CHAPTER 8

The legal regulation of religious minorities in Italy

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1. The definition of religious minority

It is well known that the use of the expression "religious minority" is a very sensitive issue. In a number of countries, members of religious minorities feel uncomfortable about being so labelled. In the past legal definitions of minority groups (including religious ones) were used to draw a line between "civilised" and "uncivilised" groups. Today they can be used to justify restrictions on minorities' rights and freedoms (see *inter alia* Ferrari, 2021, p. 63).

For the purposes of this chapter, a religious minority is «a group of people gathered in common membership who represent less than half of the population of a State and who are bound together by the intent to preserve and advance their religion or belief»[1]. Thus, "minority" should be understood as a word carrying no diminutive value or dignity. However, as we shall see below, even an objective, number-based criterion can be used to justify questionable restriction-oriented norms or policies.

2. Historical background

In the past, in the Italian political entities existing before the creation of the Kingdom of Italy – like everywhere else in Europe – only people professing the official religion were regarded as full members of the political community. Those who belonged to another religion were discriminated, persecuted or – in the worst cases – expelled. In the Kingdom of Sardinia – which led the process of

[1] This definition, which is consistent with the European and international standards of human rights protection, can be found in the website of the Atlas of Religious or Belief Minorities, a research project that aims to map and measure the rights of religious or belief minorities in the EU countries (see https://atlas.webecom.site/index.php).

Italian unification – the principle of equality of all subjects regardless of their religion was progressively recognised in 1848 and definitely confirmed by the law of 19 June, known as the "Sineo law", after its proponent (Bottoni & Cianitto 2022, p. 25, 29-30).

The proclamation of the Kingdom of Italy on 17 March 1861 was not accompanied by the adoption of a new constitution, but by the confirmation of the one of the Kingdom of Sardinia, the so-called Albertine Statute that had been granted on 5 March 1848. This charter – which served as the country's constitution until the establishment of the Republic one century later – did not contain any provisions on religious freedom. Under Art. 1, "The Catholic, Apostolic and Roman religion is the only religion of the State. Other cults now existing are tolerated conformably to the law" (English translation in Lindsay & Rowe, 1894, p. 25). Religious minorities' public manifestations, including the opening of new places of worship and proselytism (Spano, 2008, p. 2), remained prohibited, although later administrative practice progressively lifted some of such restrictions.

A major change took place in 1929, when the Fascist regime promoted a new regulation of the state's relationships with both the Catholic Church and the religious minorities, which was inherited by the Italian Republic and which still grounds a large part of today's inequalities. The signing on 11 February of the Lateran Agreements – composed of a concordat regulating the relationship between the state and the Catholic Church in Italy, and a treaty solving the Roman Question – was followed by the approval of Law no. 1159 of 24 June 1929 on admitted cults, and of Royal Decree no. 289 of 28 February 1930 on the application of Law no. 1159/1929 and its coordination with the other state laws. This regulation was originally welcomed by religious minorities as the *Magna Charta* of their freedoms: for the first time in Italian history, they had obtained public recognition. The Union of Jewish Communities even coined a gold medal for Mussolini (Jemolo, 1948, p. 500). However, the parliamentary reports accompanying the draft regulation already pointed to the restrictive position that would characterise its application. In the report of 30 April 1929, Minister of Justice Rocco stated that the expression "admitted cults" was more respectful than that used by the Albertine Statute ("tolerated cults"), but – from the legal point of view – it had no substantially different meaning (quoted by Madonna, 2012, p. 31). The application of the new rules, and especially of the decree, was much harder than religious minorities expected, and it was especially harsh on non-traditional communities, such as the Jehovah's Witnesses and the Pentecostals (Ferrari, 2013, p. 38). At this regard, it should be noted that the religious minorities already present in Italy in 1929 were far fewer than they are today: they included the Jews, the Waldensians, the Orthodox and a number

of communities from German- and English-speaking countries, such as the Baptists, the Methodists, the Wesleyans, the Anglicans, Scottish Presbyterians, the Salvation Army, the Adventists and the Pentecostals. There was no "Islam Question". Muslims subject to Italian authority were those in the colonies and they were subjected to different rules, *i.e.*, colonial ecclesiastical law (Botti, 2011).

