Essays

Atheism and the Principle of Secularism in the Italian Constitutional Order

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Abstract

More diverse and more militant nonreligious groups are contributing to change the socio-cultural landscape of a growing number of constitutional democracies. Many of these groups and their various components (hard and soft atheists, agnostics, rationalists, humanists, secularists) are claiming to enjoy the protection of religious freedom, while straightforwardly denouncing the legal tendencies that give traditional confessions distinct privileges against generally applicable laws. This also raises several questions about when, where, and how groups of atheists should engage with religious issues and the legal degree to which such engagement becomes 'religion-like'. On the other hand, this is even more evident in legal contexts where the model for managing the State-religions relationship and even freedom of religion are characterized by overt or implicit endorsements towards traditional confessions that, as such, enjoy special protected legal status. One of the most preeminent examples of that is given by the Italian association of atheists (also known as UAAR), who in the last years have launched judicial review proceedings against what they considered the Italian limited secularism. In this manner, nowadays Italian atheism is helping to shed light on the contradictions of the biased pro-religion interpretations of some important constitutional rules, including those related to the supreme principle of secularism.

I. Introduction

Religion has now taken centre stage in public debate worldwide. It is frequently identified as both the cause of large-scale global conflicts and a main source of transnational solidarities. Over the last decades, however, there has been a reduction in the amount of religious people who are active in devout practices. Furthermore, many of them happen to be part of a confession more as a result of their culture than for spiritual or ideological reasons. An emergent number of believers, for instance, affirm to be Roman Catholics because they 'feel at home' with the Church's culture and teaching, but it is highly improbable that they would believe in a divine Jesus, in hell, and in the original sin. At the same time, a growing number of people, particularly young adults, distance themselves from religion.

Nonreligious people are indeed the second largest group in North America and most of Europe. Today's East Asian societies have the highest proportion of people reporting 'no religion.' Australia is seeing an increase in the non-believers, while in Latin America younger are less likely than their elders to say that religion is

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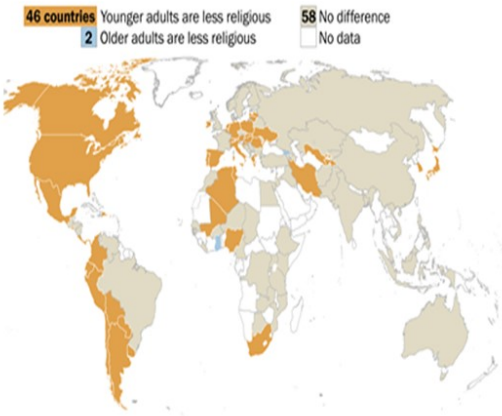
very important.[1]

Younger adults are less likely than older adults to consider religion very important in 46 countries

In just two countries – Georgia and Ghana – older adults (ages 40+) are less likely to say religion is very important in their daily lives



Source: Pew Research Center surveys, 2008-2017.
"The Age Gap in Religion Around the World"

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Younger adults less likely to say that religion is very important across regions

Number of countries with each outcome, by region

	Religion less important to younger adults	Religion less important to older adults	No significant difference
Overall	46	2	58
Asia-Pacific	5	0	15
Europe	18	1	16
Latin America	14	0	5
Middle East-North Africa	4	0	5
North America	2	0	0
Sub-Saharan Africa	3	1	17

Note: Younger adults are those ages 18 to 39; older adults are those 40 and older.
Source: Pew Research Center surveys, 2008-2017.
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This proves that pluralism and multiple religious perspectives have increased dramatically not only through the proliferation of different confessions living in the same geopolitical milieu, but also through the rising presence of at least three socio-cultural categories: unaffiliated believers; believers who, although they remain faithful to their denominational religion, adopt forms of personal spirituality; and nonreligious people who assert patent claims against the public role of religions, as part of what they see to be the realization of the promise of the secular democratic State.[2]

In reality, the position of religious nones[3] takes different forms. Indifference to

[1] Pew Research Center, 'Young adults around the world are less religious by several measures' (2018), available at https://tinyurl.com/1q52olx7 (last visited 30 June 2021). See also F. Yang, 'Religion in the Global East: Challenges and Opportunities for the Social Scientific Study of Religion' 9 *Religions*, 1-10 (2018); D. Balazka, *Mapping Religious Nones in 112 Countries: An Overview of European Values Study and World Values Survey Data (1981-2020)* (Trento: Fondazione Bruno Kessler, 2020).

[2] R. Hirschl and A. Shachar, 'Competing Orders? The Challenge of Religion to Modern Constitutionalism' 85 *The University of Chicago Law Review*, 424-485 (2018); S. Ferrari 'Religion Between Liberty and Equality' 4 *Journal of Law, Religion and State*, 179-193 (2016); A. Jamal and J.L. Neo, 'Religious Pluralism and the Challenge for Secularism' 7 *Journal of Law, Religion and State*, 1-12 (2019).

[3] The notion of 'religious nones' indicates the category of people who select 'no religion' when surveyed asking their religious affiliations. It refers to lack of organizational affiliation rather than lack of personal belief. In origin this expression was used in the US. Now it is commonly used

religious belief on the one hand and the criticism of confessional traditions on the other exemplify various way of being nonreligious.[4] This also raises several questions about when, where, and how the groups of religious nones should engage with religious issues and the legal degree to which such engagement becomes 'religion-like'.[5]

In most constitutional democracies, nonreligious people are no longer 'excluded from religious interests and considerations'.[6] For example, they can refer to schools of thought that take positions 'on religion, the existence and importance of a supreme being, and a code of ethics'.[7] Nonetheless, instead of emphasizing the collective dimension of their attitude, nonreligious people are largely considered as individualistic with a relatively high score. Recent signs of revers still remain though. These signs see an expanding number of nonreligious people organize themselves into associations, which helps atheists fight for their rights, including the right to not believe in god(s) and propagate their arguments either alone or in community, public or/and private.

The example is given by Italy, where in the last three decades atheist organizations have evolved the ability to make their voices heard. It is important to note that they are successful in doing so through various forms of judicial activities, like those being prompted and promoted by the Union of Rationalist Atheists and Agnostics (*Unione degli Atei e degli Agnostici Razionalisti*) also known as UAAR.

One of these actions, for example, originated in 1996, when UAAR launched judicial review proceedings against the pro-religion *ex parte Ecclesia* method of bilateral legislation, as laid down in Arts 7.2 and 8.3 of the 1948 Italian Constitution. After a protracted legal battle, in 2016 this initiative resulted in the judgement (no 52/2016) of the Italian Constitutional Court, and it is now waiting for a decision of the European Court of Human Rights. We should also not forget that this initiative fits into a greater judicial enterprise, such as that pertaining to the displaying of crucifix in public spaces, religious teaching in schools, the system of 0,008 of the

throughout the world. See J. Thiessen and S. Wilkins-Laflamme, 'Becoming a Religious None: Irreligious Socialization and Disaffiliation' 56 *Journal for the Scientific Study of Religion*, 64-82 (2017).

