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Marco Parisi

THE RELIGIOUS DIMENSION OF THE MIGRANT IN ITALY. RIGHTS AND IDENTITIES IN THE MANAGEMENT OF THE IMMIGRATION PHENOMENON*

1. *Introduction*

In Italy, the issue of managing immigrants has been the subject, for years now, of a constant debate involving scholars and practitioners of various scientific, academic and professional profiles. In fact, the complexity of the question – in relation to its physiological political, legal and sociological implications – lends itself to a broad and articulated discussion that involves not only scholars of immigration law, in the strict sense, but also scholars of other juridical branches which, both theoretically and practically, inevitably find themselves at the center of the process of governing immigration.

In this respect, the importance of the religious factor in the life paths of migrants is a topic that has only recently been the subject of a specific analysis in the context of the reflections relating to the human rights[1]. The cultural and religious her-

* Contributo sottoposto a valutazione.

[1] This was understood, above all, when the awareness emerged that «[…] the thematic area of religion/law is the most effective strategic place from which to face the complex problems raised by the coexistence of differences». In this sense see M. Parisi, *Multiculturalism, multireligiosity and relations between the State and religious organizations*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 32, 2018, p. 4.

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itages that the migrant brings with him from the country of origin risk suffering significant trauma, the extent of which is aggravated by the entry into force of the (recent) immigration regulations, introduced in Italy starting from 2018. The tendency to close borders, the fight against 'unwanted' immigration, often and hurriedly qualified as 'clandestine', and the growing inclination, on the part of the public institutions, to consider and to manage migration processes from a prevailing point of view based on the guarantee of the collective safety and on the management of the emergency, favors the onset of political and social tensions, that are constantly active[2]. Tensions that negatively affect the asylum and reception policies and that also reverberate on the acceptance that the migrant has of himself and of his own human dignity, prejudicing, moreover, the effective consistency of the projects and of the social ties that are established between the migrant himself and the host community[3].

[2] In this context, unfortunately, the Catholic Church has distinguished itself by taking on an ambiguous role. In fact, the ecclesiastical institution, while declaring itself completely opposed to the ghettoization of the immigrants, has repeatedly asked State authorities to provide serious answers to the growing need for security of the citizens. This change in its initial attitude of openness and tolerance manifested itself when the social integration of the foreigners into the local territorial realities (started in the very early 90s, in the name of secularism and of the right to difference of the immigrants wishing to work and live in Italy) has become difficult due to the materialization of specific identity requests. With few doubts, the Church has perceived with annoyance the requests for externalization of their customs (wearing the Islamic veil) and for the realization of their own family models (polygamy) advanced by the Muslim faith groups, the requests for the concretization of the educational models of the Koranic tradition (Islamic confessional schools) and the availability of places of worship and prayer (construction of mosques). Thus, it is precisely the Catholic ecclesiastical hierarchies that have ended up positively evaluating the growing attitude of public authorities to manage the reality of immigration with a view to containing the immigration numbers and paying attention to the fears for the conservation of the social peace. See M.C. Folliero, *Libertà religiosa e società multiculturali: la risposta italiana*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), june 2008, p. 4.

[3] This also contradicts the indications of the Constitutional Charter which, while not having specifically foreseen the current immigration phenomenon (which manifested itself in a really too rapid time compared to the

Precisely this bond is projected at the center of the reflection which has as its object the identity of the migrant person and, specifically, the religious identity, which, while not exhausting the plurality of identities of the individual, represents one of the main subjective components of the way of being of every person. It should not be forgotten that the personal spiritual dimension outlines – together with other factors – the belonging to a specific set of values and purposes, that are necessary to face everyday life and to integrate oneself through the creation of a network of actions and intersubjective relationships[4]. Unfortunately, the existing political-institutional deficits in the implementation and enhancement of the principle of solidarity are the cause and, at the same time, the effect of the excluding public policies that, as mentioned above, tend to classify migratory flows exclusively as a problem of security and public order[5], and, only sub-

disastrous economic conditions in which Italy found itself in the post-war period), does not offer any support for foreclosure policies towards the immigrants. The recognition of the inviolable human rights, carried out in Article 2 of the Constitution, does not establish a guarantee principle valid only for citizens, but sets out a value, which is applicable to all human relationships regulated by our legislator and to be shared in the Italian society. The specific provision of the rights of foreigners, in Article 10 of the Constitutional Charter, refers to international treaties without any limitation, especially without making references to limits (which could be, for istance, the reciprocity), precisely in accordance with the humanism of the Article 2. This is confirmed both by the right of asylum guaranteed to the foreigners coming from non-democratic countries (Article 10, paragraph 2), and by the prohibition of extradition of the foreigners for political crimes (Article 10, paragraph 3). See V. Tozzi, *Il diritto civile di libertà religiosa e l'immigrazione*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), march 2007, p. 13.

