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VISIBLE BELIEFS. RELIGIOUS CLOTHING AND CONSTITUTIONAL FREEDOMS: THE ITALIAN LEGAL FRAMEWORK IN COMPARATIVE PERSPECTIVE*

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1. *Religious freedom, clothing, and personal identity. Why the Italian legal order?*

The right to dress in accordance with the precepts of one's own confessional affiliation rests upon an articulated system of supranational guarantees that are mutually coherent and synergistic¹. More precisely, the choice to wear a religiously

* Contributo sottoposto a valutazione.

¹ Further information on this subject can be found in H. ELVER, *The Headscarf Controversy. Secularism and Freedom of Religion*, Oxford, 2012, p. 187 ss.; J. MARTÍNEZ-TORRÓN, *Religious Pluralism. The Case of the European Court of Human Rights*, in *Democracy, Law and Religious Pluralism in Europe. Secularism and Post-Secularism*, edited by F. REQUEJO, C. UNGUREANU, London-New York, 2014, pp. 123-146. See also *Religion, Rights and Secular Society: European Perspectives*, edited by P. CUMPER, T. LEWIS, Cheltenham, 2012, *passim*; C. EVANS, *Freedom of Religion under the European Convention on*

connoted garment is qualified simultaneously as a manifestation of personal identity and, above all, as an outward expression of religious freedom. Indeed, «to someone who is an observant member of a faith, religious identity is an integral part of that person's very being»².

Such sedimentation may appear almost self-evident, yet it deserves to be recalled at the outset: when one approaches the intersection of clothing and the religious factor, the terrain in question is not (merely) that of individual preference or 'aesthetic' taste, but that of the most immediate and visible manifestation of the *inner forum*, the spiritual dimension constituting the deepest core of personal identity. The peculiarity of this form of religious observance lies, moreover, in its temporal continuity. Outward manifestations of religious freedom are as a rule concentrated in determinate moments, whereas the precept concerning clothing accompanies the faithful throughout their daily life, transforming the body into the permanent vehicle of a precise confessional adherence. This pervasiveness explains why the regulation of religiously characterised clothing radiates across multiple sectors of the civil legal order in which the faithful's identity manifests itself, and why balancing religious freedom against competing rights demands a calibration specific to the interests at stake in each context³.

The choice to analyse legislation on religious clothing starting from the Italian legal order responds to a precise methodological reason. Indeed, Italy is characterised, within the European panorama, by the absence of *ad hoc* legislation on re-

Human Rights, Oxford, 2001; S. LANGLAUDE, *Indoctrination, Secularism, Religious Liberty and the ECHR*, in *International and Comparative Law Quarterly*, 2006, 4, pp. 929-944; J. RINGELHEIM, *Rights, Religion and the Public Sphere*, in *Law, State and Religion in the New Europe: Debates and Dilemmas*, edited by L. ZUCCA, C. UNGUREANU, Cambridge, 2012, pp. 283-306; L. ZUCCA, *A Secular Europe: Law and Religion in the European Constitutional Landscape*, Oxford, 2012.

² ADVOCATE GENERAL SHARPSTON, Opinion in the case *Bougnauoui v. Micropole*, para. 118.

³ Particularly from a comparative perspective, see M.D. EVANS, *Manual on the Wearing of Religious Symbols in Public Areas*, Boston-Leiden, 2009, pp. 7-24.

ligious clothing. Unlike France, which, as we shall see, regulated the prohibition of conspicuous religious symbols in state schools through the *loi* no. 228 of 2004 and, through the *loi* no. 1192 of 2010, prohibited the concealment of the face in public space, expressly excluding religious motivation from the list of legal exemptions, the Italian legislature has never addressed the question in general and abstract terms. The reasons for this ‘absence’ would merit a separate inquiry. However, for the purposes of this article the lack of a dedicated discipline has opened gaps subsequently filled through extensive, at times creative, interpretation of the (few) provisions in force. The resulting normative framework rests on long-standing legislative references conceived for purposes entirely unrelated to the protection of confessional pluralism, and deployed, as this discussion will attempt to show, to prohibit only particular categories of religious garments. The episodic comparisons drawn with other legal orders accordingly serve an instrumental rather than systematic purpose: the aim is to illuminate, by contrast or convergence, the specificity of the Italian normative framework, and to verify its compatibility with the conventional standard elaborated by the Strasbourg Court⁴.

Thus, in the Italian Republic the freedom to manifest one’s religious affiliation through clothing falls within the scope of protection of Article 19 of the Constitution, which guarantees the right to profess one’s faith and to exercise its worship «in any form, individual or associated»⁵, and finds further grounding in Article 2 of the Constitution, insofar as confessional clothing constitutes one of the forms through which the citizen-believer’s personal identity is expressed and communi-

⁴ See J. MURDOCH, *Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights*, Strasbourg, 2012; K. ALEXOPOULOU, *The Margin of Appreciation in Freedom of Thought, Conscience, and Religion under Article 9 of ECHR*, in *Oxford Journal of Law and Religion*, 2022, 2-3, pp. 220-245; P. VARGIU, *The European Court of Human Rights and the myth of freedom of religion*, in *Il Diritto ecclesiastico*, 2024, 3.3, pp. 755-771.

⁵ As a general premise consider that, for a better comprehension of the text, we chose to translate the sources that were not originally in English: therefore, when no other indication is given, translations are by the author.

cated. This ‘dual’ constitutional guarantee is not without interpretive consequences. Because the believer’s claim to dress in accordance with their own religious precepts can be traced back both to religious freedom in the strict sense and to the protection of personal identity, any limitations must be measured against a diversified array of guarantees, whose specific weight varies according to the context in which the restriction operates⁶. As mentioned, the distinctiveness of manifesting one’s own religious adherence through clothing lies above all in its temporal continuity. While the cultic practices properly speaking – prayer, participation in rites, observance of liturgical precepts – are concentrated in determinate moments and may be temporally or geographically circumscribed without thereby negating the believer’s confessional affiliation, the obligation concerning clothing, once perceived by the believer as binding, accompanies the individual at all times, foreclosing any separation between the exercise of religious freedom and participation in civil life⁷. Restrictions on confessionally rooted clothing must therefore never be regarded as episodic limitations on the *forum externum* of religious freedom but, in a measure proportional to the pervasiveness of the precept, they bear upon the very possibility for a person to move through public spaces without renouncing observance of the religious command. Indeed, «The right to manifest religious belief [...] is not really about the communication of ideas, whether to facilitate the furtherance of the general good or otherwise. It is about enabling the right-holder to ex-

⁶ In this regard, see the study by J. WOEHRLING, *L’obligation d’accommodement raisonnable et l’adaptation de la société à la diversité religieuse*, in *Revue de droit de McGill*, 1998, 43, pp. 328-401. More recently, see also C. UNGUREANU, *Europe and religion: an ambivalent nexus*, in *Law, State and Religion in the New Europe: Debates and Dilemmas*, cit., p. 307 ss.

⁷ Moreover, from an anthropological perspective, religious clothing is imbued with entirely personal meanings that the individual attributes to each item of clothing: F. EL GUINDI, *Veil: Modesty, Privacy and Resistance*, Oxford, 1999, p. 172 ss., and L. ABU-LUGHOD, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Other*, in *American Anthropologist*, 2002, 3, pp. 783-790.

ercise her choice to perform what she sincerely believes to be her divinely ordained duty»⁸.

2. Concealing and non-concealing clothing: a preliminary distinction

The variety of religious clothing demands a preliminary classification: the difference between a head covering and a garment that fully conceals a subject's facial features translates into differentiated legal treatments. The decisive criterion lies in the degree to which the garment affects the recognisability of the person wearing it: indeed, garments that leave the oval of the face visible are subject to a structurally different legal regime from those that conceal the face, either fully or partially, and the latter are themselves further distinguished according to the degree of concealment⁹.

With respect to Judaism, the *kippah* – which, it bears recalling, is a circular cap worn over the crown of the skull by observant male believers as a sign of reverence toward God – leaves the wearer's recognisability intact and has always remained outside the scope of general prohibitions. The wearing of the *kippah*, however, gave rise to a specific question of compatibility with Italian criminal procedural law¹⁰. Article 142 of the Code of Criminal Procedure, in its previously applicable formulation, required that witnesses take the oath bareheaded, in compliance with a *ratio* of institutional respect toward the judging body and on account of the solemnity of the

⁸ T. LEWIS, *What Not to Wear: Religious Rights, the European Court, and the Margin of Appreciation*, in *International and Comparative Law Quarterly*, 2007, 2, p. 399.

⁹ On the nature of religiously significant garments and on the criterion of facial visibility as a legal and anthropological distinguishing factor, see F. EL GUINDI, *Veil: Modesty, Privacy and Resistance*, cit., p. 170 ss.

¹⁰ On the issue of taking an oath with one's head uncovered in Italian criminal procedural law, prior to the provisions contained in Law No. 101 of 1989, see G. DISEGNI, *Ebraismo e libertà religiosa in Italia. Dal diritto all'uguaglianza al diritto alla diversità*, Torino, 1983, p. 32 ss.

moment. This requirement opened, for the observant believer, a conflict of conscience of considerable intensity between the procedural obligation just mentioned and the religious precept under discussion. The tension was eased as a result of Law no. 101 of 1989, approving the agreement (*intesa*) between the Italian State and the Union of Italian Jewish Communities, Article 6 of which introduced an express exemption from the codified discipline, allowing members of the Jewish faith to take the oath with their head covered.

