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Circumcision and EU Citizenship

SUMMARY: 1. Premise - 2. Circumcision in the Acts of the Parliamentary Assembly of the Council of Europe: the issues covered - 3. Citizenship and religious pluralism - 4. Additional Citizenship, religious freedom and the European policy of "double standards" - 5. Conclusions.

1 - Premise

There is a close relationship between circumcision and citizenship, which is only apparently not so evident.

Circumcision is a practice which principally conforms to Jewish and Muslim religious identities, leaving aside the cases when it is carried out for therapeutic reasons¹; however, it must be remembered that the habit of circumcising new-born males is widespread in some African regions, in virtue of a commonplace cultural-religious custom.

In the first two cases circumcision finds expression in an essentially codified ritual of "confessional-religious" nature, as well as defined "ritual" circumcision. In the third case, on the other hand, such a practice is based more on folklore and culture and European law struggles to incorporate the reference to the clear exercising of the right to religious freedom, which is harder to use in the "Old Continent" due to fluid religious traditions which are not part of the rigid confessional scheme².

It should be observed how the pyramid system of religious freedom (the reference being to the Italian system) greatly influences the observations regarding this practice legitimizing in particular the distinction between "confessional-religious" or "ritual" circumcision and

¹ Cf. G. STANO, s.v. *Circoncisione*, in *Enciclopedia del diritto*, vol. III, Sansoni, Firenze 1949, pp. 1702-1704, and Y. DALSACE, *La circoncision dans le judaïsme*, in V. Fortier (ed.), *La circoncision rituelle. Enjeux de droit, enjeux de vérité*, Les Presses Universitaires de Strasbourg (PUS), Strasbourg, 2016, pp. 19-24. Concerning the circumcision between Muslims, who practice it for reasons of purity as indicated by the *Sunna*, cf. M. ABOU RAMADAN, *Le débats sur la circoncision en droit musulman classique et contemporaine*, in V. Fortier (ed.), *La circoncision rituelle*, cit., pp. 25-38.

² Cf., *ex plurimis*, F. CASTRO, *Il modello islamico*, Giappichelli, Torino, 2007.



“cultural-religious” circumcision with all the issues that it entails, in particular with regard to the possible *vulnus* to the right to equal religious freedom. In the former case, circumcision, referred to a highly religious organized institutionalized religious group in Italy such as the Jewish community, is purely confessional, having the effect of invoking exonerating circumstances; in the case of Muslims, who form a group lacking in common understanding, however, the justification does not work automatically, since it is necessary to distinguish between new-born circumcision similar to the Jewish one and circumcision carried out on more mature minors, which is closer in treatment to cultural, ethnic circumcision. Finally, in the latter case the punitive treatment means that the fact is treated by right like any injury.

And so, in dealing with such a complex phenomenon, some documents from the Parliamentary Assembly of the Council of Europe tend to consider such a practice exclusively as a possible attack on children’s physical integrity, without dwelling on the perspective relating to the right of religious freedom and the potential inclusive value of the “acknowledgement” in the interest of a universal citizenship, a future development of wider far broader reach lying behind the mere practice of circumcision³. It is this future development that we will consider in this paper.

³Even if European rights do not completely ignore the religious profiles of circumcision, there is, however, a negative trend in this regard. The case of Norway is exemplary: “(D)uring the buildup to the general election in December, several political parties have discussed the question of a ban on the circumcision of baby boys, a procedure that was subject to heated debate a few years back, leading to the adoption of the Act on Ritual Circumcision of Baby Boys in 2014, in order to bring the procedure into the conventional health system [...]. While the projected number of 2000 circumcisions per year based on the proportion of Muslims and Jews in the population has proven greatly exaggerated, the law has generated a considerable number of conscientious objections from doctors who refuse to perform the procedure. Although only the right-wing Progress Party, currently part of the ruling coalition, has officially called for a ban on the procedure, several other parties have discussed similar regulations”, on <http://www.eurel.info/spip.php?article3297&lang=en> (last accessed: 2 December 2018). Lastly, in Iceland there is debate in strong terms, on a controversial bill aimed at criminalizing the same ritual circumcision. Cf., <https://grapevine.is/news/2018/03/16/not-so-cut-and-dry-the-circumcision-controversy-continues/>; <https://grapevine.is/news/2018/04/26/ban-on-circumcision-to-be-dismissed-in-parliament/>; <https://www.israelnationalnews.com/News/News.aspx/245193> (last accessed: 2 December 2018).