[4] M. Ricca, *Diritto e religione. Per una pistemica giuridica*, Cedam, Padova, 2002, pp. 66-67.

[5] This is due, as it is well known, to the current Islamic terrorist threats. Faced with this danger and the growing demand for security, the State institutions are experiencing a feeling of profound disorientation. In fact, Islamist terrorism is endowed with a widespread, powerful and – above all – unpredictable charge of harm, often launched without scruple and with extreme determination by anonymous attackers against civilians, who find themselves completely unprepared for this type of action that are detrimental to collective security. These difficulties do not diminish, but rather increase, when the attention is focused on the victims, whose characteristic is precisely that

sequently, as a humanitarian question[6], strictly connected to the realization of the rights of freedom of the human person[7].

of having nothing or almost nothing in common, other than being indiscriminately considered as 'infidels'. See F. Alicino, *Lo Stato laico costituzionale di diritto di fronte all'emergenza del terrorismo islamista*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 2, 2018, pp. 3-4.

[6] Indeed, this was also due to the fact that, from the point of view of the legal reaction to the phenomenon of immigration, a plethora of regulations (now restrictive ones, now utopianly permissive ones) has been produced. A disjointed set of rules that never is emerged from a mere emergency logic, contrasting legality and solidarity. These two parameters, on the other hand, would need one realistic synthesis, to be operated through a planning logic of the migratory flows, which presupposes the ability /availability of the European countries (which have now become pluricultural) to metabolize the immigration. In short, security and integration should be pursued together through a single policy tending to link the local identities with those of new settlement, the needs of public order with those of social justice, the community instances of peaceful coexistence with the individual ones, in order to protect the dignity of each individual man. See F. Freni, *Flussi migratori, religione e diritto nella* polis *euro-mediterranea*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 35, 2012, p. 6.

[7] In modern legal literature, the individual as such is recognized as a unitary center for the imputation of fundamental and inalienable rights. This ideal construction has the undoubted merit of placing the problem of the protection of human dignity at the center of the legal discourse. The limitations of this construction, however, are equally obvious. The theme of the so called '*ius migrandi*' offers us a privileged perspective to grasp the existing inequalities. It is about inequalities, in fact, which, however, are accompanied by more and more strongly differentiated legal statutes which are the outcome of regimes of exclusion operating against the 'non-citizen'. Taking outside its own territory a mass of individuals who claim rights, the constitutional State of law, which had promoted the protection of those rights, ends up revealing all the artificiality that lies behind the modern legal construction of the 'foreigner'. In this regard, see R. Bartoli, *Il diritto penale dell'immigrazione. Strumento di tutela dei flussi immigratori o mezzo di esclusione e indebolimento dello straniero?*, in *Ius peregrinandi. Il fenomeno migratorio tra diritti fondamentali, esercizio della sovranità e dinamiche di esclusione*, edited by M. Meccarelli, P. Palchetti, C. Sotis, Eum Edizioni, Macerata, 2012, pp. 277-297.

2. *Religious identity of the migrant and political strategies between discrimination and social integration*

The new declination of the reception system, the cuts in services for migrants and the general downsizing of the protections reserved for them, following the approval of the most recent rules on public security and immigration (launched, as it has been said, in 2018 and only partially corrected in 2020), represent the inversion of a political paradigm which, with the implementation of the previous social integration system, had promoted the spread of the hospitality throughout the national territory, thanks also to the involvement of the local authorities, as well as of the third sector entities. Before the reform rules, there had been the creation of a system capable of fully exploiting the integrative potential of the individual territories and of the entire civil community, contributing to the overcoming of some purely paternalistic welfare approaches, which had constituted the prerequisite for the subsequent social abandonment of the migrant considered as such.

The strength of the previous approach in question is to be found in an overall taking charge of the migrant who, in addition to favoring his social and community integration, attributed to the local authority the responsibility of pursuing the public policies implementing the principles set out in Articles 2 and 3 of the Constitution and, in particular, the recognition of the inviolable human rights, the fulfillment of the duties of political, economic and social solidarity, as well as the removal of the obstacles that prevent the full development of the human person. Instead, by accentuating the pre-existing rigidities, starting from the adoption of Law Decrees n. 113 of 4 October 2018 and n. 53 of 14 June 2019[8], the current organi-

[8] Under the first regulatory provision, the so-called 'humanitarian protection' – that is the type of protection (for many years granted in Italy to a large number of migrants) recognized to those who, although not in conditions such as to obtain the refugee *status* or the subsidiary protection, were in serious personal situations (due to famine, natural disasters, violence, misery, hunger, political instability, lack of respect for fundamental human rights) – has come to disappear from our legal system. The residence permit

zation of the reception system in Italy has come to be characterized by an excessive fragmentation inspired by the aforementioned security and emergency logic, which has characterized all the many measures implemented on the political (and managerial) level of the immigration.