The landscape of female Islamic garments is the most typologically articulated and the most discussed from a legal standpoint¹¹. The main and most widespread garments are arranged along a *continuum* ordered by increasing degree of coverage: the *foulard* covers only the head, leaving the face and neck fully visible; the *hijab* wraps the head, hair, and neck, framing the face. Also to be included are the *chador*, circular in structure and distinguished by a central opening framing the oval of the face while enveloping the female figure from head to foot; the *niqab*, a veil that fully conceals the face, leaving only the eye region visible; the *burqa*, a full garment covering the female figure in its entirety, with a textile grille positioned at eye level¹². These latter two garments – and the

¹¹ See S. CARMIGNANI CARIDI, *Libertà di abbigliamento e velo islamico*, in *Musulmani in Italia*, edited by S. FERRARI, Bologna, 2000, p. 223 ss.; P. CAVANA, *I segni della discordia. Laicità e simboli religiosi in Francia*, Torino, 2004; A. FERRARI, *La lotta dei simboli e la speranza del diritto. Laicità e velo musulmano nella Francia di inizio millennio*, in *Symbolon/Diabolon*, edited by E. DIENI, A. FERRARI, V. PACILLO, Bologna, 2005, p. 193 ss.; J. LUTHER, *Il velo scoperto dalla legge: profili di giurisprudenza costituzionale comparata*, in *Islam ed Europa*, edited by S. FERRARI, Roma, 2006, p. 63 ss.; A. MOTILLA, *Il problema del velo islamico in Spagna*, in *Islam ed Europa*, cit., p. 143 ss.; S. TONOLLO, *Islamic Symbols in Europe: the European Court of Human Rights and the European Institutions*, in *Stato, Chiese e pluralismo confessionale*, 2014, 5, p. 1 ss.; M. CIRAVEGNA, *La nozione di “segno esteriore forte” tra problemi di definizione e presunzione di lesività: la sentenza “Dahlab c. Svizzera”*, in *Diritto e religione in Europa. Rapporto sulla giurisprudenza della Corte europea dei diritti dell'uomo in materia di libertà religiosa*, edited by R. MAZZOLA, Bologna, 2012, p. 117 ss.

¹² In addition to the *hijab*, *chador*, *niqab* and *burqa*, other main types include the *khimar*, a loose veil covering the head, shoulders and part of the torso; the *shayla*, a long scarf wrapped around the head, particularly com-

burqa to an absolute degree – are definable as concealing in the technical sense, since they prevent the visual recognition of the person¹³: it is upon these that the legislative and regulatory discipline of numerous European legal orders concerning public order and security is focused¹⁴. Non-concealing clothing, while exposed to specific objections in particular sectors such as the workplace¹⁵, raises issues of a different nature,

mon in the Persian Gulf countries; and the *al-amira*, generally consisting of a close-fitting cap and a second veil worn over it. Also noteworthy is the *jilbab*, a loose-fitting outer garment designed to ensure modesty in dress. In South Asia, the *dupatta* is common – a shawl worn on the head or over the shoulders, also found in non-Islamic traditions. In South-East Asia, the *tudung* – a local form of women's veil common in Malaysia and Indonesia – and the *telekung* – a loose-fitting garment worn mainly during women's prayers – are notable. For a systematic classification of types of Islamic women's clothing, see F. EL GUINDI, *Veil: Modesty, Privacy and Resistance*, cit., *passim*; L. AHMED, *Women and Gender in Islam: Historical Roots of a Modern Debate*, New Haven, 1992; E. TARLO, *Visibly Muslim: Fashion, Politics, Faith*, Oxford, 2010, p. 144 ss.; J.S. JOULI, *Pious Practice and Secular Constraints: Women in the Islamic Revival in Europe*, Stanford, 2015, p. 196 ss.; A. MOORS, E. TARLO, *Introduction: Fashion, Faith and Identities*, in *Fashion Theory*, 2007, 2-3, pp. 133-141.

¹³ Moreover, it is worth noting that «forms of “full-face veiling” have [...] historically been adopted by non-Muslim populations and, at the same time, not adopted by Muslim populations»: COMMITTEE FOR ITALIAN ISLAM, *Parere concernente burqa e niqab*, in *Quaderni di diritto e politica ecclesiastica*, 2011, 2, pp. 474-477.

¹⁴ For further information on this matter, please refer to the articles in issue 1/2012 of the journal *Quaderni di diritto e politica ecclesiastica*, in particular: S. FERRARI, *Il «burqa» e la sfera pubblica in Europa*, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 3-12; L. MANCINI, «Burqa», «niqab» e diritti della donna, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 27-38; A. OVERBEEKE, *Verso un divieto generale del «burqa» nei Paesi Bassi*, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 107-132; A. MOTILLA, *El problema de la utilización de vestimentas religiosas en el espacio público: el asunto del «burqa» islámico en España*, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 133-160; L. CHRISTOFFERSEN, *A Quest for Open Helms. On the Danish Burqa-Affair*, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 193-210.

¹⁵ With specific regard to anti-discrimination legislation, see the studies by A. PACE, *Problematica delle libertà costituzionali. Parte speciale*, Padova, 2014, pp. 179-205; L. PALADIN, *Il principio costituzionale d'eguaglianza*, Milano, 1993; C. TOBLER, *Indirect Discrimination: A Case Study into the Development of the Legal Concept of Indirect Discrimination under EC Law*, Antwerp, 2005; K. ALIDADI, *Religion, Equality and Employment in Europe: The Case for*

primarily relating to a violation of the principle of non-discrimination: its presence in public spaces therefore remains unrelated to the problematic profiles of public order.

3. *Concealing clothing and public space: security-driven tensions (and distortions) ...*

The recognisability of the person in public space constitutes a corollary of the principle of public order, established to safeguard collective security, which requires identity verification by the authorities. The scope of this area within the Italian legal system is traced by two provisions: Article 85 of Royal Decree no. 773 of 1931 (commonly called, in Italian, *Testo Unico delle Leggi di Pubblica Sicurezza* or TULPS), which prohibits «appearing masked in a public place», subjecting the offender to a sanction that, in the original 1931 formulation, was criminal in nature (a minor offence punishable by arrest for up to three months or a fine) and was subsequently converted into an administrative sanction by Legislative Decree no. 507 of 1999; and Article 5, paragraph 1, of Law no. 152 of 1975 (the so-called *legge Reale*), which establishes the prohibition on wearing «any [...] means apt to render the recognition of the person difficult, in a public place or a place open to the public», while at the same time providing for an exemption where a «giustificato motivo» (justified reason) exists. The genesis of the *legge Reale* can be traced to the climate of opposition to political violence of the 1970s (Anni di piombo) and presents an ‘open’ structure, hinging upon the «justified reason» clause¹⁶. The interpretation of this clause has absorbed

Reasonable Accommodation, Oxford, 2017; *Discrimination Law: Theory and Context*, edited by N. BAMFORTH, M. MALIK, C. O’CINNEIDE, London, 2008; I. RORIVE, *Religious Symbols in the Public Space: In Search of a European Answer*, in *Cardozo Law Review*, 2009, 6, pp. 2669-2698; E. BRIBOSIA, J. RINGELHEIM, I. RORIVE, *Aménager la diversité: le droit de l’égalité face à la pluralité religieuse*, in *Revue trimestrielle des droits de l’homme*, 2009, pp. 319-373.

¹⁶ It is worth mentioning that wearing the hijab (without covering the face and allowing for recognition) does not fall within the scope of the prohi-

the greater part of the litigation between public order provisions and religious freedom: case law has progressively recognised that the observance of a confessional precept requiring the covering of the face may satisfy the *giustificato motivo* exemption, thereby rendering the conduct criminally irrelevant. This development emerges clearly in a 2004 case, when a woman was placed under investigation by the Public Prosecutor's Office of Treviso for the offence under Article 5, paragraph 1, of Law no. 152 of 1975, for having walked along a public street wearing the *niqab*. The judge for preliminary investigations ordered the case dismissed, holding that the *giustificato motivo* was satisfied by the confessional precept requiring the wearing of that garment. However, litigation on the matter has never entirely subsided, and for this very reason it is necessary to recall the most significant case-law rulings. Thus, the Court of Cremona, by judgment of November 2008, fully acquitted a woman who had entered a courtroom wearing the *niqab*, charged with violating Article 5 of the *Reale* Law. The judge held that the *giustificato motivo* required by the provision as a ground for exemption had been established, considering, among other things, the factual elements gathered during proceedings: the woman had duly submitted, upon entering the courthouse, to security checks and the identification procedure. This finding led the judge to exclude the existence of the offence as charged, given that the public order purpose pursued by the provision had been fully satisfied, in the case at hand, thereby depriving the prohibition of its applicative premise. A partially dissonant approach is that of the Court of Pordenone which, by judgment of 2016, convicted for violation of the same Article 5 of Law no. 152 of

bition set out in Article 5 of Law No. 152 of 1975 but rather constitutes a legitimate expression of individual religious freedom. On this subject, see G.L. GATTA, *Islam, abbigliamento religioso, diritto e processo penale: brevi note a margine di due casi giurisprudenziali*, in *Stato, Chiese e pluralismo confessionale*, 2009, p. 1 ss.; M. CIRAVEGNA, *Abbigliamento religioso, tutela dell'identità e ordine pubblico*, in *Quaderni di diritto e politica ecclesiastica*, 2010, 1, pp. 385-408; N. FIORITA, *Libertà religiosa e società multiculturali: il caso del velo islamico*, in *Stato, Chiese e pluralismo confessionale*, 2008, pp. 1-19.

1975 a woman who had refused to remove the *niqab* to take part in a session of the municipal council of San Vito al Tagliamento. The local judge held that the circumstances of the concrete case did not satisfy the requirements of the exemption, while nonetheless leaving unprejudiced, in the abstract, the relevance of religious freedom as a possible ground of justification. The Court of Milan expressed itself in convergent terms by order of February 2009, issued during the course of criminal proceedings, holding that the order directed at a defendant to remove the «Islamic head covering»¹⁷ was consistent «with the well-established institutional practice whereby no one may attend a hearing with their head covered, with the exception of the law enforcement officers assigned to the security of the hearing», as well as with the disciplinary powers that Article 470 of the Code of Criminal Procedure confers upon the judge «for the protection of the dignity and respect owed to the Judicial Authority». The judge further excluded that the defendant's voluntary decision not to attend the hearing, following the unheeded invitation to uncover the head, amounted to a violation of the right of defence, since no coercive removal had occurred. The wavering orientations of case law recurred in the episode, which took place in 2018, of a trainee lawyer removed from the courtroom of the Regional Administrative Court (in Italian, *Tribunale amministrativo regionale* or TAR) of Emilia-Romagna for having refused to remove the *hijab*¹⁸. The decision received wide media coverage and was criticised in the literature. As a matter of fact, Article 12 of the implementing rules of the Code of Adminis-

¹⁷ It should be noted that – in this case – the reference concerns a generic ‘head covering’ worn by a man, as distinct from the types of concealing Islamic veils for women mentioned previously. On this issue, see A. MADERA, *Il porto di simboli religiosi nel contesto giudiziario*, in *Stato, Chiese e pluralismo confessionale*, 2020, 4, pp. 1-26. In general, see R. MAZZOLA, *Il velo islamico nel contesto giuridico europeo. Le ragioni di un conflitto*, in *Diritto, immigrazione e cittadinanza*, 2018, 1, pp. 1-29.

