Chapter 68
Law and Religion: The Peculiarities of the Italian Model—Emerging Issues and Controversies

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68.1 Introduction

In this chapter, the perspective used to study religion and its changes is the law. As is well-known, Italy is a civil law country. There is a specific branch of Italian law, called "Diritto ecclesiastico," devoted to investigating the treatment of the religious factor, especially in terms of religious freedom and the relationship between the Church and the State.[1]

After a brief analysis concerning constitutional provisions for religion and the principle of secularism, as defined by the Constitutional Court since the late 1980s, the essay examines the issues and controversies among those not yet resolved in the Italian order. The questions have a background in the deep changes occurring in the religious landscape that are caused by the increasing secularization of society, which has significantly eroded the number of individuals identifying themselves as Catholics, the historical religion of the majority of citizens and the advent of new religious movements not traditionally present in Italy. Circumstances that arose as a result of the meaningful shift of believers to other religious faiths, in particular Jehovah's Witnesses, but even more by the new demography caused by the waves of immigrants who have hit the Country in recent decades, including a significant portion of whom are Muslim.[2]

We focus on topics that appear more moderate and more critical, including the multidimensional nature of religion and the transformation of the legal framework in the country that are caused primarily by Italy's accession to supranational bodies

[1] On this topic, see, among others, Casuscelli (2012), Finocchiaro (2012), Vitali and Chizzoniti (2012), Musselli and Tozzi (2007) and, for the European context, see Doe (2011).

[2] For changes in religious affiliation, see Davie (1994) and Hervieu-Léger (1993).

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S.D. Brunn (ed.), *The Changing World Religion Map*,
DOI 10.1007/978-94-017-9376-6_68

such as the COE, OSCE and EU. Undoubtedly, the presence of religious symbols in the public sphere (and especially in Italy the case of the crucifix) and questions concerning places of worship (which today are significantly if not exclusively about Islam) seem to be of interest even outside the Country.

68.2 Constitutional Framework

The Italian Constitution, in force since 1948, contains several provisions, directly or indirectly, concerning religion that, taken together, outline a system in which the religious factor is not confined to the private sphere as in other European Countries.

First, the Constitution recognizes and guarantees "the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed" (article 2, Const.), in a context of equality before the law "without distinction of sex, race, language, religion, political opinion, personal and social conditions" (article 3, paragraph 1, Const.).[3]

More specifically, article 19 of the Constitution is dedicated to religious freedom, under which "anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality."

Here, the Constitution speaks only of religious freedom and not explicitly of "freedom of thought, conscience and religion," according to the denomination accepted in some international instruments of protection of fundamental rights (for example, article 18, ICCPR) or supranational (article 9, ECHR and, now, article 10, Charter of Fundamental Rights of the European Union) in which Italy participates.

Nevertheless, the Italian Constitution contains a specific provision for the right to freely express thoughts (articles 21), and article 19 Const. also protects freedom of atheism, as explicitly endorsed by the Constitutional Court's judgment, no. 117/1979, concerning the oath in criminal trials.[4]

In this perspective, we must always remember the central role in protecting the religious factor, for a long time ignored, of article 20 Const. under which "No special limitation or tax burden may be imposed on the establishment, legal capacity of any organization on the ground of its religious nature or its religious or confessional aims."

Conversely, as pertains to the relationship between the State and religious groups, fundamental Italian law has two separate provisions, the first of which is reserved exclusively for the Catholic Church. We refer to article 7 Const., which declares that "The State and the Catholic Church are independent and sovereign, each within its

[3] In this chapter, the English Presidency of the Republic website is used. Retrieved: January 18, 2013, from http://www.quirinale.it/qrnw/statico/costituzione/pdf/costituzione_inglese_01.pdf

[4] The Constitutional Court's pronouncements can be read at http://www.cortecostituzionale.it/actionPronuncia.do, where the database search form is available.

own sphere. Their relations are regulated by the Lateran Pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments."[5]

The provision includes the particular historical background relating to the well-known events concerning Italian unification (the 150th anniversary was celebrated in 2011), specifically the resolution of the so-called Roman Question as well as the continuing recognition of the opportunity to settle bilaterally the alleged *rex mistae* (that is the subjects that are of interest to the State and for the Catholic Church) also passed the totalitarian fascist era in which the same Pacts were undersigned.