2 - Circumcision in the acts of the Parliamentary Assembly of the Council of Europe: the issues covered

The position of the Parliamentary Assembly of the Council of Europe is articulated, first and foremost, in the Resolution 1952 (2013)⁴ and in the Recommendation 2023 (2013)⁵, both of which are expounded in this way:

⁴ Cf. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20174&lang=en> (last accessed: 2 December 2018):

"[...] 2. The Parliamentary Assembly is particularly worried about a category of violation of the physical integrity of children, which supporters of the procedures tend to present as beneficial to the children themselves despite clear evidence to the contrary. This includes, among others, female genital mutilation, the circumcision of young boys for religious reasons, early childhood medical interventions in the case of intersex children, and the submission to, or coercion of, children into piercings, tattoos or plastic surgery.

[...] 5. The Assembly itself has adopted numerous texts drawing attention to various forms of violence inflicted upon children in bad faith (sexual violence in different contexts, violence in schools, domestic violence, etc.). It continues to fight against different forms of violence inflicted upon children via different promotional activities and campaigns (domestic violence, sexual violence). However, it has never looked into the category of non-medically justified violations of children's physical integrity which may have a long-lasting impact on their lives.

[...] 7. The Assembly therefore calls on member States to:

7.1. examine the prevalence of different categories of non-medically justified operations and interventions impacting on the physical integrity of children in their respective countries, as well as the specific practices related to them, and to carefully consider them in light of the best interests of the child in order to define specific lines of action for each of them;

7.2. initiate focused awareness-raising measures for each of these categories of violation of the physical integrity of children, to be carried out in the specific contexts where information may best be conveyed to families, such as the medical sector (hospitals and individual practitioners), schools, religious communities or service providers;

[...] 7.4. initiate a public debate, including intercultural and interreligious dialogue, aimed at reaching a large consensus on the rights of children to protection against violations of their physical integrity according to human rights standards;

7.5. take the following measures with regard to specific categories of violation of children's physical integrity:

[...] 7.5.2. clearly define the medical, sanitary and other conditions to be ensured for practices which are today widely carried out in certain religious communities, such as the non-medically justified circumcision of young boys;

[...] 7.7. raise awareness about the need to ensure the participation of children in decisions concerning their physical integrity wherever appropriate and possible, and to adopt specific legal provisions to ensure that certain operations and practices will not be carried out before a child is old enough to be consulted".

⁵ Cf. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20176&lang=en>



“Children’s right to physical integrity” and both also deal with male circumcision. In these acts, non-therapeutic circumcision - related to other very different inhuman and degrading procedures - is highlighted exclusively as regards the private and criminal nature of the procedure, on the grounds of the contractual and extra-contractual it implies (just think about the crimes of personal harming or abusive practice within the medical profession)⁶. And all this when, as has just been affirmed, non-therapeutic circumcision assumes further “confessional-religious” significance and essential “rituals”, which are undoubtedly manifestations of religious freedoms, insofar as they apply to basic aspects of the religious identity of people tied to non-majority cultural-religious traditions (in Europe) and interesting basic options for the same religious freedom starting from the right for a minor to religious education from their parents and the right for that same minor to be able to belong to a religious community⁷.

(last accessed: 2 December 2018):

[...] 3. The Assembly points out, however, that a certain category of human rights violations against children is not yet explicitly covered by any international or European policy or legal instrument: the medically unjustified violations of children’s physical integrity as specified in Assembly Resolution 1952 (2013).

4. With the purpose of reinforcing the protection of children’s rights and well-being at the European level, the Assembly invites the Committee of Ministers to:

4.1. take fully into account the issue of children’s right to physical integrity when preparing and adopting its new strategy for the rights of the child as of 2015, in particular as regards the fight against all forms of violence against children and the promotion of child participation in decisions concerning them [...]”.