Last but definitely not least, an abhorrent derogation to Sineo law was introduced by the racial laws of 1938-1945 (see *inter alia* Brusco, 2019).

3. The constitutional framework between religious pluralism and selective cooperation

Religious pluralism is one of the basic principles enshrined in the Constitution of the Italian Republic, entered into force in 1948. Its programmatic base is Art. 2, whose application goes well beyond the regulation of religion:

> The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social formations where his/her personality is developed, and it requires the fulfilment of the non-derogable duties of political, economic and social solidarity[2].

The recognition of the role of social formations (an expression encompassing religious denominations) aims to overcome both liberal and Fascist ages, when the only legally relevant relationships were those between the individual and the state. This norm grounds the constitutional regulation of religious pluralism, whose pillars are Arts. 7 and 8 (Cardia, 1996, pp. 182-185):

> Art. 7(1). The State and the Catholic Church are, each one in its own sphere, independent and sovereign.
> (2). Their relationships are regulated by the Lateran Agreements. The amendments of the Agreements, agreed upon by both parties, do not require the procedure of constitutional revision.
> Art. 8(1). All religious denominations are equally free before the law.
> (2). Religious denominations other than the Catholic Church have the right to organise themselves according to their own charters, provided that they do not breach the Italian legal system.

[2] The translation of this and the subsequent constitutional provisions is mine.

(3). Their relationships with the State are regulated by law on the basis of agreements with the respective representatives.

The reading of these norms leads to two remarks. The first one concerns the definition of religious minorities, which the constitution refers to as "religious denominations other than the Catholic one". This expression has been much criticised, as liable to "suggest that non-Catholic groups have no distinctive identity and they form an undifferentiated lot" (Mazzola, 2021, p. 135). As to the second remark, the systematisation of Arts. 7 and 8 may look like erratic to a reader unfamiliar with Italian constitutional history: Art. 7 concerns only the Catholic Church, Art. 8(1) refers to all religious denominations and Art. 8(2-3) only applies to religious minorities. In fact, this order reflects the hierarchy of priorities manifested by the majority of the members of the Constituent Assembly (25 June 1946 – 31 January 1948). Their primary interest was the protection of the legal position of the Catholic Church and the Lateran Agreements, including Art. 1 of the Treaty, which reiterated the norm included in the Albertine Statute, according to which the Catholic Apostolic Roman religion was the sole religion of the state. The legal position of the Lateran Agreements became one of the most hotly debated issues in the entire constitution making-related debate (Musselli, 2010, pp. 82-161). Only in the end, as a form of compensation for both past injustice and present inequality, the norms on religious minorities were elaborated. They were originally added to what was to become Art. 7 and then moved to a separate article: the Catholic Church and the other religious denominations may not be placed on the same level and, thus, had to be regulated by different constitutional articles. At this point, the inclusion of a unifying norm, referring to *all* religious denominations, was debated. The discussion revolved around whether the constitution should recognise their equality or their equal freedom (Long, 1990, pp. 348-353). Given the prevailing trend, the logical conclusion was the latter: the recognition of religious pluralism may not entail the equity of the Catholic and other religions.

The difference made between the Catholic Church and the other religious denominations fits the pattern described by Silvio Ferrari as selective cooperation. Cooperation with social groups is a typical feature of democratic states. As noted, social groups include religious denominations, and cooperation with religious denominations takes place just like with other social groups (*e.g.*, political parties and trade unions). However, it is not the same with all religious denominations: the more one is regarded as having values shared by the (majority of) society, the higher its chances of cooperating with the state (Ferrari, 2015, pp. 71-72).

Under Art. 8(1) of the constitution, all religious denominations are equal before the law only insofar as the sphere of freedom is concerned, that is, they are all entitled to the same rights to freedom, but the specific manifestations thereof may be different. As argued by Waldensian scholar Giorgio Peyrot, this means in principle that all religious denominations have the right to manifest their traditions and true nature (quoted by Mazzola, 2021, p. 135). Religious minorities should be all given the same opportunities, and not to be subject to a homogenising legal regulation. This is a crucial development in a context, like the contemporary one, where the call is no longer for equality but for the right to be different (Dalla Torre, 2007, p. 7). Nevertheless, the management of differences may also lead to the continuation of a policy of inequality.

