

CONSCIENCE, VALUES AND RELIGIOUS IDENTITY*

Prof. Maria D'ARIENZO, PhD

Full Professor of Ecclesiastical Law,

Canon Law and the Right of Religious Cults,

Department of Jurisprudence, Frederic II University of Napoli, Italy

maria.dariento2@unina.it

ABSTRACT: Conscience, Values and Religious Identity.

The right to difference constitutes in Western legal systems the main instrument for supporting equality in the exercise of rights, as can be seen about the wearing of religious symbols. The paper examines the relevance of religious identity in contemporary multicultural societies, where the believer's religious belonging comes across the multifarious spheres of social life. In light of this, the essay also intends to analyse the relationship between religious and cultural identity in pluralistic societies.

Keywords: *Conscience, Values, Religious Identity.*

The issues arising from the interplay between the western and the non-western religious cultures can be considered as major challenges to the relationship between freedom and secular legal systems. To put it diversely, the dynamics stemming from these relationships requires a balancing between the protection of cultural and religious diversity, on one hand, and the preservation of the core values of western legal systems¹. In a nutshell, it could be said that it is so because the multiculturalism of contemporary societies and their multi-religiosity are to sides of the same coin. Cultural identity, actually, cannot be pragmatically distinguished from religious belonging, if only because both often share the same behavioral patterns and

* The Italian version of the contribution was published in *Calabria Rotary*, a. 2, 2, aprile-giugno 2022, pp. 52-56.

1 Cf. M. d'Arienzo, *Dialogo interculturale, mediazione giuridica e integrazione sociale*, in *Diritto e Religioni*, 2, 2015, p. 422.

cognitive habits, which in turn constitute the scaffolding of individual and social way of life².

The right to freedom in religious matters constitutes the benchmark to analyse the dynamics between the equality in rights and the protection of diversity from a historical-legal point of view. In the same perspective the effectiveness of the right to freedom can be also considered the main criterion to verify the real and concrete guarantee of cultural pluralism³, based on the right to difference of everyone against any imposition of axiological models to which to conform. Indeed, the free choice of values constitutes the root of the affirmation of the identitarian conscience that is claimed as right to freedom in relation to the protectionist dynamics of the social system, be it religious or political⁴.

The historical dynamics confirm the affirmation of secularity's principle as protection of the specific identity and self-determination of everyone⁵. The deepening of the historical dynamics underlines the juxtaposition of those two profiles of the right to religious freedom - distinct though contemporary - that have characterised the dynamics between authority and freedom in the building process of the modern state: the freedom of thought in matters of faith, claimed by individuals against the religious organizations; and the religious organizations' freedom, claimed by churches and religious groups against political power.

Under this profile, the principle of secularity reflects and preserves the two instances underlying the historical-legal conceptualisation of the right to freedom in religious matters. The first instance is the recognition and appreciation of the diversity of faith. In this light, the secularism has represented a tool against intolerance, primarily of religious power, or of the orthodoxies of institutionalised religious organization and it has also

2 *Ivi*, pp. 422-423.

3 *Ivi*, p. 421.

4 M. d'Arienzo, *La libertà di coscienza nel pensiero di Sebastien Castellion*, Giappichelli, Torino, 2008; Ead., *Rădăcinile dreptului libertății de conștiință. Politică și religie în controversele teologice ale secolului al XV-lea în contextual reformei protestant*, in *Jurnalul libertății de conștiință*, vo. 9, n. 3, 2021, pp. 340-354; Ead., *Contro la violenza sacra. Potere, libertà e diritto nel pensiero di Sebastiano Castellione*, in L. Felici (a cura di), *Violenza sacra, 1. Forme e manifestazioni nella prima età moderna*, Viella, Roma, 2022, pp. 195-205.

