

Freedom of Religion in Islam

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First of all I want to underline the importance and the primacy of the religious freedom. In fact, on a legal perspective, religious freedom is the starting point of every human freedom. This is also true from the point of view of the Islamic law: it is considered, indeed, that religious freedom allows the expression of the spiritual and the noblest dimension of human nature.

For the Islamic tradition, mankind organised itself into communities in order to protect the spiritual legacy received by the same and one God. Religions are all true and effective, no one can say that his religion is the only best one, because God has revealed itself from the beginnings: the first Islamic prophet is Adam, and from the first man to the time of Muhammad, all prophets are “Islamic”, which means “faithful and submitted to God”.

At a public level, freedom of religion in Islam corresponds with the freedom of the different communities to regulate internal relationships on the basis of their different kinds of laws. *Shari‘a*, in particular, recognise totally the cult and the rights of the communities of the Hebrew, of the Christians and of the other oriental religions. Freedom of religion was one of the few rules concerning the public law, because the *shari‘a* contains mainly rules about the Islamic cult and the family law. The most part of the public law is considered outside the *shari‘a* and it is rather called *siyasa*.

It is not by chance that the term *dhimma* indicates at the same time the legal personality in virtue of which a man has rights and duties and also the legal personality (considered in this case also a “protection”) recognized from the Muslim Caliphate to the other religious communities, whose members are indicated like *dhimmi*. In this line of thought, the Qura’n asserts that men cannot be discriminated on the basis of their faiths.

He has chosen you and has imposed no difficulties on you in religion; it is the religion of your father Abraham. It is he who named you Muslims, both before and in this Revelation.¹

The respect between the different religions and the legal practice of the religious freedom has been therefore one of the original characters of the Islamic civilization. The same victory on the Byzantine Empire, amazing if the military forces in field are considered, had been prepared and

¹ Corano, XXII, 78.

supported by a great part of the population of Syria, Jordan and Palestine that spontaneously had been delivered to Muslims. Monophysites, Nestorians, Armenians and Jewish people saw in Islam a guarantee of religious freedom, especially since it appeared in an age deeply marked by theological disputes and persecutions successive to Council of Chalcedon.

Many bishops instructed their own faithful about the privileges that they would have obtained in quality of *dhimmi* in the Muslim Caliphate. In entire cities and regions, like Damascus, Kinnaṣrīn (Chalkis) and KTMrus (Cyrrus), the clergy supported the Muslims. Sometimes the capitulation in front of the Muslim armies assumed the true character of a “liberation”, to the point that the population Shaizar (Larissa) or Adhri‘...t (the ancient Edrai) came out from the city with processions of singers holding branches of myrtle, in order to celebrate the Muslim armies led by AbTM ‘Ubayda or directly by the Caliph ‘Umar.²

The Islamic Caliphate considered himself as the protector of all the communities, to which he granted wide autonomies. The Canon 6 of the Nestorian Synod, as for instance, convened in 676 by the *Catholicos* Mar Guiwarguis, could therefore order that all the disputes between Christians had to be judged in the Church before persons - priests or laics - named directly by the bishop.³ The figure of *q...yṯ al-naḡ...r...*, the “Christian judge”, took part in the social life of the age as much as that one of *q...yṯ al-muslimin*, the “judge of the Muslims”: the autonomy of the Christian community was evident in particular in the family and successions laws and in the conduction of *waqf*, the “pious foundations”, but the State tolerated a wide autonomy also in the criminal law, excepted for those crimes that upset the public order.⁴ In the aftermath of the ‘Abb...sids, the Ottoman Caliphate would have further encouraged and organized the pluralistic and composite character of the society. In so far as the Ottoman Empire may be considered as a super-confessional guarantor of the religious freedom of all its citizens.

With the end of the Ottoman caliphate and the beginning of the modern age, a reference to the religious freedom must necessarily start from a comparison between the actual situation and the original Islamic doctrine. Only the latter, in fact, can constitute a valid point of reference of what is the Islamic perspective, while an analysis carried out exclusively from the legal experiences of the

² A. Ducellier, *Cristiani d'Oriente e Islam nel Medioevo*, pp. 24-31.

