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PRISON AND RELIGION IN ITALY. THE ITALIAN CONSTITUTIONAL ORDER TESTED BY A NEW "RELIGIOUS GEOGRAPHY" *

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As many know, prisons across Europe are facing an overcrowding crisis, which is a manifestation of at least three trends: 1) tougher sentencing by judges (particularly for drug-related offenses); 2) a slow justice system; 3) lack of money to build new facilities to accommodate the excess number of inmates.

This situation is particularly grave in Italy to such an extend that in January 2013 the European Court of Human Rights (*Affaire Torreggiani et autres c. Italie*) ruled that overcrowding in Italian prisons «violated basic human rights». In that occasion the Court gave Italy one year in order to rectify the issue. In addition, many reports have underlined the fact that the rate of suicide in Italian prisons is one of the highest in the EU; as also demonstrated by the Antigone (an important NGO dedicated to the Italian prison system).

This problem becomes even more acute when taking into account the fact that in many Italian prisons the number of foreign inmates exceeds the

number of the Italians detainees. Jails in Milan and Vicenza, for example, more than 60% of inmates are foreign, while in the mountain territories of Trentino Alto Adige and Valle d'Aosta, the proportion reaches nearly 70%.

As one can imagine, this grave situation reflects into the relationship between religion and prison in Italy. In fact, from this perspective, that situation translates into a prison system where: an inmate can be in a cell with people with six different languages and six different habits; where there is one who prays as, for example, an observant Muslim five times a day and another who swears five times a minute; where there is one who eats pork and one who cannot bear to look at it; where there is one who never washes and one who washes all the time.

So, in order to offer a more realistic imagine, as an Italian inmate said during an interview, «if you take a bunch of people like a mini United Nations, it is a disaster when there is only one toilet, when everybody brings their own culture to the bathroom».

This description shows very well that in the last 40 years in the Italian prisons the "religious geography" has changed dramatically. Yet, both the penitentiary facilities and the legislation are still based on past situation, when from a religious point of view the prisoner population was substantially homogeneous. To put it in other words, the "classical" normative instruments elaborated for managing religious claims in a mono-cultural and mono-religious prisons do not easily fit in with the problems created by a completely changed religious population geography. It is no coincidence that this legislation does not necessarily promote the respect of human rights of all inmates, including those who are part of neo *nomoi* groups, usually made up of foreign immigrants. So that, the same legislative policy, which seems attractive for some religious and cultural perspectives, can be seen as a disadvantage, if not discriminatory, towards other towards detainees belonging denominations other than traditional ones.

This is even more evident when focusing the attention over specific issues, such as: the difference between the legal status of roman Catholic chaplains and the legal status of religious ministers of other

denominations; especially those that are not signed an "*intesa*" (agreement or mini agreement) with the State, as established by Article 8.3 of the Italian Constitution; the regulations concerning religious practice and religious freedom in the Italian prisons; and the problems related to the presence of a large number of Muslim inmates.

1. ***Legal status of Roman Catholic chaplains and chaplaincy***

Article 26 of the 1975 penitentiary Act (no. 354, *legge penitenziaria*) states that in Italy detainees have freedom to profess religion, to educate themselves in their own creed, and practice worship. A the same time, Article 1 of the 4 March 1982 Act (no. 68) provides that in the Italian prisons worship, religious education and religious assistance of the Roman Catholicism are formally entrusted to chaplains. Besides, under Article 16 of the 1975 penitentiary Act, the Catholic chaplains are part of the prison Commission, which draws up the penitentiary regulation.

More generally, chaplains are called upon to support and contribute to the development of human beings, with a result that they often fill the role of promoter, guarantor and defender of the detainees' fundamental rights and freedoms. This implies freedom of religion, as established in Article 19 of the Italian Constitution, where it is affirmed that «veryone has the right to profess freely their religious faith in any form».

