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Problems on the legal status of the Church of Scientology *

SUMMARY: 1. Preliminary observations. The recent English case law about Scientology - 2. The long Italian process - 3. The condemnation of the religious movement in France - 4. Conclusion.

1 - Preliminary observations. The recent English case law about Scientology

Religious denominations are not a simple filter between the individual and the State, but stand out as social entities constitutionally recognized, as affecting the conduct of the individual[1]. The problem with regard to their qualification is therefore focused on the possibility of acquiring visibility, even in public spaces. The heterogeneity in the definition of the phenomenology of religion, as it is found in sociological studies, currently lacks in the legal domain[2]. At the regulatory level, in fact, the conflict only centers on the binomial confessions – sects where to the first ones, well-

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[1] **F. FINOCCHIARO**, *Diritto ecclesiastico*, 9ª ed., Bologna, 2003, p. 69; cfr. **D. HERVIEU LÉGER, F. GARELLI, S. GINER, S. SARASA, J.A. BECKFORD, C.F. DAIBER, M. TOMKA**, *La religione degli europei. Fede, cultura religiosa e modernità in Francia, Italia, Spagna, Gran Bretagna, Germania e Ungheria*, Fondazione Giovanni Agnelli ed., Torino, 1992 and *www.fga.it/uploads/media/La_religione_degli_europei_01.pdf*. Cfr. **P. HARRISON**, *'Religion' and the Religious in the English Enlightenment*, Cambridge University Press, Cambridge, 1990; **D.A. PAILIN**, *Attitudes to Other Religions: Comparative Religion in Seventeenth and Eighteenth – Century Britain*, Manchester University Press, Manchester, 1984. **W.C. ROOF, W. McKINNEY**, *American Mainline Religion: Its Changing Shape and Future,* Rutgers University Press, New Brunswick, New Jersey, 1987. Cfr. also **A. GIDDENS, P.W. SUTTON**, *Sociology*, 7ª ed., Cambridge, 2013.

[2] **R.N. BELLAH**, *Religious Evolution,* in *American Sociological Review*, vol. 29, 1964, pp. 358-374; **J.M. YINGER**, *Religion in the Struggle for Power: A Study in the Sociology of Religion*, (1946), Ayer Publishing, North Stratford, 1980.

structured and socially accepted, a special discipline is reserved, though differentiated from one country to another, whereas the other ones, in which the most different types of communities are incorporated, have a clear negative connotation[3].

I would like to focus my brief remarks on the position taken by the Court decisions in three European countries, Italy, France and Great Britain, in court cases involving Scientology. The Italian case is the oldest, the Milan process was completed in 2000[4]. The other two processes were held in 2013. In the English case, the Church of Scientology has been recognized as a religious organization, whereas in France, it was convicted of fraud, conspiracy and dubbed as a criminal organization[5]. It seems to me that the Italian case can be then viewed as the "trait d'union" among the three processes: as in the French process, Scientology has been charged of criminal offenses and, as in the British judgment, it has acknowledged the status of a religious confession to Scientology.

As just pointed out, therefore, a recent English case law in 2013[6] reopened an interesting debate on the concept of religion. It was discussed whether the services performed in the chapel, and the performing of a wedding ceremony could be considered as a form of religious worship. Problems inevitably conditioned by the question: whether Scientology should/can be regarded as a religion.

A complex investigation has then been carried out, starting from a well-known case law regarding the Church of Scientology, drawn up by English law in 1970 which concluded by denying the religious character of the movement, based on a traditional conception of "religion"[7].

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[3] **M. BOUDERLIQUE**, *Sectes. Les manipulations mentales*, Chronique sociale, Lyon, 1990. **B.R. WILSON**, *Contemporary Transformations of Religion*, Oxford University Press, London, 1976, and **ID**., *Religious sects*, Weidenfield and Nicholson, London, 1970; **B.R. WILSON**, *The Social Dimension of Sectarism. Sects and New Religious Movements in Contemporary Society*, Oxford University Press, Oxford, 1990.

[4] Corte di Appello di Milano, Italy, 5 ott. 2000-1 marzo 2001, n. 4780, in *Giurisprudenza Italiana*, 2001, with comments of **P. COLELLA**, *Ancora a proposito di 'Scientology'*, p. 1408 ss.