A typical example is the provision of spiritual assistance services. All religious denominations have an equal right to provide spiritual assistance in prisons, healthcare facilities and the armed and police forces, because members of any religion have the right to receive it[3]. However, the related services are organised in different ways: chaplaincy for the Catholic Church, and the right to visit for religious minorities. This difference has been justified on objective reasons, that is, the differences in the number of their members. In fact, the organisation of the same spiritual assistance services for all religious denominations would be unfair and impracticable. In the context of an ever-increasing degree of religious pluralism, with many, but little numerous religious minorities, the establishment of chaplaincies for all religious denominations would mean the creation of permanent offices where most chaplains would have little, if not nothing to do. By contrast, the institution of external services, where ministers of all religions have the right to visit, would require the Catholic spiritual assistant to enter and exit continuously (Cardia, 1996, p. 209). Nevertheless, this legal arrangement is not free of shortcomings. On the one hand, it does not take into account the religious demography-related changes occurred in Italy. The described system of spiritual assistance services had its *raison-d'être* when the greatest majority of people in prisons, healthcare facilities and the armed and police forces were Catholics. With the passing of time, the immigration phenomenon has led to the increase of the number of members of some religious minorities, which today should justify the creation of chaplaincies for the minorities concerned in the institutions involved, or other adjustments. The imbalance affects in particular prisons and healthcare facilities, and far less the armed and police forces, whose members must necessarily be citizens of the Italian Republic (Mazzola, 2018,

[3] This is part of the broader right to religious freedom, recognised by Art. 19 of the constitution: "Everybody has the right to profess freely their religious faith in any form, individually or in association, to propagandise it and to worship in private or public, provided that the rites are not contrary to public decency".

p. 198). On the other hand, public funding covers completely only the costs of the Catholic chaplains. After the 2001 reform of the constitution, which has redistributed state and regional competences in a number of matters related to the legal regulation of the religious factor (see *inter alia* Floris, 2012), a few Regions have stipulated bilateral agreements with some local religious communities *inter alia* on the organisation of spiritual assistance services in healthcare facilities. These have ultimately introduced a new level of inequality between different local communities belonging to the same religious community. For example, the 2003 Protocol between the Region of Lazio and the Jewish Community of Rome attributed the related costs to the National Health Service, whereas under the 2009 Agreement between the Region of Lombardy and the Jewish Community of Milan, it is the latter who has to pay for the spiritual assistance services in regional healthcare facilities (Bolgiani, 2009, p. 474).

At the constitutional level, another difference between the Catholic Church and religious minorities is made by Art. 7(1) and Art. 8(2). Both recognise the principle of organisational autonomy, but the former states that the Catholic Church is sovereign and independent in its own sphere (that is, something more than mere autonomy), whereas under the latter religious denominations other than the Catholic one (only) have the right to self-organisation according to their own charters, provided that these do not breach the Italian legal system. This limitation is quite reasonable (and consistent with the European and international standards of protection of the right to religious freedom), but it formally does not apply to the Catholic Church.

4. A four-tier system of inequality

The distinction between the majority and minority religions, which characterised Italy's past history, has evolved with the passing of time into a more complex system of different legal regulations of religious minorities, which nevertheless has increased, rather than reducing, their unequal treatment. This may be described as a four-tier system of inequality (see Bouchard, 2004, pp. 70-71).

The first tier represents the most privileged religion, which remains the Catholic Church, whose legal position is first and foremost protected by the concordat. Only in 1984 was the Lateran concordat reshaped and, on that occasion, the contracting parties added a protocol to the revised concordat, stating that they considered the principle of the Catholic religion as the sole religion of the state no longer in force. In the first decades of Republican history, a sociological reinterpretation of this principle – where Catholicism enjoyed a special protection as the religion of the majority of the population, and not of

the state – continued to justify an unequal treatment. One of the most notable examples is the protection to religion afforded by the Criminal Code (one of the many pieces of legislation inherited by the Fascist regime and still in force, despite substantive revision). This made the prosecution of defamation of religion and blasphemy compulsory only when they concerned the dogmatic heritage of the Catholic religion, and reduced penalties in cases of crimes against religious feelings of a religious minority (Cianitto, 2018, p. 343). This matter was dealt with by over 180 judgements delivered by lower and higher courts since 1956 (Ivaldi, 2012, p. 44, fn. 84). Only with the judgment no. 440/1995 did the Constitutional Court start the equity process of the Catholic and other religions (see *inter alia* Ivaldi, 2004), by invoking the principle of secularism (*laicità*)[4]. Law no. 85/2006 finally amended the Criminal Code consistently with the constitutional case law (Cianitto, 2016, pp. 177-204; Gianfreda, 2012, pp. 19-31).

