

HUMAN DIMENSION IMPLEMENTATION MEETING (HDIM)  
OSCE – WARSAW, 29 SEPTEMBER 2009

**Italian Contribution**

**Freedom of religion or belief**

The right of religious freedom is guaranteed by the Italian Constitution of 1948 and it is significant that it is mentioned in the section, which recalls the fundamental principles of our Constitution.

The basic principle informing the right to religious freedom is that of the neutrality of the State, which is expressed in the constitutional principles of equality and equal social dignity (Art. 2 and 3 of the Constitution), of equal freedom for all religious denominations (Art. 8), of religious freedom for single religious groups (Art. 19 and 20).

Art. 2 of the Italian Constitution states that “the Republic acknowledges and guarantees the inviolable rights of the individual, alone or in community with others, and requests the fulfilment of the imperative duties of political, economic, social solidarity”. At Art. 3 the Constitution states that “all citizens have the same social dignity and are equal under the rule of Law, without any distinction of sex, race, language, religion, political opinions, personal and social conditions...”.

Art. 8 states that “all religious creeds are equally free under the rule of Law. The non-Catholic religious denominations have the right to organize themselves in accordance with their statutes, so far as they are not contrary to the Italian laws”.

The issue of religious freedom is also mentioned in Art. 19, which states that “every one has the right to freely profess his own religious faith in whatever form, either individually or in association with others, to propagate it and to practice its worship, in private or in public, provided that its rites are not contrary to morals”. Art. 20 states that “the ecclesiastical character and the aim of religion or of worship of an association or institution cannot give rise to special legislative restrictions, nor to special fiscal burdens, as to their constitution, juridical capacity and to every form of activity”.

The full protection of religious freedom implies, therefore, the guarantee of freedom of worship, which is the possibility of freely professing one’s religious faith in private or in public, either joining an existing denomination, or changing one’s religious faith, or establishing a new religious creed. It implies as well the possibility of making proselytism and propaganda; of establishing religious associations and of participating to existing ones, whereas legal recognition of a religious association is not a necessary requirement in order to profess and practice worship in an associated form.

The main institutional guarantees given to religious denominations by our legal system relate to 1) the autonomy of their respective organizations; 2) the non interference in the structure and the internal affairs of them; 3) the confirmation of the fullest religious freedom to carry out their own mission.

According to the Constitution religious freedom can be practiced at the general condition that its rites should not be contrary to morals and that its statutes should not include provisions contrary to the Italian laws. Other limitations can arise from the necessities of public order, or from the need to guarantee other constitutional rights. The right to religious freedom must be all the same guaranteed at the most possible extent.

To regulate, also in a restrictive way, the conditions under which religious events should take place does not imply a limitation of the right to religious freedom. The problem is to reconcile different needs resulting from the necessity of respecting other constitutional rights and rules regulating an orderly civic cohabitation.

As to the system of relationships between State and religious denominations, the Constitution follows the basic principles of full neutrality and secularism of the State, and chooses the method of the agreements in order to regulate their institutional relationships.

According to Art. 7 and Art. 8 of our Constitution, the relationships between the Italian State and religious denominations are regulated by bilateral agreements – the so-called “*intese*” – which are acknowledged by the Italian legal system through a specific law. These agreements are a guarantee either in their substance, or in their form, as the Constitution excludes the possibility of their unilateral modification through the State.

Within this frame Art. 7 of the Constitution deals with the relationship with the Catholic Church. Already before the coming into effect of our Constitution the relationship of the Italian State with the Catholic Church was regulated by the Concordat of 1929. Art. 7 is based on two fundamental principles: the acknowledgement of the sovereignty of the State and of the Catholic Church, and the regulation of their mutual relationships through an agreement.

The agreements (*intese*) with non-Catholic denominations are provided for by Art. 8 of the Constitution. They are an instrument of balance and of equality of treatment in comparison with the Catholic Church.

As the *intese* are aimed at regulating the relationships between the Italian State and a certain religious confession, which is acknowledged by our State as an independent body, the negotiations for the stipulation of these agreements fall under the competence of the Prime Minister’s Office, which acts through different Commissions.

In particular, Art. 8, comma 3 of the Constitution affirms that religious denominations other than Catholic Church have the right to organize themselves according to their own Statute, and also that their relationship with the State is regulated by law, based on the *intesa*. In the first phase of implementation of this norm (in the 1980s), after a long period of non implementation, an experimental procedure has been carried out in order to verify the right instruments for the realisation of the constitutional provisions. Only after the adoption of law 400/1988, and later of the legislative decree 303 of 1999 (concerning organization of the Presidency of the Council of Ministers), the procedure carried out by the departments of the Presidency of the Council of Ministers has been turned into law. Since the 1980s, relations with non-Catholic religious denominations have been developed successfully, thanks to the will of Governments in force. For that purpose, a Commission has been set up at the Presidency of the Council of Ministers in the early 1980s, and is still working today.