By examining the contemporary legislation, two elements (that are characterizing the political-governmental guidelines in the field of the reception management) emerge clearly and unambiguously: firstly, the desire to rationalize and to contain the economic resources used for the integrated reception policies and the related social inclusion paths; secondly, the exclusion from the integration and social inclusion projects of those who have not obtained the international protection *status*. Despite the aforementioned regulatory corrections of the most critical aspects relating to the condition of asylum seekers and holders of humanitarian protection, which took place by means of Law Decree n. 130 of 21 October 2020[9], it

for humanitarian reasons (subject to a discretionary evaluation, based on the examination of the personal history of each applicant) was thus replaced by a mandatory type of special cases of complementary protection. The Law Decree n. 113 of 2018 maintained the granting of the residence permit, already subject to regulatory provisions, to some categories of foreign subjects and added three new hypotheses of special permits: for those who were in particularly serious health conditions; for situations of 'contingent and exceptional calamity', which prevented the foreigner from returning and staying in the country of origin; for the immigrants who have carried out 'acts of particular civil value' (Article 1, paragraph 1, Law Decree n. 113/2018).

In addition to this, in the aforementioned Law Decree, there was space for a restriction and a worsening of the reception system, with the reform of the previous protection system for asylum seekers and refugees, managed by the local authorities (SPRAR), replaced by the so called SIPROIMI (Protection system for holders of international protection and for unaccompanied foreigner minors), to which only specific categories of subjects could access. In both the law provisions, the issue of immigration was treated from an emergency perspective, reproducing and expanding the stereotypes of the danger of foreigners, considered a threat to public order. This is demonstrated by the rules about the registration in the civil registry, the revocation of the international protection, the acquisition of citizenship, the use of the right to take legal action and the right of defense.

[9] The most significant changes concern the restoration of a system of guarantees that the 2018 and 2019 Law Decrees had suspended or decreased. In particular, the substantial reintroduction of the humanitarian protection

has gone from a widespread and in stages reception system to a centralized and by *status* one, within which the qualitative differentiation of the provided services depends on the legal *status* possessed by the migrants.

The current legislation presents strong critical profiles in order to guarantee the fundamental freedoms of the migrants who are guests in the various reception centers. Criticalities that find a particularly indicative *test* of the personal condition of the migrants in the verification of the effective protection of freedom of worship and religion. This is a problem that relates to the implementation of spiritual assistance activities in the separate communities, or all those actions aimed at satisfying the religious needs of subjects who find themselves, temporarily or permanently, inserted within mandatory structures. Activities based on the axiological core found in the Article 19 of the Constitution, in conjunction with the Ar-

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is worthy of emphasis. As indicated, the Law Decree n. 113 of 2018 had replaced the references to humanitarian protection with an enumeration aimed at typing and, at the same time, circumscribing the remaining hypotheses of permits, previously attributable to the humanitarian protection understood in a broad sense. The Law Decree n. 130 of 2020 did not directly restore the permit for humanitarian reasons and it has kept the wording 'special protection', expanding, however, the cases in which the permit for special protection can be issued. This special protection – as a residual category compared to the other two forms of protection (refugee *status* and subsidiary protection) – provides that those who risk suffering torture or inhuman or degrading treatment in their country of origin cannot be expelled or rejected (prohibition of *refoulement*), but instead they deserve to be protected. Furthermore, a similar protection is provided for those who, with the removal from the national territory, would see the right to respect for their private and family life being violated. Instead, it is necessary to take into account the family ties of the concerned person, his effective social integration, the duration of the stay, as well as the links with the country of origin, which may have been interrupted.

In any case, it must be said that the measures that have been adopted with the Law Decree n. 130 of 2020 are certainly not revolutionary in their scope, but the Government has limited itself to adopt some provisions aimed at making the current legislation more in tune with the Constitutional Charter, with the international Treaties and with the jurisprudence of the European Court of Human Rights. See. M.A. Simonelli, *La dialettica tra inclusione ed esclusione. Profili socio-culturali, criminologici e giuridici dell'immigrazione*, in *Le migrazioni e l'integrazione giuridica degli stranieri*, edited by H. Caroli Casavola, Giappichelli, Torino, 2021, pp. 111-113.

ticles 2 and 3, second paragraph, affirming the inviolable human rights (as well as the mandatory duties of political, economic and social solidarity) and the principle of equality as a perfect subjective right[10].