[4] On the working definition of atheism A. Payne, 'Redefining "Atheism" in America: What the United States Could Learn from Europe's Protection of Atheists' 27 *Emory International Law Review*, 663-703 (2013); G.M. Epstein, *Good Without God: What a Billion Nonreligious People Do Believe* (New York: Harper Collins, 2009); R. Arons, *Living Without God: New Directions for Atheists, Agnostics, Secularists, and the Undecided* (Berkeley: Counterpoint Press, 2008).

[5] J. Thiessen and S. Wilkins-Laflamme, *None of the Above: Nonreligious Identity in the US and Canada* (New York: New York University Press, 2020); J. Schuh, C. Quack and S. Kind, *The Diversity of Nonreligion: Normativities and Contested Relations* (London: Routledge, 2020); S. Baldassarre, *Codice europeo della libertà di non credere. Normativa e giurisprudenza sui diritti dei non credenti nell'Unione Europea* (Roma: Nessun Dogma, 2020).

[6] As the Italian Constitutional Court stated in 1960 (no 58/1960 n 33 above). See A. Origone, 'La libertà religiosa e l'ateismo', in VvAa, *Studi di diritto costituzionale in memoria di Luigi Rossi* (Milano: Giuffrè, 1952), 417.

[7] The US's Seventh Circuit Court of Appeals, *Kaufman* v *McCaughtry*, 419 F.3d 678 (7th Cir. 2005).

income taxes in support of the Catholic Church and other few confessions,[8] and the right to freely propagate atheistic messages through communication campaigns, the so-called 'right to blasphemy'. Thus, even in a traditionally Catholic country and from a tiny minority that rarely have access to media megaphones, the Italian atheists are now marking a pivotal moment in their history.

In order to better understand this attitude, it is imperative to focus on two factors. First, the evolution of the way in which Italian legal system considers the right to freedom of religion. Second, the traditional roots and essential characteristics of the Italian State-Churches relationship. As we will see, in respect of these issues the judiciary courts are playing a crucial role, just when Italy is facing not only waves of new immigration, which are quickly changing the country's religious landscape – like it was in Great Britain and France during the 1960s and 1970s. Italy is experiencing a more flexible relation between people and religion, which is a typical feature of those who value the sense of belonging to religious communities for some of their precepts while interpreting others in a completely personal way.

The first part of this article focuses on the current religious multiplicity, which includes the rising presence of nonreligious people and the related organizations. This will give the opportunity to clarify the peculiar characteristics of the Italian legal order in relation to the current expression of collective atheism, which necessarily entails the ways of understanding and viewing religion and the religious experience in the country. From this point of view, it is important to consider the way in which the Italian legal system defines atheism, taking also into account the national and supranational provisions regulating the right to freedom of religion and belief.

Then, the article highlights the role played by judiciary courts, especially when considering the method of bilateral (State-Churches) legislation. This method seems attractive to some confessional organisations, while creating unfavourable distinctions for other groups, including those related to religious nones. In this manner, today's militant atheism is helping to shed light on the contradictions of the biased pro-religion interpretations of the Italian constitutional order, including the supreme principle of secularism.[9]

II. The Collective Forms of Atheism

More diverse and more militant nonreligious groups, also known as religious nones, are contributing to change the socio-cultural landscape of a growing

[8] On the 0,008 of taxes owed by natural persons, also known as *IRPEF*, see F. Alicino, 'Un referendum sull'otto per mille? Riflessioni sulle fonti' *Stato, Chiese e pluralismo confessionale*, 28 October 2013, 1-35.

[9] I refer to the '*principio supremo di laicità*', as the Italian Constitutional court calls it. See below, paras V and VI.

number of constitutional democracies. Many of these groups and their various components (hard and soft atheists, agnostics, rationalists, humanists, secularists) are claiming to enjoy the protection of religious freedom, while straightforwardly denouncing the legal tendencies that give traditional confessions distinct privileges against generally applicable laws. According to religious nones, this is in contrast with both the principle of equality and a coherent implementation of the concept of a secular democratic State.

For their part, religions, especially the most popular ones, continue to claim a peculiar role in society, which distinguishes traditional confessions from other 'common' associations. In their view, democratic pluralism and the State neutrality on religion infer neither hostility nor indifference to religions. Moreover, several religious representatives maintain that freedom of religion should be interpreted to mean that atheism has little or nothing to do with the collective dimension of religious experiences. As a matter of fact, atheist organizations do not merit the same level of legal guarantees that religious groups command. From that perspective, it is also interesting to observe that many atheists are also concerned by some legal systems, which require groups of religious nones to pose as 'religious' organizations to receive equal treatment. That is another piece of an already confused puzzle of constitutional law on what qualifies as 'religion'.[10]

In fact, all of this signals that traditional religions and today's atheist groups often collide on policy preferences and the true essence of contemporary constitutionalism. It is not by chance that these diverging viewpoints and interests also manifest themselves through high-profile legal clashes and court cases, in which the stakes for the competing parties they represent are both high and visible.[11] Protection of gender equality, abortion, reproductive freedoms, LGBTQ rights, same-sex marriage, the right to die with dignity, the display of religious symbols in public spaces, the right to ridicule and mock religion are considered

[10] See *ex plurimis*: *McCreary County, Ky.* v *American Civil Liberties Union of Ky.*, 545 US 844, 125 S.Ct. 2722, 162 L.Ed.2d 729 (2005); *Kaufman* v *McCaughtry*, US, August 19, 2005, no 04-1914; Supreme Court of Canada, *Mouvement laïque québécois* v *Saguenay* (City), 2015 SCC 16, [2015] 2 SCR 3; Canada Federal Court of Appeal, *Church of Atheism of Central Canada* v *Minister of National Revenue*, 2019 FCA 296, 2019, 29, 11; Supreme Court of Canada, *Syndicat Northcrest* v *Amseleum*, [2004] 2 SCR 551. On the relation between the definition of religion and atheistic organizations see also: R. Dworkin, *Religion Without God* (Boston: Harvard University Press, 2013); C. Miller, ' "Spiritual but Not Religious": Rethinking the Legal Definition of Religion' 102 *Virginia Law Review*, 833-894 (2016); D.H Davis, 'Is Atheism a Religion? Recent Judicial Perspectives on the Constitutional Meaning of "Religion" ' 47 *Journal of Church and State*, 707-723 (2005); L.H. Tribe, *American Constitutional Law* (New York: The Foundation Press, 1978), 417; C. Crockett, 'On the Disorentiation of the Study of Religion', in T. Idinopulos and C. Wilson eds, *What Is Religion? Origins, Definitions, and Explanations* (Leiden-Boston-Köln: Brill, 1998), 1-13; G. Laneve, 'Atheism as Part of Religious Phenomenon: Questions and New Challenges to Secularism' 25 *federalismi.it*, 154-181 (2020).

[11] A. Connaughton, 'Religiously unaffiliated people more likely than those with a religion to lean left, accept homosexuality' *Pew Research Center* (28 September 2020); H. Harting, 'Nearly six-in-ten Americans say abortion should be legal in all or most cases' *Pew Research Center* (17 October 2018).

some of the hallmarks of the current jurisprudence.