¹⁸ For a general overview, please refer to P. CAVANA, *I simboli religiosi nello spazio pubblico nella recente esperienza europea*, in *Stato, Chiese e pluralismo confessionale*, 2012, 28, pp. 1-47 and, even earlier, Id., *I segni della discordia. Laicità e simboli religiosi in Francia*, Torino, 2004.

trative Procedure merely requires that anyone attending the hearing «must remain silent, may not make signs of approval or disapproval or cause disturbance», granting the presiding judge the power to request the intervention of law enforcement «where the judge deems it necessary for the orderly conduct of the hearing», but remains silent on any obligation to have one's head uncovered as a condition for attending court.

3.1. ...in particular: the intervention of certain local administrations

As regards the contested competence of local authorities to regulate these matters, a first case concerned ordinance no. 8 of 2004, adopted by the mayor of the municipality of Drezzo (Como) acting as a government official pursuant to Article 15 of Law no. 121 of 1981. The measure extended, by way of interpretation, the prohibition on the use of «means apt to render the recognition of the person difficult», set out in Article 5, paragraph 1, of Law no. 152 of 1975, to forms of concealing veil. The Prefect of Como annulled the ordinance by decree of September 2004, finding «lack of competence and violation of law» and, accordingly, an excess of power resulting from an erroneous interpretation of the applicable legislation. Similarly, ordinance no. 24 of 2004¹⁹ of the mayor of the municipality of Azzano Decimo (Pordenone) prohibited the wearing in public places within the municipal territory of «veils, full-face helmets, or other accessories that cover the face rendering it unrecognisable», thus including the *niqab* and *burqa*. The defect of the measure in question can be analysed as twofold: on the level of competence, the mayor had adopted a general or-

¹⁹ More recently, the same approach was also taken in Ordinance No. 100 of 2009 issued by the municipality of Varallo Sesia and Ordinance No. 36 of 2010 issued by the municipality of Novara. On the subject of mayors' powers in matters of public safety and religious dress, see F. CORTESE, *La sicurezza urbana e il potere di ordinanza del Sindaco tra competenze statali e competenze regionali*, in *Le Regioni*, 2010, 1-2, p. 133 ss.; T.F. GIUPPONI, «Sicurezza urbana» e ordinamento costituzionale, in *Le Regioni*, 2010, 1-2, pp. 49-82.

dinance on public security matters in the absence of the conditions of necessity and urgency that legitimate recourse to such an instrument; on the substantive level, the ordinance surreptitiously departed from the legal reference, disregarding the *giustificato motivo* clause that the *Reale* Law contemplates as a constituent element of the offence. This twofold illegitimacy emerges above all from the decision of the Prefect of Pordenone, who annulled the ordinance by decree in the exercise of his hierarchical power of oversight over the acts of the mayor as a government official. The municipal administration challenged the prefectural decree before the regional administrative court (TAR, *Tribunale Amministrativo Regionale*) of Friuli-Venezia Giulia, which, by judgment no. 645 of 2006, dismissed the appeal and confirmed the legitimacy of the annulment²⁰. The TAR clarified that the ordinance had introduced an absolute and generalised prohibition incompatible with the structure of the national provision. The Council of State, seized on appeal, fully confirmed the first-instance judgment with decision no. 3076 of 2008, clarifying the interpretive scope of Article 5 of Law no. 152 of 1975 and holding that the wearing of the Islamic veil, even when concealing, constitutes the implementation of a specific religious option, such as to satisfy the *giustificato motivo* capable of excluding criminal liability²¹. The Court held that «the *ratio* of the provision, aimed at protecting public order, is to prevent the use of helmets or other means for the purpose of avoiding recognition. However, an absolute prohibition exists only on demonstrations taking place in a public place or in a place open to the public [...]. In other cases, the use of means potentially capable of rendering recognition difficult is prohibited only if it occurs “without justified reason” ». The absolute prohibition on concealment of the face – insofar as relevant here, the *niqab* and *burqa* – therefore operates exclusively on the occa-

²⁰ See in this regard V. GRECO, *Il divieto di indossare il velo islamico: tutela della sicurezza o strumento di lotta politica?*, in *Giurisprudenza di merito*, 2007, 9, p. 2423 ss.

²¹ See Trib. Cremona, 27 November 2008, with a note by G.L. GATTA, S. TURCHETTI, G. VARRASO, in *Corriere del merito*, 2009, 2, p. 190 ss.

sion of demonstrations taking place in a public place or in a place open to the public, with the express exclusion of sporting events that necessarily entail such use (consider, in this regard, fencing competitions, in which athletes, for obvious and intuitive reasons, must protect their faces).

4. *The Contested Choice of the Lombardy Region Regarding Religiously Connoted Clothing*

The question of the full veil has also acquired particular significance at the regional level, where the case of the Lombardy Region constitutes the most significant point of reference. On 10 December 2015, the Lombardy regional executive (*Giunta*) adopted resolution no. X/4553, bearing the title «strengthening of access and presence-control measures at the premises of the regional council and of the bodies and companies forming part of the regional system»²². The measure, adopted in the wake of the Paris attacks of 13 November 2015, extended the application of the prohibition on the use of «protective helmets or any other means apt to render the recognition of the person difficult» to hospital trusts, local social and healthcare authorities, and the entire network of regional public facilities. The most legally controversial aspect of reso-

²² Notably, the regional executive provided for «the adoption of appropriate measures to strengthen the system of control, identification and security, prohibiting the use of protective helmets or any other means that might make it difficult to recognise a person, at the institutional premises of the Regional Executive and the bodies and companies of the regional system (SiReg), as specified in Article 1 of Regional Law No. 30 of 2006». See in this regard N. FIORITA, D. LOPRIENO, *Islam e costituzionalismo*, in *Stato, Chiese e pluralismo confessionale*, 2017, 14, pp. 1-24, spec. p. 13 ss.; G. CAVAGGION, *Gli enti locali e le limitazioni del diritto alla libertà religiosa: il divieto di indossare il velo integrale*, in *Stato, Chiese e pluralismo confessionale*, 2016, 28, p. 31 ss.; A. CESARINI, *La delibera 'anti-velo' della Giunta lombarda e il nuovo paradigma della pubblica sicurezza*, in *Stato, Chiese e pluralismo confessionale*, 2020, 7, pp. 1-24; N. MARCHEI, *L'obbligo di riconoscibilità nella delibera della Regione Lombardia sull'accesso ai luoghi pubblici e le (asserite) esigenze di sicurezza pubblica*, in *Quaderni di diritto e politica ecclesiastica*, 2017, 3, p. 829 ss.

lution no. X/4553 lies in having expressly established that «religious traditions and customs» could not constitute «justified grounds for exception»: a decision consistent with the security-driven orientation underlying the measure, which nonetheless risked having a direct impact on the protection of the religious freedom guaranteed by Article 19 of the Constitution. The aprioristic exclusion of religious motivation as a *giustificato motivo* also placed the resolution in question in possible tension with Article 3, paragraph 2, of the Constitution and with the principle of reasonableness in calibrating restrictions on fundamental rights.

Several associations – including the association for legal studies on immigration (ASGI, *Associazione per gli studi giuridici sull'immigrazione*) – applied to the Court of Milan pursuant to Article 44 of Legislative Decree no. 286 of 1998 (the *Testo unico sull'immigrazione*, consolidated immigration act), which entitles anyone with an interest to ask the ordinary courts to order the cessation of discriminatory conduct carried out by private parties or by the public administration «on grounds of race, ethnicity, nationality, or religion», as well as «any other measure suitable, according to the circumstances, to remove the effects of the discrimination». By judgment of April 2017 the Court of Milan dismissed the application: the reasoning is articulated around two argumentative axes. The first is the formally neutral and generalised character of the measure, applicable to anyone accessing the regional facilities regardless of the reason for covering the face. The second is the traceability of the prohibition to national legislation, namely Article 5 of the *Reale* Law, with respect to which the regional resolution performed a merely implementing function at the local level. On this basis the court excluded any form of discrimination. The Court of Appeal of Milan (judgment no. 4330 of 2019) fully confirmed the first-instance approach, clarifying that the regional executive had acted within the perimeter of the competences attributed to it and in coherent implementation of the national normative framework. The Court further observed that the resolution merely rendered operative, at the level of regional facilities, an obligation already established

by national law, with the consequence that any legitimacy review should properly be conducted with reference to the legal provision itself (Article 5, paragraph 1, of the *legge Reale*)²³. Finally, it should be noted that, in February 2025, the Lombardy regional council approved a motion committing the regional executive to give full implementation to resolution no. X/4553 and to urge Parliament to adopt national legislation on the prohibition of the full veil in public places²⁴.

5. A Look Beyond the Alps: The French Case in Particular

From a comparative standpoint, the contrast with the Italian solution regarding concealing clothing – founded, as we have seen, on the absence of a generalised prohibition and on case-by-case balancing – emerges with particular clarity when set against legal orders that have opted for a general and abstract normative intervention.

France, with the *loi* no. 1192 of 2010, bearing the title «interdiction de la dissimulation du visage dans l'espace public»

²³ See the reconstruction by C.B. CEFFA, *Quali garanzie a presidio della libertà religiosa nelle regioni italiane? Alcune riflessioni a partire dalla sentenza n. 254/2019 della Corte costituzionale*, in *Diritti regionali. Rivista di diritto delle autonomie territoriali*, 2020, 1, pp. 190-214, spec. p. 205 ss.