The following article 8 Const., instead, is divided into three paragraphs. The first concerns the entities identified by the term "religious denominations" (*confessioni religiose*),[6] which is not recognized with formal equality before the law but only with equality in freedom. Instead, the two following paragraphs pertain to denominations other than Catholicism. The paragraphs consider "the right to self-organization according to their own statutes, provided that these statutes do not conflict with Italian law" and the possibility of regulating by law "their relations with the State," based on "agreements with their respective representatives."

Although it is not appropriate to mention the many constitutional rules relevant in different ways to the study of religion, we must remember that reforming Title V of the Constitution, provided by law no. 3/2001, has involved a significant transformation in the allocation of legislative and administrative powers among State and other local authorities (Regions, Provinces, Municipalities and Metropolitan Cities), with remarkable consequences for regulating the religious factor.

68.3 The Principle of Secularism as a Product of Constitutional Jurisprudence

As anticipated, from all these provisions the Constitutional Court has deduced secularism (*laicità*) is the supreme principle of legal order. This is according to a particular meaning, from the well-known judgment no. 203/1989 concerning the problem of compulsory religious education in public schools as governed by the agreement between the Holy See and the Italian Republic modifying the Lateran Concordat, signed on February 18, 1984, and enforced by law no. 121/1985.[7]

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[5] The Lateran Pacts were signed between the Kingdom of Italy and the Holy See on February 11, 1929, and executed with law no. 810/1929. These include, in particular, the Treaty and the Concordat.

[6] Regarding the uncertain clarification of this expression, see the Constitutional Court's judgments no. 195/1993 and 346/2002. For the doctrine, see Colaianni (2000: 363).

[7] For this and the other Italian laws quoted, see www.normattiva.it which is the Italian legal portal.

We should start by specifying that the category of Supreme Principles has been developed to refer only to the relationship between the State and Catholic canon order. It allows for a constitutional review of the norms proceeding from the Concordat, otherwise precluded by virtue of the particular coverage provided by article 7 Const., which is the norm for legal sources (judgment no. 30/1971 as well as 16/1982 and 18/1982). This category deals with principles that cannot be subverted or changed in their essential content, even by law for constitutional amendments or other constitutional laws (judgment no. 1146/1988).

In accordance with judgment no. 203/1989 and the subsequent case law,[8] we summarize two principal readings. The first and more general identifies in articles 3 and 19, together with articles 7, 8 and 20 Const., the "values" contributing "to structur[ing] the supreme principle of State secularism, which is one of the profiles of the form of [the] State outlined by the Constitution of the Republic." The second, more specific and functional, concerns the unambiguous wording of the content, stating that the principle "entails non-indifference of the State for religions but guarantee of the State for the safeguard of religious freedom, in a regime of confessional and cultural pluralism." In other words, State actions have to be equidistant and impartial when referring to all religious denominations.

The constitutional judgment supports a positive viewpoint of secularism that meanwhile prohibits any appreciation of worth regarding the religious factor and the use of a sociological or numerical standard to legitimize situations of privilege (Casuscelli 1999: 440). But that reading does not forbid actions aimed at sustaining religion it focused on as fulfilling a worthy interest.

In any case, the same principle of secularism conveys tensions as revealed by looking at the initiatives, on the opposite side, that were submitted during the just-ended Legislative session (16th) and designed to amend the Constitution. Thus, together with the direct proposal to revise articles 7, 8, 19 and 20 Const. to strengthen the secularism of the Republic[9] there coexist bills that are designed to include a reference to the Christian heritage, even though in formal deference of secularism,[10] in this echoing the diatribes already disclosed during the drafting of the unratified Treaty establishing a Constitution for Europe in 2004 (Ivaldi 2008: 49). This reference is not unknown in the same Italian regional order (Ivaldi 2011: 328).

Nevertheless, among the issues that mostly seem to call this principle into question, we must emphasize, above all, those pertaining to the presence of religion in the public sphere. The presence, albeit with different accents, affects several other European States and questions the doctrine and the need to rethink the division between public and private space (Foblets 2012: 1).

[8] The Constitutional Court, subsequently, has intervened several times, evoking secularism. However, it is first and foremost about blasphemy and vilification, which have registered overriding references to secularism. For a global analysis, see Ivaldi (2004: 235).

[9] Constitutional bill 29 April 2009, C 241/2009. For these and the other projects of the parliamentary array listed below, refer to these websites http://www.camera.it and http://www.senato.it

[10] Constitutional bills S 320/2008, C 1483/2008, C 2374/2009 and C 2457/2009.

