

IMMIGRATION, PERSONAL LIBERTY, FUNDAMENTAL RIGHTS

edited by
MARIA GRAZIA COPPETTA

with the assistance of
LORENZO BERNARDINI



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RELIGION IN PRISON: UTOPIA FOR MIGRANTS?

ALBERTO FABBRI

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1. The balance between custodial purposes and the exercise of the right to religious freedom

The subject of this brief intervention is the level of guarantees granted to the detained person and his or her right to religious freedom. A brief understanding on the position of a detainee in general is needed,¹ before moving on analysing the condition of migrants.² Indeed, a detainee is subject to measures aimed at restricting his or her personal liberty and is confined in a limited space. In such a situation, one might imagine that this person does not have the right to profess his or her own faith, especially in terms of worship or spiritual assistance. Nevertheless, Article 19 of the Italian Constitution grants the right of religious freedom to “everyone”, which includes everyone present on the Italian territory, regardless of where they are under what legal reason they are in Italy. Therefore, even those who are in a prison facility have this right.

¹ V. GREVI (Ed.), *Diritti dei detenuti e trattamento penitenziario*, Zanichelli, 1981.

² E. OLIVITO, “*Se la montagna non viene a Maometto*”. *La libertà religiosa in carcere alla prova del pluralismo e della laicità*, in *costituzionalismo.it*, 2015(2); A. PALMA, *L’assistenza spirituale e la tutela del diritto di libertà religiosa nelle strutture segreganti*, in *www.salvisiuribus.it*, 2019; S. PAONE-C. VIGNALI, *La mediazione linguistica e culturale. Il carcere mondo di culture*, in *rapportoantigone.it*, 2021; C. PATERNITI MARTELLO, *Corpo e anima: la libertà di culto nelle carceri italiane*, in *Il carcere secondo la Costituzione. XV rapporto sulle condizioni di detenzione*, in *antigone.it*, 2019.

The problem is to identify the best model to adopt in order to strike a balance between the need to pursue the purposes of detention and the enjoyment of the rights guaranteed by the legal system. In this context, the benchmark of a “libra” should be adopted, where the need to strike a balance between different elements is the task to be achieved. In fact, on the one hand, there is the individual’s right to religious freedom within a detention facility, while on the other hand, prison order and security must be respected in a very specific historical and social context.

2. *The effects of socio-religious evolution in prison*

The quest for a balance of interests is much easier in cases where the prison population professes the same religious faith. Indeed, until a few decades ago, when the majority of prisoners professed to be Christian, with a predominance of Catholics, the figure of the chaplain,³ whose task it was to provide assistance to prisoners, did not raise questions of faith and guarantees of equality and non-discrimination, since the right to freedom of religion was widely exercised. Moreover, with regard to faiths other than Catholic, the agreements (*intese*) that may have been concluded between the religious denomination and the State, the appointment of chaplains,⁴ as well as existing prison practices, did not give rise to any significant problems, given the small number of actively religious people.

The change in social reality brought about by the migration process has also profoundly altered the range of cults practised in prison. In particular, the presence of Islamic believers—a faith that is profoundly different from Christianity⁵ (just think of the need to allow daily prayers to be held at specific times in relation to the daily services provided for in the prison regulations, or the observance of the month of *Ramadan*, with the serving of evening meals)—required a careful review of the criteria provided hitherto

³ Article 26 of Presidential Decree no 230 of 30th June 2000 (hereinafter: ‘Prison System Regulation’) ensures the presence of a chaplain in each prison facility. See F. FRANCESCHI, *L’assistenza spirituale ai detenuti appartenenti alle confessioni religiose di minoranza nel nuovo regolamento penitenziario (D.P.R. 30 giugno 2000, n. 230): un caso evidente di “amnesia giuridica” da parte dell’Amministrazione dello Stato*, in *Il Diritto Ecclesiastico*, 2001, II, p. 74 ff.

⁴ The confessions without an agreement are regulated by Law 1159 of 24th June 1929. On this point, see C. CARDIA, *Stato e confessioni religiose*, Il Mulino, 1992.

⁵ L. MUSSELLI, *Islam, diritto e potere*, in *Il Politico*, 2007(2), p. 37 ff.

and adopted in the area of religious freedom, so that they could be fully applied to all inmates, regardless of their professed beliefs.

3. The understanding with Islamic faiths and the figure of the minister of religion

The situation is aggravated by the fact that the Islamic community has not signed an agreement (*intesa*) with the Italian State that would have been useful in regulating the position of Islamic prisoners.

In this respect, the figure of the religious assistant is particularly important.

However, the problem is not only a problem of the lack of an agreement with the Italian State, but also of the internal organisation of religious belief. In fact, the structure of Islam itself does not provide for the figure of a minister of religion (*ministro di culto*).

This aspect required a change in the model adopted until now, a model which consisted in identifying the figure of the minister of religion as a stable element within a religious organisation conceived on the Catholic hierarchical model. The need to guarantee the presence in prison of a religious assistant therefore requires the activation of open ways of calling on this figure, so that all the aspects involved—security and freedom of religion—are safeguarded and guaranteed.

For this reason, the prison system has increasingly advocated the use of people who, although not legally identified as ministers of religion, can perform a role of proximity and can be called upon the explicit request of the prisoner; we are talking about cultural assistants, recreational activity assistants, cultural mediators or simply imams. In terms of cooperation, it should be noted that in 2015 the Department of Prison Administration (DAP) signed an agreement⁶ with the Union of Italian Islamic Communities (UCOII) to facilitate the entry into prisons of *imams* recognised and authorised by the Ministry of the Interior.