Compared with the past and under the previous legislation – when they were in charge of managing the prison library, the prison education programmes and the detainees' correspondence – chaplains continue to celebrate sacred rites and provide for religious assistance. As a matter of the Catholic – Code of canon – Law (see cann. 564-572, especially can. 566, §1) and the current State's legislation, it is important to note that, concerning the prison organisation, the core of the chaplains' role is to transmit the Gospel and, therefore, to bring religious support in places of detention. From this point of view, the presence of chaplains in prisons is legitimized in terms of religious assistance, based on the transmission of

the Catholic message. In the end, this legal aspect allows to distinguish the chaplain's roles for those functions referring to either psychological assistants or social workers that, as stated by the Italian Law, are also part of the prison organisation.

In reality a chaplain prison remains not only a spiritual father, but also a person capable of listening to the detainees' needs, what is more suitable to the religious nature and mission of this figure; not for nothing in France chaplains are called *aumônier* deriving form *aumône*, which refers to charity and solidarity. This means that in prison a chaplain is not only one who celebrates Mass and the sacrament of penance and reconciliation (what is commonly called Confession). He is also a person in whom detainees trust for moral and – sometimes – material support. In fact, for those detainees most in need, chaplains normally provide daily requirements, such as clothing, food, financial support (for inmates and for their families), access to affordable medication. And in doing so, they often find themselves coordinating voluntary activities.

In this sense, it is also worth remembering what is affirmed in Article 74 of the 1975 penitentiary Act, in accordance with which the competent diocesan bishop appoints a local priest as member of the Council for social assistance (*Consiglio di aiuto sociale*), which should provide social support throughout the retention period and after a detainee has served his/her sentence. Nowadays these voluntary activities are formally ruled by both Article 78 of the mentioned 1975 Act (no. 354) and Article 120 of the 2000 Presidential Decree (no. 230) regarding regulation that implements the penitentiary legislation and the measures depriving or limiting personal freedom (*Regolamento recante norme sull'ordinamento penitenziario e sulle misure privative e limitative della liberta*).

Chaplains are also involved, officially or unofficially depending on single penalty institution, in decisions concerning the treatment and the use of measures alternative to prison and measures facilitating early release. In this regard, it should be noted that even the frequency and participation in religious services might be used as a parameter to evaluate the conduct

of an inmate and, consequently, decide whether to grant him/her those benefits. This practice is legally legitimized by the content of the 1975 penitentiary Act, which states that both the judgement on the inmates' behaviour and the treatment of detainees are based on some activities, such as those related to education, job, religion, cultural activities, and sports as well as all other activities facilitating appropriate contacts with the outside world and family (Article 15 of the 1975 penitentiary Act). These are in fact actions within which chaplains normally play a very important role.

In this sense, it is important to remember the Gozzini's Act (no. 663/1986) or *legge Gozzini*, which hit the prison law in 1986, affirming a certain softening of prison life conditions. Inmates were in other words encouraged through the promise of early release measures to collaborate with juridical authorities. The Gozzini's Act favoured in particular convicts who decided to cut their ties to terrorist organisations or who were incarcerated for having participated to criminal organisations. The whole prison staff was transformed into an observation staff, chaplains and nuns included.

Parallel to these developments, in 1984 the Holy See and the Italian government signed the Concordat revising almost completely the 1929 Lateran Pacts (see *infra*). Two major changes affected prison chaplaincy: the status of the chaplain passed from aggregated personnel to personnel in charge of spiritual care; the notion of pastoral care itself was replaced by that of spiritual care. This change strengthened the chaplain's position legally, keeping it under the surveillance of the Ministry through the local inspectors. Their nomination was no longer dependent on a double agreement State-Church, but the religious authority had the power to designate someone as chaplain in prisons.

In any case, spiritual care was considered as an inmates' right, protected by the State. It was no longer an obligation imposed upon prisoners by the joint action State-Church. Pastoral care was implicitly and explicitly dominant in the second half of the last century but we observe a move towards a more individually oriented spiritual care.

All of this explains the increasing number of the so-called “little form” (*domandine*), through which many prisoners from various religions – not only Catholicism – regularly ask to speak with a chaplain, and not only for religious purposes.

