RELIGIOUS FREEDOM IN THE WORKPLACE IN ITALY BETWEEN "POSITIVE SECULARISM" AND "EXCLUSIVE NEUTRALITY"

[ESP] *La libertad religiosa en el lugar de trabajo en Italia. Entre el "laicismo positivo" y la "neutralidad exclusiva"*

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FABRIZIA SANTINI
Università del Piemonte Orientale
(Italy)
fabrizia.santini@uniupo.it
ORCID: 0000-0002-1022-6316
DOI: 10.12800/vg.20.2

"*Religious freedom is not just freedom of thought or private worship. It is the freedom to live according to the ethical principles that follow from the truth found, both privately and publicly*"[1]

Abstract: Women, religion and discrimination are three key words that inevitably become intertwined when addressing the issue of workplace (religious) neutrality. European case law (from the Court of Justice and the Court of Human Rights) recognises the legitimacy of employers prohibiting visible religious symbols in the workplace, whether public or private, in order to protect the company's image. However, this can disadvantage women of certain religious denominations in employment. Italy, with a legal system based on "positive secularism", contrasts with EU trends in the search for "inclusive" religious "neutrality", which "implies not indifference on the part of the State towards religions, but a guarantee by the State to safeguard freedom of religion, in a regime of religious and cultural pluralism".

Keywords: Women; religion; discrimination; workplace neutrality; positive secularism.

Resumen: Las mujeres, la religión y la discriminación son tres palabras clave que inevitablemente se entrelazan cuando se aborda la cuestión de la neutralidad (religiosa) en el lugar de trabajo. La jurisprudencia europea (del Tribunal de Justicia y del Tribunal de Derechos Humanos) reconoce la legitimidad de que los empleadores prohíban los símbolos religiosos visibles en el lugar de trabajo, ya sea público o privado, con el fin de proteger la imagen de la empresa. Sin embargo, esto puede perjudicar a las mujeres de determinadas confesiones religiosas en el ámbito laboral. Italia, con un sistema jurídico basado en el «secularismo positivo», contrasta con las tendencias de la UE en la búsqueda de una «neutralidad» religiosa «inclusiva», que «no implica indiferencia por parte del Estado hacia las religiones, sino una garantía por parte del Estado de salvaguardar la libertad de religión, en un régimen de pluralismo religioso y cultural».

Palabras clave: Mujeres; religión; discriminación; neutralidad en el lugar de trabajo; secularismo positivo.

[1] Pope Francis, Audience with participants in the conference "Religious freedom according to international law and the global conflict of values", 20 June 2014.

1. The right to religious freedom according to the Papal Magisterium

Sixty years ago, the conciliar declaration *Dignitatis Humanae* on religious freedom set out its subject matter and basis with a prophetic and courageous vision[2], demanding that it be recognised as a "civil right in the legal order of society".

The complexity of the issue is common knowledge, in terms of both the personal and social aspects involved, and the interdisciplinary perspectives it raises. This is especially true when viewed through the lens of labour law, which reveals tension between identity claims connected with religious freedom and organisational and regulatory structures inspired by universal economic relations. Every religion not only imposes liturgical rules, but also lifestyles, behaviours and daily practices that have different implications for the employment relationship[3].

Articles 1, 2, 3, 4(2), 8 and 19 of the Italian Constitution recognise that the workplace is one of the most significant places for "self-expression". The latter comprises many aspects, including the religious sphere[4] and consequently freedom of religion requires special protection in this area.

However, it is not just a question of protecting human dignity. According to recent studies, denying religious requests in the workplace ultimately leads to lower productivity levels. Some scholars[5] argue that protecting workers' religious freedom increases happiness, which leads to higher productivity. Therefore, higher standards of religious freedom will correspond to better business performance. Allowing employees to act in accordance with their religious beliefs would benefit the company economically and increase economic and social well-being, thus improving the quality of life of the individual exponentially[6].

Nevertheless, the issue of protecting religious freedom in the workplace lends itself to a multitude of interpretations, given the variety of sensibilities, including pre-legal ones, that are brought to bear on it. This results in a high degree of interpretative heterogeneity on the

[2] See *Religious Freedom for the Good of All: A Teleological Approach to Contemporary Challenges*, International Teleological Commission, 2019, 1.
[3] Ferrari, S., *Lo spirito dei diritti religiosi. Ebraismo, cristianesimo e islam a confronto*, Bologna 2002.
[4] Zagrebelsky, G., *Founded on Work. The Solitude of Article 1*, Turin 2013, p. 20.
[5] Brooks, A.C., «Free People Are Happy People, especially when strong personal morality guides their choices», in *City Journal* (2008).
[6] Sorvillo, S., *Economie e Religioni. L'agire per fede alla prova dei mercati*, Cosenza 2016, p. 37.

various aspects of the issue, exacerbated by the plurality of legal systems and courts that address it[7].