Admittedly, this is an agreement with only one of the Islamic actors, but the path taken has yielded encouraging results.

It is important to bear in mind that the recent episodes of religious

⁶ S. ANGELETTI, *L'accesso dei ministri di culto islamici negli istituti di detenzione, tra antichi problemi e prospettive di riforma. L'esperienza del Protocollo tra Dipartimento dell'Amministrazione penitenziaria e UCOII*, in *Stato, Chiese e pluralismo confessionale*, 2018(24), p. 1 ff.; A. FABBRI, *L'assistenza spirituale ai detenuti musulmani negli istituti di prevenzione e di pena e il modello del protocollo d'intesa: prime analisi*, in *Rassegna penit. e crim.*, 2015(3), p. 71 ff.

fundamentalism⁷ have had an impact on the prison administration and, specifically, on the regulation of the contacts that prisoners may have with the outside world. However, the full involvement of the religious communities themselves, giving them an active role in the arrangement of those figures who may enter prison, is a strategy to be encouraged and supported.

4. *A space to pray*

Another important issue is the availability of a place to pray, to be used individually or collectively for worship.

The changing prison population made it necessary to identify and provide spaces other than the Catholic chapels, suitable areas in which inmates could gather for prayer.

The solution adopted consisted, firstly, in the possibility of using one's own cell as a place for worship, even with the display of sacred images;⁸ secondly, in the use of theatres, libraries, social rooms and even corridors as collective spaces, which could be reserved on a recurring basis, on fixed days and at fixed times, according to the requests made by the religious community, through the voice of the prisoners. Lastly, it is worth mentioning that religious practices can also take place in the absence of ministers of religion.

However, the use of multi-purpose spaces, which originate with a different destination and are adapted to religious needs, represents a temporary and occasional procedure, albeit repeated, which lacks the element of stability and exclusivity, just think of the difficulty of managing liturgical equipment, which has to be brought in and removed from time to time.

5. *Concluding remarks*

Within this framework, it is clear that religion plays a fundamental role in the personal and collective development that inmates undertake within prison facilities. This aspect is duly taken into consideration within the Prison Rules (*Legge sull'ordinamento penitenziario*, Law

⁷ D. MILANI-A. NEGRI, *Tra libertà di religione e istanze di sicurezza: la previsione della radicalizzazione jihadista in fase di esecuzione della pena*, in *Stato, Chiese e pluralismo confessionale*, 2018(23), p. 1 ff.

⁸ Article 58(2) of the Prison System Regulation acknowledges the detainee's right to display images and symbols of his religious denomination in his individual room or in the common spaces.

No. 354 of 1975), whose Article 15(1) stipulates that ‘[t]he treatment of convicts and inmates shall be carried out mainly through education, vocational training, work, participation in projects of public utility, religion, cultural, recreational and sporting activities and by facilitating appropriate contacts with the outside world and relations with the family’.

The rehabilitative function that can be attributed to religion in the prison system cannot lead to considering and using the behaviour of the person concerned in the religious sphere as a criterion and parameter for evaluating his or her behaviour; the same applies to the modalities of exercising the right to freedom of religion, which must also leave equal space for the atheist, non-confessional and agnostic dimension.

Finally, the specific situation of foreign prisoners should be taken into account.

Undoubtedly, the condition of immigrants, due to their precarious and unstable situation, requires specific measures to be activated by the prison administration, in order to allow the detainee to express his “full potential”. The available data⁹ show that, over the years, the ratio between the number of foreign residents in Italy and the number of prisoners has fallen sharply, a sign that the condition of newcomers is better, with obvious positive repercussions also on the prison environment.

The “full potential” briefly mentioned above, means that, *in primis*, the prison authorities should activate a communication platform through which the immigrant detainee can understand the prison’s rules and, secondly, be informed of his rights and duties. In this way, the immigrant prisoner will be able to make informed choices that would contribute to his redemption and effective human growth. The slower and more unprepared or disorganised the system is in preparing these instruments, the greater the risk that the immigrant will use religion as a social ransom, as an island to which he can retreat in order to find his own shared, protected space, or as a ransom from his condition. In this way, especially in a prison environment, religion would no longer represent a path to human

⁹ The *Dossier Statistico Immigrazione 2021*, available at the URL: www.dossierimmigrazione.it, indicates that in 2008 the detention rate—calculated as the percentage of detained foreigners over the resident foreign population—was 0.71%, rising to a rate of 0.34% in 2020. The *Mid-year Report on the Condition of Detention in Italy 28 July 2022*, prepared by Antigone, records a detention rate of 0.35% for 2020, with a decrease for the year 2021 (0.34%) and 2022 (0.33%), in www.antigone.it.

completion, but the lesser evil in order to carve out a minimum space for survival.

The monitoring of these aspects becomes a priority in the assessment of behaviour that can spill over into religiously motivated fundamentalism. The consequences of this are, unfortunately, well known.

The supreme principle of active secularism therefore requires the prison administration to encourage, safeguard and promote the lawful expression of religious sentiments, not only in the provision of its services, but also by taking the necessary and useful measures to strengthen the civil and religious conscience of prisoners.