



Francesco Alicino

(professore a contratto di Diritto pubblico delle religioni presso l'Università degli Studi LUM "Jean Monnet" di Casamassima, Facoltà di Giurisprudenza)

Imams and other Religious Authorities in Italy *

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1 – Introduction

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 that produces paradoxes stressing the issue of secularism - the *principio supremo di laicità*, as the Italian Constitutional Court calls it¹. Italy is witnessing the deconstruction of traditional religious uniformity², experiencing a situation that, until few years ago, was unexpected and unimaginable³. This phenomenon is – among other things – leading to an increasing blurring of the line between the public and the private sphere: religious creeds are becoming more and more deprivatized, seeking greater role in

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¹ See, for example, Corte costituzionale, Decisions: no. 203 of 1989; no. 467 of 1991; no. 149 of 1995, no. 235 of 1997; no. 239 of 1997, no. 507 of 2000; no. 508 of 2000; no. 389 of 2004; no. 467 of 1991; no. 168 of 2005; no. 102 of 2008.

² N. COLAIANNI, *Diritto pubblico delle religioni, Eguaglianze e differenze nello Stato costituzionale*, il Mulino, Bologna, 2012, p. 137.

³ E. PACE, *Introduzione*, in *Le religioni nell'Italia che cambia. Mappe e bussole*, ed. by E. Pace, Carocci, Roma, 2013, p. 9. See also C. GALLI, *L'umanità multiculturale*, il Mulino, Bologna, 2008, p. 7.



the public space as well as the political arena⁴. As a result, the relationship, or we would better say the “connection”⁵, between State and religion through the principle of secularism is becoming increasingly difficult and, at times, harshly contested⁶.

Based on either the bilateral legislation⁷ or the 1929 Act (n. 1159) on “admitted religions” (which follows the approach of confessional State), the Italian law regulating the connection State-religions remains substantially tailored on the exigencies and the notion of “traditional creed” that, in turn, is mainly based on the model of Catholic Church’s organization⁸. As a consequence, from this point of view, the Italian secularism is a limited secularism or, as some have said, a “baptised laicità”⁹.

Tending to privilege some religious organizations, especially those referring to the model of Catholicism¹⁰, this limited secularism cannot be easily used for regulating “different” (theologically and structurally) denominations. The questions related to Islamic *nomoi* groups¹¹ are clear

⁴ **A. SHACHAR**, *Privatizing Diversity: A Cautionary Tale from Religious Arbitration in Family Law*, in *Theoretical Inquiries in Law*, 2008, no. 9, p. 573; **A. SHACHAR**, *Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies*, in *McGill Law Journal*, 2005, no. 49, p. 50.

⁵ **T. MODOOD**, *State-Religion Connexions and Multicultural Citizenship*, in *Post-Secularism?*, ed. by J. Cohen, C. Laborde, Columbia University Press, New York (forthcoming).

⁶ See **S. FERRARI**, *Lo statuto giuridico dell’Islam in Europa occidentale*, in *Islam e Europa. I simboli religiosi nei diritti del Vecchio continente*, ed. by E. Pace, Part I, Carocci, Roma, p. 30.

⁷ As established by Articles 7 (section 1) and 8 (section 3) of the 1948 Italian Constitution.

⁸ On the notion of “legal traditions”, including those referring to religions (in general) and Islam (in particular) see **P.H. GLENN**, *Legal Tradition of the World*, Oxford University Press, Oxford, 2014, pp. 60-97 and pp. 180-235. On the relationship between tradition and religions in the Christian and Islamic contexts see **I.R. NETTON**, *Islam, Christianity and Tradition. A comparative Exploration*, Edinburgh University Press, Edinburgh, 2006, p. 154.

⁹ **A. FERRARI**, *De la politique à la technique: laïcité narrative et laïcité du droit. Pour une comparaison France/Italie*, in *Le droit ecclésiastique en Europe et à ses marges (XVIII-XX siècles)*, ed. by B. Basdevant Gaudemet, F. Jankowiak, Leuven, Peeters, 2009, p. 333.

¹⁰ Cf. **O. GIACCHI**, *Posizione della Chiesa cattolica e sistema concordatario*, in *Individuo, gruppi, confessioni religiose nello Stato democratico*, Atti del Convegno nazionale di Diritto ecclesiastico, Siena 30 novembre-2 dicembre 1972, Giuffrè, Milano, 1973, p. 791; **G. DALLA TORRE**, *Il fattore religioso nella Costituzione. Analisi e interpretazioni*, Giappichelli, Torino, 1995, pp. 28-29.

¹¹ **A. SHACHAR**, *The Puzzle of Interlocking Power Hierarchies: Sharing the Pieces of Jurisdictional Authority*, in *Harvard Civil Rights – Civil Liberties Law Review*, 2000, vol. 35, n. 2, p. 394; **S. BENHABIB**, *The Claims of Culture: Equality and Diversity in the Global Era*, Princeton University Press, Princeton, 2002, p. 120.



examples of that. With this essay I will focus the attention over some of these questions, in particular on the role and the status of *imams*, which will be analysed in the lights of the role and status of religious ministers of other main denominations. This comparative perspective will underline how in relation to *imam* the Italian public actors regulate the connection between the State's and the law of an Islamic organization, also considering the secular constitutional principles.

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

2 – The Relationship State-Confessions and Religious Ministers

In Italy there is a long and well-established tradition referring to the connection between the State and religions, which has been strongly influenced by the specific role played by the Catholic Church in this field.

This was evident since Italy, as the independent State, was established in the second half of nineteenth century. Suffice to say that the choice in 1871 of Rome as capital of the new-born State exacerbated the tensions between these two parties, underling the "Roman question"; which is a synthetic formula indicating the political, economic and even religious contrast between State and the Holy See after the Italy reached its long-awaited independence¹². The fact that the independence and the unification of Italy was attained by destroying the secular power of Popes generated the hostility of the Catholic Church hierarchy towards the new State, although the predominantly moderate policy of the Italian Kingdom made the relations with the Catholic authorities progressively less tense¹³. Within this context, the historical turning point was represented by the

¹² F. MARGIOTTA BROGLIO, *Italia e Santa Sede dalla grande guerra alla conciliazione*, Laterza, Bari-Roma, 1966; R. PERTICI, *Chiesa e Stato in Italia. Dalla Grande Guerra al nuovo Concordato. Dibattiti storici in Parlamento*, il Mulino, Bologna, 2009.

¹³ A. FERRARI, *The Italian Accommodations. Liberal State and Religious freedom in the "Long Century"*, in *L'État canadien et la diversité culturelle et religieuse 1800-1914*, ed. by L. Derocher, C. Gélinas, S. Lebel-Grenier, P. C. Noël, Presses de l'Université du Québec, Québec, 2009, pp. 143-153.



1929 Lateran Pacts, which was considered a law framework for reconciling the two parties, Catholicism and the State¹⁴.

While rebuilding the relation State-Catholic Church, the 1929 Pacts profoundly changed both the Italian society and State's law, especially in terms of legislation regulating freedom of religion, which implies the freedom (i.e. autonomy) of religious organizations. In particular, since the Pacts were approved, in Italy the State has been considered "secular", but only in a relative sense of the term. On the one hand, the Lateran Pact established a pro-active role for Catholic Church in affirming the State's legislation regulating the individual rights, especially those related with religion. On the other, the Pacts established a specific model of collaboration¹⁵ State-Church(es) that, after the 1948 republican Constitution entered into force, was partially extended to denominations other than Catholicism¹⁶.

The most important results of this peculiar system were imprinted in Articles 7 and 8 of the Italian Constitution¹⁷ that, giving the special relevance of the traditional approach in matter of relationship State-Church, yet again underlines the historical bonds between the Italian State and Catholicism.

More specifically, Article 7 is devoted to the relationships between the State and the Catholic Church, which organization and structure is considered as an "Italian prototype" of religious denomination¹⁸. So, the first section of Article 7 establishes the mutual independence and sovereignty of both the State and the Church. At the same time, though, the second section of Article 8 states a similar (albeit less "strong") principle guarantying the free organization of denominations other than

¹⁴ See, among others, **F. RUFFINI**, *Corso di diritto ecclesiastico. La libertà religiosa come diritto pubblico subiettivo*, F.lli Bocca, Torino, 1924; **A.C. JEMOLO**, *Chiesa e Stato negli ultimi cento anni*, Einaudi, Torino, 1971.

¹⁵ **P. FLORIS**, *Laicità e collaborazione a livello locale. Gli equilibri tra fonti centrali e periferiche nella disciplina del fenomeno religioso*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (www.statoechiese.it), February 2010.