⁶ Cf., *ex plurimis*, M.C. VENUTI, *Mutilazioni sessuali e pratiche rituali nel diritto civile*, in S. Canestrari, G. Ferrando, C.M. Mazzoni, S. Rodotà, P. Zatti (eds.), *Il governo del corpo*, Giuffrè, Milano, 2011, pp. 657-713; F. BASILE, *I delitti contro la vita e l’incolumità individuale (percosse, lesioni personali, mutilazioni genitali femminili, omicidio preterintenzionale, morte o lesione conseguenza di altro delitto, rissa, abbandono di minori o incapaci, omissione di soccorso)*, in G. Marinucci, E. Dolcini (eds.), *Trattato di diritto penale, Parte speciale, II*, Cedam, Padova, 2015, pp. 123-172. The same attention to the civil and criminal profiles of non-therapeutic circumcision can be found in most of the European countries: cf. B. KRESSE, *La circoncision rituelle au regard du droit allemand*, in V. Fortier (ed.), *La circoncision rituelle*, cit., pp. 130-135; L.L. CHRISTIANS, X. DELGRANGE, H. LEROUXEL, *La circoncision rituelle en droit belge*, in V. Fortier (ed.), *La circoncision rituelle*, cit., pp. 163-166; V. FORTIER, J. DUGNE, J. LELIEUR, F. VIALLA, *La circoncision rituelle au regard du droit français*, in V. Fortier (ed.), *La circoncision rituelle*, cit., pp. 197-207; M. FOX, M. GIBSON, S. LANGLAUDE, *Ritual male circumcision in the United Kingdom*, in V. Fortier (ed.), *La circoncision rituelle*, cit., pp. 209-226; I. BRIONES, *La circoncision rituelle en Espagne*, in V. Fortier (ed.), *La circoncision rituelle*, cit., pp. 270-280.

⁷ Cf. G. GONZALES, F. CURTIT, *La circoncision en droit international, un rite religieux au filtre de l’intérêt supérieur de l’enfant*, in V. Fortier (ed.), *La circoncision rituelle*, cit., p. 113; T. DI IORIO, *Segni sul corpo e ferite nell’anima. Manipolazione degli organi genitali dei minori e*



It is clear that such a 'generic' and not 'specific' approach towards non-therapeutic circumcision by the parliamentary Assembly of the Council of Europe forgets about, or avoids dealing with the delicate balance between the fundamental rights in question, with the certain consequence of limiting the enjoyment of the (universal) right to religious freedom.

Nevertheless, at the same time by ignoring the right to religious freedom this approach ends up inhibiting the very development of a citizenship that is a guarantee of full integration of a non-majority and/or "non-traditional" religious community". It overlooks the possibility and functionality of alternative paths, both inclusive and integrative for example of cultural, health or criminal mediation which are able to include as "citizens" (in a broader, shared ethical perspective) believers of different religions and cultures, by facing openly the so-called intercultural citizenship without sidestepping the delicate issues linked to it⁸.

These concerns seem to have found expression in the Resolution 2076 (2015)⁹ and in the Recommendation 2080 (2015)¹⁰ of the Parliamentary Assembly of the Council of Europe on the "freedom for religion and to live together in a democratic society", and which would seem to show a partial but important change in sensitivity.

Indeed, in one respect paragraph 9 of Resolution 2076 (2015) is reminiscent of Resolution 1952 (2013) on circumcision, continuing to reiterate the rights of minors to physical integrity. On the other hand, the same document opens up in some way to non-therapeutic circumcision through the suggestion of a sort of arrangement, or namely laying down conditions whereby the practice must be carried out by trained, skilled personnel, "in appropriate medical health facilities", once the parents have been informed of any potential risk and counterindication that may result from the procedure¹¹. Moreover, the Resolution frames the circumcision

diritti violati, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (www.statoechiese.it), 25/2016, pp. 18-19.

⁸ Cf. P. CONSORTI, A. VALDAMBRINI, *Mediazione sociale. Riflessioni teoriche e buone pratiche*, Pisa University Press, Pisa, 2015; P. CONSORTI, *Conflitti, mediazione e diritto interculturale*, Pisa University Press, Pisa, 2013. About the theme of citizenship in an intercultural and 'cosmopolitan' perspective, cf. M. RICCA, *Pantheon: agenda della laicità interculturale*, Torri del Vento, Palermo, 2012, p. 81.

⁹ Cf. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22199&lang=en> (last accessed: 2 December 2018).

¹⁰ Cf. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22200&lang=en> (last accessed: 2 December 2018).