Nonetheless, the significance of the numbers relating to the growing expansion of the immigration phenomenon has forced a rethinking both of the scope of application of spiritual assistance in the (new) segregating communities and of the concrete ways of providing religious services themselves. In

[10] It can well be said that it is through the combination of these constitutional principles that a valuable connection is made between the fundamental principles of the republican Constitution (democratic-pluralist, personalist, worker and solidarist ones), aimed at allowing the achievement of the objectives of personal fulfillment and social promotion of the members of our society. If the principle of formal equality is based on the need to ensure, in the abstract, an equal legal-normative treatment, the principle of substantial equality responds, for the most part, to the different logic of liberation from need, as a prerequisite for the full and concrete development of the person and for the removal of those conditions of disadvantage that prevent each the full enjoyment of the rights of liberty and participation in the political life. Solidarity and equality tend towards the realization of the human person, which remains the fundamental strategic objective that can only be achieved in a democratic-pluralistic context. In it, the central element is given by the respect for the human dignity, which presupposes the protection of all the individual and collective freedoms. Such objectives can only be pursued and achieved within the framework of the constitutional democracy, that is able to hold together freedom and equality.

The complex web of the constitutional architecture, the axiological significance of the constitutional provisions on the personalist principle and on the inviolability of rights, as well as their combined interpretation, make it difficult to imagine that the design of ecclesiastical politic should not also refer to the satisfaction of the elementary needs of those which, on a regular or irregular basis, arrive on our territory. Hence the proposal of a 'constitutionalism of needs' which alludes to the need to take care of the concrete conditions of existence, based on the inviolable dignity of each and every one. In this perspective, the mandatory protection of the dignity of the human person cannot and must not know borders. Moreover, the same principle of equality, in theory, excludes any discrimination between the position of the citizen and that of the foreigner as regards the enjoyment of the fundamental rights and freedoms, fully justifying the existence of a close connection between the Articles 19, 2 and 3 of the Constitutional Charter. See G. Fontana, *Dis-eguaglianza e promozione sociale: bisogno e merito (diverse letture del principio di eguaglianza nel sistema costituzionale)*, in *La dis-eguaglianza nello Stato costituzionale*, edited by M. Della Morte, Editoriale Scientifica, Napoli, 2016, pp. 22-43.

this sense, in addition to guarantee the effective implementation of the right to religious freedom of the migrants, it was also necessary to implement the more general constitutional project for the realization of human rights, with the provision of specific rules aimed at making it even more effective[11]. Also the regulatory and administrative provisions that are aimed at respecting the principles and eating habits of the foreigners in reception should be considered in this perspective, insofar as they have tried to satisfy as much as possible the constraints constituted by the dietary rules dictated by the different religious choices or from particular health conditions of the guests[12].

Both the general rules on spiritual assistance and the administrative provisions on dietary requirements are indicative of the willingness to follow UNHCR guidelines on applicable criteria and standards to the detention of asylum seekers, which expressly provide, as a minimum condition of detention, to respect for the right to practice one's religion[13]. On

[11] A first regulatory reference is contained in the Decree of the President of the Republic n. 394 of 31 August 1999, which, in Art. 21, established the procedures for detention in reception centers, providing, in particular, that the said modalities «[…] must guarantee, in compliance with the regular development of life in common, freedom of conversation within the center and with visitors from outside, in particular with the defender who assists the foreigner, and with the ministers of worship, […] and the fundamental rights of the person, without prejudice to the absolute prohibition for foreigners of get away from the center». In the same law, then, it was stated that in the reception centers, in addition to the services that are necessary for the maintenance and the assistance of detained and hosted foreigners, the socialization interventions and the freedom of worship are insured, within the limits set by the Constitution (Art. 21, second paragraph). Finally, it was ensured that, among others, «[…] the cohabiting family members and the defender of detained or hosted persons, the ministers of worship […], the members of entities, associations of the voluntary work and of social solidarity cooperatives […] can access the centers […]» (Art. 21, seventh paragraph).

[12] A. Fuccillo, F. Sorvillo, L. Decimo, *Diritto e religioni nelle scelte alimentari*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 18, 2016, pp. 6-7.

[13] *Guidelines on the applicable criteria and standards relating to the detention of asylum seekers and on alternative measures to detention*, as set out in the *Statute of the Office of the United Nations High Commissioner for Refugees*, linked to Article 35 of the 1951 *Convention relating to Status of Refu-*

a theoretical level, therefore, despite the recurring political rigidities, there is a a whole regulatory network that would be preparatory to the implementation of operational actions that are really capable of enhancing the specific identity of the various human people. A safeguard work that is essential to ensure the effective protection of the human and personal dignity of the person in his difficult migratory path, provided that the political will can go in the direction of a full implementation of the international and internal constitutional law.

