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THE SITUATION OF MUSLIMS IN ITALY

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Abstract

In Italia, l'Islam rappresenta la seconda confessione per numero di credenti dopo il cattolicesimo. La maggior parte dei musulmani sono cittadini stranieri provenienti dai paesi della riva sud del Mediterraneo e in particolare dal Marocco. Il numero dei musulmani italiani è destinato a crescere, in termini sia relativi sia assoluti, per effetto delle naturalizzazioni e delle conversioni. Per ora il termine "musulmano" è comunemente percepito come sinonimo di "straniero" e "immigrato", quindi il musulmano è diventato l'immigrato per eccellenza. Proprio per questa particolare combinazione di appartenenza religiosa e appartenenza statale, in Italia la condizione giuridica della minoranza islamica è definita da gruppi di regole diverse: il diritto dell'immigrazione, il diritto internazionale privato, le disposizioni in materia di libertà religiosa e di rapporti tra Stato e confessioni religiose.

In terms of followers, Islam is the second-largest religion in Italy after Roman Catholicism. Most Muslims are foreigners from the southern shores of the Mediterranean, in particular from Morocco. In the future the number of Italian Muslims will grow, both in relative and absolute values, owing to naturalizations and conversions. Up until now, however, "Muslim" has largely been perceived as synonymous with "foreigner" and "immigrant", with the result that Muslims are viewed as the typical immigrant. Because of this particular combination of religious and national affiliation, the legal status of the Muslim minority in Italy is defined by different sets of rules: immigration law, private international law, and legislation governing religious freedom and relations between the State and religious organizations.

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Introduction¹

The Muslim population of Italy is usually estimated as approaching some 600,000. Islam is second only to Catholicism in number of believers. The vast majority of them are foreigners coming from Mediterranean countries, and in particular from Morocco. Italian Muslims amount to ten per cent of the total, taking into account both converts and naturalized Italians². This proportion is likely to change in due

¹ This paper is an updated and modified version of the paper presented to the conference of the European Consortium for Church and State Research held in Vienna on 15-17 november 2001.

² Figures are constantly disputed. As far as immigrants are concerned, official statistics do not consider their religious affiliation nor concern illegal aliens. Estimates are based on the assumption that people coming from certain countries are Muslim. The same can be said for those naturalised. Even more hazarded are the data about conversions.

course in favour of Italian Muslims, but for the moment it characterizes the numbers in Italy.

Due to this particular blend of national and religious affiliations, the legal condition of Islam in Italy is governed by different sets of rules: immigration law, legislation on conflict of laws and provisions concerning the rights of believers and the relationship between the State and religious communities³.

Regarding immigration law, the relevant statute is the consolidating act relating to immigration and the legal condition of foreign citizens (1998)⁴, amended in 2002⁵

Conflict of laws is governed by Conflict of Laws Reform Act (1995)⁶.

Individual and collective religious rights are guaranteed by the Constitution (Articles 3, 7, 8, 19, 20). The relation of the Catholic Church with the State is regulated by the *Concordato*⁷, whereas the relations of other religious communities are governed by an agreement reached with the State under Article 8 of the Constitution⁸, failing which the legal condition of the religious community is determined by the Admitted Religions Act (1929)⁹. This is the case for Islam.

The basic concept

According to Law 286/1998, the concept of integration has to inform all immigration policies.

The consolidating act (Article 42) lists some measures for the social integration and requires public administrations to support them. It deals with activities which foreigners legitimately residing in Italy can benefit from; with information concerning rights and duties of foreigners, the integrative opportunities of promotion for individual and communal rights and the possible re-establishment in the country of origin. The knowledge and importance of the culture, recreation, social values, and religion of foreigners have to be supported, as well as sources of information on the causes of immigration; on the prevention of discrimination and xenophobia, also by collecting materials in school and university libraries coming from the countries of origin of immigrants. The consolidating act states that courses have to be organised for persons working in contact with foreigners. These courses mainly put stress on life in a multicultural society and the prevention of behaviours of a discriminating, xenophobic and racist nature.

Integration is conceived as a progressive acquisition of citizenship, through non-discriminatory and inclusive strategies. Hence, Law 286/1998 (Article 43) deals

Statistics on foreign residents can be found in: [//demo.istat.it/stral/start.html](http://demo.istat.it/stral/start.html); www.caritasroma.it/immigrazione; www.ismu.org/italiano/cedoc/Banca_Dati/map.htm; [//pers.mininterno.it/sista/int014.htm](http://pers.mininterno.it/sista/int014.htm)

For further details, see Allievi, S. and Dassetto, F., *Il ritorno dell'Islam. I musulmani in Italia*, Roma, 1993.

On converts, reference should be made to Allievi, S., *I nuovi musulmani*, Roma, 1999.