¹¹ Cf. § 9 Resolution 2076 (2015): "As far as circumcision of young boys is concerned, the Assembly refers to its Resolution 1952 (2013) on children's right to physical integrity and,



practice within the chapter devoted to the “Freedom of religion and living together in a democratic society” and no longer simply in the one on the “freedom of children’s physical integrity” which is indeed evoked but loses its exclusivist central position. Then - and it is here that we essentially find the change in sensitivity - paragraph 8 invites States to seek “*reasonable accommodations*” in order to guarantee equality that is effective and not merely formal in the right to freedom of religion¹².

Finally, it is worth noting that in paragraph 3 in the same document, there is the acknowledgement in general terms that “churches and religious organisations are an integral part of civil society”¹³, while in paragraph 5 “religious affiliation” is recognised as being a “key element” in the identity of many European citizens, just as the freedom to live according to the practices of one’s own religion is identified as an “element of the right of the freedom of religion safeguarded by art. 9 in the European Convention of Human Rights” (a freedom which may at times encounter restrictions as regards “a fair balance between conflicting interests”)¹⁴.

out of a concern to protect children’s rights which the Jewish and Muslim communities surely share, recommends that member States provide for ritual circumcision of children not to be allowed unless practised by a person with the requisite training and skill, in appropriate medical and health conditions. Furthermore, the parents must be duly informed of any potential medical risk or possible contraindications and take these into account when deciding what is best for their child, bearing in mind that the child’s interest must be considered the first priority”.

¹² Cf. § 8 Resolution 2076 (2015): «Certain religious practices remain controversial within national communities. Albeit in different ways, the wearing of full-face veils, circumcision of young boys and ritual slaughter are divisive issues and the Assembly is aware of the fact that there is no consensus among Council of Europe member States on these matters. Other religious practices may also provoke tensions, for example in the workplace. In this context, while it is aware that States Parties to the European Convention on Human Rights have a wide margin of discretion in this field, the Assembly invites States to seek “reasonable accommodations” with a view to guaranteeing equality that is effective, and not merely formal, in the right to freedom of religion».

¹³ Cf. § 3 Resolution 2076 (2015): «Churches and religious organisations are an integral part of civil society and must, with secular organisations, take part in the life of society. National authorities should take more account of religious communities’ potential to work for dialogue, mutual recognition and solidarity. For their part, those communities have a fundamental duty, which they must fully assume, to promote the shared values and principles which underpin “living together” in our democratic societies».

¹⁴ Cf. § 5 Resolution 2076 (2015): “Religious affiliation is, for many European citizens, a key element of their identities. That affiliation is also expressed through worship and compliance with religious practices. Freedom to live according to those practices is one element of the right to freedom of religion safeguarded by Article 9 of the European Convention on Human Rights. That right coexists with the fundamental rights of others and with the right of everyone to live in a space of socialisation which facilitates living



Above all, the self-same Resolution seems aware of the need to move towards the realisation of an inclusive, pluralistic European citizenship. It is essential, then, to draw attention to the issue of citizenship, which is an "acquired" status in a society that is aware of its own multicultural, multi-ethnic and multi-religious nature, the multifaceted result of integration.

3 - Citizenship and religious pluralism

As has been mentioned, even in Italy "religion is very present in immigrants' lives, even when the inclusion process and the advancement of second generations lay the basis to becoming Italian citizens"¹⁵. This statement almost matches the consideration whereby «the members of the community society "must", by law, enjoy some basic liberties», among which, and by no means least important, are those demanding freedom of religion and conscience¹⁶.

Furthermore, if "religion [...] is the place where human beings redesign their identity", with its plural expressions, this in turn constitutes the basic content of citizenship as the governing dimension of the pluralistic layout of contemporary society¹⁷. Religious pluralism, in turn, enhances the system of values in society by expressing where it is actually guaranteed, that concept of the right for religious freedom which jurisprudence in the Court in Strasbourg considers to be essential for contemporary democracy (consider the Kokkinakis sentence).

together. That may justify the introduction of restrictions on certain religious practices; however, in conformity with Article 9.2 of the European Convention on Human Rights, the right to freedom of religion can only be submitted to those limitations which, as prescribed by law, constitute necessary measures, in a democratic society, in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. States Parties to the Convention should also strive to find a fair balance between conflicting interests resulting from the exercise of freedom of thought, conscience and religion, and the other human rights and fundamental freedoms, such as the right to respect for private and family life, the right to freedom of expression and the prohibition of discrimination".

