian context, where the linguistic symbol [of secularism] is used to indicate:
 - reciprocal autonomy between the temporal order [i.e. State sovereignty] and the spiritual order [Religious Authority] and consequent abstention of the State from entering into the internal affairs of religious confessions (Art. 7, 8 Constitution) ;
 - protection of fundamental rights of the person (art. 2), regardless of religion;
 - legal equality among all citizens, being irrelevant for this purpose their different religion (art. 3);
 - respect of the independence of confessions and their freedom to organize themselves according to their own statutes, provided these are not in conflict with the Italian legal order (art. 8, 2nd co.),
 - for all persons, and not just for Italian citizens, protection of freedom in religious matters, and that [means freedom] to believe, not to believe, to manifest in public or in private their faith, to practice religion (art. 19);
 - ban of any form of discrimination against religious organizations because of their ecclesiastic structure or of the purpose pursued through their religion or worship (Art. 20).

The constitutional rules relied upon by the Italian Court to outline its conception of secularism show a clearly favourable at-

titude towards the phenomenon of religion and towards the structures that promote religious beliefs. This attitude is expressed by the clear limits that the Italian Constitution has set to the possibility of the Italian State to pass statute and bills on its relations with religious confessions; legislative activities in these matters may only be practiced in the form of agreements with both the religion practiced by the majority and with any other religious confession (art. 7, 2nd co., and Art. 8, 3rd co.)». ⁵⁰

3.3. The Grand Chamber's View on the Crucifix in classrooms

In its Grand Chamber judgment, the European Court of Human Rights seems to have acknowledged the Italian assertions on the historical meaning of the crucifix. ⁵¹ The Court held that no issue arose under Article 9 because of the lack of any form of indoctrination and that there had been no violation of Article 2, protecting the right of pupils to education nor of Protocol 1 to the European Convention on Human Rights. The Court underlined that the major visibility of Christianity was related to the circumstance that Catholicism is, by numbers, the religion of the majority in Italy and stressed the differences between visibility, processes of indoctrination, compulsory teaching of religion and religious intolerance:

«a crucifix on a wall is an essentially passive symbol and this point is of importance [...], particularly having regard to the principle of neutrality [...]. It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities [...]». ⁵²

In this respect, the enjoyment of religious freedom does not entail the right to live in a sterile environment, but is directly linked to the attitude of public authorities, whose activities must not be discriminatory. ⁵³ In this re-

⁵⁰ Consiglio di Stato, cit. at fn. 16.

⁵¹ See *supra* (fn. 46) *Sec e multis*, J. TEMPERMAN (ed.), *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*, Leiden, Boston, Brill/Martinus Nijhoff Publishers, 2012.

⁵² ECHR, Grand Chamber, 12.03.2011, *Lautsi v. Italy*, point 72.

⁵³ G. SEVERINI, cit. *passim*.

spect, it has been said that the meaning of a cross or of a crucifix differs according to the place where it is displayed: whether it is a place of worship, a public place, a flag etc. In a place of worship a simple cross or a crucifix are religious symbols, object of veneration by believers. In non-religious places, such as schools or flags, crosses and crucifixes may still carry religious values for believers, but would not have this meaning for non-believers.⁵⁴

These arguments are at odds with those previously advanced by the German constitutional court on the «protection from exposure» recognised by the German constitution.⁵⁵ The dissent as to the understanding of secularism, mentioned by the Italian *Consiglio di Stato* as regards to other countries, is blatant also comparing the Italian and the German decisions, with the ECHR considering particularly wide the margin of appreciation of States as regards of the exposure of the population to the crucifix in public schools.

4. Religious Clothing

The Italian Constitution recognizes the right to religious freedom, in its double aspect of freedom of conscience and freedom of worship in art. 3, 19 and 20 Const.

The limits set by the Constitution concern the prohibition of «worship contrary to morality». The prohibition includes *a fortiori* worship contrary to Italian law. Accordingly, the characterisation of a practice as religious by its adepts is not sufficient for its acceptance as a religious practice whenever it contravenes public policy and basic norms. The *Corte di Cassazione* stated it explicitly in a case where the authors of voodoo practices implying slavery had tried to justify their actions as “religious practices”.⁵⁶

⁵⁴ *Ibidem*.

⁵⁵ *Bundesverfassungsgericht*, May 16th, 1995, BVerfGE 93, 1 1 BvR 1087/91, known as *Kruzifix-Urteil* (Classroom Crucifix Case). Extracts of the decision and of dissenting opinions are available in English at <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=615> (03.05.2017).

