



ITALY

Preliminary Report on the Legal Status of Religious Minorities in  
the Shadow of the European Court of Human Rights

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## **Issues to do with the Legal Status of Religious Minorities**

### 1. Legal status: overview, main topics, and relevant factors

The status of religious minorities in Italy is a topic of significant relevance in the assessment of the degree of pluralism and the protection of fundamental rights in the country. At the general level our aim was to assess how religious minorities framed their strategic actions within the Italian legal and political context with a particular attention to the direct and indirect effects of the decisions of the European Court of Human Rights within this context. The Italian Constitution protects religious freedom and the right of religious groups to establish their own institutions. Key to this protection is article 19 of the Constitution. The relationship between the State and the Catholic Church are regulated, according to article 7 of the Constitution, by a Concordat, which guarantees immunities and a high standard of protection to the Church. Other religious groups, according to article 8 of the Constitution, can request an "intesa" (agreement) with the State. This is a bilateral agreement, which needs to be approved by the Parliament, and grants different types of benefits such as: clergy access to hospitals or prisons, and allows for civil registry of religious marriages.

Within this legal context, Muslims face important difficulties as they have not signed an "intesa" with the state and they often face also challenges by local and regional authorities<sup>1</sup>. As reported in the 2014 report of the U.S. State Department of religious freedom: "Muslims in some locations continued to encounter difficulties acquiring permission from local governments to construct mosques".

In our research, the following dimensions proved to be relevant in understanding the strategic actions of religious minorities:

#### a) Newcomers/settled<sup>2</sup>

Religious minorities mainly related to migration processes and settled minorities focus on different claims and adopt different strategies.

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<sup>1</sup> In the last decade, in many Italian cities flourished local committees on local religious pluralism, established by the city council (such as the Consulta for dialogue with the religious Confessions established by the Municipality of Florence) or organized by the religious communities (such as the Forum of Religions, Milan). Muslim communities participate in these committees, in dialogue with the local administration. Despite the numerous attempts and efforts, at the national level, no agreement has been reached, probably in relation to the politicization and polarization of the 'Islam issue'.

<sup>2</sup> For analytical purposes, we define as 'newcomers communities' minority religious actors whose presence is mainly related to immigration, in comparison to minority religions historically present in Italy (namely, Waldensians, Methodist and Jewish denominations).

## b) Territorial differences

Due to the Italian legal framework, different religious minorities have different legal treatment in different territories. While this is evident in the case of religious minorities without an agreement with the Italian State (therefore their claims are decided on a case-to-case basis), also settled minorities with agreements experience different treatments (especially in relation to the construction of worship places, which is locally regulated). The role of individual initiative of local politicians emerges as an important factor.

## c) Worship places

This is 'the' issue, in relation to the legal status of religious minorities. Nonetheless, we also explored religious rights in institutions (schools, prisons, hospitals). Broadly speaking, since the beginning of the Italian 'second republic' (early 1990s) Islam-related issues have been highly politicized, and the building of mosques has become a bone of contention, especially at the local level. This issue is strictly related to the debate on immigration.

Recently, two important judgments were delivered by the Italian Constitutional Court. With a first judgment (52/2016) the Court confirmed a previous decision of the Supreme Administrative Court, pointing at the fact that there is no right to starting the procedure to reach an agreement (intesa) with the State as provided by article 8 of the Italian Constitution. The judgment was related to the Atheist network request of an agreement with the State. The second judgment (63/2016), involves the declaration of unconstitutionality of the so-called "anti-mosques" law approved by the Lombardia region. Commenting on the judgment, the President of the Constitutional Court, prof. Paolo Grossi, argued: "Our concern is to be the guardian of fundamental rights: the core of the judgment rests on avoiding discrimination, which the Court believed was present in the law". In this decision the Court declared unconstitutional some specific parts of the regional law with the most discriminatory character, other parts of the law remain still in force. In fact the Veneto region is trying to approve a similar law.

These two decisions will be of particular relevance in shaping the actions of two groups that have been at the centre of our inquiry, namely atheists and Muslims. There are in fact some possibilities that the decision against the Union of Atheists might be challenged in Strasbourg.