68.3.1 *The Longstanding Question of the Presence of Religious Symbols in Public Space: The Case of the Crucifix*

In Italy, this topic assumes a very particular feature because the specific meaning of secularism as upheld by Italian law is observed wholly different, for example, from that the French where it is expressly recognized at the constitutional level (article 1, Const. 1958), and which imports the radical observance of the principle of separation – already enshrined in the famous law 9 December 1905. It provides for significant outcomes even for religious freedom such as the existence of a sharp and severe distinction between the private sphere and the public sphere. In France, in this direction alone, major and recent legislative actions have led to restrictions on the use of religious symbols by individuals in certain fields.[11] If the ban on displaying religious symbols by students in schools, expressly Islamic headscarves, appears debatable, a somewhat different evaluation seems to motivate the most recent law on the *burqa*, which instead is based, *inter alia*, on shared protection choices for public safety.

Instead, in Italy symbols worn by believers do not appear to engender particular criticism, except the case of the so-called integral veil (that is, *burqa* and *niqab*) and similar other religious symbols, which is part of the ongoing need to avoid religious dress codes that prevent the identification of individuals.[12]

The core argument, in reverse, concerns the presence of religious symbols in public institutions, especially schools (as places for teaching and when used as polling stations) or in courthouses.

Limiting our analysis to public schools, we emphasize that the presence of the crucifix is provided by a bylaw dating back to the 1920s[13] that describes this symbol (together with benches, desk, etc.) among the furniture present in each classroom.

Confining ourselves to the circumstances that led Italy to present itself before the Court of Strasburg (that is, to the renowned Lautsi case), the case stemmed from a complaint brought before the Regional Administrative Tribunal (TAR Veneto) in 2002 by a woman of Finnish origin, on her own and on behalf of her two children. She observed that the crucifix displayed in public school classrooms constituted an incompatible infringement of her sons' freedom of belief as well as of their right to obtain an education in accordance with the family's religious and philosophical convictions.

The lawsuit crossed different levels of judgment, including meaningful suspension to allow examination by the Constitutional Court of the constitutional validity raised

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[11] Namely, laws no. 2004–228 and 2010–1192 can be viewed at www.legifrance.gouv.fr

[12] Article 5, law no. 152/1975 "Disposizioni in materia di ordine pubblico," as modified by laws no 533/1977 and 155/2005.

[13] That is, articles 118, royal decree no. 965/1924 and 119, royal decree no. 1297/1928. These norms are examples, along with others, of the re-establishment of Catholicism as the State Church in the Italian fascist era that culminated with the signing of the Lateran Pacts in 1929.

against the dispositions providing the crucifix exposition. See articles 2, 3, 7, 8 and 19 Const., that is, arguing breach of the principle of secularism. The argument was declared inadmissible, as the proposal regarding the bylaw fall outside the Court's constitutional review which was limited to acts having the force of law (judgment no. 389/2004).

Consequently, the competent Tribunal, resuming the trial, rejected the complaint in judgment no. 1110/2005. This measure was confirmed by the Council of State (the Supreme Administrative Court) decision no. 556/2006.[14] These judgments are not fully persuasive and reveal a certain uncertainty in defining secularism. The vagueness was also caused by the enduring silence of the Legislature. In fact, both looked at the crucifix substantially (neither as furniture nor as an object of worship), but as a sign of the historical and cultural heritage of the Country, and of the identity of the Italian people. According to this measure the crucifix is a symbol suitable for expressing in the best way fundamental Italian values and, therefore, does not contrast, but even confirms the principle of secularism that characterized the Republican State.

The present case proves interesting because it exemplifies the multilevel protection of fundamental rights endorsed by Italy, that is, full participation in the system of the European Convention for the Protection of Human Rights and submission to the jurisdiction of the European Court in Strasbourg.

The Court resorted to by the applicant with the Chamber's judgment (Second Section) November 2, 2009 (app. no. 308147/069) declared unanimously that the right to education (article 2, protocol no. 1) was violated along with the freedom of thought, conscience and religion (article 9 ECHR), and ordered Italy to pay non-pecuniary damages.[15] Specifically, the Court considers that "the compulsory display of a symbol of a particular faith in the exercise of public authority in relation to specific situations subject to governmental supervision, particularly in classrooms, restricts the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe." The Court continued, affirming that it "is of the opinion that the practice infringes those rights because the restrictions are incompatible with the State's duty to respect neutrality in the exercise of public authority, particularly in the field of education" (para. 57).