5 M. d'Arienzo, *Il contributo del pensiero riformato del XVI secolo all'ermeneutica della laicità*, in *Archivio giuridico*, a. CL, f. 4, 2018, pp. 697-720.

implied the protection of the freedom of dissidents with respect the religious communities to which they belong. The second instance concerns the guarantee of the freedom of the different professions of faith, as promotion of the collective (but also individual) dimension of the right to religious freedom, that can be directly claimed by religious denominations.

In contemporary societies the protection of pluralism and the principle of non-discrimination constitute the corollaries of the principle of neutrality of the public sphere in relation to multiple value options. In this way the individual dimension of the specific identity is traditionally guaranteed in Western legal systems. Differently, the new challenges posed by multiculturalism to Western law and society are represented by the instances of freedom - or rather the right to diversity - claimed by groups or communities bearers of cultural values allogenic to the Western core values. In fact, the collective identities highlight that is precisely the right to difference (that is equality *in* rights) to represent the main instance of public recognition in our societies, rather than the principle of equality of rights.

After all, the protection of religious identity is not merely the guarantee of freedom of the different fideistic options, intended as the freedom of believe in a specific dimension of the sacred, as well as not to believe. Effectively, the protection of religious identity also takes the form of guaranteeing all the intersubjective relations structured in conformity with the system of values, precepts and prohibitions of religious rights, that characterise the believer's life and his or her social practices in various spheres⁶: from the choices of matrimonial typologies to those of education; from the determination of health treatments conforming to one's ethical-religious values to the claiming of new hypotheses of conscientious objection, as the recent pandemic crisis has also demonstrated; from food choices - think of *kosher* and *halal* food - to contractual instruments conforming to religious precepts, as highlighted by ethical finance or the so-called Islamic economy⁷.

6 Cf. M. d'Arienzo, *Appartenenza religiosa e reti sociali dei migranti*, in *Diritto e Religioni*, XXII, 2, 2016, pp. 270-290.

7 Cf. M. d'Arienzo, *L'economia islamica nella globalizzazione dei mercati*, in *Diritto e Religioni*, XXIV, 2, 2017, pp. 523- 552; Ead., *La contrattualistica islamica in un'economia globalizzata*, nel vol. A. Mantineo, S. Montesano (eds.), *L'Islam. Dal pregiudizio ai diritti. Atti del Campus di Studio IUS/11 (Stilo, 18-21 maggio 2016)*, Luigi Pellegrini editore,

In other words, the religious identity protected by the right to religious freedom is not limited to the freedom of believe or not to believe, or to mere freedom of thought in the religious sphere. In fact, the religious affiliation involves the adhesion to values expressed in the precepts of religious legal systems which connote the specific culture deriving from the normative implications that *religious experience* entails⁸.

The issue of the legal regulation of the use of symbols as instruments of immediate affirmation of the individual's religious identity is emblematic of this deep relationship between religion and culture. Think, for example, of the numerous pronouncements issued about wearing the Islamic veil⁹ or the *kirpan* for Sikhs¹⁰, and also of the recent judgement of the United Sections of the Italian Court of Cassation on the subject of display of the crucifix in Italian public school classrooms¹¹.

The importance of the religious symbol in contemporary societies derives from its axiological primacy as a form of intersubjective communication and as a form of belonging to a specific religious tradition. In fact, the symbol complies a "spiritual" function because it becomes an instru-

Cosenza, 2017, pp. 123-152.

8 Cf. J. A. Martin, *Religious Experience*, in M. Eliade, *Encyclopedia of Religion*, MacMillan, New York, 1987, 12, pp. 323-330; M. Delahoutre, *Expérience religieuse*, in P. Poupard (dir.), *Dictionnaire des religions*, PUF, Paris, 1993, pp. 663-666 (Italian edition by Mondadori, Milano, 2007, pp. 724-727); J. Ries, *Symbole, Mythe et Rite. Constantes du sacré*, Cerf, Paris, 2012, p. 10 ss; Id., *Symbolisme et expérience religieuse de la lumière dans les grandes religions*, Brepols, Turnhour, 2002.