The Papal Magisterium can provide a valuable starting point. Over time, it has emphasised the Christian reasons for respecting the religious freedom of individuals and communities within the framework of the rule of law and the practices of justice in civil societies, creating an echo capable of transcending the boundaries of the community of the faithful.

Pope John XXIII opened the papal reasoning on religious freedom in his encyclical *Pacem in Terris* in the early 1960s: "Everyone has the right to honour God according to the dictates of a right conscience; and therefore the right to private and public worship of God". The Second Vatican Council followed up by stating that religious freedom, fully responsive to the nature of faith, must guarantee all human beings the right to "embrace it freely and profess it vigorously in all manifestations of life".

The papal Magisterium continues that man, through his conscience, grasps and recognises the imperatives of divine law, which he is bound to follow faithfully in all his activities in order to reach his ultimate goal of God. "He must therefore not be forced to act against his conscience. Nor should he be prevented from acting in accordance with it, especially in the religious sphere". The exercise of religion consists primarily of internal, voluntary and free acts by which human beings turn immediately to God, and these acts cannot be commanded or prohibited by a merely human authority since they "escape its competence". This is because "those very acts by which human beings, in private and public, turn to God with an inner decision transcend, by their very nature, the earthly and temporal order of things".

Public authorities consequently cannot be granted the power to impose the profession of any religion, or even less so its denial, on citizens through violence, fear or "other means".

According to the Magisterium, this right is not however totally unconditional as it is limited by personal and social responsibility.

When exercising their rights, individuals and social groups must consider the rights of others, as well as their duties towards others and the common good. Religious freedom may be limited when and to the extent necessary, provided this is done "not arbitrarily or by unfairly favouring one party over another", but in accordance with "legal norms in conformity with the

[7] LO FARO, A., «Identità religiose, lavoro e diritto: in difesa della neutralità», in *Lavoro e Diritto* (2024), pp. 27-28.

objective moral order" required for the effective defence of rights and their peaceful harmonisation for the benefit of all citizens.

Ultimately, two subjective rights coexist within religious freedom: the first, connected to the internal dimension of the individual (*forum internum*), consists of the freedom to maintain beliefs freely chosen; the second, connected to the external dimension (*forum externum*), consists of the freedom to manifest religion in public or in private, individually or in community.

The only aspect of religious freedom that can be limited by law is the manifestation of belief. This limitation can only be imposed for reasons of public order, public safety, or to protect the rights of others. Upon closer inspection, however, it cannot be said that this is a limitation of religious freedom *per se*, but rather a limitation of the right to engage in behaviour contrary to the principles of the legal system. In other words, if legitimate, restrictions on behaviour that are labelled limitations on religious freedom cannot in any way be said to damage the dignity of the individual.

From this perspective, the Magisterium is entirely consistent with EU policies. Article 9 of the European Convention on Human Rights (ECHR), which deals with the protection of religious rights, also recognises a dual dimension[8], indicating that the only limitations are those established by law and justified by the need to guarantee a "democratic society" on grounds of "public safety", "the protection of order", "public health or morals", or finally, "the protection of the rights and freedoms of others".

Due to its ethical relativism and indifference towards religion, the liberal conception of the modern State has taken this assumption to its extreme consequences and, in the name of a supposed ideological "neutrality", has removed all ethical justification and religious inspiration.

The result is an ideology of "neutrality" that marginalises, and even excludes, religious expression from both the public and private spheres.

This "neutrality" in the public sphere is only apparent though, as will be explained, alongside a civil liberty that is objectively discriminatory.

In updating Christian reflection, the Magisterium has acknowledged that members of religious communities are often subject to unfavourable treatment in the workplace, excluded from public office, and prevented from using their religious symbols, not only in dictatorial

[8] SANCHEZ, S.F., *Religious Freedom and Work*, Turin 2022, p. 39.

countries where atheistic thinking prevails, but also in some countries that consider themselves democratic. In all these circumstances, true freedom of religion cannot be said to exist. True freedom of religion is by its nature transcendent of places of worship as well as the spheres of individuals and families[9].