The opening of the Second Section, which aims to define the state entity in terms of neutrality and impartiality, corresponds to the judgment handed down March 18, 2011, which originated from the referral to the Grand Chamber brought under article 43 ECHR. It overturned the earlier decision. During the exercise of continuously balancing work between the effectiveness and uniqueness requirements of the Convention and differentiated constitutional identity and by invoking the doctrine of margin of appreciation, the better placement of national courts and the absence of

[14] The administrative judges' acts can be read at http://www.giustizia-amministrativa.it

[15] That judgment actually cannot lead to the conviction of positive behavior or, that is to say, to the removal of crucifixes from classrooms. All European Court judgments are downloadable from the search HUDOC case law at http://www.echr.coe.int

uniform standards, starting from the recognized subsidiarity of the conventional protection mechanism, are taken into account. The margin of appreciation embraces a rather broad notion, given the acknowledged lack of European consensus on the issue of the presence of religious symbols in the public space (para. 70). Involvement of different stakeholders and non-governmental organizations as well as various governments, mainly representing Orthodox Christianity, is relevant. The judgment, widely noted for the debate that arose, must be critically evaluated from several perspectives. In fact, in addition to marking a setback to the evolving trend that has marked conventional case law, the judgment shows the difficulty of achieving stable and shared solutions on issues, such as religious symbols, which seems to assume, in a different point of view, a growing importance in the European context.[16]

68.4 Overview of Enduring Questions in Achieving a Constitutional Plan

If the constitutional framework, as a whole, seems to guarantee suitable protection of religion and its public outward expression, individual or collective, delays persist in fully implementing the framework.

One issue concerns the status of religious denominations other than Catholicism. Indeed, two problems are linked. Not all groups access agreements that bilaterally regulate relationships with the State. Undeniably, by virtue of governmental discretion, several groups fail to access even the negotiating phase. For example, until now and despite attempts by some organizations,[17] no agreements with Islam were pledged. The Government has refused to proceed by taking refuge behind the impossibility of finding unified representation within the Muslim Community. Not considering the different treatment of various Christian denominations, which, however, the State has endorsed, separately, in several texts.[18] However, agreements already signed at the governmental level such as the one with Jehovah's Witnesses, the first in 2000 and another in 2007, have failed to see the process, which ends in a parliamentary law, completed.[19]

The legal context is complicated by the circumstance that denominations without agreement are still placed under outdated legislation, law no. 1159/1929

[16] This decision extensively annotated is also in English. For an overview of the Lautsi case, in light of the jurisprudential trend of this Court, see Ventura (2011: 293).

[17] That is, "Associazione Musulmani Italiani," "Unione delle Comunità ed Organizzazioni Islamiche in Italia" and "Comunità Islamica in Italia."

[18] For example, see the agreements with the Waldesians, Pentecostals, Adventists et al. For further details, please refer to the Italian government website's section, dedicated to religious denominations http://www.governo.it/presidenza/usri/confessioni/intese_indice.html#2

[19] Unlike two non-Christian denominations or those traditionally present in the Country (as was instead for Judaism whose accord goes up again to 1987), or Buddhism and Hinduism which saw their agreement concluded in 2007 and implemented in law before the end of the 16th Legislature.

and implementing royal decree no. 289/1930. But having been purged from the most macroscopic illegality by the Constitutional Court (judgment no. 59/1958) that suffers from an authoritarian approach. The use of non-constitution-oriented terminology, as it happens when using the term “cults allowed,” is characteristic. Moreover, we must consider the impossibility to achieve the enactment of a general law on religious freedom that replaces these rules, despite the great number of bills drawn up by the Government or Parliament (Senate and Chamber of Deputies) since the beginning of the 1990s.[20]

These suggestions describe, at the same time, issues that are still disregarded as well as emphasize how the tensions in question concern only two denominations, Jehovah’s Witnesses and Islam, which for different reasons are widely practiced within the Country. The absence of actionable agreements concluded with these cults is also reflected in practical problems and questions of liberty for which it is difficult to provide a satisfactory answer, as is clear, if we look at the issue of places of worship.

68.4.1 The Unresolved Issue of Muslim Places of Worship

The theme concerning places of worship is paradigmatic, by virtue of unavoidable links with freedom of religion (article 19 Const.), which is constitutionally oriented in light of the principle of equality (article 3 Const.).