¹⁶ **C. CARDIA**, *Concordato, intese, laicità dello Stato*, in *Quaderni di diritto e politica ecclesiastica*, 2004, no. 1, p. 30; **N. COLAIANNI**, *Confessioni religiose e intese*, Cacucci, Bari, 1990, p. 97.

¹⁷ Devoted to the relationships between the State and religious denominations, these Articles are included among the "Fundamental principles" (Articles 1-12) of the Italian Constitutions and, consequently, commonly held as unchangeable. On the contrary, Articles 19 and 20 of the same Constitution deal with freedom of religion as an individual right (not necessarily connected with its institutional-collective dimension). They are placed in the part of the Constitution concerning the "Civil relations" (Articles 13-28).

¹⁸ **N. COLAIANNI**, *Diritto pubblico delle religioni*, cit., p. 137.



Catholicism. Then, the second section of Article 7 affirms that the relationship between the State and the Catholic Church is “regulated by the Lateran Pacts” and that any change to these Pacts, when accepted by both parties, “does not require the procedure of constitutional amendments”; this means that, when there is a bilateral agreement, a legislative – not constitutional – act is sufficient in order to amend the 1929 Pacts and regulate the connection between the State and Catholicism. To this respect it is also important the third section of Article 8, which affirms that relationship between minority religions and the State is regulated by legislation. But these legislative acts must be based on specific agreements called “*intese*”, which literally can be translated into “arrangement” (between State and denominations) on the specific needs concerning confessions¹⁹.

In other words, both the second section of Article 7 and the third section of Article 8 establish the “bilateralism principle”, which is a direct consequence of the religious autonomy, as stated in the first and the second sections of these Articles²⁰.

This bilateralism principle requires the State to regulate questions related with the specific needs and the peculiar identity of a denomination through the agreements with the relative religious authorities. Once they have been signed by the Prime Minister and the representative of religious organizations, both Accord (Article 7, section 2) and *intese* (Article 8, section 3) need to be ratified (Accord) or approved (*intese*) by a legislative act of the Italian Parliament. This act is an atypical legislation because, once approved, it can be amended only on the basis of a new agreement between the State and the denominations concerned: no amendment based on a unilateral legislation made up by the Parliament is possible. In this way, the Catholic Church and some other denominations (those that have signed an *intesa*) have the guarantee that their legal status cannot be altered without considering their will²¹.

Now, this “bilateralism system” produces two main problems. First, it presupposes a relatively comprehensive religious institution

¹⁹ G. CASUSCELLI, *La rappresentanza e l'intesa*, in *Islam in Europa/Islam in Italia tra diritto e società*, ed. by A. Ferrari, il Mulino, Bologna, 2008, p. 304.

²⁰ G. BOUCHARD, *Concordato e intese, ovvero un pluralismo imperfetto*, in *Quaderni di diritto e politica ecclesiastica*, 2004, no. 1, pp. 70-71; G.B. VARNIER, *La prospettiva pattizia*, in *Principio pattizio e realtà religiose minoritarie*, ed. by V. Parlato, G.B. Varnier, Giappichelli, Torino, 1995, pp. 8-13.

²¹ S. FERRARI, *Il Concordato salvato dagli infedeli*, in *Studi per la sistemazione delle fonti in materia ecclesiastica*, ed. by V. Tozzi, Edisud, Salerno, 1993, p. 127.



capable of representing a denomination at the national level; this is a requirement that proved to be problematic for some religions, starting from Islam(s)²². The second problem is generated by the excessive amount of discretion, which the Government possesses, in deciding whether to accept or reject the proposal of a denomination to enter into negotiations for concluding an agreement²³. Besides, these problems are emphasized by the principle stated in the first section of Article 8, under which “all religious denominations are equally free before the law”. Thus, this principle implies that, in respect to the previous (fascist) regime, there can no longer be unreasonable (non-constitutional based) distinction between not only the Catholic Church and other denominations, but also between the minority religions that have signed an *intesa* and those that does not posses any accord yet²⁴.

As a matter of constitutional principles, the absence of an *intesa* cannot affect the right of a religious group and the relative members to worship freely; what is also stated by Articles 19 and, above all, 20 of the Constitution, where it is clearly affirmed that the religious character or the religious aim of some associations or institutions cannot justify neither special legal limitations nor greater fiscal tax for their constitution, their status or any of their activities²⁵.

Yet, the practical implementation of all these constitutional principles has revealed many interconnected difficulties.

²² **C. DECARO BONELLA**, *Le questioni aperte: contesti e metodo*, in *Tradizioni religiose e tradizioni costituzionali. L'islam e l'Occidente*, ed. by C. Decaro Bonella, Carocci, Roma, 2013, p. 34.

²³ In fact, so far as the relationship State-confessions is concerned, the legislative Act no. 400 of 1988 attributes the general competence the Council of Ministers. Besides, the Legislative Decree no. 300 of 1999 gives some specific competences to the Ministry of Interior, such as those referring to the “guarantee of the order and public safety “and the “guarantee of the civil rights, including those of religious confessions, of citizenship, immigration and asylum”.

²⁴ **V. TOZZI**, *Le confessioni religiose senza intesa non esistono*, in *Aequitas sive Deus. Studi in onore di Rinaldo Bertolino*, Giappichelli, Torino, 2011, p. 1033.

²⁵ **F. FINOCCHIARO**, *Diritto ecclesiastico*, updated by A. Bettetini, G. Lo Castro, Zanichelli, Bologna, 2012, p. 229; **A. BETTETINI**, *Commento all'art. 20 Cost.*, in *Commentario alla Costituzione*, ed. by R. Bifulco, A. Celotto, M. Olivetti, UTET, Torino, 2006, vol. I, p. 441; **M. RICCA**, *Art. 20 della Costituzione ed enti religiosi: anamnesi e prognosi di una norma “non inutile”*, in *Studi in onore di Francesco Finocchiaro*, CEDAM, Padova, 2000, p. 1557; **P. DI MARZIO**, *L'art. 20 della Costituzione. Interpretazione analitica e sistematica*, Giappichelli, Torino, 1999, p. 12; **S. FIORENTINO**, *Gli enti ecclesiastici e il divieto di discriminazione*, in *Nozioni di diritto ecclesiastico*, ed. by G. Casuscelli, Giappichelli, Torino, 2006, p. 57.



2.1 – The “Common” Legislation of *intese* and the 1929 Act

One of these difficulties is due to the fact that agreements of both Article 7 (section 2) and Article 8 (section 3) are used by the State to concede a set of rights or benefits. In this way, questions related with the principle of religious freedom – principle that is due to be equally recognised to all religions and that, as such, is normally regulated by general legislations – become matter of specific accords subject to the will of the public actors; starting from the Italian Government which, as said, has great discretion on that, especially in relation of the section 3 of Article 8, where the instrument of *intese* is stated.

In addition, in the last thirty years the practical implementation this section 3 has been characterized by the phenomenon of “photocopy agreements” (*intese fotocopia*), that is to say by the substantial similarity of all *intese* (twelve)²⁶ that have been signed by minority religions until now. As a result, approved by the Parliament, the large majority of these agreements have established a *de facto* “common legislation”, which is far from being considered “general legislation”²⁷: it is common to all religious denomination that have an agreement with the State; but the provisions of this legislation cannot be applied to other denominations that have not signed an *intesa* yet²⁸. Here is the reason why minority religions see the *intesa* more as an instrument of political legitimation than as a legal opportunity to express their specific needs and their religious identity in the Italian legal system. Which also explains why that common legislation has given rise to a rush to subscribe the *intese*²⁹.

For all these reasons, the absence of any procedure regulating the negotiations State-confessions can turn the discretionary of the Government in this matter into unreasonable (non-constitutional based) discrimination towards religious denominations that are excluded from the system of common legislation, based on the mentioned photocopy agreements phenomenon. These denominations are in fact regulated by

²⁶ See http://www.governo.it/Presidenza/USRI/confessioni/intese_indice.html.

²⁷ V. CRISAFULLI, voce *Fonti del diritto (dir. cost.)*, in *Enc. dir.*, 1968, p. 948. M. RICCA, *Legge e Intesa con le confessioni religiose: sul dualismo tipicità-atipicità nella dinamica delle fonti*, Giappichelli, Torino, 1996, p. 25; F. CARNELUTTI, *Teoria generale del diritto*, Soc. ed. del Foro italiano, Roma, 1951, p. 42.

²⁸ B. RANDAZZO, *Diversi ed eguali. Le confessioni religiose davanti alla legge*, Giuffrè, Milano, 2008, p. 21.