³ Legal questions raised by the fact that Muslims are in majority foreign citizens are discussed by Berlingò, S., Botta, R., Ferrari, S., Lariccia, S., Onida, F. and Varnier, G. B., in "Las relaciones entre el estado y las confesiones minoritarias: los derechos religiosos de los inmigrantes", *Anuario de Derecho Eclesiástico del Estado*, 1998, pp.53-117.

⁴ D.l. 25 luglio 1998, n. 286 ("Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero"), hereafter, Law 286/1998).

⁵ L. 30 luglio 2002, n. 189.

⁶ L. 31 maggio 1995, n. 218 ("Riforma del sistema italiano di diritto internazionale privato").

⁷ L. 27 maggio 1929, n. 847 and l. 25 marzo 1985, n. 121.

⁸ Article 8 of the Constitution states that "All religious denominations are equally free before the law. [...] Their relations with the State are regulated by statute on the basis of an agreement with their respective representatives".

⁹ L. 24 giugno 1929, n.1159.

with discrimination for the first time¹⁰. Discrimination is defined as a behaviour involving a distinction, an exclusion, a restriction or a preference on grounds of race, colour, ascendants, national or ethnic origin, beliefs or religion. Behaviours, whose intended purpose or actual result is to prevent the enjoyment and exercise of fundamental rights and freedoms, are also of a discriminatory nature. The protection against discriminatory behaviours is explicitly granted both to citizens and foreigners. In case of discrimination, a civil action for compensatory damages can be taken.

Law 286/1998 provides for the establishment of several official bodies charged with the projection and monitoring of integration policies: the Commission for Integration Policies and a National Coordination Unit.

The aforementioned Commission, charged with the drafting of the annual report on the level of accomplishment of immigrants' integration policies on behalf of the Government, and with the proposal of suggestions and with the answering to questions put by the Government, was dissolved in July 2001 and hasn't yet been reinstated. During its activity, the Commission took into consideration problems closely connected to the condition of muslim immigrants.

The national coordination body is rooted in the CNEL, and is charged with the coordination, study, and spreading of local integration experiences, together with the promotion of good practices.

Nevertheless, integration does not seem to be a major objective for all Muslims. Some experts¹¹ underline that certain groups focus on a neo-communal project, involving the claim for collective rights, rather than individual ones and for economic and social integration, doubled with cultural separateness. From that perspective, an agreement reached by the Islamic community and the State under Article 8 of the Constitution could be conceived as a means to resist integration¹².

Status of islamic communities

Constitution gives protection to any religious organisation against discriminatory norms. Article 20 of the Constitution states that the religious character and the religious or confessional aim of an association or institution shall not involve special legal limitations or fiscal burdens for its constitution, legal status or any of its activities.

According to the law, Islamic communities normally are associations. The right to form associations freely is guaranteed by the Constitution (Article 18)¹³. Italian law distinguishes between recognised associations and non-recognised associations. Only the former apply for and are granted with the recognition at the national or regional level, from which specific rights and privileges are derived.

¹⁰ Italian EC law 2001 (law 1 march 2002, nr. 39) carries out EU Directive 2000/43/CE on Equal Treatment of Persons Irrespective of their Racial or Ethnic Origin, delegating the Government to issue a "legislative decree" no later than one year after the coming into force of the Law (10 april 2003).

¹¹ See Pacini, A., "I musulmani in Italia. Dinamiche organizzative e processi di interazione con la società e le istituzioni italiane", in Ferrari, S., *Musulmani in Itali. La condizione giuridica delle comunità islamiche*, Bologna, 2000, pp. 21-52; Guolo, R., "La rappresentanza dell'Islam italiano e la questione delle intese", *ibid.*, pp. 67-82; and, with reference to the European case, Dassetto, F. *La construction de l'Islam européen*, Paris, 1996.

¹² To that effect see Onida, F., "Las relaciones entre el Estado y las confesiones minoritarias: los derechos religiosos de los inmigrantes", *Anuario de Derecho Eclesiástico del Estado*, 1998, p. 110.

¹³ The text of the Constitution deals with a right granted to citizens (Citizens are entitled to form associations freely, without authorization, for aims which are not forbidden to individuals by criminal law). Notwithstanding, there is no doubt that this also concerns foreigners. Besides, the Immigration Act (1998) explicitly mentions associations formed by foreigners.

Islamic communities are non-recognised associations, as other socially important organisations, such as political parties and unions.

The only Islamic organisation which is not an association is the Centro Islamico Culturale d' Italia (CICI), recognised as a religious legal entity (*ente morale di culto*) by a decree passed by the President of the Republic¹⁴.

Recognised religious legal entities are regulated by the norms defined by l.n. 1159/1929 and r.d. n. 289/1930¹⁵. These norms concern the recognition itself and the control to be exercised over the entities. The recognition is granted by the President of the Republic, on proposal by the Interior Minister, who exercises the control on the religious entities. However, doubts are put forward about the constitutional legitimacy of some of those provisions. Some rights and privileges are granted to recognised religious legal entities.