²⁴ In which the council was required to: urge the Government and Parliament to adopt legislative measures aimed at introducing a ban on the wearing of the Islamic veil, such as the burqa or niqab, in public places and buildings, as well as within schools; fully implement Lombardy Regional Council Resolution No. X/4553 of 2015, renewing the call to local authorities to ensure compliance within their respective public buildings; to call on the Government to consider extending the ban on covering the face and head with a *burqa*, *hijab*, *khimar*, *jilbab*, *niqab* and *chador* to all school premises, ensuring that this measure not only safeguards security but also promotes the integration of underage pupils; and monitor the implementation of the measure, to verify that the ban is applied fairly and proportionately, without discrimination, and that the measures adopted are effectively justified on grounds of security and the protection of public order, in full compliance with Italian and European legislation and case law. The full text is available at the following link: <https://gedasi.consiglio.regione.lombardia.it/dasi/public/d3b47421-7465-4ff9-85e3-7c3d471a6e11>.

(prohibition of concealment of the face in public space), addressed the question in a manner entirely different from Italy. The scope of application of the law is defined in terms of subjective universality and extensive territoriality: the prohibition operates in all public spaces, including streets, squares, thoroughfares, and sites in which a public service is provided, irrespective of the sex and nationality of the person concerned. A point of particular significance is the deliberate exclusion of religious motivation from the list of legal exemptions, exhaustively confined to cases justified by health, professional, sporting, artistic, or traditional reasons. Moreover, the compatibility of the law was subjected to review by the European Court of Human Rights in the celebrated case *S.A.S. v. France* of 2014, a landmark ruling on full Islamic clothing under conventional law. The applicant, a French Muslim, alleged the violation of Articles 8, 9, 10, and 14 ECHR, challenging the compatibility of the statutory prohibition with the guarantees of respect for private life, freedom of thought, conscience, and religion, as well as of expression, and with the principle of non-discrimination. The Court examined the legitimate aims abstractly invocable under Article 9, paragraph 2, ECHR, preliminarily excluding that the prohibition could be traced to the protection of public security, given the absence of a concrete and identifiable threat. The French government, however, principally argued for an ‘atypical’ legitimate aim: the protection of «vivre ensemble» (literally, ‘living together’)²⁵ as a condition for social

²⁵ See S. ANGELETTI, *Il divieto francese al velo integrale, tra valori, diritti, laïcité e fraternité*, in *Federalismi*, 2016, 1, pp. 1-30; I. RUGGIU, *S.A.S. vs France: si conferma il divieto francese al burqa con l'argomento del "vivere insieme"*, in *Quaderni costituzionali*, 2014, 4, p. 957 ss.; U. ZINGALES, *Il limite di compatibilità dei simboli religiosi negli spazi pubblici di una democrazia aperta: il caso del burqa e del niqab*, in *Federalismi*, Focus Human Rights, 2015, 2, pp. 1-24; S. FERRARI, *La lotta dei simboli e la speranza del diritto (Parte seconda): la guerra "italiana" al "burqa" e al "niqab"*, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 39-62. See also E. BREMS, *S.A.S. v. France: A Reality Check*, in *Nottingham Law Journal*, 2016, 25, pp. 58-72; L. PERONI, A. TIMMER, *Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law*, in *International Journal of Constitutional Law*, 2013, 4, pp. 1056-1085; E. HOWARD, *Law and the Wearing of Religious Symbols: European Bans on the Wearing of Religious Symbols in Edu-*

coexistence and for the maintenance of the minimum conditions of interpersonal interaction. The Court held that this objective could be subsumed within the category of «protection of the rights and freedoms of others» under Article 9, paragraph 2, finding in the visibility of the face an implicit prerequisite of the model of public interaction protected by the Convention, and qualified it as a legitimate aim. The argumentative core of the judgment centres on the question of the margin of appreciation: the Strasbourg Court observed that, among the member States of the Council of Europe, there is no consensus as to the desirability or illegitimacy of a statutory prohibition of the full veil in public space. Comparative legislation attested, at the time of the decision, to the adoption of a prohibition of general scope in only a very limited number of legal orders. In the absence of consensus on a question pertaining to choices of cultural and social policy rooted in the political and constitutional identity of each State, the Court recognised in favour of national authorities a wide margin of appreciation, leaving to their discretionary assessment the identification of the point of balance between the conventional guarantee of religious freedom and the protection of the model of society that each country intends to preserve²⁶. The choice of the French legisla-

cation, Abingdon, 2012; F. TULKENS, *Freedom of Religion under the European Convention on Human Rights: A Precious Asset*, in *BYU Law Review*, 2014, 3, p. 509 ss.; A. FORNEROD, *Les «affaires» de burqa en France*, in *Quaderni di diritto e politica ecclesiastica*, 2012, 1, pp. 63-82.

²⁶ On the so-called 'margin of appreciation' doctrine – without claiming to be exhaustive – please refer to E. BENVENISTI, *Margin of Appreciation, Consensus, and Universal Standards*, in *New York University Journal of International Law and Politics*, 1999, 31, pp. 843-854; J.A. BRAUCH, *The Margin of Appreciation and the Jurisprudence of the European Court of Human Rights*, in *Columbia Journal of European Law*, 2004-2005, 11, pp. 113-150; E. BREMS, *The Margin of Appreciation Doctrine in the Case-Law of the European Court of Human Rights*, in *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht*, 1996, pp. 230-314; M. DELMAS-MARTY, M.L. IZORCHE, *Marge nationale d'appréciation et internationalisation du droit. Réflexions sur la validité formelle d'un droit commun pluraliste*, in *Revue internationale de droit comparé*, 2000, 4, pp. 753-780; M.R. HUTCHINSON, *The Margin of Appreciation Doctrine in the European Court of Human Rights*, in *International and Comparative Law Quarterly*, 1999, p. 638 ss.

ture was held to be proportionate to the objective pursued: according to the Strasbourg judges, the measure leaves religious practice in the private sphere untouched and is accompanied by a relatively mild sanctioning regime. The judgment nonetheless gave rise to wide-ranging reservations in the scholarly literature. The notion of «vivre ensemble», in fact, has been criticised as a limit with deliberately undefined contours, capable of legitimising the normative compression of cultural-religious minorities in the name of an ‘ideologically’ neutral conception of public space.

A subject of heated debate, especially in recent years, has concerned the wearing of the so-called *burkini* – a garment covering the entire body, except for the face, hands, and feet, enabling Muslim women to engage in swimming activities while observing religious requirements perceived as binding. This gave rise to a major controversy in France in the summer of 2016, when several municipal administrations issued ordinances prohibiting its use on public beaches, grounding the prohibition on arguments relating to hygiene and security, as well as with reference to the protection of republican *laïcité*. The *Conseil d'État*, the French Council of State, ruling in interim proceedings by order of August 2016 concerning the resolution of the municipality of Villeneuve-Loubet, suspended the measure, setting out reasoning intended to serve as a general guideline: according to the administrative judge, restrictions on freedom of conscience and worship must rest on demonstrable and concrete risks of disturbance to public order, such that the mere visibility of a garment traceable to a religious practice remains extraneous to the imperative reasons capable of justifying limitations on individual freedom in spaces open to the community²⁷. As for Italy, as early as

²⁷ See L. PEDULLÀ, *Abbigliamento religioso e tutela dell'ordine pubblico nello stato di emergenza. Il paradigma francese*, in *Rivista trimestrale di scienze dell'amministrazione*, 2016, 4, pp. 1-8; D. FERRARI, *I sindaci francesi contro il «burkini»: la laicità a ferragosto? A prima lettura di alcuni recenti orientamenti giurisprudenziali*, in *Stato, Chiese e pluralismo confessionale*, 2016, 31, p. 15 ss. See also *Approches juridiques de la diversité culturelle*, edited by M.C. FOBLETS, N. YASSARI, Leiden, 2013; E. BRIBOSIA, I. RORIVE, *In*

2009 the mayor of Varallo Sesia (Vercelli) ordered (ordinances no. 99 and 100 of 2009) the prohibition on wearing the burkini at municipal bathing facilities, accompanying the measure with the installation of signs prohibiting the wearing of *burqa*, *niqab* and *burkini*. By order of April 2014, the Court of Turin, ruling in proceedings brought by ASGI, characterised the decision made by the Varallo Sesia administration as discriminatory conduct on grounds of ethnic origin and religion.

6. *The First Case Study. Religious Clothing in Public Schools: A Comparison of Legal Systems*

Public school is the institution in which the tension between the individual's religious freedom and the neutrality (*rectius*, equidistance) of the State reaches its maximum intensity, for two converging reasons: the school is the place in which the identity of future generations is formed, and it is the terrain upon which the principle of secularity of public education deploys its most direct effects. The legal significance of the questions that arise is amplified by the different qualification of the subjects bearing the religious claim: students and teachers occupy profoundly different roles, with the consequence that the solutions adopted in the two cases may diverge considerably²⁸.

In Italy, in the absence of *ad hoc* legislation expressly prohibiting concealing religious clothing in public schools, the established practice allows students to wear religiously oriented garments. A guiding principle on the matter was set forth by the regional education office for the Friuli-Venezia Giulia

Search of a Balance Between the Right to Equality and Other Fundamental Rights, in *European Anti-Discrimination Law Review*, 2015, 20, pp. 5-14; J.H.H. WEILER, *Freedom of Religion and Freedom From Religion: The European Model*, in *Maine Law Review*, 2011, 1, p. 760 ss.

²⁸ Most recently, see M.C. RUSCAZIO, *Forme di presenza del fenomeno religioso nella scuola pubblica. I riti e l'abbigliamento religioso*, in *Individuo e collettività: tra autonomia e responsabilità*, edited by L. MARISIO, G. SICHERA, G. SOBRINO, Torino, 2023, pp. 46-57.

Region of the Ministry of Education, University, and Research in a letter addressed to school principals in the region: in the absence of national laws expressing a clear prohibition, the grounds for opposing, as a general matter, the use of «signs of expression of cultural and religious affiliation that do not conflict with the orderly conduct of teaching activity» fall away. On this subject, mention may be made of the solution adopted by the ‘Sandro Pertini’ school in Monfalcone, a municipality in the same Italian region, which embodies a practice developed by the school principal in the exercise of the institution’s power of self-organisation, devised precisely with reference to the wearing of the *niqab* by some female students. The procedure consists of a daily verification of personal identity, conducted by a staff member of the institution in a private room through the temporary removal of the veil, prior to access to the classrooms. This operation aims at satisfying the obligation to identify students that rests upon the school institution, while nonetheless leaving the freedom of religious manifestation unprejudiced.