²⁹ See F. ALICINO, *La legislazione sulla base di intesa. I test delle religioni “altre” e degli ateismi*, Cacucci, Bari, 2013, pp. 93-108.



the 1929 Act (no. 1159) on “admitted religions” that, approved during the fascist regime, legitimize an even greater discretionary power of the Minister of Interior³⁰; so that these denominations are excluded from the more favourable provisions of legislation based on agreement between the State and some confessions. This is more evident by the fact that denominations possessing an agreement are no longer subject to the 1929 Act, whose provision are in effect entirely replaced by the far more favourable provisions stated in the legislation that approves an *intesa*.

To this regard we must remember that the 1929 Act was designed to regulate the “traditional” denominations other than Catholicism. These are minority denominations whose notion was based on the “religious geography”³¹ of the first half of twenty century; a geography that, under the pressing process of immigration and the elusive phenomenon of globalization³², has now completely modified³³. And this explains why the provisions of the 1929 Act do not always meet the needs³⁴ of those denominations whose presence in Italy is relatively recent³⁵. That is the case of Islamic organizations and theirs specific religious ministers, normally called *imams*³⁶.

2.2 – State’s Law and Religious Ministers

³⁰ According to the 1929 Act, the Minister of Interior will take into consideration the assets of the denominations or religious entity that claims recognition. For example, It will take into account the number of the claimants’ members and how widespread they are in the country; the compatibility between the claimants’ statute and the main principles of the Italian legal system; the aim of the denomination that claim to be recognised by the State, an aim that has to be “prevalently” of religion and cult.

³¹ **R. MAZZOLA**, *Laicità e spazi urbani. Il fenomeno religioso tra governo municipale e giustizia amministrativa*, in *Stato, Chiese e pluralismo confessionale*, cit., March 2010, where the Author explains the impact of a multicultural-multireligious society over the “physical geography of the secularism principle” (*geografia fisica della laicità*).

³² **M.R. FERRARESE**, *Prima lezione sul diritto globale*, Laterza, Bari-Roma, 2012; **M.R. FERRARESE**, *Il costituzionalismo globale tra “non luogo” e “dislocazione”*, in *Diritto pubblico comparato ed europeo*, 2013, II, p. 440.

³³ **J. LAURENCE**, *Managing transnational Islam: Muslims and the state in Western Europe*, in *Immigration and the Transformation of Europe*, ed. by A. Craig Parsons, M. Timothy Smeeding, Cambridge University Press, Cambridge, 2006, pp. 252-273.

³⁴ **V. AHMAD ‘ABD AL WALIYY**, *L’Islam e lo Stato in Italia*, in *L’Islam in Europa. Tra Passato e futuro*, ed. by S. Di Bella, D. Tommasello, Luigi Pellegrini, Cosenza, 2003, p. 33.

³⁵ **S. ALLIEVI**, *Immagini di un Islam plurale*, in *Humanitas* 55, 2000, 6, pp. 858-873.

³⁶ **J. LAURENCE**, *Knocking on Europe’s Door: Islam in Italy*, in *Center on the United States and Europe*, February 2006.



It is important to remember that, in relation to the civil status of religious ministers, there is a substantial difference between the provisions stated by the legislation coming from the bilateral (State-religions) agreement and the provision established by the 1929 Act. That bilateral legislation makes possible an automatic recognition of religious ministers, to whom some important rights and civil benefits are granted simply because they exercise specific functions within a given denomination and in accordance with a corresponding religious law³⁷.

This is evident when considering the legislation ratifying the agreement State-Catholic Church, as the 1985 Act (no. 121) that, in fact, ratified the 1984 agreement of "Villa Madama" between the Holy See and the Italian Republic, modifying almost entirely the 1929 Lateran Pacts. In this agreement it is stated that the "appointments to ecclesiastical offices are wholly made by ecclesiastical authorities". Which means that, in order to be recognised as religious ministers in the Italian legal system, those authorities must only "inform the competent civil authorities of the appointments of Archbishops and diocesan Bishops, of Coadjutors, of Abbots and Prelates with territorial jurisdiction, including parish and other official appointments to ecclesiastical offices relevant to State administration" (Article 3, §§ 2-3).

But that substantial difference is also affirmed through the bilateral legislation based on *intese* signed and approved until now; a legislation that, in respect to religious ministers, affirms very similar provisions to those stated in the 1984 Accord State-Catholic Church. That is the case of Lutheran pastors, Evangelical ministers, Orthodox priests, Jewish clergies and even Buddhist masters; what in the language of the *intese* are all called *ministri di culto*, which can be translated into "ministers of religion" or "religious ministers".

These are clear demonstrations of the fact that in both the 1984 Agreement State-Catholic Church and the "common legislation" based on *intese* the principal reference for recognising the civil status of a religious minister is the law of a corresponding denomination, rather than the State's law: in this matter, the latter (State's law) simply refers to the former (religious law). In practice, once a person has been defined and recognised as minister by and within a religious community, this same person is a religious minister for the State too. In brief, so far as the status of religious minister is concerned, the rules that govern the internal

³⁷ S. FERRARI, *Diritto e religioni*, in *Introduzione al diritto comparato delle religioni. Ebraismo, islam e induismo*, ed. by S. Ferrari, il Mulino, Bologna, 2008, p. 9.



activities of religious groups have almost automatically civil effects within the Italian legal system.

On the contrary, under the 1929 Act, even though a denomination is recognised by the State, a religious minister can have a civil status only after the public authority has formally recognised and appointed him. In particular, the religious minister in himself must in this case submit a specific request to the Italian Minister of Interior, which is due to control that the claimant meets the criteria established by Article 3 of the 1929 Act and by the relative Royal decree of 1930 (no. 289)³⁸. In order to be recognised as religious minister by the State, the request must in particular contain: 1) the religious act through which the minister was appointed by the religious authorities; 2) the documents showing that the designation was made in accordance with the religious rules of the denomination concerned; 3) the documents affirming that the religious minister is an Italian citizen, especially when he is due to celebrate religious marriages with civil effects. In addition, the claimant must demonstrate to speak Italian, giving all further and necessary information for a correct and complete “legal enquiry”. Without the governmental approbation, no civil effect can be recognized to the acts made by ministers of a given denomination.

It is important to note that most of these criteria are especially intended on the basis of Catholicism, whose hierarchical structure is built around a “Church”, in the Christian sense of the term. Because of the central role of a pastor or priest, in this case it is assumed that those who perform religious rites also represent the religion. This is an idea that, conceived as general principle, has become the principal reference in defining the “religious minister” of all confessions, including denominations other than Catholicism. Which is also evident by the fact that in this field the above mentioned 1984 agreement of Villa Madama was henceforth followed by all agreements (*intese*) between the State and some other confessions³⁹. We must in fact remember that from the first

³⁸ Regio Decreto 28 febbraio 1930, n. 289 , Norme per l'attuazione della legge 24 giugno 1929, n. 1159, sui culti ammessi nello Stato e per il coordinamento di essa con le altre leggi dello Stato.

³⁹ See in particular the six agreements (*intese*) that were signed (from 1984 to 1993) by: the Waldensian Protestant Church in 1984 (approved by the Act 11 August 1984, n. 449); the Christian Churches of the Seventh-day Adventists in 1986 (approved by the Act 22 November 1988, n. 516); the Assemblies of God, a Pentecostal Church, in 1986 (approved by the Act 2 November 1988, n. 517); the Union of Jewish Communities in 1987 (approved by the Act 8 March 1989, n. 101); the Christian Evangelical-Baptist Union in 1993 (approved by the Act 2 April 1995, n. 116); the Lutheran Church in 1993 (approved by the Act 29 November 1995, n. 520).



intesa signed by the Waldesian Protestant Church stemmed the mentioned phenomena of both “photocopy agreements” and “common legislation”⁴⁰.

So, it is not without a reason that when this bilateral-common legislation was extended (in 2012) to some “very new” religious organizations – which more than others mark their difference from the Catholic Church – the provision regulating the civil status of religious ministers generated very complex judicial disputes. The example is given by the agreement between the State and the Italian Buddhist Union (*Unione Buddhista Italiana* – UBI)⁴¹, whose provisions has produced intricate legal paradoxes, alimented by the “strange relationship” between that common legislation based on *intese* and 1929 Act on admitted religions.