⁵⁶ *Cassazione penale*, sez. V, 18/11/2008, (ud. 18/11/2008, dep. 30/12/2008), n. 48350, note C. PENISI, “Le pratiche di magia nera e i riti Vudu non sono riconducibili ad alcuna confessione religiosa: nuove sette e nuovi movimenti religiosi, libertà di coscienza, libertà religiosa e tutela dei diritti umani”, in *Dir. famiglia*, fasc.1, 2010, p. 37. See F. BASILE, *Il diritto penale nelle società multiculturali: i reati culturalmente motivati*, in *Ragion pratica*, 1/2013, pp. 9-48.

The «Charter of Values, Citizenship and Integration»⁵⁷ in sections 25 and 26 declares that:

«25. On the basis of its religious and cultural tradition, Italy respects the symbols and the signs of all religions. No one can say to be offended by the signs and symbols of a religion different from his/her own. As established by international Charters, it is convenient to educate the youth to respect the other's religious beliefs, without finding in them elements of division.»⁵⁸

No specific statutory provision exists as regards to the wearing of religious signs and symbols. In practice, freedom of worship may only be limited if its exercise contrasts with the basic principles on which the Italian society is grounded. Up to now, two religious garments have been subject to judicial analysis as regards to the potential impairment of Italian constitutional values and principles: the female veil and the Sikh's *kirpan*.

4.1. Rules on the Full Female Veil

Within the Italian legal order, persons may not wear garments concealing their facial features *without justified reason*.

These rules are art. 85 del R.d. 18 June 1931 n. 773 «È vietato comparire mascherato in luogo pubblico» (it is forbidden to appear masked in a public place) and art. 5 of Law 22 May 1975, n. 152 (Provisions for the protection of public order) [c.d. Law *Reale*]:

It's forbidden the use of protective helmets – or any other similar object making it difficult to recognize a person – in public places or in places open to the public, without justification. It is prohibited in any case the use of the aforementioned objects in the course of events that take place in a public place or in places open to the public, with the exception of sport events that require the use of such garments. The offender shall be punished by imprisonment from one to two years and by a fine from 1,000 to 2,000 Euros.

⁵⁷ *Supra* fn. 39.

⁵⁸ The full text of the Charter is available in English on line at the following address: http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/14/0919_charter_of_values_of_citizenship_and_integration.pdf.

Several Administrative acts explain the functioning of these rules and in particular two acts of 1995 and 2000, respectively. Through an act n. 4/95 of 14 March 1995 by the Minister of Internal Affairs the use of scarfs in photographs used for identity cards of citizens professing religious beliefs that require the use of scarfs has been authorised. With the act of 24 July 2000, the Ministry of Internal Affairs has stated that turbans, chadors and veils carried for religious reasons «are an integral part of regular clothing and contribute, as a whole, to identify the wearer, of course as long as these keep the face uncovered» and therefore allowed these accessories, in accordance with the constitutional principle of religious freedom (Art. 19 Constitution). In both cases the facial features need to be clearly visible. In sum, wearing headscarves in State school and while taking photos for identity cards is possible to the extent that the face is well visible.⁵⁹

None of various legislative proposal to ban the wearing of *burqa* and *niqab* in public places has been passed by the Italian Parliament,⁶⁰ even though public authorities have a wide margin of appreciation as regards to the legitimacy of wearing the full female veil.

For this and other reasons, an opinion on the opportunity to introduce a specific ban of full female veil in the context a reform of the aforementioned legal rules (art. 85 del R.d. 18 June 1931 n. 773 and art. 5 of Law 22 May 1975, n. 152) has been asked to the «Committee for Italian Islam», a body created by the Italian government, whose components are experts of Islamic law, in part Muslim and in part not.⁶¹

The Committee «recommends caution in drafting any law prohibiting garments as *burqas* and *niqabs*». It explains the non-religious origin of these garments and «casts doubt on the existence of a link between *burqa* and *niqab*, on the one hand, and «Islam» and «religious affiliation» on the other».⁶²

⁵⁹ Cf. art. 289 of the Royal Decree 635/1940 and the *circolare* of the Ministry of the Interior n. 4/1995.

⁶⁰ See the proposals n. 2422 May 6th 2009, and n. 2769 of 2 October 2009, respectively at http://www.camera.it/_dati/leg16/lavori/schedela/trovaschedacamera_wai.asp?Pdl=2422 and at http://www.camera.it/_dati/leg16/lavori/schedela/trovaschedacamera_wai.asp?Pdl=2769 (03.05.2017).

⁶¹ http://www1.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/Comitato_Islam_italiano/0776_2010_02_11_Islam.

⁶² http://www1.interno.gov.it/mininterno/export/sites/default/it/assets/files/19/00036_Comitato_Islam_-_relazione_Burqa_07_10.pdf, p. 4.