[5] Cour d'Appel de Paris, 2 febbraio 2012, and Tribunal Correctionnel de Paris, 12ème chambre, n. 9835623114 c. Association Spirituelle de l'Église de Scientologie, SARL SEL, et autres, del 27 oct. 2009, unpublished. The decision of the Cour de Cassation 2013, in Cass. crim., 16 oct. 2013, n° 12-81.532, 05-82.121, 05-82.122, 03-83.910: Juris Data n° 2013-022379.

[6] R (on the application of Hodkin and another) v Registrar General of Births, Deaths and Marriages [2013] UKSC 77, 11 December 2013, in *http://www.supremecourt.gov.uk.decided-cases/docs/UKSC_2013_0030_Judgment.pdf*

[7] R v Registrar-General, ex parte Segerdal [1970] 2 QB 697.

The Segerdal case arose from a request by the Church of Scientology to have its chapel at Saint Hill Manor, East Grinstead, registered as a place of worship under the Places of Worship Registration Act 1855. Such a status would have entailed tax benefits and other advantages. But the request was rejected by the Divisional Court[8], and upheld by the Court of Appeal[9].

With reference to the nature of Scientology, it has been commented:

> "Turning to the creed of the Church of Scientology, I must say that it seems to me to be more a philosophy of the existence of man or of life, rather than a religion. Religious worship means reverence or veneration of God or of a supreme being"[10].

This precedent was considered of paramount importance for the evolution of the issue. In 1974, the Immigration Appeal Tribunal drawing on the case Segerdal, ruled that Scientologists could not take advantage of the privileges granted in the immigration law to the ministers of religion.

As late as 1980 it was used to propose a definition of religion in the

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[8] Lord Parker CJ, Ashworth e Cantley JJ, [1970] 1 QB 430.

[9] Court of Appeal, Lord Denning MR, Winn e Buckley LJJ [1970] 2 QB 697. From this court case it has been formulated the definition of religion in England: see **R. SANDBERG**, *Law and Religion*, Cambridge University Press, Cambridge, 2011, pp. 44-45. About the historical approach v. **J. RIVERS**, *The Law of Organized Religions: Between Establishment and Secularism*, Oxford University Press, Oxford, 2010.

[10] R v Registrar General, Segerdal and another, in *All England Law Reports*, [1970] 3 All ER "I do not find any such reverence or veneration in the creed of this church, or, indeed, in the affidavit of Mr. Segerdal. There is considerable stress on the spirit of man. The adherents of this philosophy believe that man's spirit is everlasting and moves from one human frame to another; but still, so far as I can see, it is the spirit of man and not of God. When I look through the ceremonies and the affidavits, I am left with the feeling that there is nothing in it of reverence for God or a deity, but simply instruction in a philosophy. There may be belief in a spirit of man, but there is no belief in a spirit of God. This is borne out by the opening words of the book of ceremonies. It states: 'In a Scientology Church Service we do not use prayers, attitudes of piety, or threats of damnation. We use the facts, the truths, the understandings that have been discovered in the science of Scientology. That seems to me to express the real attitude of this group. When Mr. Segerdal in his affidavit uses the word 'prayer' he does not use it in its proper sense, i.e. intercession to God. When the creed uses the word 'God' (as it does in two places) it does not use it in any religious sense. There is nothing which carries with it any idea of reverence or veneration of God. The sample sermon has no word of God in it at all. It says that man has a body, mind and spirit. It emphasises man, and not God. It seems to me that God does not come into their scheme of things at all. I do not think that this evidence is sufficient to bear out the contention that this is a place of meeting for religious worship".

case Re South Place Ethical Society. The Society, interested in the "study and dissemination of ethical principles and the cultivation of a rational religious sentiment" had applied for the status of charity, qualifying as a religious organization. Judge Dillon referred to the comments of the case Segerdal on what constituted a religion and noted that religion "is concerned with man's relations with God, and ethics are concerned with man's relations with man. The two are not the same, and are not made the same by sincere inquiry into the question: what is God?". Religion was then defined as something requiring "faith in a god and worship of that god", which is the definition in the English common law.