The second tier consists of the thirteen religious minorities regulating their relationships with the state by virtue of law based on a bilateral agreement with the respective representative entity. They are:

- nine Christian denominations, many of which are unions, federations or associations representing respectively (in chronological order): 1) the Waldensian and Methodist Churches, 2) the Pentecostal Churches, 3) the Seventh-day Adventist Churches, 4) the Baptist Churches, 5) the Evangelical-Lutheran Church, 6) the Orthodox Churches under the jurisdiction of the Ecumenical Patriarch of Constantinople; 7) the Church of Jesus Christ of Latter-day Saints (Mormons); 8) the Apostolic Church, 9) the Church of England; the Union of Jewish communities;
- two unions representing respectively Hindu and Buddhist associations, schools and centres and, last but not least, a separate Buddhist entity – Soka Gakkai Buddhist Institute[5].

The extension of the possibility to regulate bilaterally one's relationships with the state, first available only to the Catholic Church, to other religious denominations is a novelty introduced by Art. 8(3) of the constitution. Nevertheless, for a long time this possibility remained only on paper. In 1950 the Federal Council of Evangelical Churches requested to start negotiations for a bilateral agreement, but the request was rejected by the Department for religious affairs of the Ministry of Interior Affairs because "a parallelism between the concordat with the Holy See and the agreements with the representatives of religious denominations other than the Catholic one [was] not legally admissible"

[4] On the meanings attached by the Constitutional Court to the principle of secularism in its case law, see Ferrari (2012, p. 124).

[5] See: https://presidenza.governo.it/USRI/confessioni/intese_indice.html#2.

(quoted by Cardia, 1996, p. 203). The first bilateral agreement was signed only on 21 February 1984, three days after the signing of the revised concordat, to stress once more the hierarchy of the state's priorities in the regulation of its relationships with religious denominations.

With the passing of time, as mentioned, twelve more bilateral agreements have been signed and approved by law but – in a context of socially increasing religious pluralism – the religious minorities concerned remain a small group among all those existing in Italy (see Mazzola, 2021, pp. 141-147). Nevertheless, the main criticism of such a system of bilateral agreements is not so much its selectivity, but the fact that it has enlarged, instead of restricting, privileges. Bilateral agreements have not regulated the specific aspects of the religious life of the minorities concerned, which general legislation is not suited to address. This would have in principle justified the stipulation of a small number of agreements. But far from regulating the special needs of the interested minorities, bilateral agreements have merely been the instruments to extend the prerogatives first reserved only to the Catholic Church to thirteen religious minorities[6]. In fact, they have been developed as "photocopy-agreements" and have invariably reproduced almost the same text. As a result, the broader system of bilateral agreements (including the concordat) has come to include general rights, which should be instead recognised to all religious denominations by virtue of a law on religious freedom (see *inter alia* Alicino, 2013).

However, the Italian legal system lacks such a law. This is what Alessandro Ferrari calls the "mother" of all lacks (2012, p. 96). No attempt has so far succeeded in abrogating the law and decree on admitted cults, and in substituting it with a new regulation suited to face the new challenges posed by the evolution of time and society (Tozzi *et al*., 2010; De Gregorio, 2013). The 1929 law is severely outdated. On the one side, some stipulations are obsolete: Art. 4, which reproduces the text of the Sineo law, has been overridden by Art. 3 of the constitution (recognition of all citizens' formal and substantive equality and equal dignity); Art. 5 guarantees freedom of discussion in religious matters but this, too, has been superseded by Art. 19 of the constitution. On the other side, it does not take into account many of the contemporary problems of religious freedom, for the obvious reason that they had not arisen yet at the time of its approval (suffice it to mention the issue of religious symbols).