Pope Benedict XVI also critically noted the drift towards the illiberal exclusionary effects of the State's "liberal neutrality"[10]. Recalling that religious freedom has "a dimension that is not only personal, because the social nature of human beings requires them to express their internal religious acts externally", the Pope praised Italy, which, unlike other EU countries, has managed to progress "in accordance with a correct vision of secularism, in light of its history, culture, and tradition". The Holy Father reiterated that, in respect for the positive secularism of State institutions, the public dimension of religion must always be recognised.

He was referring to how Italy has dealt with the issue of the presence of crucifixes in public places (the *Lautsi* case)[11]. Italian judges have ruled on this matter in 1988, 2006, and most recently in 2021. They concluded that displaying the crucifix is not mandatory but cannot be considered discriminatory. This establishes a principle that should be considered applicable to other religious symbols.

This conclusion is not in line with the Court of Justice's case law, nor that of the European Court of Human Rights[12], which has recognised the display of crucifixes in classrooms as a violation of parents' rights to educate their children according to their beliefs, and of pupils' rights to freedom of religion[13].

This contrast stems from the different legal systems' divergent views on secularism and the relationship between the State and religion, regarding the unique issue of displaying

[9] Address by Pope Francis, Meeting for religious freedom with the Hispanic community and other immigrants, Independence Mall, Philadelphia, Saturday, 26 September 2015.
[10] Address by Benedict XVI at the presentation of credentials of the new Italian ambassador to the Holy See, 17 December 2010, application of "Religious freedom, the path to peace", Message for World Peace Day 2011.
[11] Cass, SS.UU., 24414/2021, cf. LO FARO, A., «Religious identities, work and law: in defence of neutrality», in *Lavoro e Diritto* (2024), p. 28; critically, see POSO, V.A., «Croce e Gustizia. La libertà religiosa ed il principio della laicità dello Stato nelle aule delle scuole pubbliche dopo la sentenza delle Sezioni Unite n. 24414/2021. Quasi un racconto», in *Labor* (2021); VIDIRI, G., «Il lavoro nei principi fondamentali della Repubblica italiana tra ideologia e giudici sovrani», in *Il Lavoro nella Giurisprudenza* (2022), pp. 445 ff., and the doctrine cited therein.
[12] CJEU 14 March 2017, Achbita (C-157/15) and Bougnaoui (C-188/15); 15 July 2021 Wabe and MH Muller Handels (C-804/18 and C-341/19); 13 October 2022 s.C.R.L. (C-344/20); 28 November 2023 Commune d'Ans (C-148/22), widely commented on in doctrine.
[13] On the basis of this conclusion, Italy was ordered to pay €5,000 in compensation for non-pecuniary damage: CEDU, 3/11/2009, *Lautsi v. Italy*, n. 30814/06.

religious symbols in the workplace, whether attributable to employer choices (e.g. displaying a crucifix) or employee choices (e.g. clothing or other visible signs).

The demands arising from the European Union's interpretation of the right to religious freedom are in stark contrast to the principle of "positive secularism" that characterises our legal system. According to Pope Benedict XVI, this opens the way to the "marginalisation or even explicit rejection of the religious factor".

2. THE PRINCIPLE OF "NEUTRALITY" IN THE WORKPLACE, ACCORDING TO THE EU'S INTERPRETATION

Affirming "dignity" as the foundation of individual religious freedom undoubtedly places the papal Magisterium in open contrast with the Luxembourg court, which, on very different grounds, has come to consider legitimate the employer's ban on wearing visible religious symbols in the workplace, whether public or private[14] .

This is a case law that we could define as "strictly French" in origin, as it all stems from disputes that arose in France and ended up elevating a general principle of "neutrality" to EU law.

According to the Court of Justice's reasoning, from the Baby Loup case to Muller, via Achbita, Bougnaoui and Wabe[15] , a company regulation prohibiting the display of any visible signs of religious beliefs at work must be considered legitimate "since it does not specifically penalise those who profess a certain religious faith or hold a certain belief, but imposes limits on the outward manifestation of any individual belief in a completely uniform manner".

[14] See note 11.

[15] The doctrine commenting on the decisions can be said to be endless. See, among many others, BENIGNI, R., «L'affaire "Baby Loup" e la laïcité nel rapporto di lavoro privato. La Francia tra tentazioni integraliste e tutela della libertà religiosa del salariato», in *Quaderni di diritto e politica ecclesiastica* (2015), p. 689; ADAM, P., «Baby-Loup: horizons et défense d'une jurisprudence anathème», in *Revue de droit du travail (*2013), p. 386; PAGOTTO, T., ERVAS, E., «Achbita v. Eweida: libertà d'impresa e libertà religiosa a confronto», in *Federalismi. It* (2017), p. 7.