The definitions of Dillon and Segerdal are also still of fundamental importance in 1999, when the Charity Commission decided to reject the application of Scientology for obtaining the status of a charity. The Commission concluded that the Church is not been established for the advancement of religion, because though

> "it is accepted that Scientology believes in a supreme being", "the core practices of Scientology, being auditing and training, do not constitute worship as they do not display the essential characteristic of reverence or veneration for a supreme being".

It is clear, however, that the definition developed by the Segerdal judgment of religious worship has been carried out within a theistic definition of religion, anchored in anachronistic parameters. It is also well-known that in English law, religion and right display common characteristics. The law protects charitable trusts if the funds are directed towards the advancement of religion[11]. At the individual level it is recognized that individuals have the right to freedom of thought, conscience and religion under Article 9 of the European Convention. They have also the right of non-discrimination on the grounds of religion or belief, in accordance with EU Council Directive 2000/78/EC and in accordance with national legislation based on the principle of equality.

There has never been a universal legal definition of religion in

[11] In Re South Luogo Society Ethical [1980] 1 WLR 1565, 1572, a case on the law of charity, Dillon J said that religion requires "the belief in a god and worship of that god," citing the definition of Buckley LJ of religious worship, already contained in the decision Segerdal. More recently, the Parliament granted the partial definitions of religion in Section II of the Charities Act 2006 (now Article 3 of the Charities Act 2011) and section X of the Equality Act 2010 for the purposes of such acts. For the purposes of charity law, section 3 (2) (a) of the Charities Act 2011 hours states that: «"Religion" includes - (i) a religion which involves belief in more than one god, and (ii) a religion that does not involve belief in a God».

English law, and experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word. There are several reasons for this – the different contexts in which the issue may arise, the wide variety of world religions, the development of new religions and religious practices, and ongoing developments in the common understanding of the concept of religion owing to cultural changes in society.

In order to settle the question posed by the Church of Scientology, London courts have found it necessary to perform a parallel examination of some foreign Court decisions. Attention has focused on two cases, one arisen in the United States and the other one in Australia[12].

In the first one, Malnak v. Yogi, the issue was whether teaching in a public school of a course named the "Science of Creative Intelligence – Transcendental Meditation" constituted a religious activity violating the first amendment of the US Constitution. The judge took a different approach compared to previous cases[13], (where a stricter theistic definition of religion had been adopted), in line with more recent jurisprudence[14], which meanwhile had moved towards a broader approach in recognition of the fact that adherence to the traditional definition would deny religious identification to the faiths adhered to by millions of Americans.

Judge Adams noted that although the old definition proved no longer to be adequate, no new definition had been fully formed. Instead, the courts had proceeded by a process of analogy, looking at familiar religions as models in order to ascertain, by comparison, whether the new set of beliefs served the same purposes as unquestioned and accepted religions. He observed, however, that there exists a wide difference between deciding "by analogy" that a particular group of ideas constitutes a religion; and explaining what evidence is to be looked at in making such an analogy and justifying it. He identified three kinds of such evidence.

The first was that the system of religious belief is concerned with the ultimate questions of human existence: the meaning of life and death, the role of mankind in the universe, the proper moral code of right and wrong. The second was that the system of belief is comprehensive in the

[12] The decision of CJ Adams v. Yogi Malnak 592 F.2d 197 (1979), in a concurring opinion "per curiam" of the Court of Appeals of the United States, 3rd Circuit, and the decision of the High Court of Australia, in the Church of the New Faith v. Comm'r of Pay-Roll tax (Victoria) (1983) 154 CLR.

[13] As in the Supreme Court's decision in Davis against Beason 133 US 333 (1890).

[14] Including the decisions of the Supreme Court of the United States v. Seeger 380 U.S. 163 (1965) and Welsh v. United States 398 US 333 (1970).

sense that it provides an all-embracing set of beliefs in answer to the ultimate questions. The third was that there were external signs that the belief system was of a kind which could be analogized to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, and attempts at propagation. These kinds of evidence were not to be thought of as a final test for a religion, rather, they were features that recognized religions would typically exhibit.

The significant contribution of the judgment to the development of the Court decisions in this area lays in Judge Adams's attempt to adopt a comparative approach to the identification of a religion, rather than a traditional definition based on the Judeo-Christian religions[15].

