

Religious dietary rules and the protection of religious freedom

Some evidence from practice in Italy

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In the Italian system freedom of worship provided by the Constitution is safeguarded by unilateral and contractual norms, sanctioned for minority confessions by an agreement, named *intesa*, that also concerns dietary issues. Muslim communities, however, as they have no *intesa* with the Italian state, are always compelled to negotiate in respect of their religious norms. Religious freedom concerns not only ritual acts, but also behaviours including dietary ones, which are based on religious beliefs. The aim of this paper is to critically reconstruct how Italy takes charge of religiously-motivated needs concerning food and beverages, both for those confessions holding an *intesa* (such as Hebraism) and for those not (Islam), in order to trace the real degree to which freedom of worship is guaranteed in Italy. The analysis will be focused on the bargaining for religious dietary rules in schools and in constraining institutes, as they are main social spaces of confrontation between believers and the state.

If we limit ourselves by considering food merely as a means of satisfying one's own physiological needs, we will not be able to understand why something that is good to eat for one person can be a repulsive object for another. Human beings were born omnivores; thus, apart from the times when they are forced to select their forms of nutrition on the basis of survival, we can state that an aversion or propensity to eat specific foods is related to the meaning that an individual's community gives them. According to Lucio Meglio (2012: 8) 'alimention translates from a biological process to a cultural fact of a society': everywhere cultures have always adopted somewhat explicit dietary behavioural codes, which, by distinguishing between permitted and forbidden foods and passing on their preparation processes, have changed perceptions of taking food from a mere physiological act into a means by which to frame social rules of mutual belonging and socio-cultural identification (Guigoni 2009: 13–14; Venzano 2010: 9–10). Food, as well as language, preserves culture and especially during periods of migration it becomes essential in providing and sustaining

self-representation in the public space (Saint-Blancat *et al.* 2008: 68) as well as maintaining firm roots in the motherland.

Furthermore, alimentation may also represent a relationship with God. Abstention from eating specific foods and observing cooking rituals are how religious people feed both body and soul, enabling them to feel part of a wider, but at the same time differentiated community.

This article will investigate the relationship between dietary laws and religious freedoms, as guaranteed by the Italian system. A brief discussion of the regulation regarding relations between the state and religious bodies will bring readers to the core of the matter; by which I refer to an understanding as to whether the presence of an agreement (*intesa*) may facilitate the compliance of religious dietary rules. The focus will be on Islam because it has a rich set of dietary precepts and because it has no *intesa* with the Italian state. Muslim religious dietary rules in school canteens and prisons will be analysed, since the impediments in the way of individuals independently being able to observe these laws involves the state protecting religious freedoms, thus accomplishing the constitutional principles.

Schools and prisons offer two very interesting case studies because they are the institutions which facilitate the transformation of society into a multicultural and multi-religious one. In each of these contexts the role played by religion is totally different: schools have the difficult duty of educating learners to accept diversity by respecting each others' cultural and religious identities, while prisons are the places in which religion becomes the instrument which supports the reintegration of the prisoners into society. The aim of this paper is to analyse the answers provided by those institutions to the citizens/believers and to elaborate on the ways in which the accommodation or rejection of dietary prescriptions is justified.

Religious alimentary rules in Islam

The religious pluralism, which increasingly characterises Italian society has its origins – mainly but not exclusively – in the dynamics of migration which started in 1980s. In comparison with other European countries, Italy has experienced the phenomenon of migration relatively recently, transformed 'by the Great Mother of emigration to a new, powerful magnet for many people in search of a land in which to build, by means of their own efforts, a better future for themselves and for their children' (Bolaffi 2001: 4).

Unlike all the other industrialized countries, Italy has become a land of immigration without at the same time having realized the full employment of

Italians. While in other European countries foreign labour is required by, and managed and directed to, the areas most industrialized by the national governments, in Italy the immigrants have come spontaneously.

The influx into Italian territory has also come about due to the absence of legislation on immigration and effective border controls, while the northern European countries have enacted more restrictive rules. The 'wavering' attitude assumed by the Italian legislature, more oriented towards 'governing the tensions of the moment' than providing long-term legislation in response to the phenomenon, has become a powerful factor of attraction (Bonifazi 1998: 204). The increasing number of foreign people in the country is also fostered by the deployment of several amnesties in order to regularize 'illegal' immigrants, already embedded in the illegal labour market, as well as the geographical position of Italy which, thanks to the great ethno-national variety of the immigrants prevents the identification of Muslims with any one country of origin.