2. ***Legal status of representatives of denominations other than Catholicism***

Albeit belatedly in respect to other European Countries, since the 1970s and 1980s Italy has been dealing with social and cultural challenges as a result of unprecedented religious and cultural diversity. This has produced paradoxes stressing the issue of secularism (the *principio supremo di laicità*, as the Italian Constitutional Court calls it), underlying the deconstruction of traditional religious uniformity: it is a situation that, until few years ago, was in fact unexpected and unimaginable. As a consequence, the relationship between State and religion through the principle of secularism is becoming increasingly difficult and, at times, harshly contested.

In this sense, we have to distinguish bilateral legislation from the 1929 unilateral Act (no. 1159). The former is based on both Lateran Pacts (regulating the relationship between State and Catholic Church, as stated by Article 7 of the Italian Constitution) and agreements called *intese* (regulating the relationship between State and denominations other than Catholicism, as established by Article 8.3 of the Italian Constitution). The latter refers to the place and the role of confessions other than Catholicism that have not signed the *intese* yet. In any case in Italy the connection State-religions remains substantially tailored on the exigencies and the notion of “traditional creed”. Tending to privilege some religious organizations, especially those referring to the model of Catholicism, neither bilateral legislation nor the 1929 Act can be easily used for regulating “different” (theologically and structurally) denominations; especially those whose presence in Italy is relatively recent.

The questions related to the representatives of denominations other than

Catholicism in the Italian prisons is a clear example of that.

As said before, in accordance with Article 19 of the Constitution, Article 26 of the 1975 Act (no. 354) affirms that detainees have freedom to profess and practice freely their faith. This translates into the fact that in prisons it is ensured the celebration of the Catholic rites and the presence of at least one chaplain. Instead, the situation is different when it comes to detainees believing in confessions other than Catholicism. In cases like these, inmates have the right to receive the assistance of religious ministers who refers to their creeds and celebrate the relative rites, but only upon request and provided that this presence and relative actions are compatible with the public order and do not support behaviour contrary to the well-being of the prison community.

It is important to note that, within the Italian legal system, the expression "religious minister" does not come from the religious terminology. It is a *nomen iuris* that the State's Law uses to define the civil status of some religious figures. At the same time, however, this Law sustains that the recognition of a religious minister is a result of a connection between the State's legal system and the Law of a religion. In other words, the State attaches the civil status of religious minister to those who, within a denomination, are already considered as such.

Thus, so far as the civil notion of religious ministers is concerned, the connection between the State's Law and the Law of a given religion is based on two main features: 1) the autonomy of a denomination in deciding what persons are able to play the specific role of religious minister; 2) the right of the State to formally recognize the status of religious minister, verifying whether a person designated by the spiritual community effectively exercises activities that, within this community, distinguish him from other "normal" believers. Besides, any community with religious aims can operate within the Italian legal system, without authorization or prior registration. The constitutional source and foundation of this principle are essentially based on Article 19 in combination with Article 8.1 of the Italian Constitution.

This may explain the content of Article 58 of the 2000 Presidential Decree

(no. 230), which affirms that in the cases related to denominations other that Catholicism, the direction of the prison should use ministers of those confessions whose relationships with the State are either regulated by the *intese* or specified by the Ministry of the Interior. Alternatively, in prison the presence of religious ministers other than chaplains may be authorized under Article 17 of the 1975 Act (no. 354), through which those ministers may be included among social operators who promote and empower rehabilitation of inmates and their reintegration back into society – thus reducing the risks of poverty and social exclusion. In sum, the absence of an agreement (*intesa*) between the Italian State and some religious denominations cannot affect the right of inmates to worship freely. In this manner, the issue stresses the question related to the presence and the role of religious ministers of different *nomoi* groups within the prisoner population.

3. ***Regulations Concerning Religious Practice and Religious Freedom (Meals, Prayers, Visits…)***

It is important to note that the data made available (and updated to 2014) by the Italian Ministry of Justice shows the following distribution: the Jehovah's Witnesses are in 53 penal institutions; Islamic organizations in 33 institutions; Orthodox Churches in 19 institutions; Evangelicals in 16 institutions; Buddhists in 14 institutions; Jews in 5 institutions; Adventist Church in 3 institutions; Christian Catholic and Apostolic Church in 2 institutions; Evangelical Pentecostal Church in 2 institutions; Assemblies of God in Italy in 1 institution; Waldensian Church in 1 institution; Confessions not specified in 14 institutions.