In particular, with the aim to celebrate religious marriage with civil effects, on 9 June 2009 two *dharma* masters of the Temple of Shôbôzan Fudenjim, a Buddhists organization that is member of the UBI, requested to be recognised by the State’s authority. In accordance to the provisions of the 1929 Act and after a long administrative dispute⁴², in January 2013 the Italian Minister of Interior appointed these *dharms* as religious ministers. But, twenty days later an *intesa* between the State and the UBI association entered into force, replacing the 1929 Act that, in respect to all member of that association, could no longer produce legal effects⁴³. This means that the *dharma* masters were not any more considered religious minister under the 1929 Act. In any case, though, they could acquire the status of religious ministry by the norms of the 2013 agreement: it seemed, then, that from the *dharma*’s point of view it did not matter at all whether or not the 1929 Act was effective. However, that was not the case.

⁴⁰ G. CASUSCELLI, *L’intesa con la Tavola valdese*, in *Concordato e Costituzione. Gli accordi del 1984 tra Italia e Santa Sede*, ed. by S. Ferrari, il Mulino, Bologna, 1985, p. 235; P.A. D’AVACK, *Intese II) Profili generali*, in *Enc. giur.*, Roma, XVII, 1989, p. 3; C. MIRABELLI, *Osservazioni intermedie sulle intese tra Stato e confessioni religiose in forma pattizia*, in *Le intese tra Stato e confessioni religiose. Problemi e prospettive*, ed. by Giuffrè, Milano, 1978, p. 217.

⁴¹ The UBI is a religious and worship corporation, which also performs cultural and charity activities, and does not represent any specific Buddhist school, but aims to sustain the whole Italian Buddhist movement, respecting all the tradition of the doctrine with all its branches. The UBI gathers and assists different Italian Buddhist groups, promotes their initiatives focused to spread the teachings and practices of Buddhist doctrine, and sustains their mutual collaboration.

⁴² TAR del Lazio, decisions no. 4544 of 2012 e no. 4889 of 2012.

⁴³ See the Act 31 December 2012, n. 245, which approved the agreement (*intesa*) between the State and UBI signed the April 4th, 2007.



The 2013 *intesa* is the agreement State-confessions that does not provide any rule regulating the religious marriage with civil effect; which, as said before, is the main (if not the only) reason for two *dharma* masters want to be appointed by the State. Therefore, since the 2013 agreement entered into force, the marriage celebrated by those masters can no longer have any civil effects; unless the Temple of Shôbôzan Fudenji chooses not to be part of the UBI association and to re-submit itself and its members to the less favourable provisions of the 1929 Act.

Whatever will be the choice, this example are quite revealing that, so far as the civil status of religious ministers is concerned, the Italian legislation regulating the connection State-confessions does not always meet the needs of “new” (i.e very different) denominations, within which both the model of traditional Church and the notion of religious minister rarely have corresponding components⁴⁴. That seems to be more manifest in relation to the civil status of Muslims *imams*.

To this specific regard, before jumping on quick conclusions, we must understand what the notion of religious ministers legally implies. That will give the possibility to analyse the figure of Islamic *imam* in the light of the civil definition of religious minister, clarifying whether, how, and when an *imam* could be considered a religious minister with a recognising civil status.

3 – *Imam* in Italy. Is that a Religious Minister?

In the Italian law the expression “religious minister” indicates a legal status that is recognised to those persons who, regardless for their specific functions, within a given denomination plays a different role in respect to other “normal” believers⁴⁵. Therefore, the expression “religious minister”

⁴⁴ As I tried to demonstrate in F. ALICINO, *Lo strano caso dei ministri di culto buddhisti. Ovvero la legge sui culti ammessi vs la legge di approvazione delle intese*, in *Quaderni di diritto e politica ecclesiastica*, 2013, no. 2, pp. 409-429.

⁴⁵ M. PARISI, *La figura dei ministri di culto acattolici delle confessioni «senza Intesa» Gli orientamenti del Consiglio di Stato tra consistenza numerica dei gruppi religiosi e discrezionalità della Pubblica Amministrazione*, in *Quaderni di diritto e politica ecclesiastica*, 2014, no. 2, p. 373; N. FIORITA, D. MILANI, *Il personale religioso (ministri di culto)*, in *Proposta di riflessione per l’emanazione di una legge generale sulle libertà religiose*, ed. by V. Tozzi, G. Macrì, M. Parisi, Giappichelli, Torino, 2010, p. 228; A. LICASTRO, *Sui requisiti «moralì» per l’approvazione della nomina dei ministri dei «culti ammessi» (osservazioni a TAR Sicilia – Catania, Sez. II, 28 settembre 2007, n. 1505)*, in *Stato, Chiese e pluralismo confessionale*, cit., January 2008, pp. 1-3.



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 affirms that the recognition of a religious minister is a result of a connection between the State's legal system and the law of a religion⁴⁶. In other words, the State attaches the civil status of religion minister to those who, within a denomination, are already considered as such⁴⁷.

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 features⁴⁸:

- 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 religious community effectively exercises activities that, within this community, distinguish him from other "normal" believers⁴⁹.

Taking into serious account all these elements, we can then consider the figure of *imam*, analysing it in the light of the State's law regulating the civil status of religious ministers.

Historically speaking, the figure of *imam* dates the first period of Islam. Specifically *imam* is in this context considered the guide of a community prayer, not only the Friday prayer, but also other prayers made by a group of persons with an *antistes*: a person who, standing in

⁴⁶ D. GRIMM, *Conflicts Between General Laws and Religious Norms*, in *Constitutional Secularism in An Age of Religious Revival*, ed. by S. Mancini, M. Roselfeld, Oxford University Press, Oxford, 2013, p. 3.

⁴⁷ C. CARDIA, *Principi di diritto ecclesiastico. Tradizione europea legislazione italiana*, Giappichelli, Torino, 2010, p. 217. Cf. R. BENIGNI, *La qualifica di «ministro di culto» tra autoreferenzialità confessionale e discrezionalità amministrativa. Le intese del XXI secolo ed i recenti pareri del Consiglio di Stato, nn. 2748/2009 e 561/2012*, in *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, 2012, no. 30, p. 14.

⁴⁸ See Comitato per l'Islam Italiano, *Parere su Imam e formazione*, 31 May, 2011, in http://www1.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/Comitato_Islam_italiano/0054_2011_05_31_comitatoislam.html_746804720.html (last accessed 24 October 2014).

⁴⁹ See F. ONIDA, voce *Ministri di culto*, in *Enc. giur.*, XX, Roma, 1990, p. 6; C. MIRABELLI, *L'appartenenza confessionale*, Cedam, Padova, 1975, p. 359; A. BETTETINI, *Alla ricerca del "ministro di culto. Presente e futuro di una qualifica nella società multireligiosa*, in *Quaderni di diritto e politica ecclesiastica*, 2000, 1, p. 249; A. LICASTRO, *I ministri di culto nell'ordinamento giuridico italiano*, Giuffrè, Milano, 2005, p. 482.



front of other believers⁵⁰, recites some religious formulas and performs typical religious gestures (bows and prostrations)⁵¹. *Imam* is neither a priest nor a clergyman who, in the Christian milieu, are purposely “consecrated” to the role of religious ministers⁵². Instead, imams are selected at the local level⁵³: 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 nicely⁵⁴.

From this point of view 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 trainings⁵⁵. 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.

That may explain why in Italy (likewise in other European Countries), as religious ministers, *imams* are almost all self-taught people. This is underlined by the fact that, most of the times, as citizens *imams* have a precarious job. During the week they normally take care of things other than religion: they perform religious functions in their spare time. To see them working as *imams*, one often must go down in some underground parking or in apartments converted into mosques⁵⁶, where

⁵⁰ “*Imam*” is an Arabic term that literally means “he who is in front”: according to Islamic tradition, *imam* is the person who leads the prayers in front of the community that is aligned in parallel rows. See **Y.S. YAHE PALLAVICINI**, *The Training Programme of Imams in Italy*, in *The Study of Religion and the Training of Muslim Clergy in Europe, Academic and Religious Freedom in the 21st Century*, ed. by W.B. Drees, P. Sjoerd van Koningsveld, Leiden university Press, Leiden, 2008, p. 470.

⁵¹ **W. MADELUNG**, *Imâma*, in *The Encyclopaedia of Islam*, ed. by B. Lewis, V.L. Menage, Ch. Pellat, J. Schacht, Brill-Luzac, Leiden-London, 1986, vol. III (H-IRAM), pp. 1163-1169.

⁵² Cf. **C. CIOTOLA**, *Note in tema di individuazione dei ministri di culto*, in *Diritto e Religioni*, 2007, no. 1, p. 143.

⁵³ **C. CHANTAL SAINT-BLANCAT**, *Imâm e responsabili musulmani in relazione con la società locale*, in *Chiesa e Islam in Italia: esperienze e prospettive di dialogo*, ed. by A. Pacini, Edizioni Paoline, Milano, 2008, pp. 57-82.