The nature of recognised religious entities as public law entities or private is regarded irrelevant by authorities.

The CICI, which promotes the official Islam of the States, has its seat at the Great Mosque in Rome. Its board of directors is formed mainly by ambassadors of Muslim sunni States accredited to the Holy See or to the Italian State. The influence of Saudi Arabia in the CICI is balanced by that of other States, above all Morocco. Saudi Arabia is the prominent member of the World Muslim League, which politically and financially supports the Centro. On the other hand, Morocco is the country of origin of the majority of Muslims resident in Italy.

The more structured Islamic organisations have proposed themselves as the representatives of the Muslim community, in order to reach with the Italian State the agreement provided for in Article 8 of the Constitution.

The first to propose a draft for a possible agreement was UCOII, in 1992. UCOII is an association formed in 1990, grouping a number of local associations. Its foundation was promoted by the Islamic Centre of Milan and Lombardy, which initially claimed to be the only representative of Islam in Italy. According to some observers¹⁶, UCOII vehicles a political version of Islam, influenced by the ideology of the Muslim Brotherhood. Its roots are widespread throughout the entire Italian territory.

In the following year, the CICI asked for the negotiation of an agreement, without proposing a draft agreement. This request aimed clearly at the ability of UCOII to be the representative of Islam in negotiations with the Italian State.

In 1996 it was the AMI (Associazione musulmani italiani) to present a draft agreement. What distinguishes AMI from other Islamic organisations is that all its members, and not only the leaders, are Italian.

The last draft agreement, proposed in 1998, is by the Coreis, formerly known as AIII (Associazione per l'informazione sull'Islam in Italia). Its members are mainly converts, adhering to an esoteric version of Islam.

No agreement has been settled till now with the Islamic community. As far as other religious communities are concerned, it must be noted that the Italian State has always considered as partners only recognised religious legal entities, even if no

¹⁴ D.p.r. 21 dicembre 1974, n. 712.

¹⁵ As far as Catholic entities or entities formed by religious communities under agreement are concerned, more specific norms could exist: this is not the case with Islamic entities.

¹⁶ Pacini, A., 'I musulmani in Italia. Dinamiche organizzative e processi di interazione con la società e le istituzioni italiane', in Ferrari, S., *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, Bologna, 2000, notably at 44; Guolo, R., 'La rappresentanza dell'Islam italiano e la questione delle intese', *ibid.*, pp. 70-72;

legal norm imposes to the State to do so. Besides, the State wants its negotiating partner to be representative.

To break the deadlock, in 1998 the Italian section of the Muslim World League, the UCOII and the CICI formed the Consiglio islamico d'Italia (CII). Under its statutes, the CII is the representative of the entire Islamic community in Italy and aims at entering into negotiations to reach the agreement with the Italian State. Moreover, the CII applied for the recognition as a religious legal entity. But this attempt to coordinate muslim organizations in Italy is to be considered as dropped.

The signing of an agreement in the near future appears to be quite unlikely. However, even without an agreement, the law actually in force can give satisfactory answers to some of the basic needs of muslim believers.

Moreover, the position of Islam, like all the other confessions who have not signed an agreement, will very likely be strengthened by the adoption of a law on religious liberties intended to take the place of the 1929 law on allowed confessions. A bill on the issue is planned to be soon discussed in the House of Representatives¹⁷.

Ritual slaughtering

Since the first half of the 20th c., Italian law shows sensitivity towards unnecessary suffering caused to animals. A statute dating from 1927¹⁸ imposed new standards for the slaughtering of animals, in order to ease their death. The following year the statute was repealed by a new one¹⁹. The provisions on the methods to be adopted for the slaughtering were reproduced, but an exception was introduced regarding ritual slaughtering: the slaughtering could be performed in accordance with religious norms²⁰.

In 1978, Italy gave effect to the European directive 74/577/Cee, by the act n. 439, 2 agosto 1978. According to the new act, the only method for avoiding unnecessary suffering is the stunning of the animal. Once more, an exemption is given for slaughtering performed in accordance with religious norms, provided that it is authorized by the Minister of Health, in concert with the Minister of the Interior.

A decree²¹ authorised the slaughtering of animals in accordance with Hebrew and Islamic religious laws, imposing the taking of all possible precautions in order to avoid as far as possible any kind of suffering or unnecessary excitement. The Muslim community, as far as it is concerned by this issue²², was perfectly satisfied with the new norms, so that no draft agreement made any mention of it.

More recently, Italy ratified the Strasbourg Convention on the protection of animals for slaughtering and gave effect to the European directive²³ incorporating the principles of the same Convention.