In this regard, it is useful to recall the 2011 *Lautsi and others* v *Italy*[12] decision of the European Court of Human Rights (ECtHR), which involved the human-rights claim of a mother residing in Italy who objected to the display of religious crucifixes in her sons' public schools. This is a case that was supported by UAAR and other European associations of religious nones and that, during the process, brought together strange bedfellows of religious groups like American Conservative Evangelicals, the Russian Orthodox Church, and the Vatican, all united by their advocacy of Christian symbols in the European public sphere.[13] One can also take into account the 2013 *Eweida* v *United Kingdom*[14] decision of the ECtHR (holding that Art 9 of the ECHR was violated when a British Airways flight attendant was prohibited from wearing a visible cross at work) and the 2014 *S.A.S.* v *France*[15] judgement of the ECtHR (ruling that the French laws banning the Islamic full-face veil did not breach the ECHR because the State autonomy and regulatory powers over attire in public spaces trump considerations of religion-based freedoms).[16]

Similarly, it is possible to point out with reference to the 2017 decisions of the Court of Justice of the European Union regarding *Achbita* v *G4S Secure Solutions NV* (affirming that, under certain conditions, employers may dismiss employees who refuse to comply with company policies concerning religious attire)[17] and the ECtHR's *Eweida* v *United Kingdom* judgement (ruling that a religious organization's claim to religious autonomy was sufficient to trump the claimant's right to respect for his private life).[18]

Finally, it is worth mentioning other important cases concerning the right to produce satire in France[19] and other sensitive issues, such as those referring to the 2015 US Supreme Court *Obergefell* v *Hodges* decision[20] (ruling that under the Equal Protection Clause of the Fourteenth Amendment marriage is a fundamental right guaranteed to all couples, including same-sex ones), the 2018

[12] Eur. Court H.R. (GC), *Lautsi and Others* v *Italy* App no 30815/06, Judgment of 18 March 2011.

[13] See P. Annicchino, 'Winning the Battle by Losing the War: The Lautsi Case and the Holy Alliance between American Conservative Evangelicals, the Russian Orthodox Church and the Vatican to Reshape European Identity' 6 *Religion & Human Rights*, 213, 215-18 (2011).

[14] Eur. Court H.R., *Eweida* v *United Kingdom* App nos 48420/10, 59842/10 and 36516/10, Judgment of 15 January 2013.

[15] Eur. Court H.R. (GC), *S.A.S.* v *France* App no 43835/11, Judgment of 1 July 2014.

[16] In this sense see also: Eur. Court H.R., *Dakir* v *Belgium* App no 4619/12, Judgment of 11 July 2017; *Belkacemi and Oussar* v *Belgium* App no 37798/13, Judgment of 11 July 2017.

[17] Case C-157/15 Samira Achbita e Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV, [2017] ECLI:EU:C:2017:203.

[18] Eur. Court H.R., *Eweida* v *United Kingdom* n 14 above.

[19] F. Alicino 'Freedom of Expression, Laïcité and Islam in France: The Tension between Two Different (Universal) Perspectives' 27 *Islam and Christian-Muslim Relations* 51-57 (2015); Id, 'The Italian legal system and imams. A difficult relationship', in M. Hashas, J.J. de Ruiter and N. Valdemar Vinding eds, *Imams in Western Europe. Developments, Transformations, and Institutional Challenges* (Amsterdam: Amsterdam University Press, 2018), 359-380.

[20] *Obergefell* v *Hodges* 576 US 14-556 (2015).

UK's *Alfie Evans* case (involving an infant with a GABA-transaminase deficiency),[21] and the 2019 *DJ Fabo's* of the Italian Constitutional Court (holding that assisted dying is not a crime if some persons wanting to end their life are experiencing intolerable suffering).[22]

These decisions are merely examples of the fact that often the stance of the traditional confessions is opposed to the secular view of religious nones. Nevertheless, and for the same reasons, this is even more evident in contexts where the model for managing the State-religions relationship and even freedom of religion is characterised by overt or implicit endorsements towards traditional confessions that, as such, enjoy special protected legal status. One illustrative and interesting example of that resides in Italy. In particular, it resides in the historical role played by the bilateral State-Churches normative instruments, as primarily affirmed in arts 7.2 and 8.3 of the 1948 Constitution.

III. Religion and the Italian Constitutional Order

The Italian population has many different ways of understanding and viewing religious belonging.[23] The tendency to think of oneself as Catholic, for example, is much more widespread than considering oneself unrelated to religious teachings. It is worth pointing out that this situation does not reproduce individualism in belief or the so-called *religion à la carte*, through which any person becomes the locus of his/her own religion. Despite uncertain and ambivalent convictions, most of the Italian citizens prefer to identify themselves as belonging to an official religion, primarily Catholicism.[24]

This explains the limited number of atheists and agnostics in the country.[25] People that do not believe or join any particular religion are constantly increasing in many European States: for example, they amount to thirty-five, forty percent of the population in France, Belgium and Germany, while nonreligious people have overtaken Christians as the majority position among white British population.[26] On the contrary, in Italy the corresponding number stands at around nine percent

[21] *In the matter of Alfie Evans* [2018] UKSC, 20 April 2018.

[22] Corte costituzionale 25 settembre 2019 no 242, *Il Foro italiano*, I, 829 (2020).

[23] F. Garelli, *Religion Italian Style. Continuities and Changes in a Catholic Country* (Farnham: Ashgate, 2014), 87.

[24] R.W. Bibby, *La religion à la carte: pauvreté et potentiel de la religion au Canada* (Montréal: Fides, 1988), 110; L. Witham, *Marketplace of the Gods. How Economics Explains Religion* (Oxford: Oxford University Press, 2010), 156-158; S. Lefebvre, 'Religion in Court, Between an Objective and a Subjective Definition', in L.G. Beaman ed, *Reasonable Accommodation. Managing Religious Diversity* (Vancouver-Toronto: UBCPress, 2012), 32-51.

[25] Of course, this picture changes in accordance with the socio-demographic characteristics of the population, or the different contexts where people live.

[26] It is interesting to note that the UK's 2010 Equality Act expressly states 'Religion means any religion and a reference to religion includes a reference to a lack of religion. Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.'

and it has shown no particular growth trend over the last decades. This is because many Italians, including those who do not believe in God, consider religion in general and Catholicism in particular as reference in terms of their culture of origin and national identity.[27]

One result of this attitude is the low attendance to ordinary religious practices (Sunday worship service, private prayer, study and reading of the holy scriptures, etc), on the one hand, and the tendency to focus the attention on the great religious events (the proclamations of saints, the Pope's visits to local dioceses, the commemoration of charismatic religious figures), on the other hand. In addition, a vast majority of Italians participate in religious rites of passage (baptisms, church weddings, religious funerals), which are often seen as solemn celebrations of the most important moments in a person's life, as well as in the life of the local and, at times, even national community. Conversely, an important part of the Catholic world normally deserts parishes. From here stems one of the paradoxes of people's religious behaviour in Italy: it is still able to fill the public squares, while the churches remain substantially empty.[28]

It is important to note that this situation is also the result of the unique historical process, which has influenced the way the State effectively governs religious issues, including those referring to the right to freedom of religion and its relationship with atheism.