The EU's development of an "exclusive", "rigid" or "exclusive" neutrality[16] is not only of dubious legal and logical soundness, as will be explained, but also excessively biased in its outcomes in favour of freedom of enterprise.

From our perspective, it matters little whether this is considered within the scope of Article 16 of the Nice Charter, which states that freedom of enterprise includes the right of employers to consider the wishes of their customers, or whether it aligns with the approach taken by the European Court of Human Rights. The latter has called for a balance between religious freedom and business interests, not only in relation to the conclusion of employment contracts but also in accordance with the principles of secularism, neutrality, pluralism and democracy that should characterise all European societies.

Adopting strict neutrality could also be the best way to address the difficulty of reconciling the contractual autonomy of the employer with the identity aspirations of the individual[17], whose personality is intrinsically involved[18].

Union policies tend to enforce a "neutrality" that is blind to differences, whereas the demands of the global labour market necessitate the development of pluralistic societies, where workers are no longer exclusively "male, white and Catholic"[19], and employers must guarantee ever-higher standards of individual well-being[20]. In a pluralistic society, it is not possible to be "blind" to the needs of individuals and the vast array of religious beliefs. This may be evident in company canteens, for example, with regard to requests for menus that comply with religious dietary requirements, holidays, the frequency of rest days and daily breaks, and the possibility for individuals to adhere to religious rules concerning clothing.

Not only that. As far as we are concerned, the application of rules of corporate neutrality to religious clothing, albeit in a general and undifferentiated manner, inevitably brings together the three key words that form the basis of this reflection: women, religion and discrimination.

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[16] FROSECCHI, G., «Un'altra neutralità è possibile. Riflessioni a margine della giurisprudenza della Corte di giustizia sugli indumenti religiosi sul luogo di lavoro», in *Rivista Giuridica del Lavoro e della Previdenza Sociale* (2024), pp. 223 ff.

[17] ALIDADI, K., BADER, V., VERMEULEN, F., «Religious diversity and reasonable accommodation in the workplace in six European countries: An introduction», in *International journal of discrimination and the law* (2013), p. 59.

[18] GONZÀLEZ ORTEGA, G., «Libertad religiosa y contrato de trabajo en la jurisprudencia del Tribunal Europeo de Derechos Humanos: una propuesta armonizadora», in *Lex Social: Revista de derechos sociales* (2016), p. 328.

[19] VISCOMI, A., «Diritto del lavoro e "fattore" religioso, una rassegna delle principali disposizioni legislative», in *Quaderni di diritto e politica ecclesiastica* (2001), p. 377.

[20] See, for example, the United Nations *Global Compact*, launched in 2000, which established ten fundamental principles for sustainable, inclusive and human rights-respecting business conduct. These include the protection of cultural and religious diversity in the workplace.

Penalising women for wearing the Islamic veil is the most obvious example of intersectional discrimination, characterised by a combination of subjective connotations, such as religion and gender in this case.

The State, therefore, by aligning itself with EU policies, limits a fundamental right of the individual, making only atheists feel comfortable in the workplace, while all those who profess a religion, to a greater or lesser extent depending on the precepts of their faith, feel uncomfortable or are even excluded from carrying out certain activities. In other words, the paradigm of neutrality conceals the denial of pluralism: religion would be confined to the private sphere or its free expression in the public sphere would be restricted, resulting in a form of forced homogeneity[21] .

We cannot justify the adoption of the principle of "exclusive" neutrality in our investigation, either in the public or private sphere.

In the public sphere, this is because the duty of impartiality in the exercise of functions has no connection with the right to manifest religious affiliation, unless the intention is to exclude any separation between the private sphere (the profession of religious belief) and the performance of "neutral" public functions.

Only by reasoning in this way could one, in the name of "exclusive" neutrality, ask public employees not only for impartiality in the performance of their duties, but also for a rigidly impartial appearance, which excludes any sign of belonging to a religious belief. After all, Advocate General Kokott concluded in the Achbita case that "while an employee cannot leave their gender, skin colour, ethnic origin, sexual orientation, age or disability in the locker room, as regards the practice of religion, a certain degree of discretion may be required as soon as they enter their employer's premises".

But then again, it is also commonly accepted that the appearance of religious neutrality cannot in itself guarantee the neutrality of the service provided[22] .