¹⁷ C 2531. A first bill was presented by the Prodi Government during the previous legislature.

¹⁸ r.d. 21 luglio 1927, n. 1586.

¹⁹ r.d. 20 dicembre 1928, n. 3298.

²⁰ This subject is dealt with in detail by Roccella, A., "Macellazione e alimentazione", in Ferrari, S., *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, Bologna, 2000, pp. 201-221.

²¹ D.M. 11 giugno 1980.

²² Ottavia Schmidt di Friedberg (*Being a Muslim in the Italian Public Sphere: Islamic Organizations in Turin and Trieste*, paper presented at the International Congress "Religious Freedom and the Neutrality of the State: The Position of Islam in the European Union" held in Leiden, 14-16 December 2000) reports that Muslims resident in Trieste "do not seem to consider this a really crucial issue. In this matter local Muslims follow a legal opinion that is more liberal and allows them to eat 'the meat slaughtered by the people of the Book, i.e. by the Jews and the Christians'".

²³ The european directive 93/119/Cee was given effect by d.lgs. 1 settembre 1998, n.333.

The new act extends the protection measures for animals to be slaughtered to poultry and rabbits. They must be spared not only from the unnecessary suffering, pain and excitement, but other forms of suffering which can be avoided. The exemption from stunning for ritual slaughtering is confirmed²⁴.

One provision deserves careful consideration: sheep and goats slaughtered at home for family consumption have to be stunned. It is likely that this extension of the stunning will raise problems in connection with the celebration of *al-'id al kabir*, unless local communities manage to reach an accomodations with institutions, to the effect to slaughter animals in slaughter houses²⁵.

Building mosques and cemeteries²⁶

Municipalities, (acting) as planning authorities, have to reserve areas for the building of places of worship, taking into account the religious needs of local population. Mosques unquestionably fall within the scope of this provision.

Plans drawn by municipalities have to comply with certain town-planning standards, fixed by state or regional legislation: they determine the percentage of the areas to be assigned to buildings of worship out of those allocated to the constructions of public interest (as nursery schools, schools, market places, surgeries, social centres, parks etc.) and they settle the amount of money *in reserve* to support the building, restoration, etc. of places of worship.

Actually, public financial support to the building of places of worship comes mainly from municipalities. Municipal funding is integrated with regional financial support.

As far as financial support from regions is concerned, regional laws show their favour to the Catholic Church, because of historical reasons. Besides the Catholic Church, funding is often reserved to those religious communities who signed an agreement with the Italian State. At the moment, Muslim communities would be excluded from *this* benefit by *this* kind of provisions.

It must be noted that the Constitutional Court²⁷ ruled that an act, passed by the Region of Abruzzo²⁸, was contrary to constitution/constitutionally illegitimate, as it limited the financial support to the Catholic Church and the Communities with an agreement with the Italian state. The distinction made by the act is in contrast with/goes against the principle of equality before the law granted to religious communities by Article 8 of the Constitution, and violates the fundamental human right of freedom of religion granted by Article 19 of the Constitution. It is not mandatory for religious communities religiose to sign an agreement with the State. The position of religious communities has to be considered as being directed to meet the religious needs of the citizen; all the confessions are equally adequate to represent the religious inetrests of their believers. As to the norm requiring the organised presence of the community in the municipalities concerned, the Court

²⁴ It might need to be remembered that many bills over the past few years have been repetedly put forward in order to eliminate the exemption from giddiness for all ritual slaughterings (see, for the present legislature, S 298), regardless to the fact that ritual slaughtering, al least for the Jews, is covered by an agreement.

²⁵ In Turin the matter was settled with the City Council, and in 1996, when *al-'id* was on a Sunday, the veterinarian and the workers at the slaughter house agreed to open it for Muslims and to help them. See Schmidt di Friedberg.....

²⁶ For a more detailed discussion of the topic see Botta, R., "Diritto alla mosche a' tra 'intesa islamica' e legislazione regionale sull'edilizia di culto", in Ferrari, S., *Musulmani in Italia. La condizione giuridica delle comunit  islamiche*, Bologna, 2000, pp.109-130.

²⁷ See decision n. 195, 27.04.93.

²⁸ L.R. Abruzzo n. 29, 16.03.1988.

declared its constitutional legitimacy: it provides a necessary standard to evaluate the actual religious needs of the population *and their importance*.

This trend has been quite recently confirmed with decision 346/1992²⁹.

Notwithstanding the decisions passed by the Corte Costituzionale, many regional acts including similar provisions are still in force.

Muslim communities have already built or projected to build some monumental mosques in Italy, in conformity with town-planning legislation³⁰. The most notable example is the Great Mosque in Rome, inaugurated in 1995 and built at the expenses mainly of Saudi Arabia, through *the Muslim World League*.