9 About the Islamic veil in European case law cf. European Court of Human Rights, 11 July 2017 (*Belcacemi and Oussar v. Belgio*) in <https://curia.europa.eu>; European Court of Human Rights, 26 November 2015 (*Ebrahimian v. France*), in <https://curia.europa.eu>; European Court of Human Rights, 18 September 2018 (*Lachiri v. Belgium*), in <https://curia.europa.eu>; Court of Justice of European Union, 14 March 2015 (C-157/15), in <https://curia.europa.eu>; Court of Justice of European Union, 14 March 2015 (C-188/15), in <https://www.echr.coe.int>; Court of Justice of European Union, *Grand Chamber*, 15 July 2021 (C-804/18, C-341/19), in <https://www.echr.coe.int>.

10 Italian Court of Cassation, 15 May 2017, no. 24084, in *Quaderni di diritto e politica ecclesiastica*, 3, 2017, p. 981 ff. annotated by A. Licastro, *La «sfida» del kirpan ai «valori occidentali» nelle reazioni della dottrina alla pronunzia della Cassazione penale*, Sez. I, 15 maggio 2017, n. 24084, in *ivi*, pp. 983-1007.

11 Italian Court of Cassation, United Sections, 9 September 2021, no. 24414, available at: https://images.go.wolterskluwer.com/Web/WoltersKluwer/%7Bc0be14b4-e883-4917-a-caf1d7fa1df2bb9%7D_cassazione-sezioni-unite-civili-sentenza-24414-2021.pdf.

ment of mediation with the dimension of the sacred¹², translates into a function of cultural and social identity. In this way the “religious” nature of the symbol constitutes for the *homo religiosus* a bond between the perceptible and the transcendent, ascribable to a system of relations that are not only intersubjective, but of communication with a superordinate and spiritual reality¹³. The wearing of the symbol thus becomes an “active” instrument of connection and communication between the spiritual world and the believer’s values that live in the concrete social dimension.

On the other hand, the religious symbol can also take on the connotation of immanent or pragmatic transcendence¹⁴ and in this sense it can assume the nature of a cultural product¹⁵. In this case, its function of identifying a sense of belonging, but also of differentiation from other religious cultures, is significant. In fact, the symbol as cultural product expresses systems of social relations and distinctive values that distinguish the specific cultural tradition with respect to others.

In this perspective, therefore, the ostentation of a religious symbol becomes the expression of a specific religious and cultural identity. On a legal level, even if these behaviours could be apparently regarded as the exercise of the right to freedom of “expression”¹⁶, on the contrary they can

12 About the different profiles concerning the interpretation of symbols and religious symbolism, cf. B. Morris, *Anthropological studies of religion. An introductory text*, Cambridge, University Press, Cambridge-New York, 1987.

13 Cf. M. d’Arienzo, *Diritti culturali e libertà religiosa*, in *Diritto e Religioni*, 2, 2014, p. 580 ff.

14 Cf. G. Azzoni, *La duplice trascendenza del simbolo*, in E. Dieni, A. Ferrari, V. Pacillo, *Symbolon/biabolon. Simboli, Religioni, Diritto nell’Europa multiculturale*, Il Mulino, Bologna, 2005, pp. 27-36, but especially p. 34 ff.; M. RICCA, *Chi vuole il crocifisso? Domande semplici, democrazia interculturale, fede personale*, in *Diritti umani e diritto internazionale*, 4, 2010, pp. 5-39; S. Testa Bappenheim, *I simboli religiosi nello spazio pubblico. Profili giuridici comparati*, Editoriale Scientifica, Napoli, 2019; E. Howard, *Law and the Wearing of Religious Symbols in Europe*, Routledge, Abingdon-New York, 2020; S. Bacquet, *Religious Symbols and the Intervention of the Law Symbolic Functionality in Pluralist States*, Routledge, Abingdon-New York, 2020; A. Negri, G. Ragone, M. Toscano, L. Vanoni (eds), *I simboli religiosi nella società contemporanea*, Giappichelli, Torino, 2022. About the symbolic pragmatic cf. C. Sini, *Il simbolo e l’uomo*, Egea, Milano, 1991, pp. 171.