IV. Atheism and the Italian Constitutional Order

In Italy, freedom of religion is primarily regulated by Art 19 of the 1948 Constitution, which establishes that anyone is entitled to freely profess religious faiths in any form, individually or with others, and to propagate religions and celebrate rites in public or in private, provided they are not offensive to public morality. So far as the collective dimension of religious experience is concerned, this provision should be interpreted in combination with Art 8 of the Constitution, which states that all religious confessions enjoy equal freedom before the law. In addition, Art 20 of the Constitution affirms that no special legislative limitation or tax burden may be imposed on the establishment, legal capacity or activities of any association or institution on the ground of its ecclesiastical nature or its

[27] E. Drescher, *Choosing Our Religion. The Spiritual Lives of America's None* (New York: Oxford University Press, 2016), 16-52; G. Zurlo and T.M. Johnson, 'Unaffiliated, Yet Religious: A Methodological Demographic Analysis', in R. Cipriani and F. Garelli eds, *'Sociology of Atheism' Annual Review of the Sociology of Religion* (Leiden/Boston: Brill, 2016), 50-75; T. Cragun Ryan et al, 'On the Receiving End: Discrimination toward the Non-Religious in the United States' 27 *Journal of Contemporary Religion*, 105-112 (2012); L. Woodhead and A. Brown, *That Was The Church That Was: How the Church of England Lost the English People* (London: Bloomsbury Publishing, 2016); F. Garelli, *Religion Italian Style* n 23 above, 90.

[28] F. Garelli, *Gente di poca fede. Il sentimento religioso nell'Italia incerta di Dio* (Bologna: il Mulino, 2020), 3-7.

religious or worship purposes.

It can be easily noted that in these dispositions there is no reference to the freedom of thought and the freedom of conscience which, on the contrary, are expressly mentioned in many other national and supranational legal documents, including the Universal Declaration of Human Rights (Art 18) and the European Convention of Human Rights (Art 9).

As for the collective dimension of religious freedom, the Italian Constitution also refers to denominations (Art 8), religious faiths (Art 19) and the ecclesiastical nature, or religious or worship purposes of associations or institutions (Art 20). In these cases, the 1948 Constitution does not mention beliefs, associations or institutions other than denominational ones;[29] which may constitute an obstacle for nonreligious people who, for example, would want to see the promotion of atheism protected under the constitutional rules.

Once again, that is evident in the light of other legal documents, which are able to include groups of religious nones under the protection of the right to freedom of thought, conscience and religion. The example is given not only by the European Convention of Human Rights,[30] but also by the European Union (EU) law. According to this law, the Union equally respects the status of Churches and religious associations or communities and the status of philosophical and non-confessional organisations, while maintaining an open, transparent and regular dialogue with them.[31] Sometimes the EU's law goes even further, stating that the concept of religion 'shall include the holding of theistic, non-theistic and atheistic beliefs'.[32]

[29] In Germany, for example, the status of non-denominational organizations is established in the Constitution. In particular, Art 140 of the *Grundgesetz* states that associations pursuing philosophical ideology have the same status as religious groups. In other words, both religious groups and philosophical organizations (*Weltanschauungsgemeinschaft*, which includes humanistic and atheistic associations) may have the status of public law corporations (*Körperschaft des öffentlichen Rechts*, also known as *KdÖR*). It also means that each Lander-State is entitled to grant the *KdÖR* to atheistic associations that, in this way, may benefit some distinct rights against generally applicable laws. Thanks to such equal legal treatment between religious denominations and philosophical organizations, the Land of Lower Saxony, for instance, has signed an agreement with the *Freireligiösen Landesgemeinschaft Niedersachsen*, a local atheistic association.

[30] See Art 9 ECHR, which 'includes freedom to change his religion or belief and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'. At the same time, the ECHR declares that the State shall respect the right of parents to ensure right to education and teaching in conformity with their own religious and philosophical convictions' (Art 2 of the 1st Protocol to the Eur Court H.R.).

[31] Art 17 of the Treaty on the Functioning of the European Union.

[32] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L304/12, Art 10.1(b). In this vein, it is also important to note that the EU's Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16 establishes a general framework for equal treatment in employment and occupation and prohibits direct and indirect discrimination, harassment, instructions to discriminate and victimization on grounds of religion or belief. On this see Case C-414/16 *Vera Egenberger* v *Evangelisches Werk fur Diakonie und Entwicklung e.V.*, [2018] ECLI:EU:C:2018:257,

To this regard, it is important to consider what the Italian Constitutional Court (ICC) affirmed in the 1960 decision (no 58), according to which freedom of religion in general and Art 19 of the Constitution in particular do not

> involve the protection of all forms of freedom of thought. Specifically, it does not imply atheism.

This is because atheism 'ends where a religious experience begins'.[33] It means that, since freedom of religion applies exclusively to persons who believe in a traditional religion, atheists cannot benefit from that constitutional protection.

However, in 1979, in the light of the pressing demand for the effective implementation of international human rights – which invariably refers to freedom of religion or belief, where belief includes not only religious but also nonreligious beliefs such as humanism, atheism and agnosticism – the Court reversed two decades of its own jurisprudence. The ICC affirmed that Art 19 of the Italian Constitution encompasses all manifestations of freedom of thought which, in a way of another, are correlated to religion. Moreover, the same Court stated that the Italian constitutional order

> does not legitimate differentiation of protection between the expressions of religious faith and the expressions of disbelief.[34]

Hence, since 1979 Art 19 of the Constitution has not only implied the protection of religious persons. It has also ensured an equivalent level of respect to religious nones. In other words, since 1979 religious freedom in Italy has inferred the protection of public and private phenomena that, from a philosophical and ideological point of view, could be located in-between two poles of legal concern: the positive pole, related to people who believe in a confessional organisation and the related precepts; and the negative pole, which may take the form of a sense of scepticism and realism suggesting, for example, that fear and superstition are mothers of all religions. In brief, since 1979 the Italian Constitution has been interpreted in a way that allows the protection of both religious people and atheists in their right to freely profess (religious or nonreligious) beliefs, whether they are acting individually or collectively, in private or in public.

It should be noted that when the ICC issued the 1979 judgement in Italy atheism existed but only in the form of individual attitude. In the late 1970s there was no organisation of religious nones capable of connecting isolated individual

where the European Court stated that the right of autonomy of Churches and the right of workers must be subject of an assessment aimed to ensure a fair balance between them.

[33] Corte costituzionale 13 July 1960 no 58 (translation mine), *Giurisprudenza costituzionale*, 752 (1960).