It remains that religion is one of the most solid pillars of the treatment of inmates in Italy. This is all the more true when comparing the current legislation regulating the penal institutions with the previous rules that, for example, establish the obligation for detainees to attend the Mass and other Catholic rites, with the exception only of those professing other creeds. After the 1948 Constitution entered into force, the relation

between prison and religion in Italy changed (at least from the legal point of view) completely.

In matter of religion, the 1948 constitutional principles are in fact based on the imperative balance between the "universal" need for a peaceful coexistence among different viewpoints and the equal protection of "specific" religious needs and rights: not only the rights of an religious group to be different *from* other denominations, but also the fundamental rights of all person *within* both the State's legal system and given religious communities.

In prison the impact of these rights is more evident by the fact that even an inmate subjected to isolation during the investigation (the so-called provisional/pre-trial detention) should receive assistance from either Catholic chaplains or religious ministers of denominations other than Catholicism. This example is important because it highlights the crucial need to affirm a constitutional balance between the right and the interest of inmates (awaiting trial under precarious conditions of detention) to exercise his/her religious beliefs and the State's right and interests to prevent anyone from tampering with the evidence of the related case. By virtue of the special protection given to religion, the measure of solitary confinement cannot affect the inmates' religious freedom, which implies a possibility to meet with a religious minister. A detainee can be prevented from exercising this right only on the basis of specific reasons; such as the risk of changing significantly the probative picture, as delineated by the investigation.

The inmates' freedom of religion also plays a key role in matter of alimentation. In this case we should remember that food is a construct (a combination) of significations and communication. Talking about food requires looking at it as a network of community's "grammar", which holds people together. Food is not only a collection of products that can be used for statistical or nutritional studies. It is also, and at the same time, a system of symbols and images, a protocol of usages, situations and behaviours. Foodways – which includes the beliefs and behaviour surrounding the production, distribution, and consumption of food –

could in fact be seen as narrative performances of how society constructs notions of itself and its relationship with the world. Therefore, food may also involve a belief in spiritual, invisible and transcendent entities. In brief, it can infer religion. Moreover, given that food is a fundamental part of our culture, and since religion is one of the great cultural constructs of human society, we can deduce that not only food and religion are very often strictly interconnected, but also that in many parts of the world religion is the most important tool for affirming rules concerning alimentation.

With regard to the prison system, it should first be noted that in Italy there is no legal rule regulating the nutritional regime. However, the jurisprudence of the Constitutional court and the Court of Cassation has affirmed that the respect for specific diets should be considered a direct expression of religious freedom. For this reason, inmates should be able to access to food in conformity with their own religious convictions. In other words, the Italian penitentiary system shall be organized, as far as possible, in order to allow detainees to practice their religion and follow their beliefs, which implies to feed themselves on the basis of some religious rules.

Nonetheless, in Italy these principles remain routinely unimplemented. Even though in the last 40 years the religious geography of prisoner population has changed dramatically, in relation to food the penitentiary system is still dominated by the traditional view. This system continues working as though the foreign inmates were all Catholics; when, on the contrary, most of them are believers of other confessions. They are, for example, Muslims that, as such, would feed in conformity with their own religious (Islamic) principles; what, given the current situation, is almost impossible. From here stem some critical situations that aliment anxiety, apprehension, discomfort, and religious conflicts.

These are in fact the kind of circumstances that lead us to focus the attention on the questions related specifically to Muslim inmates.

4. *The "Problems" Related to Muslim Inmates*

To this respect it should be first noted that in Italy at least 35% of inmates come from Muslim-majority Countries, and one in four prisons has a prayer area set aside for them. The 2013 report made by the Italian Ministry of Justice titled "Mosques in Prison Institutions" (*Le Moschee negli istituti di pena*) affirmed that of the 64,760 detainees, approximately 23,000 were foreign, and 13,500 of them came from Muslim-majority States, mostly Morocco and Tunisia. Many of them had been convicted of (or were pre-trial detainees for) drug dealing, theft, falsifying documents and resisting arrest. Of these persons, just under 9,000 were observant Muslims, including 181 imams or spiritual leaders, and 53 out of 202 prisons surveyed had Mosques set up for them.