The Committee then concludes: «Referring to ‘Islam’ in a text of the law may carry the risk of feeding the ongoing polemics, or to spark off new ones. We therefore recommend to omit in the text of law any reference to religion or Islam, limiting the reform to the assessment that, in the prohibition in Article 5, «clothing called burqa and niqab» must be considered included, regardless therefore of the reasons – religious and «Islamic» or possibly not religious or non-Muslim – that push some people to wear them. In parallel, Article 85 T.U.P.S. could be amended in the first paragraph with a reference to an unconditional prohibition for use in public places or open to the public «of any means or garment designed to make difficult to recognize the person», except of course the justified reasons arising from health needs or personal security or workplace needs. In the third paragraph, an explicit rule may be introduced, according to which: «The local public security authorities may provide for exceptions to the ban set in the first paragraph in the context of places open to the public by informing people with specific posters’, in order to authorize the use of the burqa or the niqab in mosques. In any event, purging the law from any reference to religion seems to be the best means not to feed controversy and polemics»⁶³.

According to Section 26 of the Charter «In Italy there are no restrictions on people’s attire, as long as it is chosen freely and it is not detrimental to his/her dignity. It is not accepted to cover the face because this impedes the person’s recognition and hinders establishing relations with the others».⁶⁴

4.1.1. Italian Practice on the Female Veil: The Limits of the «Free Choice», Human Dignity and Equality of Men and Women

The wearing of the veil cannot be imposed by a man to a woman, be it her husband or her father.⁶⁵

In a case where the veil was not at stake but a man had asked the Court to respect his religious and cultural beliefs that allowed physical punishment to women, the *Corte di Cassazione* stressed that these beliefs could

⁶³ *Ibidem*.

⁶⁴ *Ibidem*.

⁶⁵ P. MOROZZO DELLA ROCCA, *Responsabilità genitoriale e libertà religiosa*, in *Dir. famiglia*, fasc. 4, 2012, p. 1707 ff.

not lead to any reduction of the legal sanction prescribed by Italian law.⁶⁶ A religious behaviour deserves legal protection only insofar it does not contrast with basic principle of the Italian legal order, such as the equality of men and women.⁶⁷

The *Corte di Cassazione* sanctioned through the application of aggravated circumstances a man who had insulted a Muslim woman and had tore her veil off.⁶⁸ According to an author, «in this case, the court interpreted the dominantly Catholic environment as an element leading to the definition of the act as a racist act against a different religious culture».⁶⁹

The Court of *Cremona*, in a case of 2008,⁷⁰ decided that the conduct of a Tunisian woman, a witness in a criminal proceeding, that went to court wearing a *burqa* but immediately uncovered her face upon demand of identification by a police officer simultaneously exhibiting its identity card was not in contrast with art. 5 of l.152/75. The judge stated that the use of *burqa* in public places or space open to the public is not forbidden by that law; even though the ban is possible in case of objective problems of public order and difficulties of recognition that can't be overcome with a simply request for an identification document.

⁶⁶ Cassazione 12 August 2009, n. 32824 in (2010) *Quaderni di Diritto e Politica Ecclesiastica*, p. 1033.

⁶⁷ Cassazione penale, 26 aprile 2011, n. 26153, sez. VI, in *Cass. pen.*, fasc.9, 2012, p. 2962 and the comment by F. PIQUÉ, "La subcultura del marito non elide l'elemento soggettivo del reato di maltrattamenti né esclude l'imputabilità del reo". The personal dignity of women is seen by a part of the Italian public opinion offended by a garment that erases – socially – her figure and the representation of her individuality. It is also often stressed that the human dignity of women is very negatively affected by *burqas* and *niqabs* since these garments decrease the autonomy of women. It has been said that the *burqa* reduces women's vision and their sideways glance as well as their ability to move. However, the argument remains weak in a society where garments reducing women's ability to move – such as high heels and other so called «fashion victims» garments – are accepted and diffused. As pointed out by the Yemenite photographer Boushra Almutawakel in relation to her conscience-awakening photo shooting (on line at http://www.theguardian.com/artanddesign/gallery/2013/may/17/pictures-of-week-mother-daughter-doll_niqab_and_burqas), in the first place, an instrument to protect women from men's disrespectful comments that are frequent in certain societies. In such circumstances, it is preferable to avoid judging women wearing a veil and instead promote initiatives for respecting the role of women as human beings and in particular as social human beings.

⁶⁸ Cassazione 4 April 2006, n. 11919 in (2006) *Quaderni di Diritto e Politica Ecclesiastica* 1052, Cass. 8 January 2010, n. 286 in (2010) *Quaderni di Diritto e Politica Ecclesiastica* 1033.

⁶⁹ M. VENTURA, *Religion and Discrimination Law in Italy*, cit. p. 12.