[34] Corte costituzionale 10 October 1979 no 117 (translation mine), *Il Foro italiano*, I, 625 (1981). See P. Bellini, 'L'ateismo nel sistema delle libertà fondamentali' 1 *Quaderni di diritto e politica ecclesiastica*, 85-90 (1985) and P. Floris, 'Ateismo e religione nell'ambito del diritto di libertà religiosa' *Il Foro italiano*, I, 5 (1981).

experience at the national level. Therefore, in 1979 the constitutional decision and its new way of considering atheism did not really involve the collective dimension of religious freedom. At the same time, we cannot forget that, since the Lateran Pacts were approved (1929), the collective dimension of religious freedom has been largely governed by the method of State-Churches bilateralism. Furthermore, this method has always referred to the special relationship between the State and the Roman Catholic Church. As such, it has affected the way in which atheism has been legally defined in the history of the Italian Republic.

V. The Principle of Secularism and Atheism

It is important to recall that the unification of Italy in 1871 abolished the secular-territorial power of the Catholic Church, which generated the hostility of the ecclesiastical hierarchy towards the newborn political entity. On the other hand, the predominantly moderate policy of the Italian State made its relationship with the Roman Church progressively less tense; so much so that, during the Fascist period, the Italian government and the ecclesiastical hierarchy were able to stipulate the Lateran Pacts, which was a turning point in the history of the Italian legal system.[35] Not only the 1929 Pacts were considered as a legal framework to reconcile two parties, the Roman Catholic Church and the Kingdom of Italy. The Pacts also established a proactive role for this Church in legally defining some religious issues, such as teaching of religion in schools, presence of ecclesiastical hierarchies in public debates, the State funding to the confessions, legal punishments for offences against religion,[36] and criminal law provisions related to blasphemy against the deity (*la divinità*), religious symbols and religious authorities.[37]

Most of all, the 1929 Pacts laid the foundation for a method of bilateral State-Church collaboration that, since the brand-new Republic of Italy entered into force in 1948, has partially been extended to religions other than Catholicism. This has been made possible by Arts 7 and 8 of the Constitution, which highlight the historical bonds between the State and the Catholic Church.[38]

[35] F. Ruffini, *Corso di diritto ecclesiastico. La libertà religiosa come diritto pubblico subiettivo* (Torino: F.lli Bocca, 1924); F. Margiotta Broglio, *Italia e Santa Sede dalla grande guerra alla conciliazione* (Roma-Bari: Laterza, 1966), 86; R. Pertici, *Chiesa e Stato in Italia. Dalla Grande Guerra al nuovo Concordato. Dibattiti storici in Parlamento* (Bologna: il Mulino, 2009), 189; A. Ferrari, 'The Italian Accommodations. Liberal State and Religious freedom in the 'Long Century' ', in L. Derocher et al eds, *L'État canadien et la diversité culturelle et religieuse 1800-1914* (Québec: Presses de l'Université du Québec, 2009), 143-153.

[36] Arts 402-406 of the 1930 Italian Penal Code.

[37] Art 724 of the 1930 Italian Penal Code. See C.A. Jemolo, *Chiesa e Stato negli ultimi cento anni* (Torino: Einaudi, 1971), 537. See also Corte costituzionale 18 October 1995 no 440, *Giurisprudenza italiana*, I, 178 (1996).

[38] C. Cardia, 'Concordato, intese, laicità dello Stato' 1 *Quaderni di diritto e politica ecclesiastica* 30 (2004); N. Colaianni, *Confessioni religiose e intese* (Bari: Cacucci, 1990), 35; P. Floris, 'Laicità e

Art 7 establishes that the State and the Catholic Church are independent and sovereign, each within its own sphere. Albeit weaker, this principle is also affirmed in Art 8.2 of the Constitution, which guarantees the free organisation of religious denominations other than Catholicism. At the same time, Art 7.2 declares that the Lateran Pacts regulate the State-Church relationships and that a change to these Pacts, when accepted by both parties, does not require the procedure of constitutional amendments.[39] It means that, when there is a State-Church bilateral agreement, a legislative (non-constitutional) act is sufficient in order to amend the 1929 Pacts. Another point of reference for the method of bilateralism is Art 8.3 of the Constitution, which affirms that legislative acts regulate the relationships between the State and minority religions. These acts, however, must be based on *intese*, which can be translated literally as 'understandings' between the State and denominations other than Catholicism.

Thus, once the Italian government and the representatives of a given denomination have signed an agreement (Art 7.2) or an *intesa* (Art 8.3), these documents need to be ratified (agreement) or approved (*intesa*) by specific acts of the Italian Parliament.[40] In this manner, the Catholic Church and minority religions holding an *intesa* have the guarantee that their legal status, benefits and privileges cannot be altered without considering their will. This also explains why, in order to keep the special status within the State's territory, some confessional organisations, in particular the Catholic Church and minority religions with *intese*, intensely support the principle of bilateralism.[41]

However, not all minority confessions are able to sign an understanding with the State. The method of bilateralism generates two main problems. First, it presupposes a relatively comprehensive religious institution capable of representing a denomination at the national level. This requirement was proved to be very challenging for some religious organisations, such as those referring to Islam.[42]

collaborazione a livello locale. Gli equilibri tra fonti centrali e periferiche nella disciplina del fenomeno religioso' *Stato, Chiese e pluralismo confessionale*, February 2010, 5.

[39] This procedure is provided by Art 138 of the Constitution.

[40] Concerning the recent relationships between the State and the Catholic Church, on 18 February 1984 the State and the Holy See signed an agreement, which was then ratified by the law of the Italian Parliament (legge 25 March 1985 no 121). This law is an atypical *sui generis* legislation because, once it enters into force, it can be amended only on the basis of a new agreement between the State and the Church: no amendment based on a unilateral legislation made by the Parliament is possible. The same can be said about the legislative acts approving *intese*: they can only be changed via additional legislative acts that, in turn, must be based on further understandings between the State and confessions concerned.

[41] G. Bouchard, 'Concordato e intese, ovvero un pluralismo imperfetto' *Quaderni di diritto e politica ecclesiastica*, 70 (2004); G.B. Varnier, 'La prospettiva pattizia', in V. Parlato and G.B. Varnier eds, *Principio pattizio e realtà religiose minoritarie* (Torino: Giappichelli, 1995), 8-13; S. Ferrari, 'Il Concordato salvato dagli infedeli', in T. Valerio ed, *Studi per la sistemazione delle fonti in materia ecclesiastica* (Salerno: Edisud, 1993), 127-158; M. Ventura, *Creduli e increduli. Il declino di Stato e Chiesa come questione di fede* (Torino: Einaudi, 2014), 58.

[42] C. Decaro Bonella, 'Le questioni aperte: contesti e metodo', in Id, *Tradizioni religiose e tradizioni costituzionali. L'Islam e l'Occidente* (Roma: Carocci, 2013), 34-35.