Italy has also undergone a transition from temporary immigration to immigration in which 'the immigrant ceases to exclusively consider himself as foreigner, a visitor, a worker' and define himself as a member of society (Mancini 2008: 93).

The cultural and religious pluralism that characterises Italian society has produced the revival of a number of issues which are generally considered to be outdated by the secularized western countries. Religions become (again) a key actor in the public space as they play a more important role than the one they held up until quite recently (Ferrari 2008: 9–11). In such a context western states – Italy among them – are called upon to find satisfactory solutions which allow individuals to feel themselves to be both citizens and believers.

Following the scheme outlined by Carlo De Angelo (2002: 34–5), it is possible summarize the requirements of Muslims as follows:

- requests that have an impact on the organization of urban public spaces such as the building of mosques, cemeteries and places suitable for the execution of ritual slaughter;
- requests related to the world of work for example, a flexibility of schedules and calendars in order to fulfil spiritual duties (Ramadan, for example);
- requests regarding the educational system (such as the opportunity to open private schools, wear the veil, and teach Islam in schools);
- requests concerning the application of the personal statute to family disputes involving Muslims regardless of their citizenship.

In order to better understand the requests concerning alimentation in public spaces it is necessary to analyse Muslim dietary rules.

Religious alimentary rules may be included in a general and an abstract pattern, applicable to each confession. Each alimentary provision contains:

- total bans (concerning the consumption of some specific foods);
- relative bans (prohibition on the consumption of food at certain times);
- cooking methods.

Alimentary prescriptions play an important role in Islamic religious practice. Most Muslims nowadays live a fully secularized existence, but they still maintain alimentary rules as a means of avoiding a ‘secularized behaviour drift’ (Rhazzali 2010: 92) and to express their religious affiliation.

The revised rules drastically reduce the amount of bans and days of fasting, and do not include impositions such as Lean Friday or *Shabbat*. One of the characteristics of Islamic alimentation is moderation: food is not only a source of nutrition; it also represents a vehicle through which to create wellness within the entire community.

According to the precepts of the Qur’an, Muslims can eat what is permitted, and what is good and tasty. All vegetables are allowed, while marine and land animals are treated differently. Marine animals are permissible in the case of natural death, except for those that are considered to be dirty or aggressive towards humans.

Things change with reference to land animals. Islam allows their consumption only if those animals were hunted and two conditions are implemented: the absence of a state of consecration and an invocation of God’s name before hunting (Ascanio 2010: 71). Animals that have died of natural causes, pork, and blood may not be consumed.¹

Another known ban is the prohibition on drinking alcohol. The Qur’an has moved from a positive interpretation regarding the consumption of intoxicating beverages, specifically the *khamr*, to their ban (Chaumont 2007). Since the object of the prohibition was not clear, juridical schools have adopted a more or less radical interpretation of this rule. Apart from the *Hanafi School*, which

1 In the Qur’an, pork takes on a double meaning. It is considered an unclean food and the symbol of rejection. Compared to other animals it occupies a ‘special position’ because it is the only one to be explicitly mentioned, as opposed to the more general definition of livestock, and forbidden.

prohibits only the consumption of wine and allows a moderate use of other alcoholic drinks, other Sunni schools ban all alcoholic beverages.

Islam also prohibits its believers from eating specific foods at certain periods. During Ramadan, every Muslim must totally abstain from food, drink, smoking and sexual activity during the period from sunrise to sunset. Minors, critically ill patients, pregnant women or breastfeeding or menstruating women, the aged and all people doing heavy work are excluded from fasting. Members of all of these categories however, apart from sick, aged people and minors, have to make up for their fasting days, and if they are not able to accomplish this task, they will have to provide a certain amount of food to the poor in proportion to the number of days they did not comply with the fasting.

In order to produce meat which may be consumed, it has to be butchered following a precise ritual. This can take place in two ways: the *dabb*, originally intended for small-sized animals, dictates the slitting of the neck, trachea and jugular vein with one cut; and the *nahr* which applies to bigger animals and does not specify the cutting of the trachea and jugular (Ascanio 2010: 80). During the ritual slaughter, the animal has to be awake, conscious, positioned towards Mecca, and the cutting has to be followed by an abundant bleeding. A good, sane Muslim man, who must invoke the name of God before proceeding, should do butchering². Animals can be sacrificed at the beginning of a new day, but not before the dawn prayer.

Sometimes some permissible foods may become prohibited. Having been in contact or even close to impure or dangerous substances for humans, will transform permitted foodstuffs into impure matter, a status that has to be dealt with by means of a purification act (Ascanio 2010: 74–5).