In the Australian case, the Church of Scientology, according to the law Victoria Pay extra fiscal 1971, requested an exemption from the tax for wages paid by a religious institution. The question, considered by the High Court, was

> "whether the beliefs, practices and observances which were established by the affidavits and oral evidence as the set of beliefs, practices and observances accepted by Scientologists, are properly to be described as a religion".

The court held that they were.

The court held that it was to be recognized as a religion, stressing that

> "We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion."[16].

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[15] However, the approach has its flaws. Professor Sarah Barringer Gordon has identified them in the Spirit of the Law: Religious Voices and the Constitution in Modern America (2010), p 150, where he noted, "has invested an extraordinary power in the judiciary to decide where religion begins and ends life secular "and this created uncertainty as to the category of religion unstable. Professor Gordon has provided a larger critical in a chapter entitled The New Age and the New Law: Malnak v. Yogi and the definition of religion in *Constitutional Law* in a multi-author book of religion and Stories of Law (2010), edited by Professor Leslie Griffin. In it he described the decision as influential, but controversial and now a bit "dated".

[16] Their conclusion was critical, p. 136.

They, therefore, concluded that it had been proved that the belief in a Supreme Being was part of Scientology, although there was no dogma of Scientology who had expressed a particular concept of a Supreme Being, and that members of Scientology had accepted and followed its practices because they perceived it as a means to give effect to their supernatural beliefs. As a result, Scientology had met the two criteria that had been previously identified.

In light of these important references to law cases, the English courts decided to carry out a review of the traditional dogmatic approach of the concept of religion, as it had been formulated in the Segerdal case. They thus attempted to identify the elements that characterize a "religion", referring especially to the United States judgment[17]. It was then stressed that

> «One of the more important indicia of "a religion" is that the particular collection of ideas and /or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses. If that be absent, it is unlikely that one has "a religion". Another is that the ideas relate to man's nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium (see Malnak v Yogi) is that the adherents themselves see the collection of ideas and/or practices as constituting a religion»[18].

They, however, added that none of these clues is necessarily decisive of the question whether a particular collection of ideas and / or practice should be characterized as religion. The assessment must be based on case observation but there is no doubt that the most recent jurisprudential decisions allow to expand the concept of religion, as well as in the Segerdal case and conclude, more correctly, that Scientology satisfied all five clues that have been identified so far.

Unless there is some compelling reason to support the contextual contrary, the concept of religion cannot be confined to religions that

[17] As formulated in the decision of Mason ACJ and Brennan J, p. 130.
[18] p.174

recognize a supreme divinity that would sound like a form of religious discrimination unacceptable in today's society, leading to exclusion of Eastern beliefs, now commonly included as "religions": for example Buddhism as well as Jainism, Taoism, Theosophy and part of Hinduism[19].

The motivations of the English decision appear, therefore, absolutely sharable and overlapping with the Italian case law and doctrine already largely developed in the nineties. It was, in fact, possible in the past to anchor the definition of "religion" to the existence of a transcendent God; but the knowledge of Eastern religions has made this traditional approach anachronistic and outdated. It calls, therefore, for a new definition, more realistically responsive to changed social needs.

2 - The long Italian process

In this sense the long process of Milan is of great importance, which, after six pronunciations was concluded in 2000 and legally recognized Scientology as a religion in Italy. The case was based on the complaint of a series of criminal offenses against some members of the church: conspiracy, fraud, extortion. After some contradictory rulings, the Milan judges became aware of the need to define the religiosity of the movement, i.e. it is to be considered a religion if all the alleged activities can qualify as normal religious practices.

The Court decisions of the Supreme Court in 1995 is of fundamental importance; it was claimed, for the first time and in a decisive manner, the need to assess the religious nature of the association which in turn questioned any assessment under the criminal law[20].

It is, then, only from this claim that the problem was focused on the religiosity of the movement as a *sine qua non* for the configuration of

[19] The evidence in this case shows that, among others, Jains and Buddhists, Theosophists have places of worship registered in England. Lord Denning in Segerdal [1970] 2 QB 697, 707 recognized that the Buddhist temples have been "properly described as meeting places for religious worship," but he referred to them as 'exceptional cases' without further explanation. The need to make an exception for Buddhism (which has also been applied to Jainism and Theosophy), and the absence of a satisfactory explanation for this, they are strong signals that there is something not adhering to the general rule supposed.