3. *Conclusions*

On the basis of what has been said so far, it is clear that the integrated reception system has undergone a considerable downsizing, with negative repercussions on the dignity of the migrants, in favour of whom, paradoxically, some attempts have been made to guarantee and to facilitate the practice of their own worship in a suppressive context of all other freedoms, starting with those of circulation and judicial defense[14]. The collective security, understood as a pre-eminent public in-

gees and Article II of the relevant 1967 Protocol. On the basis of these acts of the United Nations, at the level of the European Union, the *European Asylum Support Office* (EASO) was able, in September 2016, to propose some operational indications for what concerns the protection of the religious factor, and, in particular: a) that in guaranteeing the assignment of accommodation to the applicant, specific and objective factors related to the applicant's individual situation are taken into account, including the applicant's cultural, linguistic and religious affiliation; b) that in ensuring that applicants have adequate space available for recreational and group activities, in collective accommodation, the gender, the age and the cultural and religious needs of the applicants should be taken into account; c) that in ensuring the access to a sufficient and adequate feeding, the food preferences of 'specific groups' (an expression that is also referable to groups with a specific religious identity) are taken into account.

[14] See N. Colaianni, *L'Europa e i migranti. Per una dignitosa libertà (non solo religiosa)*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 40, 2017, p. 17, who deems it legally contradictory and morally disrespectful that the migrants, if observant Muslims, are guaranteed the free profession of religious faith in the reception centers, even if they are then (erro-

terest, cannot become a single parameter for the reconsideration (from a political and legal point of view) of the human rights and freedoms, as the Court of Cassation also clarified[15].

It should be noted that in the systematic renovation of the reception system, achieved through the most recent legislative innovations, there is a contextual redefinition of the rights for the migrants who, even once the phase of their identification and first assistance, after disembarkation or arriving at the border, mostly find themselves having to deal with procedural and administrative steps whose conclusion, prolonged over time, anthropologically translates the migrants themselves from 'persons' to 'subjects awaiting rights'. The entire hospitality chain has taken on a connotation that is less and less respectful of the human dignity and more and more marked by a dimension, as highlighted above, which has made the safety as the pre-eminent (if not the only) value to be preserved. As evidence of this, it can be observed how also the terminology used for the definition of the procedural steps in the circuits of the migrants detention is evocative of a police-based political approach, as in the case of the hotspots, conceived at the regulatory level of the European Union in 2015 and then incorporated into the Italian legislation. Within them, the humanitarian reason is, at least mainly, managed in terms of police enforcement, connoting the condition of permanence of the migrants as a real confinement[16].

In general, there are some programmatic and conceptual contradictions that have transformed the combination of hospitality and integration into a real mirage destined to a few

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neously and hastily) considered affiliated with terrorist groups, precisely by virtue of being followers of the Islamic religion.

[15] This is the ordinance n. 19393 of 9 September 2009, with which the United Civil Sections of the Court of Cassation highlighted how fundamental human rights cannot be subject to evaluation with any other public interest, including that of the security of the State, to the point that no margin of discretion lies with the public administrations that must evaluate the application for asylum by a foreign citizen.

[16] S. Montesano, *La tutela della libertà religiosa del migrante nel sistema di accoglienza in Italia. Un'introduzione al tema*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 32, 2019, p. 115.

'chosen' ones. The restriction of the beneficiary migrant audience of the integrated reception and the remaining legislative measures that have been introduced seem to be in sharp contrast to some important documents that have been approved at government level, aimed at affirming basic principles in matters of immigration policy. The reference goes to both the 'Charter of values, citizenship and integration'[17] and the 'Plan for integration into security: Identity and Encounter'[18], which represent, in an emblematic way, the paradigmatic outcomes that have been largely disregarded in the recent years of political management of the migratory phenomenon in Italy[19].

In the first case, the 'Charter' is an interesting post-constitutional code of principles and values of the structure of the peaceful social coexistence, in which we can find the concept according to which every person, present on the Italian territory, is entitled to benefit from the fundamental rights, without distinction of sex, ethnicity, religion, social conditions. We are faced with an important recognition of principles that is set at the same time as the obligation, on everyone's part, to respect the values on which civil society and law in Italy are founded. Further, this document adds that the freedom rights and the social rights, that the Italian legal system has ma-

[17] This document, of mere political and programmatic value, was adopted in 2007 to summarize and to make explicit the fundamental principles of the legal system that regulate collective life, both of citizens and immigrants, trying to focus on the main problems related to the issue of integration. The 'Charter', drawn up according to the principles of the Italian Constitution and the main European and international Charters of human rights, focused, in particular, on the problems of coexistence among the diversities that the multiculturalism has posed to the Western societies.

[18] With this document, approved in 2010, the intention was to summarize the Government strategy on integration policies for immigrants, combining hospitality and security. The 'Plan', in the light of the 'White Paper on the future of the social model', promoted by the Italian Government in 2009, identified the main lines of action and the tools to be adopted in order to promote an effective integration path, in compliance with the prerogatives and the competences of the various involved institutional actors, as well as of the envisaged legislative procedures.