Lastly, it has to be cited that Muslims in a state of need are allowed to eat what would otherwise be forbidden foods. This provision is important for Muslims living in non-Muslim countries because it allows a reinterpretation of alimentary rules making lawful – in cases of crisis and within a limit that prevents death – behaviours that are actually prohibited (Abu-Sahlieh 2012: 263). This principle has been largely used during migration. In this way some Muslims have made a ‘sort of compromise with religious obligations’ (Rhazzali 2010: 185) deciding to adopt some religious obligations and avoiding others, since they believe God gives a man the chance to simplify his life (Abu-Sahlieh 2012: 284).

2 Also the ‘people of the Book’ can make the ritual sacrifice. This requirement is very important, especially in the context of migration in which Muslims have to deal with the native merchants.

Religious freedom and the relationship between the state and religions in Italy

Religious freedom concerns not only ritual acts, but also behaviours religiously rooted, such as dietary ones. Obstructing the facilitation of religious dietary provision forces believers to go against their own religion or, to drastically reduce their quality of life (Botta 2008: 43; Roccella 2003: 2).

With that said, it should be appropriate to clarify what is the relationship between alimentary rules and religious freedom as it is guaranteed by Italian system.

Article no. 19 of the constitution – the *grundnorm*, which concerns religious freedoms – grants everybody the right to profess his or her own beliefs both privately and collectively, and to proselytize and worship within moral limitations. The full dimensions of this statement can be entirely understood only if considered in conjunction with other constitutional norms that uphold this freedom directly or indirectly. The first of those would be article no. 2, which grants man's inviolable rights, both as an individual and as part of a social group where he/she shows his/her personality. Among such rights – which cannot be changed by constitutional review law or constitutional law, since they existed before modern laws³ – is religious freedom, considered as a 'vehicle for self-fulfilment, personal completion, self-promotion and meaning-making' (Loprieno 2009: 74).

Also closely connected with religious freedom is article 3, in both of its clauses. The formal one (article 3.1), which prevents lawmakers from discriminating against people on the basis of religious differences, and the substantial one (article 3.2), which compels the state to ensure the full development of human beings, promoting the satisfaction of the religious needs of everyone (Cardia 1996: 204), as well as legitimizing the application of different laws within diverse contexts.

This analysis cannot ignore the reference – although minimal – to the constitutional principle regarding state–religion relations. The constitution declares every religion to be equal before the law; it constitutionalizes the principles of church–state separation and confessional independence (articles 7.1 and 8.2), so both state and confessions in their respective matters exert an independent and sovereign power; it defines the treaty as a 'regulating tool' for state–church relations (Cardia 1996: 223). The *intesa* – this is the name of the agreement stipulated by the state and the confessions different from Catholic one – aims to determine specific needs concerning confessions, and, as soon as it is approved,

3 Constitutional Court, sentence no. 1146/1988.

it becomes the instrument by means of which the state and the country's cults and confessions regulate their mutual relationships. Those bodies which hold an *intesa* are no longer subject to the law of admitted worships (no. 1159/1929).

The innovative system set up by the constitution has been consistently rejected in practice. In fact, it produces a 'stratification in the legal status of cults and confessions' (Botta 2008: 126), with the Catholic Church standing in the first row, with those confessions which hold an *intesa* just behind, whilst an 'anonymous jumble of indistinct' (Peyrot 1978: 49), whose relations with the state are still regulated by the law of admitted worships, bodies take up the rear.

The framework outlined above is completed by the principle of *laicità*, inferred by Constitutional Court through the combined reading of articles 2, 3, 7, 8, 19 and 20 of the Constitution (decision 203/1989). Defined as one of the supreme principles of the Italian constitutional order, *laicità* does not imply an indifference on the part of the State before the confessions; but it requires the state to take action to promote religion in equivalent and impartial way, so that a different treatment that goes beyond the limits of reasonableness constitutes an 'inadmissible discrimination' (decision no. 329/1997).

For the purposes of this article, Judaism and Islam can be taken as prime examples respectively of a religious body on the one hand with and on the other without an *intesa*. The Union of Italian Jewish Communities (UCEI) signed an *intesa* with the state on 27 of February 1987, which was implemented by Law 101/1989. The situation with Islam is different: the absence of both a hierarchical structure and a central authority has led to multiple interpretations of the religious message – all equally legitimate – and to the spread of various versions of Islam, thus making it impossible to define a single entity capable of representing all Muslims.⁴ Several actors have tried to establish themselves as 'official' interlocutors of Muslim communities, presenting draft versions of an *intesa* in order to organize their relationships with the state, but without so far reaching an agreement.