⁷⁰ Decision of November 27th, 2008, *Riv. it. dir. e proc. pen.* 2010, 2, 957 with a comment by Provera.

Several administrative bodies have issued municipal bans concerning the full female veil.

In one case, a ban was issued for all kinds of veil in a school, probably under the influence of French legislation. Most of these orders were local and have been struck down by the judiciary or by superior administrative bodies.

In another case, the mayor of a Piedmonts village had spread in his town posters containing the ban of wearing *burqa* and *niqab* in public places. The Court of Turin ordered to remove all of them, and ordered the mayor (together with his successor that had kept the posters where they had been put) to indemnify two citizens offended by the panel (for an amount of 11.500 Euro), to publish the decision in the local *media* («*Corriere Valsesiano*») and in the Facebook page of the mayor who had issued the municipal order, a space regularly used by him for provocative statements as regards to the integration of immigrants.⁷¹ In a third case, the Director of a public school in *Friuli Venezia Giulia* had adopted “Restrictive measures affecting the use in schools of expressive signs of religious affiliation, in particularly the Islamic veil”. These measures banned the use of any kind of Islamic veil, “also in the form of the *hijab*, i.e. that of more common use, which covers only the hair and neck, leaving the face free”. With a note of February 17th, 2015⁷², the *Garante regionale dei diritti della persona* expressed the view that the measures were «inconsistent with the objectives therein proclaimed: to counter racism, bullying or religious discrimination. In a democratic society objectives of a high level of coexistence and social inclusion should be pursued in such a way that they do not impair the civil rights of minorities and that they erase the diversity of which are these are carriers, and therefore social pluralism, but shall rather have the objective of teaching diversity, dialogue and equal chances»⁷³.

The *Ministero dell'istruzione, dell'università e della ricerca Ufficio Scolas-*

⁷¹ http://www.olir.it/ricerca/getdocumentopdf.php?lang=ita&Form_object_id=6361.

⁷² http://www.olir.it/ricerca/getdocumentopdf.php?lang=ita&Form_object_id=6487.

⁷³ “Il Garante regionale dei diritti della persona ritiene innanzitutto che la misura del divieto di indossare il velo islamico in classe, anche nelle forme del *hijab*, appare incoerente con gli obiettivi proclamati di contrastare forme di razzismo, bullismo o di discriminazione religiosa. In una società democratica, obiettivi di un più elevato livello di convivenza ed inclusione sociale dovrebbero essere perseguiti non comprimendo i diritti civili delle minoranze ed eliminando la diversità di cui sono queste sono portatrici, e dunque il pluralismo sociale, bensì educando alla diversità, al dialogo e alle pari opportunità”.

tico Regionale per il Friuli Venezia Giulia – Direzione Generale, immediately struck down the measures with a subsequent note.⁷⁴

The *Consiglio di Stato*, by judgment VI, June 19th, 2008, n. 3076, stated that Art. 5 of Law n. 152 of 1975 does not provide any legal ground for the legitimacy of an order of a mayor of the Friuli-Venezia Giulia which had banned to walking in public wearing the veil that covers the face, because unrelated to the powers of a mayor.⁷⁵

More recently, Lombardy has enacted regional legislation banning the use of helmets or any other garment obstructing recognition of persons in public places without justification.⁷⁶ A petition asking to declare these norms of discriminatory character – filed by four associations of citizens involved with the protection of immigrants – has been rejected by the *Tribunale di Milano* on April 20th, 2017. The ban is in force since January 1st, 2016.

4.1.2. A Brief Anthology of the European Court of Human Rights' Decisions on the Female Veil

The practice of the ECHR on headscarves is conspicuous.

Most of these cases were brought against France, Switzerland and Turkey.⁷⁷ The French ban concerning the full female veil has been declared compatible with art. 8, 9 and 14 of the ECHR in the case *S.A.S. v. France*.⁷⁸

Previously, in many cases, applications by female applicants having refused to remove their headscarves on grounds of religious beliefs had been

⁷⁴ http://www.olir.it/ricerca/getdocumentopdf.php?lang=ita&Form_object_id=6480.

⁷⁵ See the *Ordinanza* 2009 n. 3 Comune di Azzano Decimo in materia di uso di mezzi atti a rendere difficoltoso il riconoscimento della persona.

⁷⁶ Based on art. 5 of law 153/1975, the *delibera* bans any: “uso di caschi protettivi o di qualunque altro mezzo atto a rendere difficoltoso il riconoscimento della persona in luogo pubblico o aperto al pubblico senza giustificato motivo”.