[19] M. Parisi, *Immigrazione, pluralismo culturale e libertà religiosa. Il* test *dell'Islam italiano*, in *Quaderni di diritto e politica ecclesiastica*, n. 2, 2018, pp. 532-540.

tured over time, must be extended to all the immigrants, reaffirms the secular conformation of the State, based on the recognition of the full individual and collective religious freedom, and clarifies that the same religious freedom must be recognized to every person, citizen or foreigner, and to all the spiritual communities.

Also in the 'Plan for integration into security: Identity and Encounter' there are statements and objectives of a certain importance, in the belief that the educational policies and the continuous comparison between the different social, ethnic or religious categories constitute the fundamental tools for the realization of an Italian integration model. An approach that tends to make the construction of the social dialogue founded on the relational experiences of each individual, that is an authentic encounter based on mutual knowledge and respect, reciprocated with the natural curiosity for each other's culture and tradition. For this reason, the political measures must offer a regulatory and preventive framework that favors the interaction between all the individuals and the integration of the immigrants into the host social reality, starting from concrete interventions that support the learning of the Italian language and of the constitutional values on which the coexistence in the civil community is based.

Having said that, we wonder how it is possible to achieve the aforementioned conditions, considering the current regulatory and organizational features of the reception system. It does not seem doubtful, in fact, that the approved measures (instead of favoring the integration and placing the State at the service of the immigrants in their being as human persons), if anything, are contributing to subject the immigrants to some administrative procedures that are mortifying their attempts to assert identity and their potential for social integration[20]. The security needs are, to a fairly significant extent,

[20] In this sense, the few regulatory provisions (mostly affirmed in regulations, secondary acts and guidelines of the Public Administration) regarding the protection of religious identities appear to be ineffective and probably destined to suffer the prevalence of other values, first of all that of safety. It is sufficient to think about the provision that is foreseen in the Ministerial De-

compressing the right for the foreigner to exercise his freedom of worship, subordinating the religious assistance to a series of authorizing procedures that end up prejudicing the (possible) need to receive a spiritual support[21].

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cree n. 12700 of 20 October 2014, which, in regulating the entry into the reception centers by persons not included in the employed staff, including the ministers of worship, makes the access as subject to a specific request for authorization to be sent to the Prefecture. The latter, once acquired the authorization of the competent Police Headquarters, must promptly send these requests to the competent offices of the 'Department for Civil Liberties and Immigration' for the prior opinion that, if favorable, allows the Prefecture itself to authorize entry to the applicants, communicating the names to the managing body. The extremely complex procedure is burdened, then, by the fact that: the request for authorization to access the centers by the subjects listed in the provision must be forwarded in advance of the requested access date (in order to allow the Prefecture to obtain the release of the permit); the procedure described, to be repeated every time the access to the center is required, can be avoided only for the journalists and the photo-cameramen, for which the Prefecture can issue a single authorization that is valid for the duration of the cooperation. It seems at least surprising that while for the journalists and the camera operators, the Prefecture may, at its discretion, issue a single authorization and therefore allow free and continuous access during the time of the collaboration, for the other categories of subjects, including the ministers of worship, this possibility is not foreseen.

[21] Even the *de facto* detentions – that is, not covered by the law and, therefore, removed from any judicial control – which are carried out in the reception centers contribute to further exacerbate the difficulties in benefiting from spiritual assistance by the migrants. These are critical issues that have been denounced for some time by the legal doctrine and by the various commissions that over the years have carried out investigative visits to places of confinement for migrants and asylum seekers, but, up to now, not dealt satisfactorily by the legislator and the judiciary. Moreover, the emergency approach that characterizes the Italian immigration policies often creates the favorable ground for the grafting of completely arbitrary situations or *de facto* detention. It seems appropriate to reiterate that the European directives on reception, as well as the new Dublin Regulation (in line, moreover, with the ECHR and with the general international law) require that the deprivation of liberty must be subject to precise procedural guarantees, such as the adoption of a reasoned act, the validation by the judge, the possibility of presenting an appeal before a judicial authority. It is a question, as it has already been pointed out, of principles contemplated by the Constitutional Charter in Art. 13, paragraph II, but which are often completely disregarded in practice. See A. Del Guercio, *La detenzione amministrativa dei richiedenti asilo nel diritto dell'UE e in quello italiano*, in *Il diritto di asilo in Europa*, edited