⁵⁴ **P. BRANCA**, *Quale Imam per quale Islam*, in *Islam in Europa / Islam in Italia. Tra diritto e società*, cit., pp. 219-231.

⁵⁵ See, for example, **COREIS**, *Statuto degli Imam della Federazione dell'Islam Italiano*, in [http://www.coreis.it/Testi/STATUTO % 20DEGLI % 20IMAM. PDF](http://www.coreis.it/Testi/STATUTO%20DEGLI%20IMAM.PDF) (last accessed 24 October 2014).

⁵⁶ **G. CASUSCELLI**, *Il diritto alla moschea, lo Statuto lombardo e le politiche comunali: le incognite del federalismo*, in *Stato, Chiese e pluralismo confessionale*, cit., September 2009.



there are minaret and other Islamic symbols, but only in either the picture or in the paintings hanging on the wall⁵⁷. Many Islamic communities avoid institutionalizing systematically places of worship and religious actors⁵⁸.

We may say that, at the very end of the day, we know little or almost nothing about *imams* in Italy; what is also due to the fact that Italian law normally do not recognise them neither as religious ministers nor as religious authorities.

As *imams* they play in any case a crucial role in Muslim communities, which all together hold more than two millions believers, the majority of whom are immigrant. And we must remember that many Mosques and the relative imams providing a range of welfare services that strongly affect the integration process of immigrants⁵⁹. This means that imams play an important social role too⁶⁰. All things considered, though, there is no doubt on the fact that the imam's most important function is based on religion⁶¹. From a root meaning "in front of", the imam

"comes to be the leader in prayer, and hence, by extension, the religious-political head of the whole Islamic community, whose God-given task it to lead them in the fulfilment of God's commandments. It is noteworthy that jurist chose this word, rather than the more obvious *khilâfa*, *caliphate*, in their formulations of the qualifications, functions, and duties of the supreme sovereign"⁶².

That proves that all other imam's functions, including the social and political ones, come from (and are based on) his religious authority, even if not recognised and affirmed by the "sacrament"⁶³. An imam is in fact recognised and affirmed through the everyday leadership, whose legitimation derives directly from his religious role⁶⁴.

⁵⁷ E. CASALE, *Islam italiano, cercasi imam*, in *Popoli*, February, 2014.

⁵⁸ K. RHAZZALI, M. EQUIZI, *I musulmani e i loro luoghi di culto*, in *Le religioni nell'Italia che cambia*, cit., pp. 51-52.

⁵⁹ K. RHAZZALI, M. EQUIZI, *Islam italiano, cercasi imam*, cit., pp. 46-47.

⁶⁰ M. BOMBARDIERI, *Why Italian Mosques Are Inflaming the Social and Political Debate*, in *Mosques in Europe. Why a Solution Has Become a Problem*, ed. by S. Allievi, Alliance Publishing Trust, London, 2010, p. 269.

⁶¹ G.V. AHMAD, *The History of Islam in Italy*, in *The Other Muslim. Moderate and Secular*, ed. by Z. Baran, Palgrave Macmillan, New York, 2010, pp. 55-57.

⁶² B. LEWIS, *The Political Language of Islam*, Chicago University Press, Chicago-London, 1988, pp. 31-32.

⁶³ Cf. E. PACE, *Sociologia dell'Islam*, Carocci, Roma, 2004, p. 56.

⁶⁴ For a theological analysis of "imam" in respect to *khilâfa* see D. SORDEL, *The Caliphate*, in *The Encyclopaedia of Islam*, cit., pp. 45-47. See also TH.W. ARNOLD, *The*



In sum, so far as Islamic organizations are concerned, the theological absence of any sacred ordination⁶⁵ does not necessary imply the absence of persons capable of managing the sacred rules of Islam: persons who, within an Islamic denomination, have the essential duty to ensure the correct observation of the “transcendental Law” inferring the appropriate interpretation of its provisions⁶⁶. And this is more than enough for taking into consideration the status and role of imams, even from the State’s point of view⁶⁷.

In effect, the real obstacle in this sense is not affirmed by the peculiar figure of imam in respect to the “traditional” – mostly Christian – notion of religious ministers. Quite the contrary, these obstacles are created by the fact that, in Italy, most of the times Islamic communities are not recognised as religious creed. In this manner, there is no possibility to establish an effective connection between the State’s legal system and the law of an Islamic denomination. Which generates two interconnected consequences. On the one hand, the Muslim community cannot fully affirm its autonomy as religious confession. On the other, the State cannot formally recognize the status of *imam* simply because it cannot verify whether persons designated by the religious community for this role are effectively different from the other “normal” believers.

In brief, this situation is alimanted by an incoherent State’s policy on Islam rather than by the structural organization of Islamic organization and the peculiar figure of *imam*.

3.1 – The Connection State-Islamic Organizations

To this respect it is important to precise that any community with religious aims can operate within the Italian legal system, without authorization or prior registration. In this sense, the only limit is based on the protection of public order and common decency.

Despite these restrictions, the Islamic denominations or their legal

Caliphate, Oxford University Press, Oxford (Academic Monograph Reprints), 1999.

⁶⁵ As it is provided by the law of Catholic Church. See, for example, Can. 1024, § 1, of the Code of Canon Law: «A baptized male alone receives sacred ordination validly».

⁶⁶ F. FREGOSI, *Islam, una religione senza clero? Una riflessione comparata*, in *Daimon*, 2003, no. 3, pp. 98-113.

¹² In general, on the questions relation to the relevance of the role and the functions religious ministers within the State’s law see N. COLAIANNI, *Autorità religiose e ministri del sacro. Introduzione al tema*, in *Daimon*, no. 3, 2003, p. 17.



entities may choose among various types of legal capacity. They, for example, may constitute themselves as “non-recognized associations”, in accordance with Article 36-38 of the Italian Civil Code: also used by political parties and trade union organizations, this is the simplest model of association that does not provide particular control from the State’s authorities⁶⁸. According to Articles 14-35 of the Civil Code and the 2000 decree of the President of Italian Republic (no. 361), those entities can also choose the form of “recognized associations”, which provides legal personality through registration at the local Prefecture. The civil capacity of Islamic organization may also be obtained via Article 16 of the “Provisions on law in general” (*Disposizioni sulla legge in generale*) that, based on the principle of reciprocity, may grant foreign Muslim entities the same rights guaranteed to the Italian legal bodies⁶⁹.

However, under all these provisions there is almost no legal difference between an association with no confessional purpose and an Islamic organization that, on the contrary, is specifically based on religious aims. Here is the reason why, so far as Islamic groups are concerned, the attention is normally focused on the above-mentioned 1929 Act, which provides for entities the possibility of obtaining a legal capacity on the basis of their confessional aims. Yet, even considering these provisions, there still exist obstacles in term of religious autonomy and legal recognition of Islamic organizations. For example, the 1929 Act may subject these groups to the control of the Government, giving it a large marge of discretions: the State’s authorities may annul the decisions made by the representatives of a religious entity, replacing them with the State commissioners.

In addition, because of both the lack of unitary representation at the national level as well as the strict interpretation of the Italian public order⁷⁰, normally Islamic groups are regulated by the general legislation concerning association, in its double version of recognise and non-recognise association⁷¹. This in practice means that Muslim groups are not

⁶⁸ That legal capacity includes independence in property matters and the ability to receive donations, take legal actions, etc.

⁶⁹ **A. FERRARI**, *Libertà religiosa e nuove presenze confessionali (ortodossi e islamici): tra cieca deregulation e super-specialità, ovvero del difficile spazio per la differenza religiosa*, in *Stato, Chiese e pluralismo confessionale*, cit., July 2011, p. 13.

⁷⁰ **L. PALADIN**, voce *Ordine pubblico*, in *Noviss. Digesto it.*, 1965, XII, p. 130.

⁷¹ In fact, the only Islamic organisation that is not an association and that, in accordance with the 1929 Act (no. 1159), has been recognised as a religious legal entity; that is the Italian Centre of Islamic Culture (*Centro Islamico Culturale d'Italia*). See the decree of the President of the Italian Republic, 21 December, 1974.



only excluded from some important privileges – like those established by both the *intese* and, with the said problems, the 1929 Act's provisions – but also from the possibility to be legally recognised by reasons of their religious aims. In other words, these Islamic groups can only enjoy the legal benefits guaranteed to all other private associations, which are irrespective of religious connotations. Which, in turn, is exacerbated by the fact that, apart from Catholicism, Islam is the largest religious creed in Italy⁷².