The “Commission for Intese with Religious Denominations”, based at the Presidency of the Council of Ministers and initially set up under the Presidency of Prof. Francesco Margiotta Broglio, has the task to draw the operative guidelines for the implementation of agreements. Members of the Commission were initially a number of academics and the Director General for Religious Affairs at the Ministry of the Interior. Currently, Prof. Francesco Pizzetti heads the Commission, and the composition has been enlarged to all Governmental branches involved in the procedure of *intese*”, such as the Ministry of Interior, Economy and Finance, Defence, Justice, Education, Health and the Ministry of Culture.

Before proceeding to an *Intesa* with a religious denomination, the ad hoc Commission requests the opinion of the “Advisory Commission for Religious Freedom”, set up in 1997 in the Presidency of the Council of Ministers. The Commission for Religious Freedom, chaired by professor Margiotta Broglio and composed of academics with expert knowledge in this field, is responsible, among others, for the examination of problems concerning the drawing up of agreements, working out general guidelines for each ratification.

To date, *intese* have been implemented and approved by law, pursuant to Art. 8 of the Constitution, with Churches represented by the Valdesian Church,; the Assemblies of God in Italy; the Union of Seventh-day Adventist Christian Churches; the Union of Italian Jewish communities; the Evangelical Baptist Christian Union of Italy; the Lutheran Evangelic Church in Italy. On April 4 2007, *intese* with the Apostolic Church in Italy, the Church of Jesus Christ of Latter-day Saints; the Christian Congregation of Jehovah’s Witnesses; the Holy Archdiocese of Italy and Exarchate of Southern Europe; the Italian Buddhist Union; and the Hindu Union have been signed but they are not yet approved by law. The two *intese* amending those with the Tavola Valdese and the Union of Seventh-day Adventist Christian Churches were approved by Parliament in June 2009.

In addition to the instrument of the agreements, the Italian legal system entails the possibility for religious communities to be recognized as a juridical person. This recognition is attained after a preliminary inquest, which falls under the competence of the Central Direction for Religious Matters of the Ministry of the Interior. This inquest is aimed at verifying the existence of the requirements provided for.

As already mentioned, the lack of a legal recognition does not undermine the right to religious freedom as this right is stated in our Constitution. Therefore, the right to profess a creed or a religion can be also asserted simply through *de facto*-associations.

In our legal system, there are denominations which have stipulated agreements, other religious communities which are legally recognized, and finally associations for worship which exist only *de facto*.

The difference between these various communities does not affect the right to religious freedom, which has to be guaranteed in any case, but consists in a different level of relationships with the Italian State (e.g. in the patrimonial sphere or in the field of civil law).

Moreover, in addition to legislation that would foster the exercise of fundamental freedoms, Italian laws also provides rules that explicitly prohibit discrimination of any kind, including for religious ground, in compliance with the relevant European and international standards in the field. For example, to ensure that the Holocaust will never be forgotten, a Commission for coordinating the commemoration for the remembrance of the Shoah was set up in Office of the Presidency of the Council of Ministers. This includes Memory Day, celebrated on the 27 January each year, as stated by law 211 of 2000. This Commission has the mandate to coordinate the initiatives which are being organized all over the country, with the participation of institutions, schools, NGO, media and private citizens.

After this preamble, we will list hereafter the initiatives which have been taken during 2009 and relate to the issue of religious freedom.

The Charter of the Values of Citizenship and Integration, which has been issued by the Minister of the Interior on April 23 2007, remains a document of great value. It reaffirms the principles of equality of religious denominations and of religious freedom, which is acknowledged to each human being. The Charter states the right of the individual to have a religious faith, or not to have it, to practice it or not to practice it, to change religion, to spread it, and to join together in religious groups. The Charter declares that the Italian State fosters interreligious and intercultural dialogue in order to increase respect of human dignity and to contribute to overcome prejudices and intolerance.

Among the articles of the Charter which are most interesting there is art. 25, which states that, according to an attitude of friendly secularism, all religious symbols and

signs deserve respect, notwithstanding the Italian religious and cultural tradition, and that no one can consider himself offended by symbols and signs of a religion different from his own. Thus the Italian legal system is different from that of other countries, where, following the spirit of secularism, it is forbidden to bring in schools and public places particularly evident symbols of a religious group.