The issue concerning the position of teachers is more controversial, bearing directly on the constitutional principle of impartiality of the public administration under Article 97 of the Italian Constitution. In the absence of judicial precedent and normative references capable of guiding the interpreter, one strand of scholarship maintains that public school teachers merely provide an educational service, without representing or properly ‘embodying’ the State institution. The choice of clothing would therefore fall within the sphere of the teacher’s private life, and a prohibition on wearing religious symbols would amount to a discrimination based on religious affiliation and, as such, prohibited. From this perspective, the limitation is to be found, if anything, in the ‘indoctrinating’ use of religiously oriented clothing worn by the teacher, with consequences that are detrimental to the students. The contrary scholarship proceeds from the premise that the principle of impartiality under Article 97 of the Constitution requires every public employee, and, *a fortiori*, anyone performing a teaching function in a public school, to observe a confessional neu-

trality that the display of a clearly recognisable religious sign would irreparably compromise. The European Court of Human Rights endorsed this second approach in its 2001 inadmissibility decision concerning the case of *Dahlab v. Switzerland*²⁹, holding compatible with Article 9 ECHR the measure by which an elementary school teacher had been ordered to refrain from wearing the *foulard*, the Islamic headscarf, during lessons: the right of pupils to receive an education in an environment of religious neutrality was considered a legitimate aim capable of justifying the restriction, since a «powerful external symbol» such as the veil would have impaired that neutrality beyond the threshold of tolerance of the legal system.

Remaining within this domain, the legislative solution of greatest incisiveness is the one adopted, again in this case, by the French legal order with the *loi* no. 228 of 2004, which introduces the prohibition on wearing in public schools – with the explicit exclusion of university institutions – symbols or garments manifesting a religious affiliation with a visible character (*ostensibles*)³⁰. The criterion for drawing a distinction between permitted and prohibited symbols is articulated by the *règlement d'application* of the same year, commonly referred to as the *Fillon* circular, which distinguishes *signes ostensibles* – immediately recognisable as indicators of confessional affiliation – from *signes discrets*, which fall outside the scope of operation of the prohibition.

The *Conseil d'État*, by decision of December 2007, recognised the compatibility of the law with the French consti-

²⁹ In the legal literature, see C. LABORDE, *Critical Republicanism: The Hijab Controversy and Political Philosophy*, Oxford, 2008; E. HOWARD, *Law and the Wearing of Religious Symbols: European Bans on the Wearing of Religious Symbols in Education*, cit., *passim*; A. VAKULENKO, *Islamic Dress in Human Rights Jurisprudence: A Critique of Current Trends*, in *Human Rights Law Review*, 2007, 4, pp. 717-739; L. VICKERS, *Religious Freedom, Religious Discrimination and the Workplace*, Oxford, 2008; J. RINGELHEIM, *Rights, Religion and the Public Sphere*, cit., pp. 283-306.

³⁰ See M. CALAMO SPECCHIA, *I «simboli» della (in)tolleranza neutrale e la République*, in *Diritto pubblico comparato ed europeo*, 2005, 1, p. 173; E. BRIBOSIA, I. RORIVE, *Le voile à l'école: une Europe divisée*, in *Revue trimestrielle des droits de l'homme*, 2004, 60, p. 951 ss.

tutional system: the measure was indeed proportionate to the aim of preserving the secularity of the public school system, applied in a generalised and uniform manner, and allowed students the possibility of attending private religious schools, which were recognised as equivalent to state schools in terms of the legal validity of the qualifications awarded. The European Court of Human Rights confirmed this approach in the case of *Dogru and Kervanci v. France* of 2008, in which the Court held compatible with Article 9 ECHR the measure of removal adopted by the French school authorities against pupils who had refused to remove the Islamic veil during physical education classes³¹.

In the past, the Turkish legislature instead decided to confine its regulatory intervention to the university sphere, limiting students' ability to wear confessionally connoted clothing, consistent with the constitutional principle of secularism (*laiklik*) enshrined in Article 2 of the Turkish Constitution of 1982³². Although in Turkey the prohibition on wearing the Islamic veil in universities has been definitively abolished³³, marking a turning point with respect to the separatist tradition inaugurated by Mustafa Kemal Atatürk³⁴, it is

³¹ On the judgment *Dogru and Kervanci v. France* see J.P. MARGUÉNAUD, *Mariages et signes religieux : laïcité quand tu nous tiens ! (CEDH 2e sect., 20 janv. 2009, Şerife Yiğit c. Turquie – CEDH 5e sect., Kervanci c. France et Dogru c. France)*, in *Revue trimestrielle de droit civil*, 2009, p. 285.

³² On the principle of secularism (*laiklik*) in the 1982 Turkish Constitution and its development in case law, see E. ÖZBUDUN, *Turkey's Search for a New Constitution*, in *Insight Turkey*, 2012, 1, pp. 39-50; Y. NAVARO-YASHIN, *The Market for Identities: Secularism, Islamism, Commodities*, in *Fragments of Culture: The Everyday of Modern Turkey*, edited by D. KANDIYOTI, A. SAKTANBER, London, 2002, pp. 221-253.

³³ On 8 October 2013, as part of the so-called 'democratisation package', the ban was formally lifted in universities through an amendment to Article 5 of the dress code regulations (*kıyafet yönetmeliği*). On the process of democratic reform in Turkey and the abandonment of Kemalism, see G.M. TEZCÜR, *Muslim Reformers in Iran and Turkey: The Paradox of Moderation*, Austin, 2010; M. SOMER, *Moderate Islam and Secularist Opposition in Turkey: Implications for the World, Muslims and Secular Democracy*, in *Third World Quarterly*, 2007, 7, pp. 1271-1289; E.J. ZÜRCHER, *Turkey: A Modern History*, London, 2004.

³⁴ For a more detailed examination of Kemalist thought and its influence on the secular nature of the Turkish state, see A. MANGO, *Atatürk: The Biog-*

nonetheless worthwhile briefly to retrace certain orientations of the adjudicating bodies of the Council of Europe that have ruled on the matter on two distinct occasions. By the decision concerning application no. 16278/90 of 1993 (*Karaduman v. Turkey*), the European Commission of Human Rights declared inadmissible the application brought by a student at Ankara University who had been refused issuance of an academic degree certificate on account of her failure to submit a bareheaded photograph. The Commission excluded that this requirement amounted to an interference with the freedom to manifest one's religion, observing that «in a university setting there are limits to the manifestation of religious convictions which are aimed at the protection of the rights of others or the maintenance of order» and that the applicant, by enrolling at a public university, had accepted the rules governing its operation. The ruling of greatest significance is the 2005 Grand Chamber decision in the case of *Leyla Şahin v. Turkey*. The dispute originated from a circular issued by the rector of Istanbul University in February 1998, which prohibited female students from accessing university buildings, classrooms, and examination sessions while wearing the Islamic veil, and male students from doing so while sporting a long beard³⁵. The Grand Chamber confirmed the First Section judgment of June 2004, holding the measure compatible with Article 9 ECHR³⁶: this ruling, indeed, may be regarded as a well-estab-

raphy of the Founder of Modern Turkey, New York, 1999; B. LEWIS, *The Emergence of Modern Turkey*, Oxford, 1961; B. TOPRAK, *Islam and Political Development in Turkey*, Leiden, 1981; F. ACAR, G. ALTUNOK, *The 'Politics of Intimate' at the Intersection of Neo-Liberalism and Neo-Conservatism in Contemporary Turkey*, in *Women's Studies International Forum*, 2013, 41, pp. 14-23.

³⁵ Critical analyses have been carried out by M. PARISI, *Simboli e comportamenti religiosi all'esame degli organi di Strasburgo. Il diritto all'espressione dell'identità confessionale tra (presunte) certezze degli organi sovranazionali europei e (verosimili) incertezze dei pubblici poteri italiani*, in *Il diritto di famiglia e delle persone*, 2006, 3, pp. 1415-1452.

³⁶ See K. ALTIPARMAK, O. KARAHANOGULLARI, *European Court of Human Rights: After Şahin: The Debate on Headscarves Is Not Over, Leyla Şahin v. Turkey, Grand Chamber Judgment of 10 November 2005, Application No. 44774/98*, in *European Constitutional Law Review*, 2006, p. 268 ss.; S. LANGLAUDE, *Indoctrination, Secularism, Religious Liberty and the ECHR*, cit., pp.

lished precedent in the Court's case law, insofar as «In spite of its flaws and of the many criticisms received, the rationale *Leyla Şahin* has not remained an isolated episode in the life of the ECHR. The principles and perspective present in *Leyla Şahin* have subsequently been used by the Court to decide against the applicants in other cases of students or teachers who had various sanctions imposed for wearing Islamic headscarves at school in Turkey, and also in France, where the restrictive policies on the use of religious garb in public schools (but not at the university) were confirmed and reinforced by the 2004 law on religious symbols»³⁷.

7. *The Second Case Study. The Employment Relationship and the Right to Dress According to One's Religious Convictions*

The Italian system of antidiscrimination protection in the workplace is organised around a complex of provisions operating on distinct levels. The conflictual character that has historically marked social struggle in this domain has, over time, generated tension between freedoms of primary importance within the Italian constitutional order: the freedom of the worker to practise their faith without prejudice to their employment (Article 19 of the Constitution), and the employer's right to manage their economic activity autonomously, either by basing it on principles of neutrality or, conversely, by pursuing ideological or religious aims (Article 41 of the Constitution). In this regard, case law has repeatedly emphasised that

929-944; N. NATHWANI, *Islamic Headscarves and Human Rights: a Critical Analysis of the Relevant Case Law of the European Court of Human Rights*, in *Netherlands Quarterly of Human Rights*, 2007, pp. 221-254; A. NIEUWENHUIS, *European Court of Human Rights: State and Religion, Schools and Scarves. An Analysis of the Margin of Appreciation as Used in the Case of Leyla Şahin v. Turkey, Decision of 29 June 2004, Application Number 44774/98*, in *European Constitutional Law Review*, 2005, pp. 495-510.