⁷⁷ See *e multis* E. RELANO PASTOR, *Towards Substantive Equality for Religious Believers in the Workplace? Two Supranational European Courts, Two Different Approaches*, in *Oxford Journal of Law and Religion*, 2016, vol. 5, pp. 255-279; J. RINGELHEIM, *State Religious Neutrality as a Common European Standard? Reappraising the European Court of Human Rights Approach*, *ivi*, 2017, vol. 6, pp. 24-47; K. ALTIPARMAK, O. KARAHANOGULLARI, *European Court of Human Rights: After Sabir: The Debate on Headscarves Is Not Over*, in *European Constitutional Law Review*, vol. 2, pp. 268–92.

⁷⁸ See ECHR, June 26th, 2014, Application n. 43835/11.

declared inadmissible. In *El Morsli v. France*,⁷⁹ the Court held that the denial of a visa to France, as a consequence of the refuse by a Moroccan woman to remove her headscarf for the limited time necessary for an identity check, could not ground a complaint for the violation of her right to religious freedom, since it served legitimate aims of public safety.

In *Dahlab v. Switzerland*⁸⁰ and *Kurtulmuş v. Turkey*⁸¹ the Court declared inadmissible the complaints of, respectively, a primary-school teacher and a university professor, that were prevented from wearing a headscarf during the exercise of their functions. The Courts insists that, in democratic societies, the State is free to prescribe «dress codes» inspired by the principles of secularism and neutrality of the civil service, especially – but not only⁸² – in the framework of education.⁸³

Inadmissible were declared also applications by students that were prohibited to enter schools and universities with a headscarf.⁸⁴

In other cases, declared admissible, the Court decided for a non-violation of art. 9.⁸⁵

In the case of *Leyla Şahin v. Turkey*⁸⁶ the court notes

«the emphasis placed in the Turkish constitutional system on the protection of the rights of women. Gender equality – recognised by the European Court as one of the key principles underlying the Convention and a goal to be achieved by member States of the Council of Europe – had also been found by the Turkish Constitutional Court to be a principle implicit in the values underlying the Constitution. In ad-

⁷⁹ See ECHR, March 4th, 2008, Application n. 15585/06.

⁸⁰ See ECHR, February 15th, 2011, Application n. 42393/98.

⁸¹ See ECHR, January 1st, 2006, Application n. 65500/01.

⁸² See *Ebrahimian v. France*, November 26th, 2015, Application n. 64846/11 concerning a hospital employee.

⁸³ According to the German Constitutional Court, it is part of the individuals' freedom of faith, protected by the German Constitution, the right of teachers to where headscarves during their work. See *Bundesverfassungsgericht*, September 24th, 2003, Case No. 2BvR 1436/02 available in English at http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2003/09/rs20030924_2bvr143602en.html (03.05.2017).

⁸⁴ See ECHR, January 1st, 2006, *Köse and Others v. Turkey*, Application n. 26625/02, and ECHR, June 30th, 2009, *Aktas v. France*, Application n. 43563/08, *Bayrak v. France*, n. 14308/08, *Gamaleddyn v. France*, n. 18527/08, *Ghazal v. France*, n.29134/08, *J. Singh v. France* n. 25463/08 and *R. Singh v. France*, n. 27561/08.

⁸⁵ See ECHR, December 4th, 2008, *Dogru v. France*, Application n. 27058/05, and *Kervanci v. France* Application n. 31645/04.

⁸⁶ See ECHR, November 10th, 2005, Application n. 44774/98.

dition, like the Constitutional Court, the Court considered that, when examining the question of the Islamic headscarf in the Turkish context, there had to be borne in mind the impact which wearing such a symbol, which was presented or perceived as a compulsory religious duty, may have on those who chose not to wear it. As had already been noted, the issues at stake included the protection of the «rights and freedoms of others» and the «maintenance of public order» in a country in which the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhered to the Islamic faith. Imposing limitations on the freedom to wear the headscarf could, therefore, be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims, especially since that religious symbol had taken on political significance in Turkey in recent years. The Court did not lose sight of the fact that there were extremist political movements in Turkey which sought to impose on society as a whole their religious symbols and conception of a society founded on religious precepts. Against that background, it was the principle of secularism which was the paramount consideration underlying the ban on the wearing of religious symbols in universities. In such a context, where the values of pluralism, respect for the rights of others and, in particular, equality before the law of men and women were being taught and applied in practice, it was understandable that the relevant authorities should consider it contrary to such values to allow religious attire, including, as in the case before the Court, the Islamic headscarf, to be worn on university premises».