[20] Corte di Cassazione, II sez. penale, n. 5838, 9 febbraio 1995, *Cass. Pen*., 1996, 3, pp. 2520-2528, with comments of **R. BLAIOTTA**, *Scientology: una religione al cospetto della legge*, p. 2528- 2536. See also **G. CAROBENE**, *Scientology tra religione e sanzione*, Liguori, Napoli, 2012.

possible offenses under the criminal law, arising from the actions of the group. This recognition has an indirect effect with respect to the violation of the criminal law: if a movement has a religious nature it cannot be qualified as criminal[21].

In the Court decisions it was noted that if a group defined itself as a religious confession, the Court has the obligation to check by referring, in the absence of a legislative definition, to the criteria laid down by the Constitutional Court in 1993[22]. The Constitutional Court had specified that, in the absence of an agreement with the Italian state, and in order to recognize the confessional character of a movement, it can refer to some guidelines: previous public recognition; statutes of the institution; common consideration. It, however, pointed out the partiality of these criteria through the use of the adverb 'also' not excluding, therefore, more scope for interpretation and it is for this reason that the statements of the Statute must be associated with a thorough investigation, necessary for assessing whether the statements are actually applied.

The application of these rules of interpretation is vital to identify if the goals expressed by the statute are "religious" but one could also argue the difficulty of factoring this element out from the self-qualification, as it has been stressed in the judicial rulings. For a correct formulation of the problem, it is therefore necessary to verify the purposes set out in the statutes to control the degree of compliance with the activities actually carried out.

In this case, the configuration of the religious movement was absolutely necessary not only for the assessment of tax crimes but also for the contestation of the crime of association, because once Scientology had been granted the nature of a religious belief, it could no longer be convicted of conspiracy, unless those belonging to the confession had not changed by mutual agreement the statutory rules, giving rise to a new subject, different from the original.

The qualification of a religious movement is to be assessed according to the national legitimacy, in the light of the constitutional

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[21] Corte di Cassazione, n. 5838, 1995, cit., p. 20.

[22] Corte Costituzionale, 27 aprile 1993, n. 195 in *Foro It.*, 1994, I, 2986 ss. with comments of **N. COLAIANNI**, *Sul concetto di confessione religiosa*; **G. CASUSCELLI**, *Ancora sulla nozione di "confessione religiosa": il caso Scientology*, in *Quad. dir. pol. eccl.*, 1998, 3, p. 809 ss.; **R. ACCIAI**, *La sent. n. 195 del 1993 della Corte Costituzionale e sua incidenza sulla restante legislazione regionale in materia di finanziamenti all'edilizia di culto*, in *Giur. cost.*, 38, 1993, pp. 2151-65; **G. DI COSIMO**, *Alla ricerca delle confessioni religiose*, in *Dir. eccl.*, 1998, 1, p. 421 ss.

principle of religious freedom which is subject to well-defined limits: those fundamental limitations that constitute the essential conditions for the achievement of a peaceful coexistence of individuals in the society, and the limits that are imposed by civilization itself and the essential values and constraints; further there is the general limit, pursuant to art. 19 of the Constitution, the "morality"[23].

In a subsequent case law[24], in the same process, it was emphasized that in the absence of a definition of religion, it is very difficult for the interpreter to ascertain if a group of people calling themselves a religious movement do have such quality. The constituent had opted for an extended concept of religion, as it is apparent from the choice of not using, in Article 8 of the Constitution, the noun "religion" but the term "confessione religiosa" which identifies, on a philological dimension, a group characterized by a common profession of faith[25]. Two important considerations should be borne in mind: the Buddhist Agreement where the Italian State recognized as a confession a religious movement that does not presuppose the existence of a Supreme being and the treaty of friendship with the U.S.A. that requires to qualify as a religion movement what is already recognized as such in the United States[26].