³⁷ J. MARTÍNEZ-TORRÓN, *The (Un)protection of Individual Religious Identity in the Strasbourg Case Law*, in *Oxford Journal of Law and Religion*, 2012, 2, p. 378.

the freedom of the enterprise can never compress the dignity of the worker, which remains an inviolable limit to be preserved in every case. The safeguarding of these constitutional guarantees is principally realised through labour-law provisions that categorically prohibit: investigations capable of revealing, even indirectly, the religious orientation of an employee or job applicant (Article 8, Law no. 300 of 1970); differential treatment based exclusively on a worker's religious (or non-religious) opinions (Articles 15 and 16, Law no. 300 of 1970); or dismissals motivated by the employee's professed faith (Article 15, Law no. 300 of 1970). Italian law thus enshrines a general principle of the irrelevance of a worker's faith affiliation, which serves above all to shield the worker from undue interference by the employer, that is, to prevent faith from operating as a discriminating factor³⁸. To complete this framework, in the exercise of the competences that the treaties confer upon European Union law, the Council of the European Union issued Directive 2000/78/EC, which establishes a general prohibition of discrimination on the basis of religious or ideological convictions: this legislation was subsequently transposed into Italian law by Legislative Decree no. 216 of 2003. Within this stratified normative framework, the Italian legal order, in constant dialogue with the case law of the supranational Courts, has progressively developed a composite body of rules and principles aimed at reconciling the worker's religious freedom with the employer's legitimate interests. Accordingly, the worker has the right to wear garments expressive of their own confessional affiliation in the workplace, a right that nonetheless remains subject to balancing against competing values and interests, whose specific weight varies according to the productive sector and the duties concretely performed³⁹. Among such interests, of rele-

³⁸ See in this regard, S. BALDASSARRE, *La libertà religiosa nei luoghi di lavoro tra tutela antidiscriminatoria e strategie di inclusione*, Cosenza, 2024, p. 43 ss.; S. FERNANDEZ SANCHEZ, *Libertà religiosa e lavoro*, Torino, 2022, p. 67 ss.

³⁹ See L. VICKERS, *Religious Freedom, Religious Discrimination and the Workplace*, cit., *passim*; S. FREDMAN, *Discrimination Law*, Oxford, 2011², p. 73 ss.; S. COGLIEVINA, *Diritto antidiscriminatorio e religione. Eguaglianza, libertà*

vance is the enterprise's policy of ideological-confessional neutrality, the legitimacy of which was expressly recognised by the Court of Justice of the European Union in the preliminary ruling decided on 14 March 2017, concerning *Achbita v. G4S Secure Solutions*⁴⁰.

It is also worth noting the limitations inherent in the contractual relationship: in Italy, a worker who has accepted an assignment contractually requiring the use of a uniform or a specific attire and who subsequently claims the right to wear religious dress incompatible with it could, according to one strand of scholarship, expose their claim to the objection of breach of the principle of good faith in the performance of the contract under Articles 1175 and 1375 of the Civil Code⁴¹.

The standard developed by the European Court of Human Rights for assessing the legitimacy of restrictions on religious freedom within the employment relationship consists principally in the analysis of the duties concretely performed by the worker, an issue already addressed earlier in this discussion. However, it should be made clear that, in the Court's view, it

e laicità in Italia, Francia e Regno Unito, Tricase, 2012; A. VISCOMI, *Diritto del lavoro e 'fattore' religioso, una rassegna delle principali disposizioni legislative*, in *Quaderni di diritto e politica ecclesiastica*, 2, 2001.

⁴⁰ Conversely, arguments to the contrary have been put forward in relation to the case *Bougnaoui v. Micropole* of 14 March 2017. The full text of both judgments can be found in *Il lavoro nella giurisprudenza*, 2017, 5, with a note by R. COSIO, and in *Labor*, 24 March 2017, with a note by V.A. POSO, *Religione e pregiudizio. La Corte di Giustizia e la discriminazione per il velo islamico indossato nei luoghi di lavoro tra libertà religiosa dei lavoratori e libertà di impresa*; V. NUZZO, *La Corte di giustizia e il velo islamico*, in *Rivista italiana di diritto del lavoro*, 2017, II, p. 436 ss. In this regard also E. HOWARD, *Islamic headscarves and the CJEU: Achbita and Bougnaoui*, in *Maastricht Journal of European and Comparative Law*, 2017, 24, p. 348 ss.; J.H.H. WEILER, *Je suis Achbita*, in *Rivista trimestrale di diritto pubblico*, 2018, 1, p. 1113 ss. In particular, for the case law of the Court of Justice, see J. RINGELHEIM, *Headscarf bans in the public workplace before the Court of Justice: OP v. Commune d'Ans or the Art of Ambiguity*, in *European Labour Law Journal*, 2024, 3, pp. 1-12; S. COGLIEVINA, *Diritto antidiscriminatorio e religione. Eguaglianza, libertà e laicità in Italia, Francia e Regno Unito*, cit., *passim*.

⁴¹ On the general clause of objective good faith in the performance of a contract, see, among others, S. RODOTÀ, *Le fonti di integrazione del contratto*, Milano, 1969.

is only through such an inquiry that the requirements of necessity and proportionality can be ascertained, requirements that Article 9, paragraph 2, ECHR sets as a condition for the legitimacy of any interference with the freedom to manifest one's faith. The relevant ruling is the 2013 decision in the case of *Eweida and Others v. United Kingdom*, which jointly determined four applications concerning workers dismissed or sanctioned for reasons connected to the display of religious symbols or the refusal to perform certain duties in conflict with their own religious convictions. With reference to the cases relevant for the purposes of the present analysis, the Court found a violation of Article 9 ECHR in relation to the application of Nadia Eweida, a member of the British Airways check-in staff sent home without pay for visibly wearing a small cross necklace over her uniform⁴². The Court observed that the symbol «was discreet and could not have detracted from her professional appearance» and that «there was no evidence that the wearing of other items of religious jewellery by other members of staff had any negative impact on British Airways' brand or image», concluding that «the domestic courts accorded too much weight to the wish of the employer to project a certain corporate image». The corporate decision was therefore found to lack the requirements of proportionality, as there was no sufficient employer's interest to justify the restriction. The Court, conversely, excluded a violation of Article 9 ECHR with reference to the application of Shirley Chaplin, a nurse working in a geriatric hospital ward, who had been prohibited from wearing a similar cross necklace: in that case, the prohibition was deemed justified by reasons of patient health and safety, since the necklace exposed her to the concrete risk of being grabbed by confused or agitated patients.

⁴² In the legal literature, see M. HILL, *Religious Symbolism and Conscientious Objection in the Workplace*, in *Ecclesiastical Law Journal*, 2013, 2, pp. 191-203; I. LEIGH, A. HAMBLER, *Religious Symbols, Conscience and the Rights of Others*, in *Oxford Journal of Law and Religion*, 2014, 1, pp. 2-24; R. SANDBERG, *Law and Religion*, Cambridge, 2011, pp. 113-135; L. VICKERS, *Religious Freedom, Religious Discrimination and the Workplace*, Oxford, 2016; N. DOE, *Law and Religion in Europe: A Comparative Introduction*, Oxford, 2011, pp. 29-42.

Returning to a brief comparison with the French legal order, employment case law has developed the parameter of «contact avec le public» (contact with the public) as a discretionary criterion for the legitimacy of dismissing a worker who refuses to comply with employer directives regarding clothing⁴³. This criterion operates in close connection with the structure of the proportionality test. The visibility of the religious symbol to the eyes of the users is considered relevant for the purposes of assessing the enterprise's needs, whereas its perceptual irrelevance in the concrete performance of the service neutralises any justification for the prohibition⁴⁴. The *Cour d'appel* of Paris, by judgment of March 2001 (the *Mme Charni v. SA Hamon* case), confirmed the legitimacy of dismissing a shop assistant at a shopping centre who had refused to remove the Islamic veil, reasoning that the activity performed entailed direct and continuous contact with customers, such as to render the worker's clothing relevant to the proper performance of the contractual service. In the public sector, moreover, the principle of secularity operating within the French legal order as a constitutional constraint requires confessional neutrality on the part of every public official in the exercise of their functions. Any display of confessional symbols constitutes a violation of the duties of institutional neutrality, with disciplinary consequences graduated according to the circumstances of the concrete case. The *Cour de Cassation*, by judgment no. 537 of 2013 (case of *Mme X v. Caisse primaire d'assurance maladie de Seine-Saint-Denis*, the primary health insurance fund of Seine-Saint-Denis), clarified that the provisions on religious symbols applicable to the public sector apply analogously to the private sector when it carries out a public service, giving rise to a functional

⁴³ See, most recently, *Cour de Cassation*, judgment n. 19-24079 of 2021. See also, more generally, S. HENNETTE-VAUCHEZ, D. ROMAN, *Droits de l'homme et libertés fondamentales*, Paris, 2013; *The Experiences of Face Veil Wearers in Europe and the Law*, edited by E. BREMS, Cambridge, 2014, spec. p. 232 ss.

⁴⁴ Recently, see A. LICASTRO, *La questione del velo islamico delle addette ai controlli di sicurezza aeroportuale: tra pretese di "neutralità" e libertà religiosa*, in *Stato, Chiese e pluralismo confessionale*, 6, 2026, pp. 101-121.

expansion of the perimeter of secularity that is independent of the employer's public legal status and instead anchored to the public law nature of the activity performed. The European Court of Human Rights endorsed this approach in its 2015 judgment, *Ebrahimian v. France*, holding proportionate the non-renewal of the contract of a social worker employed in the psychiatric department of a public hospital who had refused to remove the Islamic veil.

8. *The Third Case Study. The Identifying Function of Identity Documents*

The photograph affixed to identity documents performs an identifying function that imposes, as a logical corollary, the full visibility of the oval of the face. Garments that fully conceal the face are intrinsically incompatible with this function, irrespective of religious affiliation. A significant degree of openness, by contrast, has long been recorded regarding confessional head coverings that leave intact the possibility of visually identifying the person.