More frequently, the need for a place to pray and meet is accommodated using flats, sheds or stores as prayer halls, irrespective of their official designation. Public authorities are not always disposed to tolerate this kind of precarious solutions, which often result in tensions between Muslim communities and other residents³¹.

Cemeteries

According to the law³², special and separate sectors of public cemeteries can be devoted/reserved to the burial of people belonging to religious communities different from the Catholic. Moreover, the city Mayor, on demand, can grant to foreign communities concessions on adequate areas of the cemetery for the burial of fellow countrymen.

Muslim communities have already taken advantage of this opportunity in some cities, as Firenze and Torino, even if there is still a clear tendency, among foreign Muslims, to prefer the burial in their own country.

According to Islamic Law, the burial has to be perpetual. Italian law doesn't seem to conflict with this principle. Even if, as a rule, the term for the concession of private graves in cemeteries is fixed in 99 years, the statute does not prevent its extension.

As far as the manner of burial is concerned, Islamic norms prescribe the use of the shroud, without the coffin, whereas the use of a lined coffin is mandatory according to Italian law. The only exception is represented by the Muslim cemetery of Trieste, dating back to the times of the Austro-Hungarian Empire³³. It was created in 1849 for the Muslim subjects from the Balkans: there the burial with the shroud is allowed. The issue doesn't seem crucial to Muslims in Italy, as none of the drafts proposed makes explicit mention of it. However, the problem could be solved under the legislation in force, since it is up to the Minister of Health to allow the use of biodegradable materials different from wood.

Islamic enterprises

No Islamic bank has been established in Italy. Some Italian banks have considered the opportunity of offering Islamic financing facilities, but a market survey has proved the possible functioning to be unprofitable.

²⁹ An analysis of the Constitutional Court's jurisprudence on the point can be found in Parolin, G.P., "Edilizia di culto e legislazione regionale nella giurisprudenza costituzionale: dalla sentenza 195/93 alla sentenza 346/2002", in *Giurisprudenza Italiana*, 2003, 351-353.

³⁰ The projects, in spite of their legitimacy, sometimes meet with the fierce opposition of some fringes of society. That was the case, in October 2000, of the Lodi mosque. On that occasion a fierce political campaign was launched against the prospective building of a mosque on an area conceded by the Municipality.

³¹ To that effect, see the cases of Alessandria and Varese, extensively reported by Botta, *op.cit.*, pp. 122-123.

³² See Article 100, D.P.R. 10 settembre 1990, n.285.

³³ See Grassi, "Il cimitero 'ottomano' di Trieste", *Oriente Moderno*, 1985, pp. 223-238.

Muslims in Italy can face difficulties in having their economic activities financed in compliance with the banning of *riba* posed by Islamic law. However, as in the case of some restaurants run by Muslims, it appears that the entrepreneur reaches an informal agreement with some of his nationals in order to negotiate financing through one of the types of companies regulated by Islamic law, such as *mudaraba* or *musharaka*. This would allow him to respect Islamic standards.

Islamic family law and state jurisdiction

Muslims resident in Italy are mainly foreign citizens. In their States of origin, family relationships are regulated either by *shari'a* or by statutes restating and codifying *shari'a*. Muslims in Italy are subject to Islamic family law in so far as Italian courts, or other public authorities apply their national laws to them³⁴.

According to the Conflict of Laws Reform Act (1995)³⁵, in matters relating to matrimonial relations, courts will apply the national law of the parties concerned or, subsidiarily, the law of the State where matrimonial life is mainly localized (Articles 29-31). The national law of the child will be applied in matters involving legitimacy, legitimation and paren –child relationship (Articles 33-36). These provisions result in the application of a foreign law whenever a child is born in Italy to two foreign parents, since Italian citizenship can not normally be acquired *iure soli*³⁶. Notwithstanding, foreign law can not be applied if its effects are contrary to *ordre public* (Article 16).

Often, the Muslim foreigner resident in Italy is married to a person of the same nationality: at least theoretically, they are subject to a law drawn from *shari'a*. In the case the nationalities of the spouses differ, Italian law will apply to the relationship between husband and wife, whatever their nationality is.

Before analyzing the most sensitive issues involved in the application of Islamic family law by Italian courts, it must be noted that Italian case law on the subject is very limited, in comparison with that of other European countries. Besides, to the best of my knowledge, no judgement has been given yet by the *Corte di Cassazione* in compliance with the Conflict of Laws Reform Act, since the provisions of the new act apply to controversies which came before the courts after its enforcement (1995).

Several peculiar Islamic law provisions are likely not to meet up with the requirements of the *ordre public*³⁷.

In the case of a Muslim woman marrying a non Muslim, the impediment to the marriage induces the authorities of the woman's country of origin to refuse to release the document certifying the conjugal status of the woman. As the Islamic principle is clearly in contrast with *ordre public*, the Italian Registrars Office exempts the foreign woman from producing the document.