By examining the specific statutes and the implementation rules of religious practices it is clear that any religion, including the Christian one, implements high levels of purification and ascetic techniques which, though they cannot claim to be scientific, however, they do enjoy some objectivity[27]. Most of the Italian doctrine admits today that the faith in the identity of a Supreme Being cannot be considered the only element of the

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[23] Corte Cassazione, n. 5838, 1995.

[24] Cassazione penale, sez. VI, 8-22 ottobre 1997, n. 1329, in *Quad. dir. pol. eccl.*, 1998, 3, pp. 836- 850. Cfr. **R. BLAIOTTA**, *La Suprema Corte ancora su Scientology, organizzazioni religiose ed organizzazioni criminali*, in *Cass. Pen.*, 1998, 9, p. 2384 ss.

[25] Corte di Cassazione, n. 1329, 1997, p. 29.

[26] Treaty of 2 february 1948, implemented in 1948 with L. June 18, 1949, 385. Articles I.2 and II. 1.2.3. allows Scientology to do with this qualification in Italy.

[27] Corte di Cassazione, n. 1329, 1997, cit., p. 42. **M. RICCA**, *Diritti della coscienza, identità personale e multiculturalismo*, in *Studi in onore di Anna Ravà*, ed. C. Cardia, Giappichelli, Torino, 2003, p. 672 ss.; **N. COLAIANNI**, *Eguaglianza e diversità culturali e religiose. Un percorso costituzionale*, il Mulino, Bologna, 2006; the same author, in another passage pointed out that "le religioni affollano l'agorà politica con le loro diverse visioni del mondo, ne diventano componenti culturali, si atteggiano a moral o cultural entrepreneurs con la propria identità da salvaguardare e promuovere. I luoghi di culto vuotati dalla secolarizzazione le spingono a cercar posto nei luoghi pubblici, ad accentuare piuttosto che la credenza, l'appartenenza" (p. 9).

idea of "religion"[28].

From the examination of the judicial process a clear promotion of the principle of effectiveness of the self-qualification has arisen (a necessary, but not sufficient condition, for a religious group to be called a religion is to auto qualify itself as a "religion"). The indications of Italian jurists seem, therefore, prone into a kind of recognition based on the inductive method rooted in self-qualification. The end of this long and complex process has had with the judgment of the Court of Appeal of Milan, 5 October 2000[29].

As it has been pointed out in the judgment, the status of the Church of Scientology well defines the religious aims of the association: the healing of the spiritual needs of the faithful, through individual and collective rituals; the treatment and protection of organizations that preach and practice the religion of Scientology; the establishment of training centers for the teaching and dissemination of the religion, the promotion and encouragement of the development of the Scientology religion and its rituals[30].

It is once again reiterated the impossibility of defining in a rigid and unchangeable manner the concept of the religious phenomenon, linked to the evolution of the forms of religiosity in different space-time coordinates. All religions were created by a slow evolutionary process that has progressively delineated its structure, dogmas and rituals, and, with reference to Scientology, the fact that the statute itself has assumed explicitly these characters only in recent decades, can not constitute itself principle for the exclusion of its religious nature.

3 - The condemnation of the religious movement in France. Conclusion.

[28] **M. JASONNI**, **M.V. GALIZIA**, *La legittimazione giudiziaria di una confessione religiosa. Il caso Scientology alla luce dei più recenti indirizzi della Corte di Cassazione*, in *diritto&diritti*, 19 ottobre 2000, p. 3 ss (*http://www.diritto.it/articoli/penale/jasonni.html*). It's important also to observe that "tutto il sistema di sostegno (normativo e fiscale) verso tali forme di partecipazione attiva si basa sulla meritevolezza degli scopi perseguiti in quanto tradotti nel compimento di opere a vantaggio dell'intera collettività": **A. FUCCILLO**, *Dare etico. Agire non lucrativo, liberalità non lucrative e interessi religiosi*, Giappichelli, Torino, 2008, p. 15.

[29] Corte di Appello di Milano, 5 ott. 2000 - 1 marzo 2001, n. 4780, in *Giurisprudenza Italiana*, 2001, with comments of **P. COLELLA**, *Ancora a proposito di 'Scientology'*, both p. 1408 ss.

[30] See also **G. CASUSCELLI**, *Ancora sulla nozione di "confessione religiosa"*, cit., pp. 834-835.