3.2 – Islamic Groups as Religious Denominations

Just as in other European Countries, in Italy there is not a single national Islamic organization⁷³. Many Islamic groups are local, while others refer to either some transnational Islamist movements or foreign State's entity. Immigrants make up the large number of Italian Muslim organizations that, when wishing to operate in Italy, must respect the principles of the Italian Constitution.

These principles, though, must also be taken into serious consideration in order to establish a proper connection between the State and the Islamic organizations, solving the relation questions, like those concerning *imams*. And, in this sense, the first inevitable step to take is to clarify whether or not those Islamic organizations can be defined as “religious denominations”, in the legal sense of the expression. In effect, the problem of defining what a “denomination” is has become significant in Italy with the spread of the “new” religious organizations, including Islam, whose presence in this Country is relatively recent. As there is a complete absence of statutory definitions, some say that the State is neither able nor competent to provide such a definition: the State should then rely on the self-assessment of the adherents of a group wishing to be

⁷² S. ALLIEVI, *Islam italiano. Viaggio nella seconda religione del Paese*, Einaudi, Torino, 2003.

⁷³ A. PACINI, *I musulmani in Italia: Una presenza plurale. Esperienze e prospettive di dialogo*, in *Chiesa e Islam in Italia: esperienze e prospettive di dialogo*, cit., pp. 16-39; S. ALLIEVI, *Musulmani d'Occidente. Tendenze dell'Islam europeo*, Carocci, Roma, 2005, p. 15-28 and pp. 65-96; P.G. DONINI, *Il mondo arabo-islamico. Chi sono e quanti sono i musulmani nel mondo*, Edizioni Lavoro, Roma, 2002; R. GUOLO, *La rappresentanza dell'Islam italiano e la questione delle intese*, in *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, ed. by S. Ferrari, il Mulino, Bologna, 2000, pp. 70-72. See also A.S. MANCUSO, *La presenza islamica in Italia: forme di organizzazione, profili problematici e rapporti con le istituzioni*, in *Stato, Chiese e pluralismo confessionale*, cit., 2012, n. 32.



recognized as religious denominations.

In other words, if the members of a community are the opinion that they form a religious denomination, in general the State must accept this assessment. On the contrary, though, some decisions of the Constitutional Court affirm that the term “denomination” must have an objective and not a subjective basis⁷⁴. For this way, some scholars have identified selected characteristics that a community must necessarily have to be considered denomination. One of them is the “belief” in a transcendental entity – not necessarily in God – capable of answering fundamental questions on man’s origin and destiny, to provide a moral code, to create an existential interdependence between the members and that transcendental reference. And, most importantly, these groups must have an organizational structure, even though minimal⁷⁵.

Now, whatever of these paradigms you take into account, you can still infer that in Italy many – if not most of – Islamic organizations may be defined as religious denominations. And if it is true, these organizations can sign (at least potentially) an agreement with the State, in accordance with the principles of the Italian law, in general, and the section 3 of Article 8 of the Constitution, in particular.

3.3 – The Bilateral Legislation

The feature and the quality of this last consideration can be fully understood when considering the original aim of the bilateral legislation based on *intese*. To this regard, it is important to remember some of the Constitutional Court’s decisions, where it is stated that the bilateral instrument of *intese* is mainly conceived for two interrelated purposes⁷⁶.

First, it is intended to facilitate and promote the collaboration between the State and denominations, which is the precondition to grant these denominations due public prominence within the State’s legal system, as expressly stated by the 1948 Constitution⁷⁷. This is a peculiar

⁷⁴ See in particular the Italian Constitutional Court, Decisions no. 467 of 1992 and no. 195 of 1993. See also N. COLAIANNI, *Sul concetto di confessione religiosa*, in *Il Foro. it*, 1994, I, c. 7; G. PEYROT, voce *Confessioni diverse dalla cattolica*, in *Digesto delle discipline pubblicistiche*, 1989, III, p. 358.

⁷⁵ S. FERRARI, *La nozione giuridica di confessione religiosa (come sopravvivere senza conoscerla)*, in *Principio pattizio e realtà religiose minoritarie*, cit., pp. 19-47.

⁷⁶ The Italian Constitutional Court, Decision no. 346 of 2002.

⁷⁷ An example of this kind of collaboration is given by Article 1 of the 1984 Agreement Between the Italian Republic and the Holy See, where it is stated that «The Italian



aspect of the constitutional order that, in fact, marks the difference of Italian secularism model from the French principle of *laïcité*; a principle that, based on the strict separation between the State and confessions, tends not only to relegate the “religious factors” into the private sphere⁷⁸, but also to assimilate the “religious diversities”⁷⁹ into the founding principles of French Republic (*les principes fondateurs de la République française*)⁸⁰.

The second purpose is that the bilateral legislation based on the section 3 of Article 8 highlights the specific characteristics of a single denomination. That is because otherwise those characteristics risk being sidelined by the Parliament’s unilateral legislation that, given its general-generic nature, is less capable of responding to the particular needs and the peculiar identity of different religious groups: what is a prerequisite to affirm a reasonable (constitutional based) connection between the State’s

Republic and the Holy See reaffirm that the State and the Catholic Church are, each in its own order, independent and sovereign and commit themselves to the full respect of this principle in their mutual relations and to *reciprocal collaboration* for the promotion of man and the common good of the Country» (emphasis added).

⁷⁸ J. LAURENCE, J. VAISSE, *Integrating Islam: Political and Religious Challenges in Contemporary France*, Brookings Institution Press, Washington, 2007, pp. 135-162.

⁷⁹ This tension is even clearer in those States adhering to a secular tradition, which insists on a “stricter” separation between State and Churches, as 2004 Act banning “conspicuous” religion signs from public school denotes in France. This Act significantly purports to be a mean of defending the threatened secularism or the *laïcité à la française*. As a result, the full inclusion of religious minorities in France is no longer conditional on their religious beliefs but their “assimilation-integration” to a French national identity, which perhaps remains infused with Christian “culture”. In other words, the national egalitarian ethos is set up as a model, which not only informs the drafting of State’s law, but also serves as the reference for a process of uniformity of the manifestation of religious belief in the public sphere. This explains the reaction of some immigrants – as religious group or even as individuals – who, especially after the 2004 law was promulgated, have marked their cultural-ethnic-religious identity in the public sphere. See M. TROPER, *Sovereignty and Laïcité*, in *Constitutional Secularism in An Age of Religious Revival*, cit., p. 146.

⁸⁰ J. ROBERT, *Les fondements juridiques de la laïcité*, in *Revue Politique et Parlementaire*, 2006, no. 1, p. 7. For a more general analysis see, among the others, *Les musulmans dans la société française*, ed. by R. Leveau, G. Kepel, Presses de la Fondation nationale des sciences politiques, Paris, 1988; S. RABAH, *L’Islam dans le discours médiatique*, Les Éditions Al-Bouraq, Beyrouth, 1998; E. BALIBAR, *Saeculum: Culture, religion, ideologie*, Éditions Galilee, Paris, 2012, p. 66; T. JEANTET, *L’école et la laïcité*, in *Revue Politique et Parlementaire*, 2006, no. 1, p. 29; J. SAYAH, *La laïcité réaffirmée: la loi du 15 mars 2004*, in *Revue du droit public*, 2006, n. 4, pp. 922-927; D. CUSTOS, *Secularism in French Public Schools: Back to War? The French Statute of March 15, 2004*, in *The American Journal of Comparative Law*, 2006, p. 398.



law and the rules of diverse religious denominations.

For these reasons I think that, based on agreements State-confession, that bilateral legislation may be a suitable instrument for solving the questions related to the presence of Islam organizations in Italy. Particularly, it can be an appropriate mechanism for regulating the figure of *imams*, which may be includes their training that, as some have affirmed, seems to be one of the most important steps in the process of Muslims' integration⁸¹.

To this respect it must be noted that in Italy until few year ago the training of *imams* had been neglected for a long time: while on the Muslim side there had been some initiatives to train *imams*⁸², public institutions had preferred to avoid direct involvement in this subject. This situation came to an end in 2012, when a numbers of north-Italian universities (namely, the Universities of Come, Alessandria, Milan, Padua and the Catholic University of Milan) signed an agreement with the Minister of Interior, which supported a course for the training of "Muslim religious leader". In this occasion the Italian Minister affirmed that it would actively participate in this training program, thereby facilitating the possibility for *imams* and other Muslim leader of being legally recognised and appointed in accordance of the 1929 Act; which, on the other hand, would be particularly important for providing Muslim marriage with civil effects.