The relevant normative framework in Italy is constituted by Presidential Decree no. 445 of 2000, bearing the title *Testo unico delle disposizioni legislative e regolamentari in materia di documentazione amministrativa* (Consolidated Act on Legislative and Regulatory Provisions Concerning Administrative Documentation), within the framework of which the relevant ministerial specifications are set out. Circular no. 4 of 1995 of the Ministry of the Interior established that photographs intended for identity cards must portray the subject bareheaded, with the face fully visible and captured frontally, while nonetheless permitting the wearing of a head covering by citizens professing faiths that prescribe covering of the head⁴⁵. The Ministry of Infrastructure and Transport adopted

⁴⁵ The text of the circular states as follows: «Nei casi in cui la copertura del capo in vari modi: velo, turbante o altro, è imposta da motivi religiosi, la stessa non può essere equiparata all'uso del cappello, ricadendo così nel divie-

this same approach with circular no. 23176 of 2016, extending the photographic requirements to driving licences. In any case, the features of the face must remain fully visible, with the profile unobstructed from forehead to chin. With regard to the issuance of residence permits, the extension of the exemption for head coverings had already been undertaken by circular no. 300 of 2000 of the Ministry of the Interior on the same grounds, providing that «the *chador* or even the veil, as in the case of [Catholic] nuns, form an integral part of habitual dress and together contribute to identifying the wearer, naturally provided that the face remains uncovered».

The exemption has proven, however, resistant to automatic application for any allegation of religious motivation whatsoever. The case of the adherents of so-called Pastafarianism⁴⁶, a movement founded in 2005 by Bobby Henderson and self-described as the Church of the Flying Spaghetti Monster, offers the most emblematic illustration of this. Some Pastafarian believers have claimed the right to be photographed for identity documents wearing a colander on their head, as an expression of freedom of conscience and religion: a possibility that was, in fact, granted in Austria in 2011. As for Italy, in July 2013 a resident of the municipality of Cuneo, identify-

to posto dall'articolo 289 del regolamento del T.U.L.P.S. Invero la cennata disposizione regolamentare non parla di capo scoperto ma bensì fa riferimento al cappello, cioè a un accessorio dell'abbigliamento il cui uso è eventuale e che, per le sue caratteristiche, potrebbe alterare la fisionomia di chi viene ritratto. Diverso è invece il caso in esame ove il turbante ovvero il velo delle religiose sono parte degli indumenti abitualmente portati e che concorrono nel loro insieme a identificare chi li porta. Ciò premesso si ritiene opportuno, anche alla luce di possibili richiami al precetto costituzionale della libertà di culto e di religione, che le richieste in argomento debbano trovare favorevole accogliimento presso le amministrazioni comunali, purché i tratti del viso siano ben visibili».

⁴⁶ On Pastafarianism and the issue of the legal definition of 'religion' or 'belief' within the meaning of Article 9 of the ECHR, see J. TEMPERMAN, *State-Religion Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance*, Leiden, 2010; M.D. EVANS, *Religious Liberty and International Law in Europe*, Cambridge, 2001, p. 262 ss.; J. MURDOCH, *Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights*, cit.; C.K. ROBERTS, *De Wilde v The Netherlands: Pastafarianism at the ECtHR*, in *PILARS Case Comment*, 2022, 3, p. 6 ss.

ing himself as a follower of the Church of the Flying Spaghetti Monster, submitted an application to the civil registry office for the issuance of an identity card with a photograph where he wore a colander, claiming that it was a head covering ritually prescribed by his confession. The municipal administration, which perceived an issue of interpretive uncertainty with respect to the 1995 circular, referred the question to the territorially competent prefecture, which in turn referred it to the Ministry of the Interior. The latter issued a negative response, reasoning that, in the case at hand, there were no requirements of worship capable of prevailing over the requirements of public order and security.

On the conventional level, the European Court of Human Rights has developed a body of case law consistent with the principles underlying the domestic discipline, albeit with differentiated outcomes owing to the diversity of the situations examined. In the case of *Mann Singh v. France* of 2008, the Strasbourg Court held compatible with Article 9 ECHR the circular of the French Ministry of Transport requiring a bare head in photographs for the driving licence, with no possibility of a 'religious exemption'. Returning to Pastafarianism, mention should be made of the 2021 case (*De Wilde v. Netherlands*), in which the conventional judge examined the request of a Dutch adherent of this religious movement to be photographed wearing a colander for identity documents, a request that the Dutch authorities had rejected. The Court preliminarily excluded that Pastafarianism constitutes a religion or belief within the meaning of Article 9 ECHR, emphasising that the Convention's notion of religion presupposes the satisfaction of a minimum threshold of «cogency, seriousness and cohesion»: with the consequence that merely satirical or provocative manifestations fall outside the State's obligation of recognition and reasonable accommodation in the administrative sphere⁴⁷.

⁴⁷ On the decision *De Wilde v. the Netherlands*, see C.K. ROBERTS, *De Wilde v The Netherlands: Pastafarianism at the ECtHR*, cit., pp. 1-7.

9. *Sikh Clothing: in Particular, the Kirpan and the Dastar. A Synoptic Look at Italy, Great Britain, and Canada*

Sikhism, a monotheistic religion founded in the Punjab in the fifteenth century, requires its believers to wear at all times the so-called *Panj Kakars*, the five articles of faith that trace the visible perimeter of the believer's religious identity: uncut hair (*kesh*), the wooden comb (*kangha*), the steel bracelet (*kara*), the undergarment (*kachera*) and the ceremonial dagger (*kirpan*). To these is added the turban (*dastar*), formally not included in the list of the five precepts but perceived by the community as inseparable from religious observance. In the context of Italian ecclesiastical law, the issue that has generated the most significant litigation is that of the *kirpan* as a weapon capable of causing harm, with significant legal implications that have been extensively analysed in the literature⁴⁸. For present purposes, by contrast, the Council of State, sitting in an advisory capacity, excluded in 2010 the compatibility of carrying the *kirpan*, provided for in the confessional statute, with the fundamental principles of the legal order, thereby precluding, on that occasion, recognition of the *Sikh Gurdwara Parbandhak Comitato Italia* (Sikh Association for the Italian Region). Subsequently, following a fruitful dialogue between Sikh associations and the Ministry of the Interior, a prototype of a harmless *kirpan* was developed, approved by the *Banco nazionale di prova* (the Italian public body responsible for verifying the conformity of firearms and ammunition intended for the Italian market) by registered act no. 525 of 2016, and this prototype was subsequently incorporated into the associative statutes governing the faith in question. The Council of State, in its opinion of 20 October

⁴⁸ On the classification of the kirpan as a weapon capable of causing harm under Italian law see, for example, A. LICASTRO, *Il motivo religioso non giustifica il porto fuori dell'abitazione del kirpan da parte del fedele sikh (considerazioni in margine alle sentenze n. 24739 e n. 25163 del 2016 della Cassazione penale)*, in *Stato, Chiese e pluralismo confessionale*, 2017, 1, pp. 1-29. More recently, see the study by C. CIANITTO, *Minoranze e simboli religiosi. I sikh tra identità e cittadinanza*, Torino, 2024, p. 153 ss.

2021, also expressed a favourable orientation towards the recognition of the *Sikh Gurdwara Parbandhak Committee Italy*, recommending, however, precisely the inclusion in the statute of both «the requirements – formal (the reference to the prototype) and substantive (the dimensions and shape of the blade)», in order to dispel any residual ambiguity. Among other things, the path just outlined had initially been opposed by the Indian religious authorities, who contested the confessional legitimacy of the *kirpan* in its ‘modified’ version.

As regards the Canadian legal system, the *Royal Canadian Mounted Police* adopted a policy exempting Sikh employees from the obligation to wear the traditional Stetson hat, authorising its replacement with the turban, and likewise permitted the maintenance of the beard and the carrying of the *kirpan*, holding such practice compatible with the requirements of public security. More generally, with respect to the Canadian legal order, the leading case on the matter is that concerning the case of *Multani v. Commission Scolaire Marguerite-Bourgeoys* (2006). The decision concerned Gurbaj Singh Multani, a Sikh student who in November 2001 had accidentally dropped his *kirpan* in the schoolyard: following this incident, the school administration had imposed an absolute prohibition on carrying the ritual dagger. The Canadian Supreme Court, applying the principle of reasonable accommodation and the test of proportionality, declared the absolute prohibition to be a violation of the student’s religious freedom: according to the Court, in fact, adequate protection of school safety can be achieved through less restrictive measures, specifically through an absolute prohibition on drawing the dagger and an obligation to carry it sewn under one’s clothing in a sealed wooden sheath⁴⁹.

⁴⁹ On the doctrine of reasonable accommodation developed by the Supreme Court of Canada, see J. WOEHLING, *L’obligation d’accommodement raisonnable et l’adaptation de la société à la diversité religieuse*, cit., pp. 328-401. On the Multani case, see A.N. CRAWFORD, *Learning Lessons from Multani: Considering Canada’s Response to Religious Garb Issues in Public Schools*, in *Georgia Journal of International and Comparative Law*, 2007, 36, pp. 159-188.

In the British legal order, regarding the turban (*dastar*), the exemption from the compulsory helmet requirement for motorcyclists dates to the *Motor-Cycle Crash Helmets (Religious Exemption) Act* 1976, the content of which was incorporated into Section 16 of the *Road Traffic Act* 1988. The provision exempts the turban-wearing Sikh from the helmet requirement while riding a motorcycle. In the workplace, the *Employment Act* 1989 exempts the turban-wearing Sikh worker from any obligation to wear personal head-protection equipment in any workplace, regardless of the position held⁵⁰. The same *Employment Act* governs the consequences in matters of civil liability: if a Sikh worker not wearing a helmet sustains injuries, the employer's liability is limited to only those damages that would have occurred had the worker been wearing the prescribed protective equipment. This provision has had direct implications on the insurance level: companies covering employer liability tend to exclude from the policy any risk exceeding the statutory liability limit, such that the Sikh worker remains exposed for so-called above-threshold damages, and numerous insurers have in practice refused to issue policies including additional coverage for this risk profile, leaving the Sikh worker without full insurance protection in the event of serious accidents. In the school context, the House of Lords had already laid down a fundamental line of principle in *Mandla v. Dowell Lee* (1983), recognising Sikhs as an ethnic group for the purposes of antidiscrimination legislation and establishing that the refusal to admit a pupil to a school on account of the turban constituted indirect discrimination lacking any justification in light of the aims pursued by the institution⁵¹.