15 Cf. J. Borella, *La crise du symbolisme religieux*, L’Harmattan, Paris, 2008.

16 About the relationship between religious freedom and freedom to expression cf. E. Stradella, *La libertà di espressione politico-simbolica e i suoi limiti tra teorie e «prassi»*, Giappichelli, Torino, 2008; C. Salazar, *Le “relazioni pericolose” tra libertà di espressione e libertà di*

be better considered as a form of religious profession of faith, protected in the Italian legal system by Article 19 of the Italian Constitution (right to religious freedom), and not by Article 21 of the Italian Constitution (right to freedom of thought)¹⁷.

In the governance of cultural pluralism the valorisation of the individual's religious identity can be an important factor of social integration, as has been revealed in relation to the migratory dynamics that have also affected our country in recent years. Religious communities, structured in social networks, have in fact offered a significant contribution to foster a better social and economic inclusion of migrants within the legal systems of destination¹⁸. These results have been also achieved thanks to the collaboration with civil authorities in a dimension of horizontal subsidiarity.

The same claim of the specific religious identity in relation to other value options can also assume a divisive significance. Without forgetting the phenomena of discrimination on religious grounds still perpetrated against specific religious groups, this divisive scope may result from the political use of religion. Suffice it to think to the role of religions in the recent Russian-Ukrainian crisis and precisely to the newly-established autocephalous Orthodox Church of Ukraine¹⁹. As further proof of how the

religione: riflessioni alla luce del principio di laicità, in *Stato, Chiese e pluralismo confessionale*, Online Journal (www.statoechiese.it), January 2008. With reference to the English and US jurisprudence cf. C. Cianitto, *La gestione dei conflitti tra libertà di religione e libertà di espressione: il caso britannico*; G. D'Angelo, *I simboli c.d. passivi nello spazio pubblico tra tutela delle libertà (di coscienza, di espressione religiosa) e principi di non identificazione e separazione degli ordini: spunti di comparazione (ed in una prospettiva de iure) dalla più recente giurisprudenza statunitense*, published in N. Fiorita, D. Loprieno, *La libertà di manifestazione del pensiero e la libertà religiosa nelle società multiculturali*, Firenze University Press, Firenze, 2009, respectively pp. 141-149 and pp. 151-173; M. Parisi, *Per una disciplina democratica delle libertà di pensiero e di religione. Metodi e contenuti*, AGR editrice, Inzago (Mi), 2014; M. Tushnet, *Advanced Introduction to Freedom of Expression*, Edward Elgar Publishing, Cheltenham, 2018; E. Howard, *Freedom of Expression and Religious Hate Speech in Europe*, Routledge, Abingdon-New York, 2019.

17 Cf. M. d'Arienzo, *Diritti culturali e libertà religiosa*, cit., ff. 577-594.

18 Cf. M. d'Arienzo, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, Luigi Pellegrini editore, Cosenza, 2018; Ead., *Religious communities and migration phenomenon*, in *Științific Buletin-Scientific Bulletin, serie A, Fascicula Filologie-Philology Fascicle, XXX*, 2021, pp. 223-232.

19 The autonomy of the autocephalous Orthodox Church of Ukraine was recognised by the Ecumenical Patriarchate of Constantinople, in open opposition to the Patriarchate

religious factor, far from being a mere choice of individual conscience, also plays a decisive role in geopolitical orders.