A recent condemnation of Scientology in France, which was confirmed by the Supreme Court in October of 2013, more clearly revealed, however, the problems relating to the protection of individual freedom, within EU structures, and in particular the membership of new groups of a religious nature[31]. The Court has, in fact, confirmed the sentences - for conspiracy to fraud and circumvention of incapacity - not only against five Scientologists, but also against the two main French organization structures: the Celebrity Centre and the Library Shelf.

The case dates back to 1998, when some people accused the Church of having persuaded them to spend huge sums of money into personality tests, vitamin cures, sauna sessions and packages for purification.

There are strong similarities to the Italian case, but both law cases followed completely different paths. In France, the judges avoided any definition of religion, whereas Italian lawyers thought it to be a necessary condition for any evaluation, real and concrete, about the movement and its possible dangers.

In the case in question the prosecution focused only on the personality test, with the exclusion of other "tools" used by Scientology religious path: E-meter, saunas, etc.. The Court held that the fraudulent nature of the test is deduced from the scientific presentation of the same, which is used by people without any training in psychology. In the device examined is noted that

> "*des individus* qui utilisent une doctrine philosophique ou religieuse, dont l'objet est licite, à des fins financières ou commerciales, pour tromper volontairement les tiers sont susceptibles d'être poursuivis pour le délit d'escroquerie. L'exercice ou la pratique d'un culte peut d'ailleurs donner lieu à des manœuvres frauduleuses de la part de *certains membres* de cette association cultuelle en vue de tromper des tiers de bonne foi. L'appréciation de ces manœuvres frauduleuses à travers une pratique religieuse revendiquée n'implique pas un jugement de valeur sur la doctrine professée par cette association cultuelle mais concerne seulement la licéité des moyens employés"[32].

It is important to reiterate that these problems stem from a

[31] **G. CAROBENE**, *Le minoranze religiose tra normativa penale e diritti di libertà: rilievi a margine di una recente sentenza su Scientology,* in *Stato, Chiese e pluralismo confessionale,* Rivista telematica (*www. statoechiese.it*), June 2010; **S. PALMER**, *The New Heretics of France. Minority Religions, la République and the Governement- Sponsored 'War on sects'*, Oxford University Press, Oxford, 2011.

[32] Court of Paris, 2009, cit., p. 85.

misinterpretation of the relationship religion - cult and the possible phenomena of deviance related to the latter. The French court has correctly set the issue, by emphasizing the uselessness of qualifying Scientology as a legal entity, such failure of classification has led to the absurd of having to assess the scientific nature of an instrument which is just "confessional". The investigation into the alleged or real scientific validity of an instrument - remember: a purely religious one – cannot be analyzed with tools of a scientific investigation, because it is related to a phenomenon linked to the faith and irrational.

In the juridical configuration of the offense of fraud, the demonstration of the intentional element is crucial. It cannot be invoked as a justification, according to the Paris judges, of being a faithful believer of the doctrines of Scientology.

The notion of fraud is also difficult to delimit, especially with regard to a sect. The protection of the adult is a particularly sensitive issue, especially if not referred to as the protection of the physical or financial position of the subject, but to her/his psychological integrity, by definition a very vague concept. We would run the serious risk of qualifying as fraudulent activities any action lacking scientific connotation, which is the common element in all religious in any coordinate space-time[33]!

It should, therefore, be demonstrated that the test is perceived as "deceptive" in a subjective manner, but the Scientologists use it not only as one of the instruments of proselytism but also for themselves, as a moment of verification of their religious path. It is, also, and it is appropriate to repeat, just a means of access to the confession, and not the only means of progression in this religion. It is one of the modes of religious proselytism, free of charge, who can induce individuals to question and who can direct them towards Scientology. The test is, in fact, integrated into the practice of the teachings of Hubbard and has the objective of measuring the personality, the level of self-awareness and success in life. Since it is a spiritual center - even assuming that the subjects don't know they are being confronted with a religion in the common sense of the word – there is no doubt that they cannot expect the scientific approach of psychological or psychotherapeutic practices, but they need a spiritual or metaphysical assistance.