Another delicate issue which is dealt with by the Charter is related to clothes connected with religious precepts or with cultural traditions. Art. 26 states that Italy does not consent to any restriction of clothing, provided that clothes are freely chosen and do not offend human dignity. Thus Italy does not, for example, prohibit the use of the so-called “headscarf”. Only clothes which conceal the face are not accepted on reasons of public order, as this would hinder the identification of a person.

The Charter proceeds from the “Declaration on interreligious dialogue as a factor of social cohesion in Europe and as an instrument of peace in the Mediterranean area”, issued by the Ministries of the Interior of the European Union, and acknowledged by the Chiefs of State and Government during the European Council held in Bruxelles, December 12 2003, at the end of the six-month Italian Presidency of the EU.

The Charter has been drawn up with the aim of being wide spread over the country. The Prefects, who represent the central State within the local territories, are required to operate accordingly.

Various initiatives have been taken. Some of them are, for example, directed toward the educational institutions in order to spread these values to the youth.

Through the activity of the Central Direction for Religious Affairs of the Ministry of the Interior, the Italian State has always manifested a great sensibility to the issues of religious freedom, and it pursues the aim of ensuring religious pluralism and assertion of the inviolable right to freedom of worship, alone and in community with others, providing as well for a better knowledge and for the diffusion of the different religious communities.

Within the initiatives aimed at ensuring the concrete realization of this important form of freedom, a new stimulus has been given to the activity of the so-called Monitoring Centre on Religious Policies, established within the Central Direction for Religious Affairs of the Ministry of the Interior. Its task is the studying and monitoring of all religious realities existing in the country, also in order to point out their purpose, in whatever form, individual or associated, they assert their right to religious freedom, of developing themselves according to democratic principles, and to integrate themselves in the social context, preserving on the other hand their religious identity.

This work is accomplished with the aid of the Prefects and with the flow of information coming from the Prefectures, whose collaboration enables to know the different initiatives which are taken in the territory of the Italian provinces.

During 2009 the Monitoring Centre has started up a survey with the aim of 1) monitoring the whole situation of the religious world in our country; 2) observing the phenomena connected to the practice of religious freedom; 3) recognizing critical situations; 4) seeking for solutions to problems. The main element of this survey is the acquisition of information about good practices accomplished at a local level, which have to be spread in other territories and are aimed at fostering dialogue and integration between religious faiths.

Although the survey is extended to all religious denominations, most of the issues emerging from it relate to the Islamic world, which is therefore considered with particular attention. Being aware of the challenges met by non-Catholic creeds, in particular by the Islamic one, in establishing own places of worship, the survey has the task of acquiring information about regional laws on worship buildings, as well as about concrete measures taken by some towns concerning the location of areas for worship buildings and their financing.

As religious groups are differently distributed along the territory and the issues related to them differ within the different local situations, the survey has been set up with the aim of facing the prospect of integration and pacific cohabitation in every single case. In this sense the Prefect can play a role of intermediation between different interests as well as in order to promote initiatives of integration.

The aim of the survey is also to consider, together with the Prefectures, some hypothesis of projects of integration, communication and interreligious dialogue. The survey has started at the end of March 2009, and we are still waiting for its results.

## **Places of Worship**

Art. 19 of our Constitution acknowledges the principle of religious freedom and envisages the possibility for the individual – citizen, foreigner, stateless – to profess in whatever form, alone or in community with others, the own religious faith and to practice, in private or in public, its rites. The availability of places of worship, where members of a religious confession can perform religious rites, is, therefore, an expression of the above recalled principle of religious freedom.

The issue relating to places of worship has to be set within the framework of the so-called “government of the territory”, where the State shares the legislative power with the Regions, and within the frame of the legislation concerning town planning and worship building, which falls under the competence of the Regions, as this matter – according to Art. 117 of our Constitution – is not explicitly reserved (either exclusively or together with other institutional bodies) to the State. The administrative functions related to these matters (town planning and worship buildings) are as well imputed to the Regions, which can delegate them to the Provinces and the Towns, or other local entities.

The possibility of having places of worship at one’s disposal is given to each religious group, irrespective of the fact that they have stipulated agreements with the State, or not. This principle has been stated by a number of sentences of the Constitutional Court. The Court has declared the illegitimacy of parts of some regional laws, where building of places of worship was allowed only for those denominations provided with an agreement with the State. The Court has further asserted that buildings of worship have to meet the religious needs of citizens in order to let them effectively enjoy religious freedom, and that all religious denominations are equal in front of the State.

The issue related to worship buildings is also one of the focal points, which the survey carried out in 2009 by the Monitoring Centre of Religious Policies, established within the Italian Ministry of the Interior, intends to study in order to point out possible critical situations.