The second problem is caused by the excessive amount of discretion that the Government possesses in deciding whether to accept or reject the proposal made by an organisation to enter into negotiations for concluding an understanding.[43]

Besides, over the last thirty years the practical implementation of Art 8.3 of the Constitution has been characterised by the phenomenon of the so-called 'copy&paste understandings' (*intese fotocopia*); that is by the substantial similarity of all *intese* which have been signed by minority religions until now.[44] As a result, these *intese* have established a *de facto* common legislation, which is far from being considered general legislation: it is common to all religious denominations that have signed an understanding, but it cannot be applied to other organisations that do not have an *intesa* yet.[45]

As a matter of fact, religious groups without *intese* are subject to the 1929 law (no 1159) on 'admitted religions' that, approved during the fascist regime, legitimises an even greater discretionary power by the Italian Government.[46] On the contrary, religious groups possessing an understanding with the State are no longer subject to the 1929 law, whose provisions are entirely replaced by those (more favourable) affirmed in the legislative acts approving *intese*.[47]

These difficulties are even more evident in the light of the rules stated in Arts 2, 3, 19 and 20 of the Constitution that, together with Arts 7 and 8, in 1989 led the Constitutional Court to define secularism (*laicità*) as one of the supreme principles (*principi supremi*) of the Italian constitutional order. As such, secularism does not require indifference to religions. It requires the equidistance and the impartiality of the State law, especially when related to religious issues.[48] It also

[43] See Corte costituzionale 10 March 2016 no 52, *Il Foro italiano*, I, 1940 (2016). See also F. Alicino, 'La bilateralità pattizia stato-confessioni dopo la sentenza n. 52/2016 della Corte costituzionale' *osservatoriosullefonti.it*, 1-16 (2016).

[44] See https://tinyurl.com/smj6bw5t (last visited 30 June 2021).

[45] V. Crisafulli, 'Fonti del diritto (dir. cost.)' *Enciclopedia del diritto* (Milano: Giuffrè, 1968), XII, 948; F. Carnelutti, *Teoria generale del diritto* (Roma: Soc. ed. del Foro italiano, 1951), 35; M. Ricca, *Legge e Intesa con le confessioni religiose: sul dualismo tipicità-atipicità nella dinamica delle fonti* (Torino: Giappichelli, 1996), 35; B. Randazzo, *Diversi ed eguali. Le confessioni religiose davanti alla legge* (Milano: Giuffrè, 2008), 55.

[46] According to the 1929 law, the Minister of Interior will take into consideration the assets of the denomination or religious entity that claims recognition. For example, he will take into account: 1) the number of the claimants' members and how widespread they are in the Country; 2) the compatibility between the claimants' statute and the main principles of the Italian legal system; 3) the aim of the denomination that claims to be recognised by the State, an aim that has to be 'prevalently' of religion and worship.

[47] On this aspect see R. Zaccaria et al eds, *La legge che non c'è. Proposta per una legge sulla libertà religiosa* (Bologna: il Mulino, 2019); in particular see the following articles: P. Floris, 'Le istanze di libertà collettiva e istituzionale', 145-190, and F. Alicino, 'I problemi pratici e attuali della libertà religiosa', 235-246.

[48] See the following decisions of the Italian Constitutional Court: 12 april 1989 no 203, *Il Foro italiano*, I, 133 (1989); 25 May 1990 no 259, *Giustizia civile*, I, 2504 (1990); 14 January 1991 no 13, *Il Foro italiano*, I, 365 (1991); 27 April 1993 no 195, *Il Foro italiano*, I, 2986 (1994); 1 December 1993 no 421, *Il Foro italiano*, I, 14 (1994); 8 October 1996 no 334, *Il Foro italiano*, I, 25 (1997); 14 November 1997 no 329, *Il Foro italiano*, I, 26 (1998); 20 November 2000 no 508, *Il Foro italiano*,

means that, compared to the previous (Fascist) regime, there can no longer be an unreasonable (not constitutionally based) distinction. This is true not only with reference to the comparison between the Catholic Church and other confessional denominations. It is equally true when comparing the minority religions that have signed an *intesa* and those organisations that do not possess an understanding with the State.[49]

The implementation of the supreme principle of secularism has therefore revealed other interconnected problems, which are partly due to the pro-religion vision of the method of bilateralism. That is even more evident when considering today's neo-religious and cultural pluralism, which implies an increasingly important role for organisations of nonreligious people. After all, it is not by chance that many atheists and agnostics consider the method of bilateralism as the major driving force behind Italy's limited *ex parte Ecclesiae* secularism.

VI. The Italian Method of Bilateralism and Militant Atheism

In Italy the interpretation of the constitutional rules concerning the State-religions relationship remains tailored on the notion of traditional confessions. In turn, this notion is manly based on the Catholic Church's model of organisation. Thus, under the current unprecedented cultural pluralism, the Italian law does not seem to be consistent with a modern, secular democracy. On the contrary, it seems characterised by a limited secularism or, as some have said, 'a baptised *laicità*'.[50] The example is given by the method of bilateral State-Churches legislation, which is becoming increasingly difficult and, at times, harshly contested by many organisations. These include groups of religious nones that, in the meanwhile, are seeking a greater role in the public space as well as in the political arena.

It should be stressed that in the last decades the Italian atheism has

I, 26 (2002); 9 July 2002 no 327, *Il Foro italiano*, I, 2941 (2002). See also N. Colaianni, 'Laicità: finitezza degli ordini e governo delle differenze' *Stato, Chiese e pluralismo confessionale*, 9 December 2013, 39; G. Dalla Torre, 'Ancora sulla laicità. Il contributo del diritto ecclesiastico e del diritto canonico' *Stato, Chiese e pluralismo confessionale*, 3 February 2014, 4.

[49] V. Tozzi, 'Le confessioni religiose senza intesa non esistono', in *Aequitas sive Deus. Studi in onore di Rinaldo Bertolino* (Torino: Giappichelli, 2011), 1033-1055; G. Casuscelli, 'La rappresentanza e l'intesa', in Alessandro Ferrari ed, *Islam in Europa/Islam in Italia tra diritto e società* (Bologna: il Mulino, 2008), 285-322; N. Colaianni, *Diritto pubblico delle religioni. Eguaglianza e differenze nello Stato costituzionale* (Bologna: il Mulino, 2012), 68; F. Finocchiaro, *Diritto ecclesiastico*, updated by A. Bettetini and G. Lo Castro (Bologna: Zanichelli, 2012), 120; A. Bettetini, 'Commento all'art. 20 Cost.', in B. Raffaele, A. Celotto and M. Olivetti eds, *Commentario alla Costituzione* (Torino: UTET, 2006), 441-448; M. Ricca, 'Art. 20 della Costituzione ed enti religiosi: anamnesi e prognosi di una norma "non inutile" ', in *Studi in onore di Francesco Finocchiaro* (Padova: CEDAM, 2000), 1557-1580; P. Di Marzio, *L'art. 20 della Costituzione. Interpretazione analitica e sistematica* (Torino: Giappichelli, 1999); S. Fiorentino, 'Gli enti ecclesiastici e il divieto di discriminazione', in G. Casuscelli ed, *Nozioni di diritto ecclesiastico* (Torino: Giappichelli, 2006), 57-68.