In general, in the Italian prisons the significant lack of adequate space leads Muslim inmates to pray in their cells or in the yard. In addition, Italy's chronically overcrowded and underfunded prisons are likely places for religious radicalism to proliferate. In situation like that, extremists can create networks and recruit and radicalize new members, cancelling out attempts at education and rehabilitation, the Report said. While those accused of terrorism are rigorously separated from the rest of the inmates to reduce the risk of radical proselytism, the common prisoner population might also include religious fundamentalists, who would have access to fragile, easily influenced individuals.

This is also because extremists often quote religious texts but tend to have only superficial knowledge of them. So, bringing in educated religious figures, especially if from the same ethnic and linguistic groups, could be effective in refuting extremist views, pointing to more moderate parts of religious texts. It should not be forget that many inmates find religion behind bars. Inmates find solace in religion, which allows them to recreate their communities of origin. It is not by chance that there are an estimated 10 new converts a year within the Italian prisoner populations. These are people with no strong religious beliefs to begin with, but who might find protection and a new social identity in Islam behind bars. For these reasons, expert and scholars call on prison authorities to bring in

moderate *Imams*, supposed to be capable of working on de-radicalizing the most extremist prisoners.

Having said that, it should be also noted that in the Islamic tradition *Imam* is neither a priests nor a clergyman who, in the Catholic milieus, are purposely "consecrated" to the role of religious ministers. Instead, *Imams* are selected at the local level: generally members of an Islamic community choose someone who at this level is considered knowledgeable and wise, who understand the Noble Quran and is able to recite it correctly and nicely. We can therefore argue that – generally – an *Imam* is a respected member of Muslim organizations.

About his nomination, in some communities a Muslim may be recruited and hired to be an *Imam* after undergone special trainings. In other *Imams* are chosen from among the existing members of an Islamic denomination without any specific training program. Besides, there is no universal governing body to supervise *Imams*. This is done at the community level.

This may explain why in Italy, as religious ministers, *Imams* are almost all self-taught people. By this also explains the fact that in Italy there is no list of *Imams* and other Muslim representatives. Thus, to remedy a lack of the list referring to Islamic authorities, the Ministry of Justice's Circulars of 6 May 1997 (no. 5354554) and 2 January 2002 (no. 508110) have established a specific procedure, in order to make an applicant capable of entering an Italian prison and guarantying the freedom of religion of Muslim inmates. This procedure gives representatives from Muslim communities a possibility to communicate to Ministry of Interior and the General Directorate for Prisoners and Treatment (*Direzione generale dei detenuti e del trattamento*) the groups they belong to, their role within these groups, and the Mosque of reference. After verification of the documents presented, the General Directorate decides whether or not to authorize the application.

In any case, Italy's prisons currently dispose of a modest team providing spiritual guidance for inmates made up of *Imams*, cultural mediators and volunteers. Prison authorities must work on a project with the most recognised Islamic organizations in Italy, in order to license more *Imams*

who may work with Muslim inmates.

5. **Conclusion**

The prison community is the outcome of what the inmates create. It is a cultural life, which is not straightforwardly given by the disciplinary setting of the institution; it can actually stand in opposition to it. However, commonalities develop among detainees calls symbiosis and, in Italy, a certain perception of religion comes from the common experience of the prison chaplaincy. This is also because the established chaplaincy is considered as contributing to the process of rehabilitation and integration. Here the reason why, despite the denominational differences, the State sees the Catholic Church as an indispensable partner for accomplishing its task of rehabilitation in prisons. The fact is that, on the one hand, Italy has failed to significantly reduce overcrowding in its prisons and, on the other, inmates increasingly belong to other religions than that of the chaplains.

While almost nowhere the life conditions in jail respect human dignity, Italy's prisons currently dispose of a modest team providing spiritual guidance for inmates belonging creeds other than Catholicism. This situation is not only in contrast with the constitutional-supranational principles, including those referring to basic human rights. This also makes Italy's prisons places for cultural conflicts and religious radicalism to proliferate.

In the end of the day, that is the result of a policy through which the State's prisons leave detainees in inhuman conditions, in much worse conditions than when they entered.