Another alleged offense is that of conspiracy. This offense also requires proof of an intention, prior to the preparation of the crime which,

[33] Cfr. **D. LLAMAZARES FERNANDEZ**, *Sectas y Derecho fundamental de libertad religiosa*, in **J. GOTI ORDENANA**, *Aspectos socio-juridicos de las sectas desde una perspective comparada*, Onati proceedings, 5, 1991.

to be punishable, must be characterized by one or more material facts[34]. In the case in question it should be proven that, at the basis of the activities of Scientology in France, there are no religious reasons but fraudulent acts, concerted by the group[35].

The offenses are therefore the same as those alleged in the Italian case, but profoundly different is the legal and political context of the two countries. In Italy, the crime of "plagio" (or mental manipulation) has been decriminalized since 1981[36], while in France, in 1996, a parliamentary committee has drafted a report on cults, including Scientology among the sects[37], and in 2001 the law was passed against sectarian movements and mental manipulations[38]. The different legal framework and policy interventions have affected the assessment of the case.

4 - Conclusion

Let me conclude by emphasizing that the issues raised by these judgments are of particular interest to the jurist as, in the study of contemporary religious cults, one of the most difficult problems is the approach to these movements with the appropriate theoretical framework[39]. The current

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[34] Art. 132-71 c.p. stressed that "constitue une bande organisée tout groupement formé ou toute entente établie en vue de la préparation, caracterisée par un ou plusieurs faits matériels, d'une ou plusieurs infractions".

[35] *Les sectes et le droit en France*, F. Messner ed., PUF, Paris, 1999; **A. AMOROS, A. COLLADO, M.L.L. MARTINEZ-VILLASEÑOR**, *Concepto jurídico de secta*, in *Derecho y Opinión*, 2, 1994, pp. 25-36; **R. FRIEDLI**, *Essai sur le concept de 'secte': un critère 'bonne santé-maladie'*, in *Conscience et liberté*, 1999, pp. 21-47.

[36] The decision of Italian Constitutional Court, 8 juin 1981, n. 96, was published in *Giust. pen.*, 1981, I, c. 226 ss.; in *Rivista italiana di diritto e procedura penale*, 1981, p. 1147 ss. with comments of **M. BOSCARELLI**, *A proposito del "principio di tassatività"*, p. 1147 ss.; in *Giurisprudenza costituzionale*, 1981, p. 806 ss. with comments of **P.G. GRASSO**, *Controllo sulla rispondenza alla realtà empirica delle previsioni legali di reato*, p. 808 ss.; in *Diritto di famiglia e delle persone,* 1982, p. 311 with comments of F**. DALL'ONGARO**, *L'illegittimità costituzionale del reato di plagio*, p. 311 ss., on line *http://www.giurcost.org/ decisioni/1981/ 0096s-81.html*.

[37] **A. GEST, J. GUYARD**, *Les sectes en France*, *La Documentation française*, coll. Dossier d'information de l'Assemblée Nationale, 1996, and in *xenu.com-it.net/txt/guyard.htm.*

[38] Loi 2001-504 del 12 juin 2001 tendant à renforcer la prévention et la répression des mouvements sectaires portant atteinte aux droits de l'homme et aux libertés fondamentales, in *Journel Officiel*, 13 juin 2001, p. 9337. **G. CAROBENE**, *Il binomio laicità – libertà religiosa nel sistema francese ed in quello italiano di fronte alle problematiche dei nuovi movimenti religiosi*, in *Il Diritto Ecclesiastico*, 2004, 3, pp. 699-720

[39] **J.A. BECFORD, J.T. RICHARDSON**, *A Bibliography of Social Scientific Studies of New*

social issues, arising from "religious groups" not coded according to traditional rules, require the lawyer to deal with this phenomenon in a careful manner and to avoid, first, the construction of a completely open system - easy prey to exploitation - and secondly, to impose what is now an obsolete legal framework. The management of diversity - cultural and of cult - is, in fact, one of the major challenges of our time, especially in our democratically structured societies. The novelty in this contemporary world is the rise of the politics of identity, the result of a mature theoretical awareness, linked to the inability of managing modern social dynamics according to obsolete patterns of inclusion / exclusion.

Religious Movements, in *Social Compass*, XXX, I, 1983, pp. 111-135.