Similarly, the exercise of freedom of enterprise does not seem sufficient to establish the right of employers to prevent their employees from expressing their religious beliefs in the workplace. This right cannot prevail over religious freedom as a fundamental individual right,

[21] ALICINO, F., *Costituzionalismo e diritto europeo delle religioni*, Padova (2011), p. 39.
[22] SANCHEZ, S.F., «Il principio di neutralità di fronte al fenomeno religioso nel posto di lavoro pubblico e privato», in *Variazioni su Temi di Diritto del Lavoro* (2024), p. 1135.

and in the domestic legal system, Article 41 of the Constitution expressly states that "economic freedom cannot be exercised in such a way as to cause damage to human dignity".

While the Court of Justice recognises that an employer may limit the right to freedom of expression to pursue a "secular" or "neutral" corporate image, it avoids directly comparing the right to religious freedom with the employer's claim to prevent its expression. Thus subverting the values hierarchy contained in the European Charter, placing economic rights above social rights and the fundamental rights of the individual.

"Allowing the practice of a single religion, under the pretext of equality, would mean unfair uniformity from all points of view"[23] .

In conclusion, at the European level, implementing the principle of religious freedom in the deliberations of the Court of Justice and the European Court of Human Rights demonstrates the difficulty of balancing the need to protect individuals' right to express their religious beliefs with the need to protect corporate image. The requirements for the coexistence of different values have not yet been met, and the European courts have failed to establish clear and unequivocal principles to guide Member States towards common solutions that promote the necessary multicultural integration.

3. THE "POSITIVE SECULARISM" OF THE ITALIAN LEGAL SYSTEM

As mentioned above, unlike other European legal systems, which are based on a more rigid or neutral form of neutrality (such as the French system), Italy takes a proactive approach, maintaining an equal distance from all religious denominations. This position implements the principle of secularism drawn by the Constitutional Court from Articles 7, 8, 19 and 20 of the Constitution.

This principle has been elevated to the status of "supreme principle" (judgments nos. 203 of 1989, 259 of 1990, 195 of 1993 and 329 of 1997[24]) and characterises our State as

[23] MARTIN DE AGAR, J.T., «Libertà religiosa, uguaglianza, laicità», in *Ius Ecclesiae* (1995), p. 204.
[24] See https://www.cortecostituzionale.it/ricerca-pronunce.

pluralistic, with different faiths, cultures and traditions coexisting in equal freedom (ruling no. 440 of 1995).

This "strong" secularism implies "not indifference on the part of the State towards religions, but rather a guarantee by the State to safeguard freedom of religion in a regime of religious and cultural pluralism".

Pope Benedict XVI refers to this as "positive secularism", a principle that promotes cooperation between the political and religious spheres while maintaining a clear distinction between their respective roles.

Italian secularism is not synonymous with laicism, which would consist in the exclusion of religion from the public sphere. Rather, it is based on autonomy and neutrality. Consequently, while the State may be indifferent to the religious choices of its citizens, it cannot be indifferent to religion itself, as it has a duty to guarantee religious freedom.

Within the national regulatory context, secularism in the legal system cannot even mean "neutrality"[25].

The secular State's attitude can only be one of equidistance and impartiality towards all religions, regardless of the quantitative data on the widespread adherence to a particular religious denomination (Constitutional Court rulings nos. 925 of 1988, 440 of 1995 and 329 of 1997), or the extent of social reactions that may follow the violation of the rights of a particular denomination (ruling no. 329 of 1997). The State must provide equal protection of the conscience of each person who identifies with a faith, regardless of their religious denomination (ruling no. 440 of 1995).

If we are to continue talking about neutrality in relation to our country, we must define it as "inclusive". The State does not neutralise the religious phenomenon *a priori*; rather, it adopts a tolerant attitude towards all religious manifestations[26].

Rather than having a workplace devoid of religious symbols, the State opens up the opportunity to ensure the full application of the principle of "inclusive" secularism. In this context, religious symbols and affiliations are not eliminated, but rather added together and all are equally protected.

[25] VETTOR, T., «Modelli e tecniche regolative della libertà religiosa nel lavoro: analisi e prospettive», in *Il Diritto del Mercato del Lavoro* (2006).
[26] SANCHEZ, S.F., «Il principio di neutralità di fronte al fenomeno religioso nel posto di lavoro pubblico e privato», in *Variazioni su Temi di Diritto del Lavoro* (2024), p. 1127.

From this perspective, a State that forces its citizens to practise their religion only in private and prohibits any public display of religious symbols or beliefs can be said to violate the right to religious freedom. This favours the religious expression of agnostics and non-believers, whose beliefs are also covered and protected by the same principle. According to an old definition, religious freedom is "the right of the individual to believe what he likes best, or not to believe anything if he prefers"[27].