It should also be added that the highlighted complications must be contextualized with two other factors that are impeding the exercise of the freedom of worship. First of all, obviously, the reduced freedom of movement (which varies according to the different types of reception), such as not to allow migrants to be able to reach the places of worship. Secondly, the problems encountered in the reception centers and highlighted by the 'National Guarantor for the rights of persons that are detained or deprived of personal freedom' appear quite significant. In fact, in the 'Report on visits to identification and expulsion centers and hotspots in Italy', referring to the first year of activity (2016/2017), among the major criticalities detected in the management of the centers that have been subject to evaluation of the report, those that are referable to the exercise of the cultural and religious activities of the migrants are particularly acute. The 'Report' highlighted a significant lack of common activities, meeting spaces and places of worship, with the consequent inhibition of the concrete possibility of making use of the collaboration of external subjects for the realization of spiritual and integrative activities (for example, cultural and recreational ones). Consequently, in the same document, the 'Guarantor' recommended the Ministry of the Interior to set up and equip, as a matter of urgency, suitable spaces for recreational activities and dedicated areas to prayer, suggesting the implementation of a stringent monitoring of the concrete implementation of the aforementioned activities by the managing bodies.

This critical situation, that is attributable to a tendency towards a formalistic and rigid management of the administration of the fundamental rights in the Italian context[22], ap-

by G. Cataldi, A. Del Guercio, A. Liguori, L'Orientale University Press, Napoli, 2014, p. 88.

[22] It is worth remembering that, rejecting any formalistic approach, it must be considered that the effectiveness of the fundamental rights cannot be separated from a dynamic exercise of the administrative function, from the preparation of a complete and efficient organizational structure and from a suitable provision of services. In guaranteeing the effectiveness, the administration is called upon to carry out a delicate balancing activity which is the normal (and constitutional) condition of emergence of the rights. In the ex-

pears to be detrimental to the freedoms of the human person, with particular reference to the freedom of worship. The downsizing of the integrated project dimension, on which the reception system was based before the aforementioned legislative reform interventions, has meant that the fundamental rights have been split up and made effective only for a small number of migrants. That is to say, for the benefit of limited units of people, to whom the reception projects have been able to reserve some initiatives, aimed at the emergence of their identity, enhancing their personal attitudes and specific ethical, religious and cultural characteristics.

The democracy, as a space of hospitality and coexistence that is capable of promoting the individual rights and the social unity at the same time, has to deal with its own inhospitable drift, fomented by the phenomena (that is, currently, in a significant expansion) of populism and identity nationalism[23]. This situation, in addition to prejudice the right to the existence of the migrant in his religious dimension, makes evident a systemic precariousness of the articulated regulations affirming fundamental rights and freedoms, whose dramat-

ercise of this activity, it must be guided by the beacon of individual freedom, considering the human person as part of the community in which he lives and in which the principles of solidarity and equality find a proper space. In this perspective, the administration must abandon the role of public power, as it is traditionally understood (and, above all, conceived in a formalistic sense), in order to fully assume that promotional task that the Italian Constitution imposes on all the public authorities. That is, the task of enhancing the human person and protecting his fundamental rights as a product of the human and juridical civilization which distinguishes the contemporary constitutionalism. See A. Romeo, *Amministrazione pubblica e diritti fondamentali*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 19, 2019, pp. 56-57.

[23] In populist rhetoric, the religious identity, reduced to culture, lends itself to be presented as the foundation not only of the national community, but also of the more general Western civilization, as Christian one. Obviously, giving importance to the ideal of 'belonging without believing'. In this case, the 'we' and 'them' is functional to the affirmation that only the Western culture (as Christian, even if secularized) has cultural dignity and therefore is universal, while the others are not cultures but subcultures. See N. Colaianni, *Populismo, religioni, diritto*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 34, 2019, p. 108.

ic and systematic violation reveals, paradoxically, their necessity. The very future of the democratic systems (of the European one, in general, and of the Italian one, in particular) can only pass through the network of the fundamental human rights, on which to build an institutional political structure (that is, of government of the public space) that may be able to define the right tension between unity and plurality. At this juncture, the actual operating tenor of the religious freedom must also be measured using the degree of satisfaction of the migrant's personal identity (considered as a whole)[24]. Thus, it has become crucial to understand how the current physiognomy of welcoming the migrants in our country probably represents the cross-section of the general state of health of the religious freedom, that still struggles to evolve in a personalistic and social sense[25].

What should be understood is the existence of a very strong link between the plural identities of the single individuals, who are protagonists of the complex world of migration,

[24] An evaluation in which the new role assumed by the religious faiths in the public space also has its importance. This is because, in many cases, the collective religious experience arises, on the one hand, as a factor that marks the personal identity of the subject and affects his inner growth and his projection and integration into the social sphere. On the other hand, it stands as a driving force and vital element of the civil society itself, as it is capable of significantly characterizing the political dynamics and institutions of many contemporary State systems. See P. Lillo, *Rilevanza pubblica delle comunità religiose nella dimensione giuridica europea*, in *Stato, Chiese e pluralismo confessionale* (www.statoechiese.it), n. 28, 2018, p. 4.