Instead, violations of art. 9 related to religious clothing, grounded on specific discriminations, have been recognized in cases that did not concern the female veil. In a case against Turkey and involving over a hundred persons affiliated to a religious group known as *Aczimendi tarikati*, their punishment for the wearing of their particular clothes in public areas, during a public gathering involving proselytism was held contrary to art. 9 by the ECHR.⁸⁷ In a case against the UK⁸⁸, a State where no legislation prohibiting religious clothing is in force, the Court found a violation of art. 9 in the

⁸⁷ See ECHR, *Abmet Arslan and Others v. Turkey*, February 25th, 2010, Application n. 41135/98).

⁸⁸ See ECHR, *Eweida and Chaplin v. the United Kingdom*, January 15th, 2013, application nos. 48420/10, 59842/10, 51671/10 and 36516/10.

balancing operated by UK courts between the right to religious freedom of an employee – that wished to wear a cross at work – and the right of her employer to ask her to remove it on grounds of corporate image. According to the court, the right of an employer to preserve its corporate image could not prevail over the right of the employee to wear a religious symbol. Differently, the right of a hospital to prohibit the wearing of a cross for safety reasons was held to be legitimate in the same case and the ECHR found that the right to wear a religious symbol did not prevail over a prohibition to wear it for public health and safety reasons.

4.2. The Kirpan

It's forbidden to bear weapons in Italy. However sometimes there is tolerance towards the other disputed symbol: the kirpan of Indian Sikhs. It has been observed that such tolerance is explained by the good integration of the Sikhs into the Italian society⁸⁹.

Nonetheless, judges have discretion in evaluating the danger of bearing the kirpan in specific cases⁹⁰.

The address that the Court has taken so far on the possibility, based on religious reasons, for the member of the Sikh community to bring the ritual dagger kirpan outdoor, seems no longer to find full support.

⁸⁹ See the Court of Vicenza, 28 January 2009, in <http://www.olir.it/documenti/index.php?Title=4950> and of Cremona Court 19/02/2009 n. 15, Riv. en. dir. and proc. pen. 2010, 2, 957 (sm) commented by A. Provera, *The "just cause": the religious faith as intrinsic limit of typicality*. According to the judge of Cremona: "Bring shoulder a ritual knife, the kirpan, a symbol of belonging to the Sikh religion, has an inherently communicative religious identity value, given that the conduct is not only optional, but imposed by Sikhism and not it can have only an aim clothing ornament. If these are the characteristics, even motivational, the agent's conduct, it must be recognized as they are a considerable justification, based on a sound legal support, as place within the protection of freedom of religion, the right to profess their faith freely in any form, individually or in association and to disseminate it. Considering this, ban the ostentatious by the follower of the Sikh religion of that box cutter would violate the constitutional right of the person to practice their faith outside of his place". See also S. Ferrari, cit. (Note 3) at 448 observe That the decisions are motivated by the fact that "the Sikh community is well integrated in north Italy where Sikh specialised work as farmers."

⁹⁰ Court of Latina 29 January 2010, in QDPE, 1/201, that convicted for carrying the Sikh *kirpan*.

The recent judgment of the Supreme Court, the 1st March 2016⁹¹, pointed out that the need for the right to religious freedom finds “always an impassable limit in peaceful coexistence and in accordance with the rules of public safety”. The judges argue that the ritual dagger has to be considered an improper weapon⁹² and its religious nature does not constitute a valid reason to bring the object outdoor. The assembly based its judgment on two opinions issued by the State Council in June 2010⁹³ and in April 2013⁹⁴, in which, according to the recognition of “Association Sikhism Religion Italy”, it has been showed that the religious purpose (use of the dagger) is literally in conflict with a state law that has primacy since the law considers only the intended use of the instrument, deriving from its physical characteristics of improper weapon, and doesn’t take account of the significance that the holder ascribes to the object nor the religious purposes that the knife assumes even in public places⁹⁵.

The position taken by the judges of the Court constitutes a literal application of the law on carry permit⁹⁶, apparently justified by the climate of the current historical context. In fact, the formally illegal public behaviors that find a justification for religious reasons, may make the job of the law enforcement agencies working in the field in the prevention of terrorism acts more difficult. By doing so it is conferred priority to the dimension of public safety based on preventive reasons, rather than ensure the exercise of the right that allows to carry a religious symbol that could be an instrument of aggression. One wonders if the attitude shown by the judges is the result of an effective safeguarding of social reality or it is rather a quick way to give signals of efficiency to the public at the expense of religious freedom of a group numerically insignificant in Italian religious landscape.

In this regard it should be noted that other legal systems legitimate to the members of the community of Sikhs the exemption to wear a safety

⁹¹ Supreme Court, First Criminal Section, n. 303/2016.

⁹² The classification lies in the lack of sharpness of the blade.

⁹³ Council of State, Section One, Gathering of Section of 23 June 2010, n. 02387/2010.