Bibliography:

- Azzoni, Giampaolo, *La duplice trascendenza del simbolo*, in E. Dieni, A. Ferrari, V. Pacillo (eds.), *Symbolon/biabolon. Simboli, Religioni, Diritto nell'Europa multiculturale*, Bologna, Il Mulino, 2005, p. 27 ff.
- Bacquet, Sylvie, *Religious Symbols and the Intervention of the Law Symbolic Functionality in Pluralist States*, Abingdon-New York, Routledge, 2020.
- Borella, Jean, *La crise du symbolisme religieux*, Paris, L'Harmattan, 2008.
- Cianitto, Cristiana, *La gestione dei conflitti tra libertà di religione e libertà di espressione: il caso britannico*; in N. Fiorita, D. Loprieno (eds.), *La libertà di manifestazione del pensiero e la libertà religiosa nelle società multiculturali*, Firenze, Firenze University Press, 2009, p. 141 ff.
- Cimbalo, Giovanni, *L'evoluzione dei rapporti tra Stato e Chiese nella Nuova Ucraina. Alla ricerca dell'Autocefalia*, in *Diritto e Religioni*, 2, 2020, p. 262 ff.
- Cimbalo, Giovanni, *Il ruolo sottaciuto delle Chiese nel conflitto russo-ucraino*, in *Diritto e Religioni*, 2, 2021, p. 485 ff.
- D'Angelo, Giuseppe, *I simboli c.d. passivi nello spazio pubblico tra tutela delle libertà (di coscienza, di espressione religiosa) e principi di non identificazione e separazione degli ordini: spunti di comparazione (ed in una prospettiva de iure) dalla più recente giurisprudenza statunitense*, in N. Fiorita, D. Loprieno (eds.), *La libertà di manifestazione del pensiero e la libertà religiosa nelle società multiculturali*, Firenze, Firenze University Press, 2009, p. 151 ff.
- d'Arienzo, Maria, *Contro la violenza sacra. Potere, libertà e diritto nel pensiero di Sebastiano Castellione*, in L. Felici (ed.), *Violenza sacra, 1. Forme e manifestazioni nella prima età moderna*, Roma, Viella, 2022, p. 195 ff.
- d'Arienzo, Maria, *Rădăcinile dreptului libertății de conștiință. Politică și religie în controversile teologice ale secolului al XV-lea în contextual reformei protestant*, in *Jurnalul libertății de conștiință*, vo. 9, n. 3, 2021, p. 340 ff.

of Moscow. Cf. G. Cimbalo, *L'evoluzione dei rapporti tra Stato e Chiese nella Nuova Ucraina. Alla ricerca dell'Autocefalia*, in *Diritto e Religioni*, 2, 2020, p. 262 ff.; Id., *Il ruolo sottaciuto delle Chiese nel conflitto russo-ucraino*, in *Diritto e Religioni*, 2, 2021, p. 485 ff.; V. Parlato, *L'autocefalia della chiesa ortodossa ucraina, interpretazioni dottrinali e strutture ecclesiali a confronto*, in *Stato, Chiese e pluralismo confessionale*, Online Journal (www.statoechiese.it), 7, 2019, pp. 1-16; A. Mainardi, *Le chiese in Ucraina e la sfida della pace*, in *Il Mulino. La guerra in Ucraina*, 12 marzo 2022.

