COMMON VALUES AND RELIGIOUS FREEDOM. A DIFFICULT COHEXISTENCE.

Alessia Tranfo

Ph.D. Candidate

Università degli Studi di Genova

ITALY

Religious freedom, different approaches, symbols allowed in public sphere, common values.

For decades now, people in Western have been debating the issue of religious symbols in public space. Nowadays Western Europe cultural heritage seem to appreciate a preferential treatment stating that Islam should not be treated in the same way as Christianity because it is something too far from western culture and values. This leads to the question of this contribution, whether the State is allowed to evoke hypothetical common values to guarantee a fundamental human right as religious freedom whose protection pass through the use of religious symbols in public space. A man or a woman, who is not allowed to wear or show his/her religious affiliation, is a person who is denied religious freedom. I will analyze some cases from three different countries to summarize three approaches related to the matter of religious symbols and to the thin distinction between religion and culture. I will focus on German system, Italian one and the multicultural Canadian reality.

Since the migration in 2015, European people are affected from anti-Muslim prejudices and they stress the importance of cultural national identity. In the last years, there has been a debate about defining the ‘leading culture’ (‘Leitkultur’) and respective symbols. For instance, the Bavarian government stated in April 2018 that the symbol of Bavarian culture and tradition was the cross. Accordingly, by law a cross needs to be erected in the entrance area of every public building except schools, universities and town halls. I will compare German sentences with Italian ones about the same theme (Italian Court of Cassation). Judges evoke common values of western society without defining them and risking admitting a unique western culture and obliging who is different to fit into a stereotyped European way of life.

As I will relate the constitutional situation in Germany, which is only to understand with the background of its special development, I will give a short overview over the history of the separation of the Churches from the state in Germany since the Reformation and then I will concentrate on Italian religious protection. After that, I will concentrate on Canadian constitutional approach. Furthermore, I will explain the basic principles of German Constitutional Law that rule the relationship between State and churches analyzing how German law deals with religious symbols in public space, especially Muslim headscarf and Christian cross in comparison with Italian sentences. Once painted the differences between two different ways to approach religious freedom through symbols I will focus on religious and secular State in Canada. It would be useful to describe which means are applied by judges to save the Canadian multicultural soul (f.i. reasonable accommodation) and how these approaches try to guarantee a peaceful society.