⁹⁴ State Council, Section One, Gathering of Section 10 April 2013, n. 00135/2013.

⁹⁵ The Court of Cassazione – Sezione Penale, by judgment of 15 May 2017, no. 24084, confirms this new address, claiming that “*la decisione di stabilirsi in una società con valori di riferimento differenti dai propri, ne impone il rispetto e non è tollerabile che l’attaccamento ai propri valori, seppur leciti, porti alla violazione cosciente di quelli della società ospitante*”.

⁹⁶ Law 18 April 1975, n. 110, Additional regulations of the current guidelines for the control of weapons, ammunition and explosives, G.U. April 21, 1975, n. 105.

helmet when riding a motorcycle to allow the use of the traditional head-dress⁹⁷, as well as it is authorized to police officers to wear the same hat instead of the ordinance cap provided that it's color is navy blue and has the symbol of the department on it⁹⁸.

5. Conclusions

The principle of religious freedom, universally recognized⁹⁹, finds in Italy a place of openness and realization also through its own guarantees of the principle of secularism, as its clear from Articles 2, 3, 7, 8, 19 and 20 of the Italian Constitution¹⁰⁰. This principle of promoting a separation of orders and ideologies between the State and religious faiths promotes at the same time the permanence and development of the religious spirituality as an aspect to be safeguarded through the instrument of the agreements between the Italian State and the reference religious representatives. The recognized contribution of religion to the spiritual progress of society (art. 4 paragraph II Const.) requires constant attention and a daily verification of the model adopted by the Constitution to the religious phenomenon, which allows a full exercise of the right to religious freedom not only with reference to the traditional confessions¹⁰¹.

Bringing evidence to the situation and the character of the symbols and religious signs in Italy in the light of the positions taken by the jurisprudence, some aspects arise which show that the Italian legal system is going through a transition phase.

In fact, we can see on one hand the reaffirmation of the Christianity that identifies the historical and cultural Italian heritage and, on the other hand,

⁹⁷ As the case in Britain and Canada. www.hse.gov.uk/foi/internalops/og/og-00003.htm

⁹⁸ It happens in the Police Department of New York, https://www.nytimes.com/2016/12/28/nyregion/new-york-police-department-sikh-beard-turban-policy.html?rref=collection%2Ftimestopic%2FNewYork%20City%20Police%20Department&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=days&contentPlacement=10=&pgtype=collection.

⁹⁹ Denote the Universal Declaration of Human Rights of 1948, art. 18, as a starting point the new course taking human rights in international law, http://bib26.pusc.it/can/p_martinagar/Docs/LRinternazi.pdf.

¹⁰⁰ As stated in the judgment of the Constitutional Court n. 206 of 1989.

¹⁰¹ Using this terminology in reference to confessions belonging to the historical heritage of the Italian people, in an objective assessment.

the slow but inexorable rise of new religious movements that are the result of the globalization and immigration process.

The actual process of opening to other faiths and forms of religiousness is accompanied by the constant secularist drift that animates the Italian civil reality, also made up of citizens who not only don't consider religion a value to be defended, but are also hostile to any form of religion¹⁰². As a result, there is a part of civil society, for a minority today, which considers totally unnecessary a constant dialectic stage not only with institutions, but also with other confessions acting on the same territory for the affirmation of their religious or atheist values. In this context, religion is becoming "indifferent", not relevant as a constituent element of each individual's personality, but rather as insignificant aspect, therefore not to favor, but not even to limit the space in which it finds its own expression.

In this climate, the Italian legal system has however undertaken and implemented different paths, designed to ensure religious freedom in the different environments in which it may find exercise.

The first path is the one that encourages the adoption of agreements with the confessions that present a certain degree of institutional stability in the area¹⁰³, so as to still held in Parliament the draft laws¹⁰⁴ intending to promote a law on religious freedom leading to a greater "balance"

¹⁰² We can mention the National Social promotion association called "Union of Rationalist Atheists and Agnostics", with the abbreviation "UAAR", which in its statute art. 3 is proposed as a general purpose "demand the abolition of all privileges granted, in law or in fact, to any religion, in virtue of equality before the law of religions and philosophical non-confessional organizations." The same association was the protagonist in 2014 of an attempt to conclude an agreement with the former State art. 8 II paragraph Cost.

¹⁰³ The speech obviously has wider, as to understand the situation in which Jehovah's Witnesses with an agreement in 2007 without the approval of the law, or the Islamic reality that as the second religion in Italy, still lacks an understanding.