First, we have to distinguish topics concerning the different legislative[21] and administrative[22] prerogatives of the competent territorial authorities (affecting, mostly, the identification of areas to be allocated for that purpose, the supply of contributions, the construction rules, etc.). These are closely related and concern the status of which single buildings can benefit,[23] which are all connected to the exercise of constitutionally recognized rights.[24]

This connection is well presented in the Constitutional Court, which in one of the first actions, judgment no. 59/1958, ruled that royal decree no. 289/1930 was partially unconstitutional due to infringement of article 19 Const., insofar as it provided the authorization requirement for opening temples and chapels, even if this was

[20] For close examination, see Tozzi et al. (2010).

[21] Under the cited reform of Title V, legislative powers in land use planning are allocated concurrently to the State and the Regions. Conversely, to the residual exclusive jurisdiction of Regions lies in the building matter. In any case, these prerogatives must be exercised “in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations” (article 117, Const.).

[22] Administrative functions, at first, expressly conferred pursuant to article 118 Const., to municipalities and based on the principles of subsidiarity, differentiation and adequacy.

[23] It is a profile that falls outside this discussion, as well as those issues concerning the possible qualification of a place of worship as a cultural asset in compliance with the requirements.

[24] For doctrinal insights, see Persano (2008).

simply a means for an autonomous profession of religious faith. It also allowed for the right to hold religious ceremonies or carry out other acts of worship in these buildings, on the condition that the meeting is chaired or authorized by a minister, duly approved by the Interior Ministry.

The judgment deals with various themes including which one of the possible risks lies in the fact that the local level does not guarantee concrete compliance with the principle of equality of individuals and of equal freedom of different denominations, disregarding the principle of secularism (Floris 2010: 17) as sometimes happens in contiguous territories.

Incidentally, important rulings by constitutional judges such as judgments no. 195/1993 and 346/2002 have been handed down concerning the constitutional validity of certain regional norms of planning regulations concerning places of worship proposed by Jehovah's Witnesses, which have led to the unlawfulness of provisions excluding denominations without agreement from government grants for this purpose.

Recently, the Council of State, the Fourth Section, with decision no. 8298/2010, emphasized that is "is [the] duty of local authorities to ensure that are given to all religious denominations can freely exercise their activities, including identifying suitable areas to accommodate the faithful." The Court also affirmed that the right to the free exercise of worship cannot exempt individuals "from the observance of planning regulations that, in the essential content, aims explicitly to balance the different possible land uses," referring implicitly to the incorrect stratagem to change the intended use of a property held for other purposes, by various Muslim communities throughout the Country.[25]

As for the *jus condendum,* we should note the unsuitability, even unconstitutionality (Marchei 2010: 107), of the provisions referred to in various bills introduced during the 16th Legislature. We refer, for example, to C 552/2008, C 1246/2008 and S 1042/2008.[26]

Draft C 1246, using the non-constitution-oriented terminology "cults allowed," provides a submission to a referendum for people concerned about a local authorization measure concerning the construction, renovation or change of use of a building to be destined for worship (article 2, para. 1).

Conversely, a more favorable evaluation seems to be offered by bill C 2186/2009, which, based on the recognized freedom of religion and of the objectification of the constitutional principle of secularism, states that "measures of implement or detail of whichever authority […] cannot produce anyway discriminatory effects, even indirect, to the detriment of a denomination or of her members" (article 2, para. 4).

Partly equivalent reflections deserve the norms aimed at this purpose, contained in different proposals for fulfilling the right of religious freedom (Mazzola 2010: 192).

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[25] Council of State, Fourth Section and decision no. 4915/2010, more explicitly, had previously described the facts alleged as exclusively urban, not detecting "any profile relating to the freedom of worship, which may find other more suitable opportunities for expression."

[26] For the texts, see the websites http://www.camera.it and http://www.senato.it

In addition, satisfactory solutions are not offered by the "Committee for Italian Islam" found with advisory functions at the Ministry of the Interior on February 11, 2010, in place of the "Council for Italian Islam" established five years before, not least because in it are not represented large portions of the national Islamic panorama, essentially the most problematic, as those imputable to the Union of Islamic Communities and Organizations in Italy.

However, the same opinion entitled "Places of Islamic worship" released on January 27, 2011, does not appear to be a harbinger of developments fully in accordance with the constitutional dictates[27] especially insofar as is required of Muslims a "greater availability aimed at ensuring full transparency and willingness to effective integration in the context of settlement." Increased availability invoked by bill C 3242/2010 focused on establishing a national register of mosques and imams.