[50] A. Ferrari, 'De la politique à la technique: laïcité narrative et laïcité du droit. Pour une comparaison France/Italie', in Basdevant-Gaudemet Brigitte and Jankowiak François eds, *Le droit ecclésiastique en Europe et à ses marges (XVIII-XX siècles)* (Leuven: Peeters, 2009), 333-349.

experienced a significant evolution. It has moved from a purely individual dimension to a rampant militant activism. As such, it has called into question the moral ascendancy of religion and its importance for civic belonging and national identity. Italian atheists has thus asked for the outlawing of many practices related to the privileged position of religions (especially of the Catholic Church) in public life, as demonstrated by several indicators (ie the display of the crucifix in classrooms, the legal impossibility of renouncing one's baptism,[51] the teaching of religion in classes, the system of 0.008 of the *IRPEF*).[52] In so doing, associations of nonreligious people argues that, even if they can enjoy many rights as individuals, it is difficult for them to identify with the State's law as a group. The legal system weakens the sense of belonging of many atheists, giving them the impression that they are condemned to remain eternally beyond the constitutional boundary of the Italian citizenry.[53]

Religious nones have consequently sued the State authorities on several occasions, challenging their activities on religious issues, including the method of bilateralism. Moreover, in this specific matter the Italian militant atheism has demonstrated its intention to take the bull by the horns. The most important example of this is the above-mentioned Italian Union of Rationalist Atheists and Agnostics (UAAR), which in 1996 requested the Government to initiate negotiations to sign an *intesa* with the State.[54] This was not possible, the President of the Council of Ministers replied, simply because the applicant was not eligible to be included in the national list of confessional beliefs. In addition, the President held that the refusal to accept an association's request to launch negotiations could not be subject to judicial review, as this would violate the sphere of constitutional powers vested in the Government.[55]

Nonetheless, UAAR decided to bring the case before the Court, which has

[51] In this sense UAAR offers the 'Debaptism Certificate,' see https://tinyurl.com/yuqtrns5 (last visited 30 June 2021), whose procedure has been partially validated by the Italian Data Protection Authority (*Garante per la protezione dei dati personali*), see https://tinyurl.com/1303glaa (last visited 30 June 2021). See also the Italian Bishops' Conference (CEI), 1999. Decreto Generale, Disposizioni per la tutela del diritto alla buona fama e alla riservatezza, Prot no 1285/99, Art 2, para 9.

[52] According to this system, all Italian taxpayers can participate to a sort of 'poll' to allocate 0.008 of their income tax (*IRPEF*) to the Catholic Church, the State and confessions holding an *intesa*: they can participate by signing under 'one of the others' in the tax form. The entire fund (ie the overall amount of 0.008 of the *IRPEF*) will then be divided proportionally among the choices selected by the taxpayer who signed to give 0.008 of all taxes to specific institutions (eg the Catholic Church, the State, one of the minority religions holding an *intesa*). In doing so, even the taxpayers who do not choose any denomination will end up funding one according to the selection made by those who have signed to give their taxes to a religious group.

[53] F. Garelli, *Religion Italian Style* n 23 above, 240-257.

[54] F. Alicino, La legislazione sulla base di intesa. I test delle religioni "altre" e degli ateismi (Bari: Cacucci, 2013), 218.

[55] See the President of the Council of Ministers of the Italian Republic, 'Atto protocollato DAGL 1/2.5/4430/23 e comunicato all'UAAR con lettera datata 20 febbraio 1996'. See also Consiglio di Stato, Parere 29 ottobre 1997 no 3048.

resulted in a long legal battle, marked by several judicial decisions. Some of them has been issued by the administrative courts (the regional administrative tribunals and the Council of the State).[56] Others by ordinary judges, including the Italian Supreme Court (*Corte di Cassazione*). In 2013, this Court held that the original goal of the *intese* is to make the constitutional right of religious freedom better implemented, more widely valued, and equally enjoyed by all.[57] The Italian Supreme Court, however, also affirmed that through the phenomenon of copy&paste understandings, the instrument of the *intesa* has been transformed into a sort of legislative framework, which is accessible only for few minority religions at the exclusion of all other groups.[58]

Another major problem concerning *intese* is that there is no formal procedure of using Art 8.3 of the Constitution, which can turn the discretionary power of the Government into unreasonable discrimination towards some minority groups. For this reason, in 2013 the Italian Supreme Court also stated that the decision to initiate negotiations could not be left to the absolute discretion of the Government: negotiations should be considered as a corollary of the equal freedoms guaranteed to all religious faiths. It follows that the Government's refusal to launch the negotiations cannot be considered as a political act. The refusal should instead be qualified as a legal act that, as such, is subject to judicial review.[59]

The Italian Constitutional Court intervened in the case in a different way in 2016, adopting the opposite approach: *intese* are no longer bound to equal freedom of all beliefs before the law.[60] According to the ICC, the significance of the provision under Art 8.3 of the Constitution consists in the extension of the bilateral method from the Catholic Church to non-Catholic faiths. This is possible only where the method reflects the common intentions of both religious minorities and the Government not only to conclude an agreement, but also to initiate negotiations.[61] As far as the supreme principle of secularism is concerned, the ICC affirmed that this principle certainly implies impartiality and equidistance with regard to each religious faith. However, the Court also ruled that the conclusion of an *intesa* does not involve the right to profess religious belief. This right, they clarified, is protected overall by other constitutional rules,[62] starting with those guaranteeing the right to profess individually or together with other any religion or to profess no religion at all.[63] It means that, along with the method of bilateralism, the Government holds a broad margin of discretion, which implies the power of defining what religion is, as well as the responsibility of deciding

[56] TAR Lazio (Rome) 5 November-31 December 2008 no 12539, *Rassegna Avvocatura dello Stato*, 324 (2008). Consiglio di Stato 18 November 2011 no 6083, *Il Foro italiano*, III, 632 (2012).

[57] Corte di Cassazione-Sezioni unite 28 June 2013 no 16305, *Il Foro italiano*, I, 2432 (2013).

[58] ibid.

[59] ibid.

[60] Corte costituzionale 10 March 2016 no 52 n 43 above.

[61] ibid.

[62] In particular those of Arts 3, 8.1, 8.2, 19 and 20 of the Constitution.

[63] Corte costituzionale 10 March 2016 no 52, n 43 above.

whether to initiate a negotiation with any religious group.

In other words, in this field the Government can do whatever it wants.[64]

VII. The Right to Freedom of and from Religion

It is important to note that the Constitutional Court supported the 2016 decision by a significant *obiter dictum*, for which

> the changing and unpredictable reality of national and international political relations, which may lead the Government to conclude that it is not appropriate to allow an association that requests it to launch negotiations. When confronted with this considerable variety of situations, the Government is vested with a broad discretion.[65]

Strangely enough, this passage of the decision has little to do with the Italian atheism and more to do with the confessional organisations that would subscribe an *intesa* in the near future. The *obiter dictum* is indeed important not only for UAAR case law, but also for the entire system of State-confessions relationship in Italy. Moreover, this passage uncovers another important aspect of today's new pluralism in Italy. More specifically, the 2016 constitutional decision can be fully understood when considering the presence of new religious creeds, such as those made up of Muslim immigrants.