¹⁵ R. RICUCCI, *Cittadini senza cittadinanza. Immigrati, seconde e altre generazioni: pratiche quotidiane tra inclusione ed estraneità*, Edizioni Seb 27, Torino, 2015, p. 135.

¹⁶ T. PARSONS, *Comunità societaria e pluralismo. Le differenze etniche e religiose nel complesso della cittadinanza*, G. Sciortino (ed.), Franco Angeli, Milano, 1994, p. 122.

¹⁷ R. SANTORO, *Appartenenza confessionale e diritti di cittadinanza nell'Unione Europea*, Cacucci Editore, Bari, 2008, p. 15.



Consequently, guaranteeing the right to religious freedom and, indeed, to religious pluralism, becomes the constitutive requisite for democratic-constitutional citizenship.

There is no lack of resistance to the building of such citizenship. This is expressed, above all, in the Nation States or by means of ethnocentric forms of reaction in the face of complex phenomena linked to the process of globalisation: from this rises the great debate with severe political-ideological repercussions regarding the so-called “living together” and social cohesion¹⁸.

Such frequent, blatant resistance, leads to stereotyping and fear of the migrant (easily pinpointed as ‘the Muslim’) identified as the one responsible for the downward spiralling homogenisation of the “quality of society” in Europe by means of the erosion of traditional cultural, religious and civic values which is seen as a loss and not as a transformation¹⁹.

Such resistance has a great impact on the European environments and institutions, which are constitutionally more protected from specific withdrawal. I refer in particular to the initial attitude of the Parliamentary Assembly of the Council of Europe mentioned at the beginning of this paper. By involving some sensitive issues regarding the right to religious freedom, the risk was that of hindering an integrative citizenship process in the making.

4 - Integrative citizenship, religious freedom and Europe’s “double standard” politics

Having said this, in view of the fact that society is increasingly pluralistic and multicultural, Europe is tempted by a policy of “double standards”²⁰. Such a policy, which leads both to an abuse of rational equality transformed

¹⁸ Cf. L. PRIOU-ALIBERT, *Le vivre-ensemble comme but légitime de l’atteinte à certains droits?*, in *Dalloz Actualité*, 13 January 2015, on https://dallos_actualite.fr/flash/vivre-ensemble-comme-legitime-de-l-atteinte-certains-droits#.XETxsFVKjIU (last accessed: 2 December 2018). On post-truth, cf. *Oxford Dictionaries* on <https://en.oxforddictionaries.com/word-of-the-year/word-of-the-year-2016>, and R. KEYES, *The Post-Truth Era: Dishonesty and Deception in Contemporary Life*, St. Martin’s Press, New York, 2004.

¹⁹ Cf. M. SANTERINI, *Vivere nel pluralismo. L’educazione alla cittadinanza in prospettiva interculturale*, on <http://for.indire.it/esteri4/risorse/pdf/santerini.pdf> (last accessed: 2 December 2018).

²⁰ Cf. A. FERRARI, *Religious Freedom and the Public-Private Divide: A Broken Promise for Europe?* in S. Ferrari, S. Pastorelli (eds.), *Religion in Public Spaces. A European perspectives*, Ashgate, Farnham, 2012, pp. 71-91.



into a tool of unreasonable diversified treatment on the basis of the various religious faiths, as well as to the distortion of the “neutrality” tool, draws attention to “a further defence for Europe’s fortress”²¹ taking the form of a widespread aversion to non-traditional religions and, more generally of a negative preconception regarding external shows of religious freedom which are not kept fully in check by European law. Such tendencies have a profound bearing on the question of citizenship.

European citizenship was defined by article 20 in the Treaty of the Functioning of the European Union (TFUE) and article 9 in the Treaties of the European Union (TUE)²² “not according to universal principles, on the rules and regulations laid down by every individual country for their own citizens”²³. This entails the risk that nationalistic and exclusivistic approaches are adopted, thus building in a veritable wall between citizen and foreigner who is then regarded as culturally and religiously alien. There is the same risk when the individual Union States are granted the responsibility to choose the subjects qualified to represent interests connected with exercising the right to religious freedom²⁴.

So, if the present situation would seem to be dishearteningly characterised as being a parallel, concurrent stagnation on both fronts, the one regarding citizenship and also that of religious freedom due to the prudential and security role carried out by the Nation States, we cannot but

²¹ R. RICUCCI, *Cittadini senza cittadinanza*, cit., pp. 61-62.