Religious freedom cannot be limited in the name of secularism or the neutrality of the State. This is because "they are not real rights, either of the State or of the individual, but rather principles that characterise the State's attitude towards the religious choices of citizens and religious denominations"[28] .

4. PERMITTED RELIGIONS, AGREEMENTS AND COLLECTIVE BARGAINING IN THE REGULATION OF NON-CATHOLIC DENOMINATIONS

That said, the Constitutional Court maintains the possibility of regulating bilaterally and therefore in a differentiated manner, in their specificity, the relations of the State with the Catholic Church through the instrument of the Concordat (Article 7 of the Constitution) and with religious denominations other than the Catholic Church through Agreements (Article 8)[29]. It follows that the concrete protection of workers' religious aspirations in Italy depends on *the* legal *status* of the religion to which they belong.

The Italian legal system provides for two fundamental levels of recognition: on the one hand, the law on permitted religions No. 1159 of 1929, and on the other, the system of Agreements governed by Article 8, paragraphs 2-3, of the Constitution.

This dualism results in significant variations in terms of protection, prerogatives, and access to benefits, impacting both the religious organisation as a legal entity and, indirectly, the position of its adherents.

[27] RUFFINI, F., *La libertà religiosa. Storia dell'idea*, Turin 1911, Bologna 1992, 7.
[28] SANCHEZ, S.F., «Il principio di neutralità di fronte al fenomeno religioso nel posto di lavoro pubblico e privato», in *Variazioni su Temi di Diritto del Lavoro* (2024), p. 1132.
[29] Constitutional Court 13–20 November 2000, no. 308.

Initially a jurisdictional instrument aimed at "permitting" or "prohibiting" the practice of a religion within a confessional legal system, the law on permitted religions has in fact become a mere technical procedure for ascertaining religious nature and conformity with the democratic State. Even in its absence, different religions are equally protected by constitutional provisions, both as individuals and entities[30].

Furthermore, pursuant to Article 8, paragraph 3 of the Constitution, the State may regulate relations with individual religions in order to respond to specific needs "or grant particular advantages or impose particular limitations". Such an agreement is called an "Intesa" (Agreement) and has the force of ordinary law, affecting relevant aspects of the employment relationship, such as working hours and holidays[31] .

We can therefore say that, even in employment relationships, many aspects of the right to religious freedom receive different protection depending on whether or not there is a specific Agreement between the State and each religious denomination[32] .

The emphasis on the Catholic Church (Article 7) and the requirement for non-Catholic denominations to enter into a specific agreement with the State (Article 8) mean that individual religious aspirations become a "reflected right", dependent on denominational mediation[33] . However, this intermediation is necessary in order to avoid the generation of excessive identity particularism dictated by a "melting pot" of individual requests, which are clearly incompatible with the organisational autonomy of the employer.

[30] CAVANA, P., «Le minoranze religiose in Italia tra sistema pattizio e diritto comune», in *Stato, Chiese e pluralismo confessionale* (2024), p. 12 ff.

[31] See VISCOMI, A., «Diritto del lavoro e "fattore" religioso, una rassegna delle principali disposizioni legislative», in *Quaderni di diritto e politica ecclesiastica* (2001), p. 383, but also, for an overview, ROSSI, N., «Working time and religious beliefs: a matter of reasonableness», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1568 ff; in particular on holidays, starting from the Cresco Investigation case (C-193/2017), see DE MOZZI, B., «Religious freedom and the right to rest days on religious festivals (of others)», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1429 ff.

[32]See CARCHIO, C., SARTOR, E., «Il principio di laicità come neutralità e le possibili discriminazioni indirette nelle relazioni lavorative», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1396. Pursuant to Article 25 of Law No. 246 of 2012, members of the Italian Hindu Union may observe the Hindu celebrations of *Diwali*, subject to the constraints arising from the requirements of essential public services; pursuant to Law No. 130 of 2016 (Article 22), Buddhists belonging to the IBI-SG are granted, upon request, the right to observe the holidays of 16 February (birth of *Buddha Nichiren Daishonin)* and 12 October (registration of *the Dai Gohonzon* by *Nichiren Daishonin* himself*)*; finally, Article 4 of Law No. 101 of 1989 recognises the right of Jews to observe the Sabbath. Conversely, the absence of an agreement between Islam and the State means that religious decisions and obligations based on Sharia (Islamic law) are not recognised by the Italian State and may conflict with national legislation, which takes precedence.