- d'Arienzo, Maria, *Religious communities and migration phenomenon*, in *Științific Buletin-Scientific Bulletin, serie A, Fascicula Filologie- Philology Fascicle, XXX*, 2021, p. 223 ff.
- d'Arienzo, Maria, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, Cosenza, Luigi Pellegrini editore, 2018.
- d'Arienzo, Maria, *Il contributo del pensiero riformato del XVI secolo all'ermeneutica della laicità*, in *Archivio giuridico*, a. CL, f. 4, 2018, p. 697 ff.
- d'Arienzo, Maria, *Leconomia islamica nella globalizzazione dei mercati*, in *Diritto e Religioni*, 2, 2017, p. 523 ff.
- d'Arienzo, Maria, *La contrattualistica islamica in un'economia globalizzata*, in A. Mantineo, S. Montesano (eds.), *L'Islam. Dal pregiudizio ai diritti. Atti del Campus di Studio IUS/11 (Stilo, 18-21 maggio 2016)*, Cosenza, Luigi Pellegrini editore, 2017, p. 123 ff.
- d'Arienzo, Maria, *Appartenenza religiosa e reti sociali dei migranti*, in *Diritto e Religioni*, XXII, 2, 2016, p. 270 ff.
- d'Arienzo, Maria, *Dialogo interculturale, mediazione giuridica e integrazione sociale*, in *Diritto e Religioni*, 2, 2015, p. 420 ff.
- d'Arienzo, Maria, *Diritti culturali e libertà religiosa*, in *Diritto e Religioni*, 2, 2014, p. 580 ff.
- d'Arienzo, Maria, *La libertà di coscienza nel pensiero di Sebastien Castellion*, Torino, Giappichelli, 2008.
- Delahoutre, Michel, *Expérience religieuse*, in P. Poupard (ed.), *Dictionnaire des religions*, Paris, PUF, 1993, p. 663 ff.
- Howard, Erica, *Law and the Wearing of Religious Symbols in Europe*, Abingdon-New York, Routledge, 2020.
- Howard, Erica, *Freedom of Expression and Religious Hate Speech in Europe*, Routledge, Abingdon-New York, 2019.
- Licastro, Angelo, *La «sfida» del kirpan ai «valori occidentali» nelle reazioni della dottrina alla pronunzia della Cassazione penale, Sez. I, 15 maggio 2017, n. 24084*, in *Quaderni di diritto e politica ecclesiastica*, 3, 2017, p. 983 ff.
- Mainardi, Adalberto, *Le chiese in Ucraina e la sfida della pace*, in *Il Mulino. La guerra in Ucraina*, 12 marzo 2022.
- Martin, John A. Jr, *Religious Experience*, in M. Eliade (ed.), *Encyclopedia of Religion*, 12, New York, MacMillan, 1987, p. 323 ff.
- Morris, Brian, *Anthropological studies of religion. An introductory text*, Cambridge, University Press, Cambridge-New York, 1987.

- ✦ Negri, Alessandro; Ragone, Giada; Toscano, Marcello; Vanoni, Luca (eds.), *I simboli religiosi nella società contemporanea*, Torino, Giappichelli, 2022.
- ✦ Parisi, Marco, *Per una disciplina democratica delle libertà di pensiero e di religione. Metodi e contenuti*, Inzago (Mi), AGR editrice, 2014.
- ✦ Ricca, Mario, *Chi vuole il crocifisso? Domande semplici, democrazia interculturale, fede personale*, in *Diritti umani e diritto internazionale*, 4, 2010, p. 5 ff.
- ✦ Ries, Julien, *Symbole, Mythe et Rite. Constantes du sacré*, Paris, Cerf, 2012.
- ✦ Ries, Julien, *Symbolisme et expérience religieuse de la lumière dans les grandes religions*, Turnhour, Brepols, 2002.
- ✦ Salazar, Carmela, *Le “relazioni pericolose” tra libertà di espressione e libertà di religione: riflessioni alla luce del principio di laicità*, in *Stato, Chiese e pluralismo confessionale*, Online Journal (www.statoechiese.it), January 2008, p. 1 ff.
- ✦ Sini, Carlo, *Il simbolo e l'uomo*, Milano, Egea, 1991.
- ✦ Stradella, Elettra, *La libertà di espressione politico-simbolica e i suoi limiti tra teorie e «prassi»*, Torino, Giappichelli, 2008.
- ✦ Testa Bappenheim, Stefano, *I simboli religiosi nello spazio pubblico. Profili giuridici comparati*, Napoli, Editoriale Scientifica, 2019.
- ✦ Tushnet, Mark, *Advanced Introduction to Freedom of Expression*, Cheltenham, Edward Elgar Publishing, 2018.