It remains to be seen whether the new legislature (the 17th) will record significant progress in this field, where the religious element in different contexts often assumes an identity-making value. The circumstances duly reported by the authoritative doctrine emphasize the frequency with which local administrators "appear inclined to forms of 'autarchy' in the religious sphere, in defense of the 'identity' of the communities who elect them," based on the incorrect premise to consider themselves "the only regulators of 'religious market' in their territories, detached from the rules of higher-level law (national, international and EU)" (Casuscelli 2009: 12).

68.5 Provisional Remarks: The Italian Model in Light of the Growing Multilevel Constitutionalism and the Judicial Competition

It is difficult to predict future developments in the topics considered such as religious symbols and places of worship and other outstanding issues related to religion. As shown in the introduction, the description would not be complete without additional lines about the relevance of the religious factor in the most complex supranational body in which Italy participates, that is, the EU in light of the new primary law in force since December 1, 2009 (Lisbon Treaty).[28]

Although, in compliance with the principle of subsidiarity, the *status* of churches and non-confessional organizations (article 17, para. 1 and 2 of the Treaty on the Functioning of European Union, hereafter TFUE) are beyond the EU competence (that is, they fall within the prerogative of national states). Thus it is equally impor-

[27] Opinion retrieved: January 19, 2011, from http://www1.interno.it/mininterno/export/sites/default/it/assets/files/20/0457_Luoghi_di_culto_islamici_-_Parere_del_Comitato_per_lxIslam_Italiano.pdf.

[28] Each EU document can be viewed at http://eur-lex.europa.eu

tant that in the "dialogue open, transparent and regular" under article 17, para. 3, the TFEU emphasizes the role of these entities in the European context.[29]

However, what seems to assume a greater importance, because it may interfere with national legislation, is undoubtedly the principle of non-discrimination (article 19 TFEU), pursuant to which European institutions can take appropriate action to combat discrimination based on religion. This is not a merely theoretical statement, devoid of practical consequences; rather it is based on this provision, the EU may issue directives that Member States are required to implement.[30]

However, the most interesting suggestion seems to be offered by the Court of Justice case law.[31] We refer mainly to the recent Grand Chamber judgment released on September 5, 2012,[32] in joined cases C-71/11 and C-99/11 Germany v Y and Z. In addition to constituting an important precedent, this judgment represents the first decision in which the Court of Justice ruled specifically, using as the interpretation parameters the EU norms concerning the right to freedom of religion, as laid down in article 10 of the European Charter of Fundamental Rights, which is at the same time narrowing the content. This judgment did not reserve anything more than a simple and straightforward formal warning to the Conventional system *sub species* article 9 ECHR. It avoided mentioning the articulated and long-standing Strasbourg case law.

Although detailed analysis of this case (Ivaldi 2012: 7) is deferred to more suitable places, it is nevertheless desirable to recall the statements made, pursuant to which, regarding freedom of religion in all faculties inherent in the external and public manifestation in which religious affiliations are included. The leading role in protecting the fundamental rights that the EU wants to ascribe to itself in the international arena is fully materialized.

In so doing, the Court of Justice scores a point in its favor in the "cultural competition" between supranational courts among them and the national courts (albeit within the competences ascribed by law), which should be based on authority and the ability to offer the best effective protection, based on the most suitable reference text (Ruggeri 2012: 21–23).

In substance, the picture as described above, that is, a national or supranational context, reveals a trend of the *judicialization of political-religious issues* well described in doctrine (Hirschl 2008: 191). It is an evolving phenomenon that in addition to reinforcing the centrality of case law, with an intra-systemic circulation of the models of guardianship, confirms the possibility of looking at the European supranational boundary as a particular example of judicial globalization.[33]

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[29] For the EU point of view, see the activities of the Bureau of European Policy Advisers (BEPA) http://ec.europa.eu/bepa

[30] For example, see Council Directive 2000/78/EC, especially para. 23.

[31] Decisions by EU justice bodies before 17 June 1997 can be viewed on the European legal website mentioned above while those made after that date are available on http://www.curia.europa.eu

[32] The complaint originated from the denial of asylum and protection are governed by Directive 2004/83/EC was opposed by German authorities for two Pakistani citizens, despite the risk of persecution to which they were subject, in their home Country because of their membership in the Ahmadiyya movement for the reform of Islam.

[33] This expression was used, for the first time by the American doctrine (Slaughter 2000: 1103).

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