The last two tiers of the Italian system of inequality concern the religious minorities unable (or uninterested) to secure a bilateral agreement. They

[6] Including the access to the public financing system known as otto per mille. The Catholic Church and the religious denominations having a bilateral agreement and wishing to receive funds are the only subjects (along with the state) entitled to be allocated a share of the 0,08% of the tax on income on natural persons. See inter alia Durisotto (2009).

constitute the largest part of those existing in Italy and include two of the most numerous ones: Muslims[7] and Jehovah's Witnesses[8]. All of them are still subject to the regulation on admitted cults, but there is a difference in their legal position. Some of them are recognised religious minorities, having obtained legal personality (*ente morale*) under Art. 2 of the 1929 law and Art. 10 of the related decree. As such, they constitute the third tier. The fourth one comprises non-recognised religious minorities, which have not been able[9] or have been uninterested[10] to be recognised as *ente morale*, while remaining subject to the regulation on admitted cults in any other matter.

The religious minorities of the last two tiers are the non-privileged ones: they enjoy far fewer freedoms and are subjected to a greater number of checks and controls than those having a bilateral agreement. In fact, not only is the 1929 regulation out of date, but – being rooted in the Fascist regime – it includes norms that do not seem fully consistent with the constitution. Under Art. 1 of the law, cults other than the Catholic religion are admitted in Italy, provided that they do not profess principles and do not perform rites breaching public order or public decency. However, Art. 19 of the constitution mentions only one limitation (public decency), which applies exclusively to rites; any inquire into a religious denomination's doctrine would be illegitimate.

Art. 3 of the law stipulates that the appointment of ministers of religions other than the Catholic one shall be notified to the Ministry of Interior affairs, in order to be approved. Without the government's approval, any religious marriage celebrated under Arts. 7-12 of the law itself may not obtain civil effects. By contrast, there is no requirement to approve the appointment of the ministers of the religious denominations with a bilateral agreement. This difference seems inconsistent with the principle of equal freedom before the law enshrined by Art. 8(1) of the Constitution. What is more, the administrative practice has been characterised by the application of controversial requirements. For example, in the opinion no. 561/2012, the Council of State has suggested that a positive reply should be given to those requests from ministers of religions having at least 500 members at the local level (corresponding to the smallest Catholic parishes with a resident parish priest), or 5,000 members in the entire national territory. This number-based requirement is nevertheless illegitimate in the light of the most recent constitutional case law, according to

[7] See Alicino's chapter in this book.

[8] The bilateral agreement they signed in 2000 has never been approved. See Ferrari (2012, pp. 80-83).

[9] This has been the case of the associations representing Sikhism in Italy. See Perego (2020, pp. 480-482).

[10] Some groups manifest a soft religiosity, expressed in facts rather than in legal forms (Ferrari, 2012, p. 100).

which no difference of treatment may be based on sociological or quantitative criteria (see *inter alia* Parisi, 2014).

Concluding remarks

The passage from the liberal and Fascist era to the Republican, democratic one has been characterised by the recognition of religious pluralism but, at the same time, by the continuation in new forms of the old pattern of selective cooperation. Whereas in the past there was a distinct difference between the Catholic Church and other religious denominations, since the mid-1980s there has been a trend to extend the privileges first reserved to the majority religion to some minorities. This has improved the position especially of some traditional religious denominations, like the Waldensians and the Jews, but the problem of the unequal treatment of religious minorities remains unsolved.

The issue at stake – as stressed – is not so much the existence of different regulations for different religious groups, as the consequences that this system entails. The differences in the legal regulation have not been merely justified by the will to accommodate some specific needs of some minorities, but they have mostly resulted in the extension of the area of privileges. The failure to approve a law on religious freedom – which could address most of the issues currently regulated by the bilateral agreements – ultimately forces the Italian state to continue on an endless path, by admitting from time to time some new religious groups to the club of the privileged ones. In doing so, it reinforces the system of inequality no longer of all religious minorities *vis-à-vis* the majority religion, as it happened in a traditional confessionist regime, but at different tiers among different groups of religious minorities (on this point see Ferrari and Ibán, 1997, p. 71).

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