²² Article 20 TFUE: “1. [C]itizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship”; Article 9 TUE: “[I]n all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship”.

²³ R. RICUCCI, *Cittadini senza cittadinanza*, cit., pp. 63-64.

²⁴ Cf. R. MAZZOLA, *Confessioni, organizzazioni filosofiche e associazioni religiose nell’Unione Europea tra speranze disilluse e problemi emergenti*, in *Stato, Chiese e pluralismo confessionale*, cit., 3/2014, p. 2 ff. Cf. *Decision of the European Ombudsman in his inquiry into complaint 2097/2011/RA against the European Commission*, 25 January 2013, § 48, on <http://www.ombudsman.europa.eu/cases/decision.faces/en/49026/html.bookmark> (last accessed: 2 December 2018): «[I]n particular, it cannot, in itself, call into question “the status under national law of churches, religious associations or communities, and philosophical and non-confessional organisations”»; *Guidelines on the implementation of article 17 TFEU by the European Commission*, 20 July 2013, Article 1.1, on http://ec.europa.eu/bepa/pdf/dialogues/guide_linesimplementation-art-17.pdf: “[D]ialogue partners [of the Commission] can be churches, religious associations or communities as well as philosophical and non-confessional organisations that are recognized or registered as such at national level and adhere to European values”.



insist on the continuation of the search for a 'European' alternative, which would guarantee the contextual promotion of citizenship and the right to religious freedom in the Member states.

Indeed, the pro-European vision risks waning, and along with the vision of post-World War II constitutional universalism, it is becoming increasingly likely that basic rights tied to common humanity, including the right for religious freedom, will be seriously downgraded, and will quickly lose their balance, particularly in the political, legislative and administrative sphere²⁵ and basically, they will go back to being of intimate nature, deprived of public importance, consubstantial to every right to citizenship²⁶. The impression, however, is that when the Court in Strasbourg solemnly attests to the significance of the collective nature of the right of religious freedom, such a consideration is still inadequate and basically functions according to the needs of civic 'integration'²⁷. Nevertheless, to scrutinize the role of the collective scope for the right of religious freedom within the process of civic integration is inescapable if the consequences of the recognition of the so-called pluralistic principle are to be taken seriously.

Moreover, the ambiguous nature of this aspect and the consequent adoption of a "double standard" has led to problematic, if not also contradictory provisions being adopted, in relation to the needs for paths for integration for non-majority or non-traditional cultures being laid down, placing doubt on the actual feasibility of having citizenship which is at one and the same time 'universal', 'integrated' and 'pluralistic'.

²⁵ This is even more evident in the *EU Citizenship Report 2013* - on http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport_en.pdf (last accessed: 2 December 2018) - which does not consider the issue of inclusion and the reference to universal principles. It is therefore not a coincidence that the European Parliament has been invited, shortly thereafter, to "promote value-based education": cf. the final common recommendations of the Presidential Troika of the *EU Youth Conference 2015 held in Luxembourg and the European Parliament resolution of 19 January 2016 on the role of intercultural dialogue, cultural diversity and education in promoting EU fundamental values (2015/2139(INI))*, on <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0005+0+DOC+PDF+V0//EN> (last accessed: 2 December 2018).

²⁶ Cf. A. ANGELUCCI, *L'Europa e i musulmani: quale spazio di libertà religiosa?*, in A. Pin, C. Pellegrino (eds.), *Europa e Islam*, Marsilio, Venezia, 2016.

²⁷ Cf., for example, the prohibition of wearing religious symbols in the public space: their exclusion from this area is a guarantee, according to the Court, of 'civic' integration and cohabitation. In this sense, the Strasbourg Court seems to express its preference for an individual type of religiosity. Cf., for an interesting analogy, B.L. BERGER, *Law's Religion. Religious Difference and the Claims of Constitutionalism*, University of Toronto Press, Toronto, Buffalo, London, 2015, pp. 62-104.