³ J.-B. Chabot, *Synodicon Orientale*, Paris 1902, pp. 484-485.

⁴ N. Edelby, *Essai sur l'Autonomie Législative et Juridictionnelle des Chrétiens d'Orient sous la Domination Musulmane de 633 a 1517*, Pontificium Institutum Utriusque Juris, Roma 1950.

modern States can be relative and misleading. Unfortunately this ambiguous attitude appears very often in the mass media and also at academic level.

To understand the present situation, it is necessary to keep in mind the progressive abolition of the autonomies of the various religious communities between XIX and XX century. The adoption of a unified personal law under the influence of the western laws, has led in many modern States to an anomalous juridical situation. For instance, in North Africa, with the single exception of Egypt, all citizens, independently from their religious faiths, have been submitted to norms that derive evidently from the Islamic tradition, without consideration of the fact that the *sharʿa* must be applied only to Muslims.⁵ Besides, after more than a century of colonialism, many modern States received a heavy heritage of mistrust between social groups, undermining in many countries the possibility to continue the Islamic secular tradition of mutual acknowledgment and pluralism. In 1914, the religious minorities in the Ottoman world amounted to more than 3 millions persons on a totality of 15 millions subjects (20% of the population). In few years the birth of the laic and nationalist Turkey of Mustafa Kemal coincided with the fast and almost complete disappearance of minorities (to the end of XX century we can find only 140.000 Christians and Jews, corresponding to the 0.2% of the population): we can say that the most part of the modern States supplanted religious pluralism.⁶ From a different perspective, but with the same destabilizing effects, the fundamentalistic movements distort the “letter” of the Islamic law to create a revolutionary ideology that is the negation of principles of the entire Islamic tradition. Unfortunately the Islamic tradition of tolerance has been also repudiated in many so-called “Islamic” States today.⁷ As it is stated by Bernard Lewis in a recent interview, if modern “Islamic” States will be able to go back to their juridical and traditional Islamic roots, this will be the best way to develop freedom of religion and democracy.⁸

The Muslim presence is not limited today to the oriental countries, but it has become also the second European religion for a number of believers. Isl...m is not therefore an “alien” but an integrating part of Europe, where, in a singular way, constitutions like the Italian one express fundamental legal principles that we find also in the Islamic doctrine: “all the confessions are equally free in front of the law” and “they have the right to organize themselves according their own statutes” (art. 8) -. The debate about the religious freedom in Europe – that is far to be entirely reached in our

⁵ R. Aluffi Beck-Peccoz, *Le leggi del diritto di famiglia negli stati arabi del Nord Africa*.

⁶ Y. Courbage et Ph. Fargues, *Chrétiens et Juifs dans l’Islam arabe et turc*, p. 220 sgg.

⁷ H...la Mustafa, L’Islam politico in Egitto: il richiamo alla *sharʿa* dei movimenti islamici radicali, in A. Pacini (a cura di), *Il dibattito sull’applicazione della sharʿa*, pp. 39-54.

⁸ Fiamma Nirestein, *Islam, la guerra e la speranza: intervista a Bernard Lewis*, Rizzoli, Milano 2003, pp. 129-131.

Continent - seems to open a period of comparison between the various legal traditions, in order to reach to a better understanding of the nature of “the eldest of all freedoms”, as it is called by Italian jurists,⁹ on which ideally the entire contemporary society is constructed.

The opening of the “season” of the agreements previewed from the article 8 of the Italian Constitution permit a better formalisation of relationships between State and religious communities, creating a singular right that should guarantee in the future the *par condicio* between all the different religions. It must be remembered, in fact, that an agreement with the Islamic community still lacks in Italy, although it is by far the second Italian religion for a number of faithfuls. It is important, however, to underline the presence and the work in Italy of the CO.RE.IS. Italiana (Italian Islamic Religious Community), led by Italian Muslim intellectuals. Recently the organization has been approved by the State Council to be recognised as an official body for the Islamic cult in Italy.

⁹ G. Catalano, *Libertà religiosa e diritti fondamentali nelle società pluraliste*, in *Diritto Ecclesiastico*, I, 1997, p. 597.