Poligamy can raise different sets of issues, firstly relating to marriages contracted in Italy. Italian law considers polygamy as an impediment to marriage and bars

³⁴ On conflicts between Italian law and national laws which stem from *shari'a* see the contributions by A. Bonomi to Aldeeb, S. and Bonomi, A. (eds.), *Le droit musulman de la famille et des successions à l'épreuve des ordres juridiques occidentaux*, Zürich, 1999, and Campiglio, C., "Famiglia e diritto islamico. Profili internazional-privatistici", in Ferrari, S., *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, Bologna, 2000, pp.175-185.

³⁵ Legge 31 maggio 1995, n. 218.

³⁶ See Article 1, Legge 5 febbraio 1992, n. 91.

³⁷ The topic is dealt with in detail by Colaianni, N., *Tutela della personalità e diritti della coscienza*, Bari, 2000, pp.127-144.

married persons, whether Italian or foreign, from re-marrying³⁸. The marriage of an unmarried Italian woman and a married foreign man, whose national law allows polygamy, is not valid. Nor is the marriage contracted in Italy between two foreign citizens of the same nationality valid, if the man is already married, notwithstanding polygamy is recognised by their common national law.

Polygamous marriages contracted in foreign countries by individuals whose national laws allow polygamy deserve consideration. No decisions have been taken by Italian courts on this issue. The only case put before courts concerned the opposition to the expulsion of the two wives of a Moroccan citizen. The two women claimed their right to rejoin the man as his wives. The court in question³⁹ did suspend the enforcement of the expulsion order, but did not come to a decision, since the two women in the meanwhile obtained a resident permit on other grounds. It is likely that Italian courts will adopt approaches similar to those of other European countries and will recognise some limited effects to marriages which could not have been contracted in Italy.

The Corte di Cassazione was confronted with polygamy on a single occasion, in a case concerning inheritance⁴⁰. An Italian man died; his heirs were his two daughters of the first marriage and his wife, a Somali citizen, whom he married in Somalia under Somali law. The two daughters contested the competence of the woman to inherit. They claimed that the marriage was illegal: the Islamic marriage is characterized by polygamy and repudiation and therefore is in contrast with *ordre public*. The Corte di Cassazione deemed that argument groundless. The marriage, contracted in Somalia, met all the formal requirements of Somali law, the spouses were not married at the moment of the marriage and they had the capacity to contract a valid marriage

As far as personal relations between the spouses are concerned, no decision has been taken till now. Moreover, there is no doubt that, if a husband filed a suit for restitution of conjugal rights claiming his wife's disobedience, Italian courts would refuse the remedies provided for by the foreign law on grounds of their contrast with *ordre public*.

As for dissolution of marriage, norms regulating repudiation need to be looked into. On the Italian territory, marriage cannot be dissolved by means of a repudiation, even if spouses are both citizens of a State, whose law admits this kind of dissolution. In Italy marriages can be ended only by judicial divorce proceedings.

If the repudiation is pronounced abroad, Italian courts refuse to recognise it. In particular, with reference to repudiation as regulated by Iranian law, the Corte d'Appello of Milan stated that this kind of dissolution is in contrast with *ordre public*, due to its unilateral and offensive nature⁴¹. The repudiation pronounced

³⁸ See Articles 86 and 116 of the Civil Code.

³⁹ Tribunale Amministrativo Regionale of Emilia-Romagna, *ordinanza* passed on the 10th of January, 1989. See Campiglio, C., 'Matrimonio poligamico e ripudio nell'esperienza giuridica dell'Occidente europeo', *RDIPP*, 1990, pp. 853-908; Pastore, F., 'Famiglie immigrate e diritti occidentali: il diritto di famiglia musulmano in Francia e in Italia', *Rivista di Diritto Internazionale*, 1993, pp. 73-117.

⁴⁰ Cass. Civ., sez. I, 2 marzo 1999, n. 1739. This decision is discussed by Nascimbene, B., 'Matrimonio all'estero, dichiarazione giudiziale di paternità naturale e ordine pubblico', *Quaderni di Diritto e Politica Ecclesiastica*, 1993, n. 3, pp. 773-781 and Scolart, D., 'La Cassazione e il matrimonio somalo', *Quaderni di Diritto e Politica Ecclesiastica*, 1993, n. 3, pp. 783-794.

⁴¹ App. Milano, 17 dicembre 1991, *RDIPP*, 1993, pp. 109 ff. To the same effect Tribunale di Milano, 24 marzo 1994, *RDIPP*, 1994, pp. 853 ff and Tribunale di Milano, 11 marzo 1995, n. 2533, *Quaderni di diritto e politica ecclesiastica*, 1997, pp.849-850..

abroad against an Italian woman can nevertheless be considered a ground for divorce, under the Dissolution of Marriage Act (1970)⁴².