It has been said that the signing of an *intesa* is the means by which a religious body can ensure the allocation of certain rights. We are attempting to understand whether the presence of an *intesa* may have produced consequences regarding religious alimentary rules. We already had a chance to observe that

4 For some authors this requirement does not seem to be necessary. Pierluigi Consorti (2010: 175) states that the absence of a unitary representation does not prevent the initiation of negotiations. In fact, it is not comprehensible why, if with non-Catholic Christian churches and Buddhists respectively the state has reached seven and two agreements, it is not possible to do the same with Islam.

the respect of religious dietary laws can be included – through a correct interpretation of the norm – in article 19 of the constitution. However, this consideration does not automatically render all dietary practices licit. If religious freedom collides with other constitutionally-protected rights, it is necessary to balance the interests. Following this line, some authors have begun to doubt the legitimacy of ritual slaughter, suggesting that it contravenes the animals' right to protection which – even though is not explicitly specified in the constitution – 'has acquired a growing importance in the consciousness of Italians' (National Bioethics Committee 2003: 12). This has not prevented the National Bioethics Committee from reaching a conclusion which renders ritual slaughtering licit, due to the special recognition in our constitution of the duty to protect religious freedoms and which recommends the use of tools which do not 'conflict with the ritual slaughtering ... and minimize animal suffering' (*ibid.* 12).

Regarding dietary laws, article 5.2 of the UCEI agreement states that 'slaughtering taking place according to the Jewish rite continues to be regulated by the Ministerial Decree June 11, 1980 ... in accordance with Jewish law and traditions'. The rule does not contain any innovation about animal slaughter, but gives coverage to the Ministerial Decree, binding the state not to change it, except after prior agreement with the UCEI.

Another provision dealing with dietary laws is article 6.2, which admits the right to respect the requirements concerning Jewish food without incurring costs to the local institutions in which they are located; this is applied to people in the military, hospitals, nursing homes, public assistance and institutions for prevention and punishment.

Similar provisions are contained in three draft proposals put forward by Muslim associations. Regarding ritual slaughter, as in the Jewish case, religious needs are fully met by the Ministerial Decree of 1980, thus Muslim organizations have adopted in their draft the Jewish norm with the addition of only subtle changes. However, the given provision and the subsequent amendments do not provide the absolute protection of Muslim needs, due to the lack of an agreement. This means that the state may change the law or even prohibit this type of butchering (Chizzoniti 2010: 37).

The drafts also give believers who are compulsorily placed in schools, prisons and hospitals the right to have access to an Islamic diet. We have to distinguish between associations intending to ensure this right without incurring costs to the institutions hosting the believers, such as the Unione delle Comunità Islamiche d'Italia (UCOII, 'Union of the Islamic Communities of Italy') and Associazione Musulmani Italiani (AMI, 'Italian Muslim Association'), from the Comunità Religiosa Islamica (CoReIs, 'Islamic Religious Community')

draft, in which the lack of reference to the charges suggests that they should be paid by the state.

Regarding dietary laws, the presence or absence of an agreement does not seem to produce any differences between Muslims and Jews. In the absence of a law concerning religious freedom – which shall be adopted to allow everyone to follow their religious dietary rules – believers' alimentary needs seem to be protected by law through a correct interpretation of Article 19 of the constitution (Castro 1996: 278; Chizzoniti 2010: 45; Mancuso 2012: 16). What is missing, in fact, is the political will to give satisfaction to those needs. Not long ago it was rare to run enterprise agreements or good practices, such as in school canteens, without generating complaints from the majority population. The arrival of the crisis – which is connected to the problem of economic sustainability of the interventions – and the fear of succumbing to a hypothetical clash of civilizations, has meant that the fulfilment of these requests occurs less often (D'Angelo and Fiorita 2009: 98).

Respect for alimentary rules in schools and prisons

As Antonio Chizzoniti (2010: 39) reveals, the theme of religious alimentary prescriptions was not properly evaluated by Italian law, probably because the most part of the Italian population belongs to a confession, the Catholic one, which does not impose dietary rules on its believers. Changes in the religious framework, specifically that Islam is coming close to being the second largest religion in Italy, actually impose the need to pay attention to the needs of minorities, in order to ensure a full fruition of the constitutionally-recognized rights. Therefore, it is necessary to find the appropriate tools to satisfy specific alimentary demands – which today more than ever are relevant in all areas of human activity – by keeping the principles of equality, *laicità*, and churches–state separation as benchmarks.