[33] CAMASSA, E. (ed.), *Democrazie e religioni. Libertà religiosa, diversità e convivenza nell'Europa dell'XXI secolo. Atti del Convegno Nazionale (Trento, 22-23 October 2015)*, Trento 2016, pp. 229-230.

Contrary to what one might think though, the current regulations often seem to disadvantage Catholic workers compared to members of other faiths who benefit from specific agreements, even though the dominant model is represented by the "secularised Christian citizen who experiences religion as an exclusively private matter"[34]. This demonstrates an excessive focus on the aspirations of minority faiths, whose need to follow religious precepts could be described as "*ossibus inhaerentes*"[35].

In some economic sectors, therefore, Catholics seem to encounter even greater difficulties in observing the precepts of their faith than their colleagues of other religions, as they do not benefit from specific agreements, despite the fact that Catholic holidays are undoubtedly part of the tradition of the Italian people[36] .

The religious issue also appears to lead to other forms of discrimination, as evidenced by the employment rates of women belonging to different religious groups: Muslim women have the lowest employment rate, followed by Hindus, Jews, and Orthodox Christians. This leads to increasingly evident forms of multiple discrimination.

Thus, it seems that the pluralistic, positive and proactive perspective of secularism is often betrayed in Italy precisely in the context of employment relations[37], where there is a noticeable absence of legislative provisions aimed at implementing the principle of secularism[38], which are not merely declarations of principle.

During the 14th legislature, the draft of a modern and innovative law on religious freedom was shelved due to opposition from certain political forces, as was the draft law proposed by the ASTRID Study Group in 2017 ("Regulations on freedom of conscience and religion"). This was perhaps due more than anything else to fears of violating the principle of

[34] PROTOPAPA, V., «Poteri, neutralità e tecniche di tutela», in *Lavoro e Diritto* (2022), p. 572.
[35] VISCOMI, A., «Diritto del lavoro e "fattore" religioso, una rassegna delle principali disposizioni legislative», in *Quaderni di Diritto e Politica Ecclesiastica* (2001), p. 384.
[36] ROSSI, N., «Working time and religious beliefs: a matter of reasonableness», in *Variazioni su Temi di Diritto del Lavoro* (2019), pp. 1568-1569.
[37] The absence of legal disputes on this matter can only be considered uncertain. At present, only two rulings can be cited: Lodi Court, 7 July 2014, order 1558/2014, reformed by Milan Court of Appeal, 20 May 2016, no. 579, which ruled that the decision by a recruitment agency to exclude a worker from selection for the role of hostess/leaflet distributor because of her decision not to remove the Islamic veil she wore for religious reasons and which covered her hair constituted direct discrimination on the grounds of religious affiliation; and Pret. Rome 6 November 1998, in *Diritto Ecclesiastico* (2000), p. 95, which found that the dismissal of an Adventist worker for "refusing to work on Saturdays" constituted discrimination on religious grounds.
[38] Cass. S.U., 14 May 2011, no. 5924.

secularism, which is understood as prohibiting institutions from dealing with religion and therefore providing differentiated forms of protection[39] .

Given the general obligation for employers to create the most favourable working conditions for their employees, ensuring mutual respect, safety, and the physical and mental well-being of all workers (Art. 2087 of the Civil Code)[40], the only effective means of managing work to guarantee the right to diversity and pluralism is collective bargaining[41] .

In light of the various issues that arise in the workplace, collective bargaining, particularly at company level, seems capable of addressing these problems in specific production contexts by offering tailored solutions.

Moreover, it can play a decisive role in the absence of agreements pursuant to Article 8 of the Constitution, as is the case for workers of the Islamic faith.

The recorded cases are not numerically significant[42] , being distributed only in certain production sectors and specific geographical areas: Lombardy, Veneto and Emilia-Romagna,

[39] CARCHIO, C., SARTOR, E., «Il principio di laicità come neutralità e le possibili discriminazioni indirette nelle relazioni lavorative», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1406 ff.

[40] CORSO, S.M., «Religious belief versus health and safety at work: Labour law as a guarantor of respect for fundamental rights», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1413 ff.