On the contrary, the recognition of repudiations pronounced by consent of both parties or by compensation (*khul'*) does not raise any problem: they can be directly received by the Registrar.

A decision deserving consideration was passed by Corte di Cassazione in 1999⁴³. On that occasion the court refused to apply Moroccan law, pointing to its contrast with Italian *ordre public*. Moroccan law does not allow the mother, nor the child file a suit for the declaration of paternity and denies any status to the illegitimate child, whereas under Italian law the parent-child relationship is founded on procreation and no discrimination between legitimate and illegitimate children is admitted.

As regards Italian Muslims, family relationships are subject to the provisions of the Civil Code.

However, they could wish to contract marriages according to Islamic formal requirements, the matrimonial relationships being governed by the Civil Code. This is the case of other non-Catholic confessions, either under the agreements reached with the Italian State, or in compliance with the Admitted Religions Act (1929)⁴⁴. But, as we know, the Islamic community has not signed any agreement with the State yet, nor can profit from the opportunity provided by the statute, according to which the marriage in the religious form has to be contracted before a Minister of religion recognised by the State: until now no such Islamic Minister has been appointed. The drafts proposed for the possible agreement normally deal with this issue.

In mosques in Italy, marriages are contracted and dissolved according to Islamic law. With the exception of the marriages involving foreign citizens contracted before the *sheykh* delegated by Consuls of different States at the Great Mosque in Rome, those marriages do not exist nor can be recognised by Italian law. The marriage in a mosque normally follows the civil marriage, to add the religious tie to the civil one; but it appears that there are cases of religious marriages which do not correspond to the civil ones.

It seems that the only way used to dissolve religious marriages is repudiation, due to the lack of any judicial Muslim authority. If the wife wishes to put an end to the marriage, it is apparent that influential members of the community will try to convince the husband to pronounce repudiation.

The dissolution of the marriage under Islamic law will never be recognised by the State, even in the case of agreement negotiated with the Muslim community. The Italian law reserves the jurisdiction on this point to the State.

Law on succession

According to International Conflict of Laws Reform Act (1995), succession is governed by the national law of the deceased, at the time of his/her death (Article 46). Nevertheless, a person can opt for the law of the country he/she resides in, by a statement made in the form of a will (Article 46, n.2)

⁴² Article 3 n.2 lett.e, Legge 1° dicembre 1970, n. 898.

⁴³ Cass. civ., sez. I, 8 marzo 1999, n. 1951, *Quaderni di Diritto e Politica Ecclesiastica*, 1999, n. 3, pp. 795-798, discussed by Nascimbene, B., "Matrimonio all'estero, dichiarazione giudiziale di paternità naturale e ordine pubblico", *Quaderni di Diritto e Politica Ecclesiastica*, 1993, n. 3, pp. 773-781 and Aluffi, R., "Alcune osservazioni in tema di filiazione in diritto marocchino", *Quaderni di Diritto e Politica Ecclesiastica*, 1993, n. 3, pp.767-772.

⁴⁴ L. 24 giugno 1929, n. 1159. See Articles 3 and 7.

In spite of the conflict of laws principle, Italian courts have never been faced with the application of Islamic succession law. This can be explained by the fact that under Italian law neither the courts nor any other authority play any role in the devolution process, the intervention of a notary being sufficient. If a dispute doesn't arise between heirs, this kind of issues will never come before courts. Notwithstanding the lack of case-law on the subject, it is likely that Italian courts would refuse to apply those Islamic provisions discriminating on grounds of religion or gender, because of their contrast with *ordre public*⁴⁵.

Labour law

Islam does not prescribe a weekly day of rest: Muslims have to take part in the congregational prayer on Friday and they have to accomplish ritual prayer on normal workdays during the week⁴⁶.

Italian legislation does not take into account these specific needs of Muslim workers.

Nevertheless, a rather old act⁴⁷, relating to domestic service, can provide some kind of protection in a series of cases, since it obliges the employer to allow the worker the needed time to perform the essential duties of his/her religion.

A reasonable accommodation for the question can be provided by agreements reached between the employer and the trade unions representing the workers employed in the single firm or factory. Several agreements of this kind have been reached, since they can meet the religious needs of Muslim workers, taking into account the specific conditions of the production process.

These agreements could also modify the normal working hours during the fasting month of *ramadan*, as provided for by the collective agreement for rural workers signed in the province of Ragusa⁴⁸.

No Islamic holiday is recognised by Italian legislation. The recognition seems to depend on the signature of the agreement between Italy and the Islamic community, as was the case for Jews. Besides, two *draft agreements* out of three don't require the entire day of rest but only the time necessary to take part in the congregational prayer.

No statute nor case law exists concerning the possible refusal by the worker of specific duties deemed contrary to Islam as well as to any other religion.