The recent focus on religious dietary laws had as a first consequence the production of a set of rules at various levels which attempted to provide answers to those needs. Besides the unilateral legislation about the ritual butchering and the agreement – currently limited to the provisions of the Jewish *intesa* and the one concluded, but not yet approved by law, with Jehovah's Witnesses – there is a proliferation of circulars, opinions, and local-level agreements reached between public institutions and representatives of religious communities in the area.

The evolution of a multi-faith society has triggered the transformation of public spaces, among which school seems to be the 'perfect sounding board'

(Freni 2008: 797). School classrooms are the perfect places in which to find learners of different religions sitting together, and where access to religiously-based rights occur more firmly than in other contexts. Hence schools have the difficult duty of educating learners to accept diversity in order to become well-rounded members of society who will avoid the segregation and fragmentation of the social fabric, something which is not congruent with the principles of a democratic society (Briccola 2009: 50).

Alimentary prescriptions play a fundamental role within such a context, regarding both respect for religious freedom and the integration of minorities. The presence of multiple credos presupposes rearrangements of the school canteen system, in order to allow each student to get the proper nutrition without violating his/her traditions. The National Bioethics Committee, in its report on 'Differentiated and Intercultural Alimentation' (2003: 12), observes how 'the theme of food is used instrumentally, to sacrifice the concrete interests of people, with the intention of imposing one or another government strategy on immigration'. Moreover, the committee believes that – in order to protect religious freedom fully – students should have the opportunity to consume meals prepared according to the principles of their faith, through the preparation of different menus or by providing the opportunity for students to bring food from outside. In addressing the problem of the unsustainable costs of differentiated food catering, the Committee contends that it is possible to find ways of sustaining foreign alimentary traditions and enhancing those of local communities as well.

National school catering guidelines issued by the Italian Health Minister in 2010, specifying that the presence of foreign students is a structural feature of our school system, recognize the validity of maintaining a differentiated alimentary regime to safeguard cultural and religious traditions by replacing banned foods with licit ones according to the demands of parents and without a medical certificate (Italian Health Minister 2010: 16).

The regional strategic guidelines concerning school catering also accommodate the national ones in providing choices that adhere to philosophical and religious prescriptions. In Lombardy, for example, it is sufficient to present a formal request by the students' parents to the people in charge of services. The document also emphasizes the need to provide menus for bigger communities according to specific guidelines from the local health service, in order to avoid nutritional imbalances due to menu variations.

The guidelines in Emilia Romagna provide for, when possible, the replacement of banned foods with similar certified *kosher* or *halal* items, 'or foods nutritionally equivalent and appreciated by the student or his/her family, subject

to the satisfaction of the principles of taste, safety and nutrition provided for the normal menu' (Linee strategiche per la ristorazione scolastica in Emilia Romagna 2009: 65).

At the local level, many municipalities have created a Charter of School Service where they specify the services offered and the quali-quantitative standards they wish to maintain. These rules are based on a directive of the Prime Minister issued on 27 January 1994, which sets out the principles regarding the supply of public services. These services, even if carried out under concession, must be based on principles of efficiency and effectiveness, impartiality and equality, continuity, and with the participation of citizens in order to protect the right to have a proper service delivery and to foster collaboration with their providers. The Legislative Decree 286/1999, at article 11, outlines this principle thus: 'national and local public services are delivered in order to promote the improvement of quality and ensure the protection of citizens and users and their participation in the forms, also associative, recognized by law, to the assessment and definition of quality standards'. The important role that these documents could play in setting up targets that are immediately verifiable, leads the lawmaker to make this charter mandatory (Law 244/2007, article 2, paragraph 461).

The satisfaction of alimentary needs in school canteens is strictly related to the availability of economic resources – drastically reduced following the financial crisis – and the reassertion of a native's national identity, which often ends up coinciding with the rediscovery of his/her religious values.