This reveals that, along with new forms of militant atheism, Islam(s) is now the most illustrative example of Italy's current cultural-religious diversity.[66] On the other hand, the supreme principle of secularism implies the right to freedom of (and from) religion of atheists, which includes the right to manifest nonreligion or disbelief, either alone or in a community with others, in public or private.[67]

With reference to this aspect, it should be noted that on 17 April 2020 the Italian Supreme Court issued an interesting decision,[68] which reversed previous judgement by the Court of Appeal for the district of Rome.

The Court of Appeal had prevented UAAR from using the atheist campaign aiming to run buses around some cities with a peculiar slogan, which crossed out the letter '*D*' from the Italian word *Dio* (God). Therefore, in the slogan the only visible letters were '*i*' and '*o*', meaning *io* (myself). In this manner, the slogan read:

'Ten million of Italians live very well without *D* (which implicitly means

[64] F. Alicino, 'La bilateralità pattizia Stato-confessioni dopo la sentenza n. 52/2016 della Corte costituzionale' *Osservatorio sulle fonti*, 2 (2016).

[65] Corte costituzionale 10 March 2016 no 52 n 43 above, para 5.2 conclusion on points of law (translation of the author).

[66] F. Garelli, *Religion Italian Style* n 23 above, 170.

[67] F. Alicino, 'The Italian legal system and imams. A difficult relationship', in M. Hashas et al eds, *Imams in Western Europe. Developments, Transformations, and Institutional Challenges* (Amsterdam: Amsterdam University Press, 2018), 359-380.

[68] Corte di Cassazione 17 April 2020 no 7893, *Il Foro italiano*, I, 1538 (2020).

without *Dio*-God). And when they are discriminated, UAAR is at their side'.

According to the Court of Appeal of Rome,[69] the real goal of the bus campaign was not to promote atheism, but to offend all religions denominations. On the contrary, the Supreme Court held that Arts 19 and 21 of the Constitution provide wide-ranging forms of propaganda of free thought, which includes atheistic critique of religion. The expressions that constitute offences towards religions are prohibited by the law, the apex Court said. However, this is possible when offences are clear, direct and very serious. It is not the case of the bus campaign. The Court of Appeal failed to strike a fair balance between the protection of the rights of religions and the right to freedom of expression. In other words, the Court of Appeal gave absolute primacy to protecting feelings of religious people, without adequately taking into account the UAAR's right to freedom of expression. Therefore, the Court of Appeal was not able to explain how and why the above-mentioned slogan do not aim at promoting atheism. At the same time, the Court did not clarify how and why the slogan denigrates the concept of God, offending believers of all religions.[70]

Thus, rather than being offensive, the UAAR's slogan was the expression of the rights to be equally free before the law, to communicate freely one's own thoughts in both everyday speech and writing, as well as the right to profess freely nonreligious belief.[71]

VIII. Conclusion

Before the recent wave of immigration and the current process of globalization, cultural-religious landscape of many Western democracies was pluralist, but with a number of groups having similar traditions. Today, pluralism

[69] Corte di Appello di Roma 23 March 2018 no 1869, unpublished.

[70] In this same vein see Eur. Court H.R., *Sekmadienis Ltd.* v *Lithuania*, App no 69317/14, Judgment of 30 January 2018.

[71] N. Colaianni, 'Propaganda ateistica: laicità e divieto di discriminazione' *Questione giustizia*, 10 June 2020, available at https://tinyurl.com/1vhc6mz4 (last visited 30 June 2021); M. Miele, 'La Cassazione e il «credo ateo o agnostico»' *La Nuova Giurisprudenza Civile Commentata*, II, 1133-1136 (2020); M. Croce, 'Opportune (e ovvie) precisazioni della Cassazione in tema di propaganda del non credere' 2 *Quaderni costituzionali*, 401-404 (2020); J. Pasquali Cerioli, ' "Senza D". La campagna Uaar tra libertà di propaganda e divieto di discriminazioni' *Stato, Chiese e pluralismo confessionale*, 4 May 2020, 50-56.

indicates the presence of people from very different cultures that, compared to the traditional ones, involve distinctive customs, peculiar value systems and unique practices. This trend is even more evident in legal systems with a history of religion-based influence, where the laws regulating some sensitive matters (blasphemy, proselytism, personal status, etc) and State-religions relationship still remain largely grounded on the needs and views of traditional confessions. That often clashes with a secularized attitude of atheists claiming equal treatment, freedom of expression, and freedom of religion, in both the individual and the collective sense of the terms.

The example is given by the Italian legal system, within which the interpretation of constitutional rules frequently promotes religious arguments for the implementation of the principle of secularism. For the same reasons, this explains the contrast between those who support the atheistic ideal of a 'true' secular democracy and those who sustain confessional viewpoint in governing today's socio-cultural landscape, which is also characterized by the emerging presence of new strong religious actors, like Islam(s). Thus, most of the current questions involving atheism are strictly related with at least two main factors: the historical roots of the system of State-Churches relationship; the presence of some different conspicuous forms of religious affiliation. These two factors make difficult the interpretation of the separation between religion and State, as requested by what the Italian Constitutional Court calls the supreme principle of secularism (*principio supremo di laicità*).[72] This principle remains, not by accident, largely undefined.[73]

For all these reasons, the study of the Italian atheism is extremely interesting. Even though they are a minority among minorities, atheists are able to challenge many intricate contradictions of the constitutional domain. They use the judiciary machine as precisely as possible in order, for example, to test the incongruities at the heart of the bilateralism (State-Churches) method and biased readings of the principle of secularism.

In particular, they bring these incongruities under the stricter control of both the national and supranational legal systems, which are informed by a multi-faceted conceptualisation of constitutional democracy.[74] According to religious nones,

[72] See para VII.

[73] F. Alicino, 'La libertà religiosa', in F. Buffa and M.G. Civinini eds, *La Corte di Strasburgo* (Roma: Questione giustizia, 2019), 458-467.

[74] See, for example, the following Eur. Court H.R.'s judgements, whose relative actions have been brought by UAAR: Eur. Court H.R., *Pellegrini* v *Italy* App no 30882/96, Judgment of 20 July 2001; Eur. Court H.R., *Lombardi Vallauri* v *Italy*, 20 October 2009; *Lautsi* v *Italy* App no 30814/06, Judgment of 3 November 2009; Eur. Court H.R. (GC), *Lautsi and Others* v *Italy* n 12 above. At the end of the day, one of the main ambitions of the Italian atheists is 'the concrete recognition of the supreme constitutional principle of secularism, especially with the reference of public schools and institutions, as well as the full equality before the law of all persons, regardless of their philosophical and religious beliefs'. In this perspective, the current form of Italy atheism calls for the abolition of every privilege or benefit granted, in law or in fact, to any religion' (art 3b of UAAR's Statute, which was approved during the national congress of 2 July 2006, translation mine).

this is the first step towards much more ambitious targets, such as thoroughly secular environment where there is no longer a need to be atheists, at least in the militant sense of the term.