⁵⁰ See C. CIANITTO, *Minoranze e simboli religiosi. I sikh tra identità e cittadinanza*, cit., p. 113 ss.

⁵¹ On the legal protection of the Sikh turban in common law jurisdictions, see N. SINGH GOHIL, D.S. SIDHU, *The Sikh Turban: Post-9/11 Challenges to this Article of Faith*, in *Rutgers Journal of Law and Religion*, 2008, 9, pp. 1-60, spec. p. 10 ss.

10. Religious Clothing and Sporting Activity

Finally, consideration must be given to the intersections between religious clothing and competitive sporting activities⁵². The central question concerns the legal qualification of the regulations of sporting federations that prescribe or prohibit certain garments. Such regulations, adopted by private-law subjects in the exercise of their regulatory autonomy, may produce effects that directly impinge upon the exercise of athletes' religious freedom. Following a chronological progression of federal decisions, the *World Taekwondo Federation* – today named *World Taekwondo* – in 2008 authorised the use of the veil in official women's competitions, amending its own regulations in order to permit the wearing of the *hijab* provided that it complies with the safety regulations of the discipline and with the colour requirements of the competition uniform. This constitutes the first decision of systemic importance adopted by an international sporting federation recognised by the International Olympic Committee on the matter of accommodation of religious clothing, anticipating by six years the regulatory turning point of the *Fédération Internationale de Football Association* (FIFA). The latter followed a more troubled path: in June 2011, during the Olympic qualifiers, the Iranian women's national football team was awarded a forfeit defeat for having taken the field wearing the veil in violation of the regulatory provisions then in force. Subsequently, in 2014, the FIFA Secretary General announced the definitive authorisation of the use on the field of head coverings, including the Sikh turban and the Islamic veil, on condition that the covering matches the colour of the playing uniform. A similar devel-

⁵² On this subject, see the study by C. GAGLIARDI, *La tutela delle identità religiose nel sistema sportivo: problematiche giuridiche*, Cosenza, 2023, p. 157 ss., and the extensive references contained therein, as well as A. DE OTO, *Identità e alterità nello sport: il necessario percorso dell'inclusione*, in *Sport come mezzo di inclusione*, edited by P. DELL'AQUILA, Verona, 2022, pp. 51-69; A. DE OTO, *Sport, religione e pluralismo culturale: le molteplici forme di lotta alla discriminazione etnico-confessionale*, in *Stato, Chiese e pluralismo confessionale*, 2017, 17, pp. 1-17.

opment characterised the *Fédération Internationale de Basketball*, which in 2017 rescinded its own prohibition on wearing religious head coverings in basketball competitions, with the consequent readmission to international competitions of athletes previously excluded. Consistent with this trajectory, in the spring of 2014, the Italian Referees Association (*Associazione Italiana Arbitri*) authorised a referee from the Cremona section to wear the veil while officiating a match, implicitly extending the principle of reasonable accommodation to the institutional role of the match official. Lastly it is worth mentioning the launch of Nike's *Pro Hijab* model in 2017: the garment, made of elastic and breathable polyester and developed at the request of Muslim athletes with the aim of improving performance while observing the religious obligation, inaugurated a segment of so-called 'modest fashion', transforming the American multinational into the leading commercial operator in a market that until then had been dominated by local producers with limited technological capabilities⁵³.

11. *An Open Conclusion*

The analysis conducted makes it possible to identify a key issue that transversely affects all the sectors examined: in the Italian legal order, the regulation of religious clothing does not appear, upon closer examination, to be a problem of public order, nor merely a matter of balancing fundamental freedoms, but rather a question of recognising the identity of the

⁵³ Some major fashion houses have followed a similar trajectory – Dolce & Gabbana with its *abaya* collection, DKNY with its Ramadan line – transforming religiously inspired clothing into objects of aesthetic desire, reframing the religious reference within a system of meanings governed primarily by the brand's identity. On the phenomenon of modest fashion, see *Modest Fashion: Styling Bodies, Mediating Faith*, edited by R. LEWIS, London, 2013; Ö. SANDIKCI, *Researching Islamic marketing: past and future perspectives*, in *Journal of Islamic Marketing*, 2011, 3, pp. 246-258; *Islamic Fashion and Anti-Fashion: New Perspectives from Europe and North America*, edited by E. TARLO, A. MOORS, London, 2013.

citizen-believer. The legislature is in fact called upon to determine, in each of the contexts in which the individual operates – public space in general, schools, the workplace, the sporting arenas – whether the ‘visible’ confessional identity, externalised through a particular garment, is a legitimate component of the person or a factor disturbing the rights of others⁵⁴. However, as we have seen, the Italian response is characterised by the absence of an explicit normative choice and by the consequent reliance on case-by-case judicial balancing. This option has the merit of flexibility but, at the same time, the drawback of limited predictability, thereby generating a fragmented living law exposed to the contingencies of the concrete case and to the variable sensibilities of the adjudicating bodies, as well as of public opinion which – precisely on this issue – proves to be considerably polarised.

The comparison with the examined legal systems – and in particular with the French solution, built upon the subjective universality of the prohibition and upon the aprioristic exclusion of religious motivation from the list of legal exemptions – does not appear to offer a model to be emulated, but illuminates by contrast the specificity of the Italian choice regarding relations between the public legal order and the religious phenomenon which, as clearly indicated by the Constitutional Court, «implies not indifference on the part of the State towards religions, but rather a guarantee by the State to safeguard religious freedom within a framework of confessional and cultural pluralism». The French *laïcité* as a prescriptive principle of absolute neutrality in the public sphere and the confessional pluralism as a regulative principle governing the coexistence of differences do not in fact constitute two stages of the same ‘evolutionary’ path but, rather, they constitute axiologically distinct options, which produce normative frameworks that cannot be reduced to one another. The case law of the Strasbourg Court has taken note of this irreducibility

⁵⁴ More generally, see the recent study by M. GATTI, G. EVOLVI, *Bias and judicial narrative: a critical discourse analysis of the ECtHR and ECJ case law on religious symbols*, in *European Law Open*, 2025, pp. 1-26.

through the application of the doctrine of the so-called margin of appreciation, transforming a theoretical difficulty into technical solutions that are not entirely satisfactory. Indeed, as highlighted in the literature, the approach of the supranational case law leaves the underlying problem open, namely the definition of the minimum conventional scope of freedom of religious expression in matters of clothing⁵⁵. On a closer reading, such irreducibility does not constitute a deficiency to be remedied through supranational harmonisation, however desirable that may be, but rather the reflection of the fact that, in this area, constitutional orders have made value-based choices that are not mutually comparable. Any attempt to reduce them to a 'common European denominator' would risk betraying the historical and identitarian specificity that each of them embodies and would force transcultural processes that necessarily require considerable time. At least as things stand, the law can perhaps only register this plurality, without claiming to reconcile it into a synthesis that the very nature of the subject matter – namely, the regulation of religiously connoted clothing – currently seems to preclude.

⁵⁵ See M. FERRI, *The Freedom to Wear Religious Clothing in the Case Law of the European Court of Human Rights: An Appraisal in the Light of States' Positive Obligations*, in *Religion, State & Society*, 2017, 3-4, pp. 186-202; S. BORELLI, *Of Veils, Crosses and Turbans: The European Court of Human Rights and the Protection of Cultural Diversity in Europe*, in *Cultural Heritage, Cultural Rights, Cultural Diversity: New Developments in International Law*, edited by S. BORELLI, F. LENZERINI, Leiden, 2012, p. 55 ss. See also J. MURDOCH, *Protecting the Right to Freedom of Thought, Conscience and Religion under the European Convention on Human Rights*, cit., p. 49 ss.; M.D. EVANS, *Freedom of religion and the European Convention on Human Rights: approaches, trends and tensions*, in *Law and Religion in Theoretical and Historical Context*, edited by P. CANE, C. EVANS, Z. ROBINSON, Cambridge, 2012, pp. 28-54; H.M.A.E. VAN OOLJEN, *Religious Symbols in Public Functions: Unveiling State Neutrality. A Comparative Analysis of Dutch, English and French Justifications for Limiting the Freedom of Religious Expression*, Antwerp, 2012.

NICO TONTI, Visible Beliefs. Religious Clothing and Constitutional Freedoms: The Italian Legal Framework in Comparative Perspective

This article examines the regulation of religiously connoted clothing within the Italian legal order. Starting from the preliminary distinction between concealing and non-concealing garments, the inquiry reconstructs the application of public order provisions (Article 85 T.U.L.P.S. and Article 5 of Law no. 152 of 1975), the interventions of local and regional administrations – with particular regard to Lombardy resolution no. X/4553 of 2015 – and the French paradigm founded on a general prohibition of facial concealment. Three case studies, devoted to public schools, the employment relationship and the identifying function of identity documents, together with the analysis of Sikh clothing and sporting activity, show that the question exceeds the dimension of public order and concerns the recognition of the citizen-believer's identity, within the conventional framework shaped by the Strasbourg Court through the margin of appreciation.

Keywords: religious clothing, religious freedom, Islamic veil, margin of appreciation, secularism.

NICO TONTI, Credenze visibili. Abbigliamento religioso e libertà costituzionali: il quadro giuridico italiano in una prospettiva comparata

Il contributo esamina la disciplina dell'abbigliamento religiosamente connotato nell'ordinamento italiano. Muovendo dalla distinzione preliminare tra indumenti occultanti e non occultanti, l'indagine ricostruisce l'applicazione delle disposizioni in materia di ordine pubblico (art. 85 T.U.L.P.S. e art. 5 della legge n. 152 del 1975), gli interventi di amministrazioni locali e regionali – con particolare riguardo alla delibera lombarda n. X/4553 del 2015 – e il paradigma francese fondato sul divieto generale di dissimulazione del volto. Tre casi concreti, rispettivamente dedicati alla scuola pubblica, al rapporto di lavoro e alla funzione identificativa dei documenti, insieme all'analisi dell'abbigliamento sikh e dell'attività sportiva, mostrano come la questione ecceda in realtà la dimensione dell'ordine pubblico per investire il riconoscimento dell'identità del cittadino-fedele.

Parole chiave: abbigliamento religioso, libertà religiosa, velo islamico, margine di apprezzamento, laicità.