Most of the Italian schools offer their students the chance to access different menus, by filling out a form to ensure the elimination of certain foods or substitution with others that are nutritionally equivalent. Some schools are completely opposed to these requests, as in the case of Adro, where in 2010, a municipal resolution has downgraded the principle of religious freedom to a health problem, allowing students access to different menus for religious reasons only after presentation of a medical certificate (Bossi *et al.* 2013: 36; Fiorita 2012: 152). Another example is Castel Mella where in 2007, a circular not to grant alterations to the menu based on religious reasons was approved except in the case of local traditions (Bossi *et al.* 2013: 37), thus introducing *de facto* unequal treatment on the basis of professed religion. Thus, while the administration of a 'catholic' menu is considered acceptable, since Catholicism is part of the local tradition, the requests of religious minorities of recent settlement cannot be accepted. Nevertheless, as Walter Citti notes (2007), 'in terms of the protection of religious freedom an *a priori* refusal to adapt public services to the religious needs of the users is not acceptable'. The risk that the satisfaction of

any demand for food produces excessive legal fragmentation (Chizzoniti 2010: 25) is not, in fact, a valid reason to prevent the public authority from managing both student needs and the proper functioning of public services (Citti 2007).

The satisfaction of religious alimentary needs is sometimes hampered by the reaffirmation of a national religious identity, triggered by the pluralism that increasingly characterizes Italy. For example, consider the circular promulgated by the municipality of Rome asserting the obligation to serve meat-free menus on Lent Fridays in primary and secondary schools, which fully violates the principles of equality and *laicità* (De Gregorio 2010: 61). To confirm that this provision reflects the desire for a reaffirmation of native inhabitants' identity rather than the implementation of religious freedom, it is sufficient to note that all the schools allow students to exclude certain foods from their menu, and that the canonical prescriptions require abstention from consumption of meat only from the age of fourteen (*ibid.* 61).

A significant issue for Muslim students concerns relative bans, as it is usual to encounter these periods during the scholastic year. Nevertheless, there is no single solution for this: in some schools, parents may decide to anticipate the exemption of their children by signing a permission form, while in other schools learners who are fasting are placed in empty classrooms during the break.⁵ The obligation of fasting may be reconciled with some Qur'anic readings, according to which soul and body are intimately connected. This implies that only a healthy body and mind may fully serve God, thus a wide number of believers are free from these impositions, including minors until the age of puberty. Other factors, such as the impossibility of staying away from school for an entire month and the energy needed to cope with studies may be seen as important exemptions.

If the substitution of illicit food has never been a real problem, it is not the same regarding butchering rituals. It is unusual to find canteens which are able to offer meat butchered according to religious rituals, for this usually causes some controversy. This situation has met with many complaints from families and animalist associations, not agreeing with such a 'bloody tradition'. The municipality of Albenga tried to introduce *halal* meat to allow Muslim students to eat without violating the precepts of their faith. However, this proposal met

5 The school regulation of Voltri states: 'Muslim pupils who observe Ramadan, if they do not go home, will be placed temporarily in another class during lunch break and recalled during recreational activities with their schoolmates'. See the Voltri regulation 2014.

with a wall of criticism, headed by the National Society for the Protection of Animals (2011), which stated that ‘it cannot be accepted that a secular and civil country should admit a type of butchering that offends the majority of the Italians’. Nevertheless, they forget that the secularity they are talking about is meant not to be indifferent to other religions, but is the state’s guarantee for the protection of religious freedoms in the context of a regime of confessional and cultural pluralism (decision of the Constitutional Court no. 203/1989). The obligation of equidistance and impartiality towards religions does not prevent the state from realizing measures that fully guarantee religious freedoms, and these measures are definitely undeniably inside of prisons, schools and factory canteens, where individuals cannot satisfy religious needs on their own.

The polemical arguments discussed above did not prevent the municipality of Albenga from addressing the situation by arranging a form by which *halal* meat can be chosen.

The municipality of Ferrara moved in the same direction, by including the possibility of removing from the menu pork and beef and adding *halal* meat.

In addition, the municipality of Palermo also moved in the direction mentioned described above. For example, in the rules for kindergartens it states that ‘the school meals service must strike a balance with a menu that takes care of the requirements and prohibitions of the culture and religion of the children (for example requires compliance with the preparation food with *halal* meat for Muslim children)’.

The respect for these rules inside prisons is a good litmus test as to whether the penitentiary administration can support prisoners in meeting their religious needs, since they live in an area of limited movement, which precludes individual fulfilment (Fiorita 2010: 9). Inside prisons, religion takes on *other* meanings, due to the tripartite condition of being prisoner, foreigner and believer in a minority credo.

Religious freedom in prisons is regulated by Law 354/1975 and by the implementing regulation (Decree of the President of the Republic 431/1976), which marks a break with the previous norm. In fact, for the first time, prisoners have the freedom to profess their own religious (or otherwise) belief, receive instruction in it, practise their own form of worship and display their religious symbols. Concerning food, this law only says that ‘prisoners will be provided with a sufficient and healthy alimentation; adequate in terms of age, sex, health, job, season and climate’ (article 9). There are no references to religious needs, maybe because when the law was issued, the population was mainly Catholic, and that credo does not impose restrictive alimentary rules.