[41] For a comparative perspective, see OJEDA AVILÈS, A., «The collective negotiation of reasonable accommodation of religious acts in the company», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1247 ff.; CORSO, S.M., «Religious belief versus health and safety at work: Labour law as a guarantor of respect for fundamental rights», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1413 ff. See Art. 74 of the National Collective Labour Agreement for members and employees of cooperatives operating in sports and leisure facilities (20 July 2006); Art. 78 of the National Collective Labour Agreement for cooperatives in the public and private sectors (31 January 2007); Art. 25 of the National Collective Labour Agreement for the car rental sector (14 March 2007). Similar provisions can also be found in other collective agreements: Art. 23 of the National Collective Labour Agreement for Distribution and Services (18 December 2007); Art. 36 of the Federculture National Collective Labour Agreement (21 March 2005); Art. 78 of the National Collective Labour Agreement for employees of data processing centres (CED) (21 April 2009); Art. 63 of the National Collective Labour Agreement for executives and managers in the same sector; Art. 24 of the ANAS National Collective Labour Agreement (18 December 2002).

[42] See the provincial supplementary contract for construction workers in cooperatives in the province of Ravenna (2006), which provided for *ad hoc* organisational measures for Ramadan in agreement with the trade union representatives and trade unions; the company contract of Zincatura Padana S.p.A. (Reggio Emilia) allowed absence on the last day of Ramadan in exchange for a working day, without additional pay, for the feast of the patron saint; the decentralised agreement signed by the CISL trade union in 1999 in a metalworking company in the province of Bologna, which granted an extra hour's lunch break to workers who wished to attend Friday prayers at the mosque, with the obligation to make up the hour not worked at the end of the day, cited by RICCIARDI CELSI, F., « Fattore religioso e lavoratori di religione islamica - Aspetti riguardanti la contrattazione collettiva e gli accordi sindacali», in *Comunità islamiche in Italia. Identità e forme giuridiche*, CARDIA, C., DALLA TORRE, G. (eds.) Turin (2015), p. 498; supplementary agreement between Alstom Power Italia S.p.A. and FIOM-CGIL, which acted as the company's trade union representative to guarantee a series of benefits for Muslim workers, according to which: 'the company will verify in a special meeting the feasibility of shifts, breaks and/or leave with the aim of guaranteeing the observance of religious holidays and moments of prayer', in ASCANIO, L., «La preghiera islamica in orario di lavoro. Casi, materiali, ed ipotesi risolutive della problematica emergente in contesto immigrato», in *Diritto, immigrazione e cittadinanza* (2007), p. 65; the company agreement between Essevi s.c.r.l. and FIT-CISL of 29 March 2004: which contains measures to grant breaks for prayer during working hours; see also the

where workers of the Islamic faith represent a significant proportion of the workforce, on average between 25% and 30%, and in some cases up to 60-65%[43] . In these areas, the need to protect the religious needs of Muslim workers in these areas becomes almost "mandatory", given the absence of an agreement between Islam and the Italian State. This is important for the psychological and physical well-being of workers, and in any case indirectly for the good of the company.

For workers who profess a religion other than Catholicism, without specific references, these contracts recognise the right to take weekly rest on a day other than Sunday, as well as the possibility of recovering the hours not worked on that day, without this entailing the right to overtime pay[44] .

While these agreements mostly regulate working hours, they are "tailored" to specific company needs and are then difficult to apply to third-party companies or validate as a general clause that can be extended at a national level[45] .

framework agreement signed on 25 July 2013 between CGIL, CISL, UIL and Confindustria Monza e Brianza aimed at promoting 'good practices' in the region which, although concerning immigration, attaches significant importance to religious freedom and recognises the importance of facilitating the fulfilment of workers' religious obligations, including through the granting of holidays or leave during periods of particular religious significance. Of particular relevance are the references to flexibility and regulation of the employment relationship, where the parties identify the possibility of reconciling the technical and organisational needs of the company with the religious needs of workers. In this perspective, measures are referred to that aim to allow the fulfilment of religious practices and respect for dietary requirements through, for example, the revision of menus.

[43] RICCIARDI CELSI, F., «Fattore religioso e lavoratori di religione islamica - Aspetti riguardanti la contrattazione collettiva e gli accordi sindacali», in *Comunità islamiche in Italia. Identità e forme giuridiche*, CARDIA, C., DALLA TORRE, G. (eds.) Turin (2015), pp. 480-481.

[44] On this topic, see TIMELLINI, C., «Islam subtly enters the labour relationship between trade union negotiations and inclusive safety», in *Variazioni su Temi di Diritto del Lavoro* (2019), p. 1593.

[45] ASCANIO, L., «La preghiera islamica in orario di lavoro. Casi, materiali, ed ipotesi risolutive della problematica emergente in contesto immigrato», in *Diritto, immigrazione e cittadinanza* (2007), p. 63