Islamic instruction and islamic education

The constitution (Article 33) entrusts the State with the task of instruction and grants organizations and private citizens the right to found schools and educational institutions. According to the prevailing construction, the norm means that the State provides for the transmission of the knowledge necessary to be part of the society: this doesn't involve any direct educational or ethic function. On the other hand, education concerns the different potentials of the person as a human being; it is the task of the family, to be performed, eventually, with recourse to private schools.

⁴⁵ See A. Bonomi in Aldeeb, S. and Bonomi, A. (eds.), *Le droit musulman de la famille et des successions à l'épreuve des ordres juridiques occidentaux*, Zürich, 2000, pp. 323-324.

⁴⁶ On issues dealt with in this paragraph, see Musselli, L., "La rilevanza civile delle festività islamiche", in Ferrari, S., *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, Bologna, 2000, pp.187-199 e Aluffi, R., *Tempo, lavoro e culto nei paesi musulmani*, Torino, 2000.

⁴⁷ Legge 2 aprile 1958, n. 339.

⁴⁸ As reported by Pepi, G., "Braccianti a casa per il ramadan", in *Il Sole 24 Ore*, 27 agosto 1997.

Even if the distinction between instruction and education may seem sometimes uncertain and artificial, it frames any possible discourse about school and Islam in Italy.

Two main issues deserve consideration: Islamic private schools and the place of Islamic instruction in State schools⁴⁹.

No doubt, the right to found schools and educational institutions can be exercised by Muslim organisations and individuals as well as others⁵⁰.

As a matter of fact, no private Muslim school has been set up yet on grounds of Article 33 of the Constitution.

It must be noted that several foreign schools have been founded by Mediterranean countries in different Italian towns: a Libyan school in Rome, another in Milan, where an Egyptian school exists too, and finally a Tunisian school in Mazara del Vallo (Sicily). They aim at strengthening the ties between the emigrant families and their own country of origin, in order to facilitate their possible return. The stress is placed on national identity rather than on religious aspects of culture.

Due to the lack of Islamic private schools, the demand for education is entirely directed to State schools. The number of Muslim students attending State schools is constantly increasing.

In State schools, teaching has to respect the freedom of conscience of all students.

Pupils and students have the right not to attend religious teachings regulated by the *Concordato* or the different agreements.

According to the *Concordato* between the Catholic Church and the Italian State, Catholic religion is on the curriculum of State schools. Students have the option not to attend the teaching.

As far as agreements are concerned, two are the possible regimes. A course on Hebrew culture can be set up on demand; lessons on religious issues and on religion as a phenomenon can be held, on demand, by a person charged by the religious community. These courses or lessons are optional activities and do not form part of the school curriculum.

Besides, a regulation issued by the Minister of Public Instruction (3084/1995) forbids religious ceremonies during school hours.

Theoretically speaking, in State schools, Muslim students are not exposed to non-Islamic religious teaching. As to Islamic religious teaching, its introduction depends on the possible signature of the agreement with the State. Nevertheless, it must be noted that some notions about Islam can be introduced by State schools, in the frame of intercultural education. According to the Immigration Act (Article 36), school welcomes linguistic and cultural diversities: diversity is a value, serving as a base for mutual respect and tolerance. In particular, under school legislation, school authorities can organise optional intercultural activities, concerning, inter alia, religious issues.

In 1998, an interreligious group (the Tavolo Interreligioso), gathering the representatives of several religions, was formed in Rome, on the initiative of the Municipality. The Italian Cultural Centre of Rome is part of it. The Tavolo Interreligioso intends to cooperate with intercultural projects offered by schools,

⁴⁹ For detailed discussions of these topics see Ferrari, A., "Le scuole musulmane in Italia: tra identità e integrazione" and Colaianni, N., "L'istruzione religiosa nelle scuole pubbliche", both in Ferrari, S., *Musulmani in Italia. La condizione giuridica delle comunità islamiche*, Bologna, 2000, pp. 131-156 and 157-173.

⁵⁰ A controversial point is the possible limitation of the right granted by the constitution only to citizens, according to the wording of the article. This is a crucial issue since Muslims are in vast majority foreign citizens, coming from non-european countries

with special respect to the basic elements of different beliefs and religions. It organises lectures and debates to be held in schools, at the request of school authorities⁵¹.

At present, religious education of Muslim children takes place outside the school system. Mosques play a major role in organising classes in the afternoon, after the school. Attendance on the courses is purely voluntary.

Muslim communities organise different types of activities for Muslim youth.

⁵¹ See Colaianni, N., 'L'insegnamento 'al plurale' del fatto religioso: una pista percorribile nella legislazione scolastica unilaterale" in AA.VV, *Laicità e religioni nella scuola del 2000*, Bari, 1999, p. 183.