Renewed attention to prisoners' religious needs can be found in the Decree of the President of the Republic of 30 June 2000 (no. 230), whose provisions pay special attention to religion, since it is considered to be a key factor in achieving a complete rehabilitation of prisoners. The impact of the reform, however, is far from providing full protection – at least in the case here considered – of the religious freedom of prisoners (Fiorita 2010: 9). The awareness of religious pluralism that characterizes Italy and the consideration that prison reflects significantly the dynamics of the multicultural and multi-religious society (Fabretti and Rosati 2012: 3), leads us to think that the institutions are taking a greater account of the needs of prisoners and internees. But the innovation of article 11, paragraph 4 which says that different needs regarding alimentation have to be considered, is immediately reduced by the sentence 'when it is possible' (National Bioethics Committee 2006: 5).

The Decree of the President of the Republic of 13 May 2005, 'Approval of the Policy Document on Immigration and Foreigners Inside the National Territory, for the Period 2004–6', seems to be more accurate concerning alimentary religious needs. It allows Muslims to observe Ramadan and eat after sundown, and allows differentiated diets into juvenile prisons, to respond to the various needs of different religions. Nevertheless, the document has been criticized as it may produce collateral effects, since the legislation's explicit reference to Muslims may be considered a contrary form of discrimination (Chizzoniti 2010: 40).

The 'Charter of Rights and Duties of Prisoners' celebrates a new direction. It is delivered to each prisoner or internee, and contains extracts of Law 354/1975, from the Decree of the President of the Republic 230/2000, which contain the internal rules of the institute in which prisoner is located, and other dispositions (including supranational ones). It states the right to have an appropriate alimentation and to purchase food and comfort items without specifying religious motivations.⁶

A concerted effort was made by the protocols concluded between Minister of Justice and Calabria (2003), Apulia (2008) and Tuscany (2010), through which parties undertake to protect prisoners' religious freedoms, as well as food and prayers. These documents deserve particular attention because of the role regions may play in this matter. Even though the *intesa* is the basic means by

6 The same consideration can be made with reference to the 'Charter of the Rights and Duties of Minors who Encounter the Juvenile Justice Services', which recognizes the right to ask for a different diet without considering religious motivation, by choosing a more neutral reference to 'any reason'.

which to regulate the relationships between state and Church, the regions play a fundamental role in meeting the requirements of various religious communities.

We can pinpoint two pieces of evidence by bringing the practices implemented in prisons into the scheme outlined above. Firstly, all the prisons considered allow their convicts the opportunity to respect relative and absolute bans. The possibility of asking for different food for religious reasons is formally initiated at the moment of entering the prison or informally during the recognitions of food-carriers (Fabretti and Rosati 2012: 65). As opposed to what we noted regarding schools, religious freedom has not been downgraded to a health status; in fact, no medical certificate is required to get a different menu. Prisons respond to these needs, mainly coming from Muslims, by putting together alternative menus where pork can be substituted with other types of food according to the ministerial lists.

Every year when Ramadan begins the Department of Prisons Office for the treatment of prisoners issues a circular containing directions as to how to facilitate compliance with fasting and prayer (including the collective), with which prisons also conform by means of internal service orders.

In the prison of Imperia, to meet the needs of Muslims during the period of Ramadan, a Muslim who prepares the food to be distributed after sunset joins the cook. In other prisons, for those who request it, the meal is delivered baked in a one-day package⁷ or raw, ready to be cooked in the cell⁸ within the time scheduled for the end of the activities in sections. This last option actually may generate discriminatory situations to those who cannot afford a cooker or are isolated.

Cooking methods have to be considered in a different way, since the number of penitentiaries providing meat which has been butchered according to religious rituals is very limited.⁹ In addition to the replacing of illicit food, most of

7 The delivery of baked food takes place in the Institute for Juvenile Criminal Florence and in the prisons of Enna, Reggio Emilia, Terni and Vicenza. In the latter case, to the Muslim prisoner observing Ramadan is given an extra litre of milk along with other foods after sunset and/or in the early hours of the morning.

8 Raw food is given to Muslim prisoners who request it in the prisons of Biella, Bolzano, Caltanissetta, Castrovillari, Cosenza, Enna, Gorizia, CC Pagliarelli of Palermo, Palmi, Perugia, Pesaro, Reggio Emilia, Trento, Treviso, and Udine. In Padua before the beginning of Ramadan, the people responsible of the kitchen agree with a representation of Muslim prisoners for the satisfaction of the alimentary religious needs.