[25] This is demonstrated by the fact that the immigrants, especially those settled in our country (such as, for example, those of the 'second generation'), highlight how, alongside the duty of loyalty towards the State, there is also a corresponding duty of loyalty of the public institutions towards all the affiliates. The reference made is to the second paragraph of art. 3 of the Constitution, according to which, as it is well known, the civil institutions are required to allow the full development of the human person and the effective participation of all the workers in the political, economic and social organization of the country. The immigrants refer to this constitutional norm in order to claim equal opportunities to access rights and freedoms, arguing (rightly) that, if these freedoms were denied, a real betrayal of the fundamental assumptions of the modern liberal democracies would be determined. See R. Mazzola, *Cittadini e fedeli. Il problema della doppia fedeltà. Una questione sempre aperta*, in *Mondi Migranti*, n. 1, 2015, pp. 180-181.

their religious faith and the tasks of the Republic to guarantee them not only the inviolable human rights and the religious freedom, in particular, but, at the same time, to implement the mandatory duties of political and social solidarity (pursuant, as said before, to Article 2 of the Constitution). Duties that find in the realization of the conditions of exercise of the democratic freedoms (prevented in most of the countries of origin of the immigrants) the prerequisite for a dignified coexistence between different people in the liberal, secular and pluralist framework of the Italian State[26].

[26] The structural social metamorphosis, more and more declined in a plural sense, allows us to glimpse in the mediation (operated by law) and in the acceptance of the different as the main road for a just order in the way of living together. The pluralism of values implies a flexible use of the normative instrument, so that the law – while respecting the constitutional framework of fundamental principles – can demonstrate adaptability to the inhomogeneous reality that surrounds it. In this sense, the adoption of an 'inclusive' model of security could favor the solution of the problem of maintaining the necessary balance between diversity and unity. With a prudent and moderate coexistence between civil and religious rules, the result of a satisfactory political security and of an optimal level of realization of public order (both material and ideal one) could be achieved. See R. Mazzola, *La convivenza delle regole*, Giuffrè, Milano, 2005, pp. 36-39.

Abstract

Marco Parisi, The religious dimension of the migrant in Italy. Rights and identities in the management of the immigration phenomenon

The phenomenon of immigration to Italy of people from Mediterranean countries and Eastern Europe has been accompanied, in recent years, by an uncertain institutional response in its fluctuation between suspicion and openness. Especially following the emergence of Islamic terrorism, the more conservative political forces have fomented the feeling of fear towards the foreigner immigrants, asking for the establishment of physical and legal barriers, in a vain attempt to limit or prevent the migration movements, instead to enhance the resulting advantages in terms of both peace and security between peoples and opportunities and economic convenience for the country. In this context, however, it is undisputed that the fundamental rights of the person must be recognized for the immigrants, in any of the various hypothetical and legally relevant cases, and it is equally undisputed that the right to religious freedom falls within the category of these rights. A recognition which, however, especially in the phases of the first reception of the immigrants, is hard to be fulfilled in satisfactory ways, taking into account legal, administrative and bureaucratic resistances.

Key words: immigration, fundamental rights, religious freedom.

Marco Parisi, La dimensione religiosa del migrante in Italia. Diritti e identità nella gestione del fenomeno immigratorio

Il fenomeno dell'immigrazione verso l'Italia di persone provenienti dai Paesi del mediterraneo e dall'Est europeo si è accompagnato, negli ultimi anni, ad una risposta istituzionale incerta nel suo altalenarsi tra sospetto ed apertura. Soprattutto in seguito al manifestarsi del terrorismo di matrice islamica, le forze politiche più conservatrici hanno fomentato il sentimento di paura nei confronti degli stranieri immigrati, chiedendo la fissazione di barriere fisiche e legali, nel vano tentativo di limitare o impedire i movimenti immigratori, invece di valorizzarne i vantaggi che ne discendono in termini sia di pace e sicurezza tra i popoli che di opportunità e convenienza economica per il Paese. In questo quadro, però, è pacifico che all'immigrato, in qualunque delle varie fattispecie ipotizzabili e giuridicamente rilevanti venga a trovarsi, debbano essere riconosciuti i diritti fondamentali della persona, ed è altrettanto pacifico che nel novero di questi diritti rientri il diritto di libertà religiosa. Un riconoscimento che, tuttavia, soprattutto nelle fasi della prima accoglienza degli immigrati, stenta ad essere inverato in forme soddisfacenti, scontando resistenze giuridiche di principio, amministrative e burocratiche.

Parole chiave: immigrazione, diritti fondamentali, libertà religiosa.

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