Participants (about 20 per year) attend now lessons during a weekend per month, in the period from May to December. The course is intended to give useful knowledge about the religious framework of Italian society and about laws and current problems relating to Islam. Workshops are scheduled in order to discuss how to manage the practical problems of Muslim communities in their relationship with the public authorities.

As it has been demonstrated, this training project is manly based on the experience of other European Countries, with some peculiarities. Specifically, it does not provide a religious curriculum. Instead, it is intended to impart knowledge on the Sate's cultural and legal system,

⁸¹ S. FERRARI, *The Training of Imams*, in *Islam and political-cultural Europe*, ed. by W. Cole Durham, D.M. Kirkham, T. Lindholm, Ashgate, London, 2013, chapter 6.

⁸² For example, the COREIS has for years promoted and organized a course of Islamic theological training "for religious leaders (men and women) and ministers of faith (*imams*), enabling them to deepen their knowledge of the traditional doctrine contained in the Quran and the teachings of the Prophet and the sages, making it more relevant to the present day and European society"; Y.S. YAHE PALLAVICINI, *The Training Programme of Imams in Italy*, cit., p. 474.



including family law, gender relations and interreligious dialogue; what may help *imams* and other Muslim leaders to better understand the specific connotation of Italy's secularism principle that, as said, is far from being strict secularism, like the French *laïcité*⁸³.

In other words, at the moment training *imams* in Italy does not imply religious teaching. Rather, it infers citizenship education, through which *imams* can learn about the place where they live and work, providing knowledge and information that would allow them to become more familiar with the culture, history, tradition, language, and values (including those referring to the constitutional principles) of the Italian State. This is also because today most of *imams* come from Muslim-majority Countries, knowing little about the State in which they conduct their activities as religious leaders. From here stems the fact that, given the role they played within the religious communities, training *imams* in Italy is also (if not mainly) considered as a way for promoting integration of Muslims into the Italian society.

Yet, the questions related to *imam* shows that the integration approach does not always work in respect to Islamic organizations and the relative members. The experience of these last years may instead suggest that we must start re-considering the notion of "integration" because, by its nature, it presupposes an assimilation (sometimes forced assimilation) of Muslims into the "traditional" scheme of Italian society.

3.4 – A Possible Collaboration

The case of *imam* in Italy may in effect insinuate that we must revaluing the classical integration approach in term of "interaction" between the Islamic groups and the State's authorities⁸⁴. And the interaction normally

⁸³ F. ALICINO, *Liberté d'expression et religion en France. Les démarches de la laïcité à la française*, in *La Constitution française*, ed. by M. Calamo Specchia, Giappichelli, Torino, 2009, vol. II, p. 33.

⁸⁴ G. MACRÍ, *Immigrazione e presenze islamiche in Italia: la Consulta per l'islam*, in *Stato, Chiese e pluralismo confessionale*, cit., March 2007, p. 24; G.B. VARNIER, *La ricerca di una legge generale sulla libertà religiosa tra silenzi e rinnovate vecchie proposte*, in *Il Diritto ecclesiastico*, 2007, I-II, pp. 198-200; G. RIVETTI, *Islam-Occidente. Nuove identità religiose*, in *Religione, cultura e diritto tra globale e locale*, ed. by P. Picozza, G. Rivetti, Giuffrè, Milano, 2007, pp. 93-97; P. CONSORTI, *Pluralismo religioso: reazione giuridica multiculturalista e proposta interculturale*, in *Multireligiosità e reazione giuridica*, ed. by A. Fuccillo, Giappichelli, Torino, 2008, pp. 222-228.



rejects unilaterally imposition⁸⁵. That is particularly true in relation to the questions of training *imams*, which should not be solved by unilaterally legislations, because this may generate a forced assimilation and, perhaps, unreasonable distinctions-discriminations between Islamic organizations and other religious denominations. Reversely, those questions are to be solved through the active collaboration of Muslim communities. And, at the moment, the only available instrument for implementing this collaboration is stated in the section 3 of Article 8 of the Italian Constitution.

In this way, on the Islamic side the agreement may lead religious organizations to be active parts of Italian legal system, which includes and presupposes the respect of constitutional principles. On the State's side, though, this bilateral system necessary implies the responsibility of the public authorities to treat Islamic groups as they treat other religious denominations, providing the same range of rights and benefits⁸⁶.

Thus, with the provisions of an *intesa* the State and an Islamic organization can provide essential criteria (including the training programme) for *imams* are recognised as religious minister not only by their own organization, but also within the State's legal system. On the other hand, this would give a new impulse to the constitutional instrument of *intese*, which can be finally used for supporting the peculiar characteristics of a religious group (in this case, the peculiarity of Muslim groups), rather than extending the phenomenon of photocopy agreements; a phenomenon that, as the Constitutional Court has stated, does not respect the original scope of the bilateral system provided by Article 8 (section 3) of the Italian Charter.

Some Muslim organizations have tried to engage forms of cooperation with the State, arriving to promote negotiations with the Government in order to sign an *intesa*. This is the case of *UCOII* (Union of Islamic Communities and Organizations in Italy) that, only two years after its establishment (1990), publicly manifested that intention, preparing a draft agreement and sending it to the Government. The same attempt was made by other Islamic organizations, like the Association of Italian

⁸⁵ N. COLAIANNI, *Islam ed ebraismo: dall'integrazione all'interazione*, in *Quaderni di diritto e politica ecclesiastica*, 2009, no. 1, p. 70

⁸⁶ R. ALUFFI BECK-PECCOZ, *The legal treatment of the Muslim minority in Italy*, in *The Legal Treatment of Islamic Minorities in Europe*, ed. by Aluffi Beck-Peccoz, R.G. Zincone, Peeters, Leuven, 2004, p. 146.



Muslims (1994) and the Islamic Italian Community (1996)⁸⁷. It is noteworthy to note that, so far as the figure of *imam* is concerned, important efforts stem from these drafts in order to adapt – for of all form a lexical point of view – the figures of *imams* and other Muslim authorities to the notion of religious minister as established in all agreements State-confessions signed until now in Italy⁸⁸.

All these efforts, though, have not been taken into consideration by the Italian public authorities that, instead of using directly the section 3 of Article 8, have chosen other instruments for regulating the relationship with Islamic communities. For example, in 2005 a Consultative Council of Italian Islam (*Consulta per l'Islam italiano*)⁸⁹ was established by the Italian Minister of Interior. Since then, the Council has been preparing some documents that aim at reaffirming the values of a secular State and religious freedom as well as encouraging the creation of a federation of Islamic groups.

The same, in 2010 a Committee for Islam in Italy (*Comitato per l'Islam Italiano*), made up of 19 members (representatives of Islamic organisations, scholars, professors and journalists who are experts in Islam), was established at the Minister of Interior. The Committee has been performing consultative functions and the Ministry has been listening to its views on some current questions. This is an approach that was also followed at the local level, where Consultative forums with representatives of the local Muslim community and experts in law and religion have been established; what is the case of Milan⁹⁰.

Besides, after a new Government was established in November 2011, the Minister for Cooperation and Integration created (March 2012) a permanent conference on “Religions, Culture and Integration”, in which there were (and still are) representatives of Muslim organisations and experts in Islam and in other religions. This conference was essentially

⁸⁷ R. ACCIAI, *La bozza di intesa fra la Repubblica italiana e l'Unione delle comunità ed organizzazioni islamiche in Italia*, in *Principio pattizio e realtà religiose minoritarie*, cit., p. 258; L. MUSSELLI, *A proposito di una recente proposta di bozza d'intesa con l'Islam*, in *Il Diritto ecclesiastico*, 1997, I, p. 295; M. TEDESCHI, *Verso un'intesa tra la Repubblica italiana e la Comunità islamica in Italia?*, in *Il diritto di famiglia*, 1996, p. 1574.

⁸⁸ Cf. A. CILARDO, *Diritto islamico, diritto occidentale: ambiguità semantica*, in *Europa e Islam. Ridiscutere i fondamenti della disciplina delle libertà religiose*, ed. by V. Tozzi, G. Macrì, Rubbettino, Soveria Mannelli, 2009, p. 94.

⁸⁹ S. FERRARI, *La consulta islamica*, in ISMU, *Dodicesimo rapporto sulle migrazioni 2006*, FrancoAngeli, Milano, 2007, pp. 249-263.

⁹⁰ F. ALICINO, *Costituzionalismo e diritto europeo delle religioni*, Cedam, Padova, 2011, pp. 86-89.



conceived as a space for meetings and seminars rather than a consultative or decision-making body.