¹⁰⁴ Bill S.2064, *Provisions on religious preachings of Cults not the subject of Agreements pursuant to art. 8, third paragraph, of the Constitution and according to constitutional principles*, by Raffaele Volpi (League) on 29/07/2015; C.2939, *Regulations on religious freedom and repeal of the legislation allowed cults*, by Fabio Lavagno (PD) and the other 06/03/2015; C.36, *Religious Freedom and repeal of the admitted cults legislation*, presented by Marco Boato (Mixed-Green Group) on 28/04/2006; C. 134, *Religious Freedom and repeal of the admitted cults legislation* by Valdo Spini (Group Democratic Party of the Left-L'Ulivo) on 28/04/2006. Cfr. *Proposal for reflection for the issuing of a general law on religious freedom: acts of the Study Seminar organized jointly by the Faculty of Political Science of the University of Salerno and the Department of theory and history of institutions: Naples and Fisciano, 15, 16 and 17 October 2009*, V. TOZZI, G. MACRI, M. PARISI (eds), Giappichelli, 2010.

between faiths operating in Italy through the elimination of the law on churches allowed in 1929 and significant expansion of a common religious right.

The other is trying to promote tools that ensure and encourage the integration of many different religious groups in the territory. In this regard, committees of participation have been established¹⁰⁵ and approved a Charter¹⁰⁶ that highlights the particular nature of the Italian law, not only as a duty owed to those who are on the Italian territory, but also rights that can be exercised and collectable.

In the end, most recently, a cultural training tool has been established for those who are called to play a position of contact between the faithful and the Italian institutions, such as imams, ministers of religion and cultural mediators¹⁰⁷.

The undertaken process should create the condition in which the rights related to religious freedom are well considered in the social context, allowing their exercise in full knowledge of the Italian historical, social and political context in which they operate.

We have to point out that this path is set in a context characterized by a strong Catholic origin, which constitutes the social substrate on which Italy has been developed.

Therefore it shouldn't be striking if the model of understanding with religions other than Catholic is the conventional one of 1984, and if the teaching of religion, as well as the assistance, must always face the spaces

¹⁰⁵ We can show the *Council for Italian Islam* established by decree in 2005 by the then Minister of the Interior Giuseppe Pisanu, and confirmed in 2006 by the new interior minister Giuliano Amato. In 2010, the Interior Minister Roberto Maroni, forms a *Committee for Italian Islam*, with 19 members, half of Italians, chosen from among experts of Islamic law, both Muslim and non.

In 2012 the Ministry of Andrea Riccardi has given rise to *Conference national permanent "Religion, Culture and Integration"*.

In February 2015, the Ministry of the Interior Angelino Alfano has chaired a meeting with representatives of various communities and Muslim associations, the first episode of the one in the Interior Ministry's intentions would become «a permanent consultation». Basically it would be a new edition of initiatives already seen with his predecessors.

¹⁰⁶ *Charter of citizenship and integration values*, Decree 23 April 2007 published in the G. U. n. 137, 15.6.2007.

¹⁰⁷ From February 2017 Training course for Imams of rights and duties of the Italian Constitution promoted by the Home Office, Department for Civil Liberties and Immigration, within the National Program FAMI 2014 coordinated by the Interuniversity Consortium Sites (Cois): in addition to that of Bologna, those of Calabria, Salerno, Bari, Pisa and Florence, and the Flaminia Foundation of Ravenna.

and possibilities in Catholic life, without forgetting the building of worship, or the reference we mean when we speak of religious ministers¹⁰⁸.

Religious symbols fall within this line of thinking. As pointed out, they constitute and express the Christian history of the Italian people, and don't acquire a sense of ideological affiliation with the State. The process of secularism, which began with the Constitution of '48, requires for its success not only uniformity of the regulatory apparatuses to a substantial equality and impartiality, but also the preservation of social religiosity, which finds its bases and expression in the heritage and tradition.

This must lead to a constant dialectical relationship between the individual and the collective, so that the regulatory apparatus can always find full realization. However the principle of secularism seems to be increasingly exploited to obtain neutral public spaces, also following the French example, that warrants the removal and resizing of all the elements that the mere sight may disturb individual consciences or that can lead to the presumption an ideologically oriented expression by the civil institutions.

The current events, such as the recent attacks of fundamentalist origin, accompanied by reasoning by dyads of society in which we tend to proceed with opposite and contrary cataloging¹⁰⁹, lead to limit if not to suppress, all forms of religious expression that can't be classified with Italian/occidental parameters, not only as aspects of an advanced secularism, but also as religious elements which go beyond our spiritual ground, making the religious integration more difficult and conflicting.

¹⁰⁸ It's easy to recall the imams who can not be cataloged with the same parameters and establishing their function of Catholic priests.

¹⁰⁹ In particular T. RIMOLDI, *Religious freedom in Italy. The critical issues*, in *Coscienza e Libertà*, no. 51, 2015, p. 68.