Lombardy has also amended legislation in order to outlaw the burqa and niqab from public offices and hospitals. Also, in the last decade, many controversies have been developing around local laws/regulation promoting indirect discrimination (against Islam) – such as 'anti-kebab' regulations.

## 2. Strategies pursued by religious minorities

The Italian legal system sets out clear legal principles on the role and the regulation of religion in public life. First of all for the Italian legal order all citizens are equal before the law regardless of their religion and according to article 8 of the Constitution each religious group has the right to establish its own institutions as far as they do not violate the law. Non-Catholic religious groups can request an agreement (intesa) with the government, which is also regulated by article 8 of the Constitution.

Schematically, we can identify four categories of action:

- a. Political action – such as: local agreements between religious groups and administration; support/lobby towards law/law provisions...
- b. Legal action
- c. Social action – such as: participation in/promotion of inter-faith meetings; charity activities...
- d. 'Private'<sup>3</sup> action – such as: organizing religious activities without the State support.

An important strategy pursued by a significant group of minorities in the last few years has involved the creation of the "Coalition for religious agreements with the State". Created in March 2008 this pressure group has been able to achieve a significant result as the government led by Silvio Berlusconi passed in May 2010 the laws that enacted the previous agreements by the members of the coalition and the Italian government. We can qualify this as a lobby effort which successfully led to the approval of the laws.

On the other hand, various attempts have been made (supported by settled minorities) to enforce a law on religious freedom, without success, so far – even though our informants are quite confident that a draft law on the topic will be enforced soon. According to the promoters, a law on religious freedom would be an improvement, with respect to the present regime – which makes a hierarchical distinction (Catholicism; Religions with an agreement; Recognized religion without an agreement – 'Cults'; 'Others'). As a matter of fact, religions without an agreement are subjected to the (fascist) law on 'allowed cults', which includes a high degree of State control on religions' internal affairs and a complex set of procedures for accessing basic rights (such as religious assistance for prisoners).

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<sup>3</sup> In this context, by 'private' we mean the activities of religious actors without a juridical recognition of their religious status (such as Muslim communities, or Scientology) and, partially as a consequence, actions that belong to the private field (such as the building of worship places as private enterprise).

### 3. Relations with the ECtHR case law

The decision of the Italian Constitutional Court 52/2016 explicitly mentions the following ECtHR cases: *Gutl v. Austria*; *Loffelmann v. Austria*; *Lang v. Austria*; *Savez crkava "Rijec Zivota" and others v. Croatia*; *Jehovas Zeugen in Osterreich v. Austria* but arguing that the situation at stake in the case was different and had to be decided under the principles of Italian constitutional law. In a rather contradictory move, the Constitutional Court argues that no discrimination can be found when religious groups are unable to start negotiations with the government to reach an agreement as provided by art. 8 of the Constitution because the Italian legal framework offers also other tools to protect the principle of "equal freedom" among religious groups.

In the case against the Lombardy region law there is no direct reference to the ECHR but there is a vague reference made by the government to international instruments for the protection of freedom of religion or belief which are deemed to be not relevant by the Court. A reference to the ECtHR case law is made by the NGO Vox intervening in the case but the intervention has not been admitted by the Court (it will be in any case relevant to assess how this reference has been used).

### 4. Extent to which the actors involved in these legal status issues engage with the ECtHR in their claims-making; preliminary assessments

According to our analysis very few actors are aware of the potential and even the existence of the case law of the ECtHR on religious freedom. Few specialized experts are aware of major cases (among them the most known is surely *Lautsi v. Italy*). The frame of mobilization and interpretation of the political field is in the majority of the cases shaped by narratives of national political actions and opportunities structures. Contrary to this almost settled scenario there are certain groups such as the Union of Atheists which are particularly aware of the ECtHR and international case law and shape their political actions according to it.

Apart from these groups, we observed that:

- The ECtHR is often quoted in relation to the broader issue of "European Union"
- The 'language of rights' and related semantics are quite predominant in the actors' discourse.