5 - Conclusions

The treatment reserved to the integral, effective exercising of the right of religious freedom in Europe, thus becomes litmus paper in the process of building an integral effective citizenship. In other words, it can be claimed that with the Resolution 2076 (2015) and the Recommendation 2080 (2015) the freedom to live according to the customs of one's own religion is recognised as an essential element of "living together" so much so that on one hand "the Assembly believes that the principle of secularity does not demand the elimination of religion from the social space"²⁸ and on the other it warns States how even decisions taken in the name of the "neutrality of the State" can give rise to discrimination which is contrary to the right to religious freedom, and to the same principle of secularity when members of a religious community feel they do not enjoy "full membership" within the national community, or that they are not considered fully-fledged citizens because of their religious practices²⁹.

These are important considerations, especially since the Luxembourg Court's sentence of 14 March 2017 (Grand Chamber) in the trial C157/15, *Samira Achbita e Centrum voor gelijkheid van kansen en voor racismebestrijding against G4S Secure Solutions NV*³⁰, in which the prohibition imposed on the employee on the part of the employer (private) is legitimised in the name of alleged neutrality, which is in fact "only apparent since it leads to a particular disadvantage for those people who belong to a religion that imposes or advises on the wearing of a specific type

²⁸ Cf. § 6 Resolution 2076 (2015): "Furthermore, the Assembly considers that the principle of secularity does not require the elimination of religion from social space; quite the contrary, this principle, properly interpreted and implemented, protects the possibility for different beliefs, religious and non-religious, to coexist peacefully while all parties respect shared principles and values".

²⁹ Cf. § 7 Resolution 2076 (2015): «Legislatures and governments must take account of the fact that political decisions taken in the name of the "neutrality of the State" may, in practice, give rise to disguised discrimination against minority religions, which is incompatible with the right to freedom of religion and the principle of secularity. Worse, such decisions may give rise to a feeling among the members of the communities concerned that they are not considered full members of the national community. However, religious groups must be aware that any conviction or religious practice that violates human rights is not acceptable».

³⁰ Cf. <http://curia.europa.eu/juris/document/document.jsf?docid=188852&pageIndex=0&doclang=IT&=1> (last accessed: 2 December 2018).



of clothing”³¹. Indeed, the Court’s decision is adopted in the name of neutrality which, nevertheless, gives rise to discrimination of those who belong to the Muslim faith substantiating their exclusion from the community of citizens due to a religious practice, albeit private, as is *mutatis mutandis* the one regarding ritual circumcision, namely, whilst bearing differences in appearance not being public but in public.

The Assembly’s approach of the creation of a democratic citizenship by means of the development of shared processes also with the religious communities in any case seems positive but includes a ‘nota bene’³². The principle of “living together” is a ‘vague’ notion conceptually very close to the “principle of majority”³³. From the Assembly it was used to promote the freedom to live according to the customs of one’s own religion but in a different context, the ECHR, it is more often (in a certain sense ab)used in order to limit the use of other customs (e.g. the veil) precisely because of its vagueness and the possibility to raise it as a bastion in defence of a majority which is culturally predetermined that wishes to assimilate in order to “[...] live together”. It is, therefore, about an approach able to reassess an inclusive secularity on the condition that it is objective in its notion of “living together” by linking it to concepts which are less transient such as pluralism and plural citizenship (in which civic and religious affiliation can live together) in order to contrast all forms of fanaticism and extremism, reviving the affiliation to a Europe of the peoples and not merely of the economies.

³¹ N. COLAIANNI, *Il velo delle donne musulmane tra libertà di religione e libertà d’impresa. Prime osservazioni alla sentenza della Corte di giustizia sul divieto di indossare il velo sul luogo di lavoro*, in *Stato, Chiese e pluralismo confessionale*, cit., 11/2017, p. 3.

³² Cf. § 13.3.1 Resolution 2076 (2015): «[...] develop projects in collaboration with religious communities to promote shared values and “living together” [...]». Cf. Recommendation 2080 (2015), § 3.4.: «develop synergies between the platform and the thematic meetings on the religious dimension of intercultural dialogue with other Council of Europe projects and initiatives in the field of education, culture and youth, such as the “No Hate Speech Movement - Young People for Human Rights Online”, “Education for Democratic Citizenship and Human Rights” and “Intercultural cities”».

³³ Thus we read in the pages relating to the opinions of the judges Spano and Karakas in the ruling by the European Court of Human Rights, *Balcacemi et Oussar v Belgium*, 11 July 2017 (on [https://hudoc.echr.coe.int/fre#{"fulltext":\["oussar"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["001-175141"\]}](https://hudoc.echr.coe.int/fre#{)) - last accessed: 2 December 2018).