Now, it seems that all those political attempts have not been coherent and, above all, they have not been taking into serious consideration the principles and the instruments established by the 1948 Constitution. Starting with the *intese* that, as I tried to demonstrate, do not necessary preclude a direct collaboration between the State and different Islamic organizations; which may be done in accordance to the principles stated in the Constitution for solving some specific problems, like those referring to the civil relevance of *imams* within the Italian legal system. Moreover, this approach reveals some sort of “epistemological obstacles”⁹¹ upon which the Italian public actors tend to consider Islam(s) and the corresponding denominations unable to have a factual collaboration with the State⁹².

In other words, the Italian approach on the questions related to *imams* seems to be based on the fact that Islamic organizations are “other”⁹³ than those denominations that are more compatible with the traditional system of relationship State-confessions affirmed until now in Italy; a system that has been established through the implementation of Articles 7-8 of the Constitutions and the 1929 Act. As a consequence, since Islamic groups are “different” from the “traditional” creeds, the public actors tend to promote new pathways, like those marked by the *Carta dei valori per l'integrazione e la cittadinanza* (Charter of values for integration and citizenship)⁹⁴, also sponsored as the basis for a future “understanding” between the State and Islam(s)⁹⁵.

⁹¹ In this case I refer to the Gaston Bachelard's notion of “*obstacles épistémologiques*”: **G. BACHELARD**, *La formation de l'esprit scientifique*, Librairie Philosophique J. Vrin, Paris, 1938, p. 337: “*Les obstacles épistémologiques affirment toujours quelque part des ombres ... sur la connaissance du réel, qui n'est jamais immédiate et pleine. Les révélations du réel sont toujours récurrentes. Le réel n'est jamais “ce qu'on pourrait croire” mais il est toujours ce qu'on aurait dû penser*”.

⁹² **J.-F. GAUDREAULT-DESBIENS**, *The Legal Treatment of Religious Claims in Western Multicultural Societies: Limits and Challenges*, in *Religious Claims in Multicultural Societies: The Legal Treatment*, ed. by C. Decaro Bonella, Luiss University Press, Rome, 2014, pp. 17-40.

⁹³ **S. ALLIEVI**, *Costruzione del nemico, bisogno di sicurezza e conflitto*, in *I musulmani e la società italiana, Percezioni reciproche e conflitti culturali, trasformazioni sociali*, ed. by S. Allievi, FrancoAngeli, Milano, 2009, p. 20.

⁹⁴ **S. FERRARI**, *La Carta dei valori, della cittadinanza e dell'integrazione*, in *ISMU, Tredicesimo rapporto sulle migrazioni 2007*, Milano, FrancoAngeli, 2008, 265-277.

⁹⁵ See **C. CARDIA**, *Introduzione alla Carta dei valori della cittadinanza e dell'integrazione*, in Ministero dell'Interno, *Carta dei valori della cittadinanza e dell'integrazione*, (s.i.d.), 2008,



It is not by chance that the mentioned Italian Committee for Islam has suggested that, in order to be appointed by the State, this *Carta dei valori* be subscribed by *imams* and all other religious minister. In particular, that must be done in accordance with the 1929 Act that, to this aim, must be accompanied by a “circular of Ministry of Interior” which, in turn, must give a constitutional-based interpretation of the mentioned Act⁹⁶.

Without intervening on the Constitution and its principles, this proposal generates some legal problems. For example: why do we need a ministerial circular to clarify the scope of the 1929 Act for the purpose of recognising imams? And why must the subscription of the Charter (which has no legal status) be considered a prerequisite in order to appoint an imam and other religious ministers, when this same duty is not requested to religious ministers of other confessions that have signed an *intesa*? And, above all, why must the public actors exclude the possibility to regulate this matter through Article 8 (section 3) of the Constitution, as it has been done with twelve denominations “other” than Islamic?

4 – Conclusion

Based on the unitary vision of the cultural-religious character of Italy, both the Charter of values and the Committee’s proposal seem to confirm the basic elements of the integration approach. In this context, the questions related to Islam must be primarily managed not under a pluralistic constitutional point of view, but rather with the Italian traditional system of relationship between State and religions⁹⁷.

A system that can be perfectly used when referring to the “traditional” denominations and that can hardly be taken into account for

p. 8; N. COLAIANNI, *Alla ricerca di una politica del diritto sui rapporti con l’Islam (Carta dei valori e Dichiarazione di intenti)*, in *Stato, Chiese e pluralismo confessionale*, cit., January 2009.

⁹⁶ See Comitato per l’Islam Italiano, *Parere su Imam e formazione*, cit., p. 6: «Sembra, dunque, opportuno prevedere una circolare che, fornendo un’interpretazione costituzionalmente compatibile dell’istituto, chiarisca le modalità di “approvazione” precisandone i requisiti richiesti, a partire dalla sottoscrizione della Carta dei Valori di cui al d. m. 23 aprile 2007 (da parte di tutti i ministri, musulmani e non, richiedenti) anche in relazione alla formazione ... e prevedendo la costituzione di un albo dei ministri di culto approvati di pubblico accesso».

⁹⁷ G.B. VARNIER, *Il diritto di libertà religiosa: le stagioni della storia e la voluntas legislatoris*, in *Proposta di riflessione per l’emanazione di una legge generale sulle libertà religiose*, cit., pp. 7-9.



“other” (minority) religious organizations⁹⁸, such as the Islamic groups that, as said, are usually made up of immigrants⁹⁹.

In fact, this approach was conceived in the past and with a specific “religious”, which is now completely different¹⁰⁰. It was tailored for a substantially monocultural society, enable to describe the today’s religious reality in Italy. Here is the reason why this same approach, which seems attractive for some denominations, can systematically be seen as a disadvantage, if not discriminatory, by others creeds and their relative members, including the religious authorities¹⁰¹. Which is evident by the fact that, since the 1948 Constitution entered into force and under a more recent pressing process of immigration, in this matter there have been affirming a sort of “cold peace” between State and “new” denominations (*in primis* Islamic denominations) other than traditional ones¹⁰². A peace that is able to establish armistice but no reconciliation, bargaining but no mutual understandings, stalemates and standoff, dictated less by respect for the positions of “others” than by the fear of them.

Abstract

In Italy imams are more than 800 members. As imams, they are almost all self-taught people. As citizens, most of the times they have a precarious job. During the week, they normally take care of things other than religion. They perform religious functions in their spare time. Moreover, to see them working as imams, you have to go down in some underground parking or in apartments converted into mosques, where sometimes you see minaret and other Islamic symbols, but only in either the picture or in the paintings hanging on the wall.

In the end of the day, we know little or almost nothing about imams. Besides, the Italian law normally do not recognise them as religious authorities.

⁹⁸ V. TOZZI, *Fasi e mezzi per l’attuazione del disegno costituzionale di disciplina del fenomeno religioso*, in *Stato, Chiese e pluralismo confessionale*, cit., May 2007, p. 14.

⁹⁹ C. SAINT-BLANCAT, *Italy*, in *The Oxford Handbook of European Islam*, ed. by J. Cesari, Oxford University Press, Oxford, 2014, pp. 265-310; S. COGLIEVINA, *Italy*, in *The Yearbook of Muslims in Europe*, ed. by J. Nielsen, S. Akgönül, A. Alibašić, E. Raciuc, Brill, Leiden, 2013, pp. 351-367.

¹⁰⁰ V. TOZZI, *Le moschee ed i ministri di culto*, in *Studi in onore di Piero Pellegrino. Scritti di diritto canonico ed ecclesiastico*, ed. by M.L. Tacelli, V. Turchi, Esi, Napoli, 2009, vol. II, pp. 474-475.

¹⁰¹ N. FIORITA, *Remunerazione e previdenza dei ministri di culto*, Giuffrè, Milano, 2003, p. 37.

¹⁰² L. LA CROCE, *I ministri di culto nel vigente sistema normativo. Una prima ricognizione*, in *Quaderni di diritto e politica ecclesiastica*, 2003, no. 2, pp. 367-368.



Nevertheless, as imams they play a very important role in local Muslim communities that, under the pressing process of immigration, hold nowadays more than two millions persons.

The paper will analyse the status of Islamic imams in Italy, comparing them with the status of other religious authorities (priests, rabbis, pastors ecc.). In particular, this comparative perspective will be focused on both angles: on the one hand, the research will compare the role of imams with those of religious authorities within their respective community; on the other, we will compare imams with considered the different way through which Italian law treats both imams and other religious authority. This perspective will give us a possibility to underline how both the social context and the Italian legal framework (regulating the State-religions connexions) manage religious claims.

Keywords: Imams, authority, religion, State, law.