9 The meat served is slaughtered according to Islamic requirements in Bolzano and Pesaro. In Imperia the meat slaughtered according to religious norms has a certification issued by the supplier, comes packaged separately and is prepared separately from ordinary food.

the time prisoners are allowed to buy *halal* or *kosher* food externally. Once again, the satisfaction of religious needs is closely related to the economic means of each individual. The solution adopted by some Muslims is considering their detention regime as a 'state of need': if there is some resistance against the consumption of pork, the consumption of meat not butchered in the ritual way seems not to be a problem.

Halal food may turn into *haram* if it comes into contact with something considered impure, and in jails, this problem arises in relation to the fridges. Only in a very few cases does the allocation of space take into consideration religious needs.¹⁰

Lastly, it should be appropriate to highlight a judgment that underlines how religious freedom is abundantly related to the discretion of the penitentiary administrations. In September 2013 a Buddhist prisoner, subjected to the principles from article 41b of the penal code,¹¹ appealed to the Supreme Court (Cassazione Penale no. 4147/2013) against the magistrate's decision regarding two claims concerning infringements of religious freedom. The prisoner was denied the opportunity to meet a Zen Buddhist teacher, as well as to have vegetarian food. The magistrate merely sent a communication to the prisoner claiming that the situation 'had to be faced following technical modes not depending on himself', while, with respect to the request for vegetarian food, he cited an older ordinance suggesting the adoption of 'measures to provide food in appropriate ways, even considering switching to other suppliers if necessary'.

Referring to the judgment no. 135/2013 of the Constitutional Court, according to which if the complaint 'refers to the alleged infringement of a right and not on organizational or functional aspects of the institute, the procedure takes on a jurisdictional nature', the Supreme Court considered that the behaviour of the prison administration is a violation of religious freedom and, therefore, annulled the contested decision since magistrate's communication was not considered 'appropriate for both procedure and content'.¹²

10 The division of fridges takes into consideration the religious needs of the prisoners in Padova and Palermo (Pagliarelli). In Alessandria the prisoners are used to organize themselves in an informal way.

11 41b is an article of the Italian penal code. It is referred to as the 'rigorous' imprisonment (*carcere duro*).

12 The European Court of Human Rights was appealed to concerning the administration of 'religious food' in prison two times. In the case of 'Jakobski vs. Poland', the appellant complained of a violation of freedom of worship on the basis that the prisons in which he was located had denied him the provision of a vegetarian menu, in accordance to his religion. In the first instance this request had been fulfilled on the basis of medical reasons. Once medical reasons were no longer presented, the diet was not assured.

Conclusion

The aim of this article was to investigate the relationship between dietary laws and religious freedoms as guaranteed by the Italian system, and to analyse the answers provided by schools and prisons to the citizens/believers referring to accommodation or rejection of dietary prescriptions.

As stated previously, religious freedom concerns not only ritual acts, but also behaviours which are religiously-based, such as diet. Referring to alimentary rules, the presence or absence of an agreement with the state does not seem to produce any differences between Muslims and religions holding an *intesa*, since the believers' alimentary needs seem to be protected by law through the correct interpretation of article 19 of the constitution.

The problem is the different answer given by public institutions to these requests. Both institutions considered represent the evolution into a multi-faith society, although schools are the places where the access to religiously-based rights occur more firmly, maybe for fear that children can get away from their parents' religion. In schools food has been used as a tool to reaffirm the values of the majority, almost for fear of succumbing to that hypothetical 'clash of civilizations' suggested by Samuel P. Huntington (1996).

In the case of prisons we are dealing with institutions which are at the margins and where what happens is of little interest to the public. The research conducted shows that the alimentary religious needs are satisfied in a uniform way throughout the country, highlighting that there is only a problem of costs.

At any rate the most important issues are those regarding organization and costs, especially in this period of crisis in the welfare state. One solution in this sense is a shift of the costs of meals to the religious bodies, although the risk is to create differences between confessions.

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The Court, referring to what has already been stated in the ruling 'Cha'are Shalom ve Tsedek vs. France', decided that 'dietary rules can be considered a direct expression of beliefs in practice in the sense of article 9', thus the refusal of the prison authorities were in violation of articles 9 and 14 also because other prisoners have a menu compliant with religious norms. In the same sense the ruling 'Vartic vs. Romania' of 2013.

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