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Anti-mosque act, FOB report: “It violates EU’s rules”

Rome, 11 May 2015



The “anti-mosque act” violates EU’s rules. That’s what emerges from a report by FOB (European Federation for Freedom of Belief), sent to the Council of Europe, the European Court of Human Rights, the proper committees, coordinators and bureaus at the European Parliament and the OSCE/ODIHR, with the support of IRF Roundtable. FOB is a Federation of Associations - including **Soteria International**, **European Coordination for Freedom of Conscience**, **LAYMS** and **AIDRL** -, independent from any party, that advocates freedom of thought, religion and belief.

FOB (European Federation for Freedom of Belief) expresses deep concern about the Italian Lombardy law on worship places aka “anti-mosque act”. The close examination elaborated by the vice-chairman, Dr. Alessandro Amicarelli, on behalf of FOB shows the picture of a regulation which, besides being conflicting with the Italian Constitution, violates also the principles of the European Convention on Human Rights and those included in the Guidelines of the FORB programme issued by the Council of the EU, and that Italy is indeed called to respect. FOB also remarks that what has been underlined by the European Court of Human Rights on the occasion of several cases of disputes on the same subject is completely disregarded by the Lombardy law, opening further the possibility, in presence of all the prescribed requirements, of filing a complaint before the European Court in Strasbourg against the content of this piece of legislation.

The said legislation “*Legge regionale n. 62/2015 in materia di costruzione di luoghi di culto*” seriously discriminates all religious minorities, and intensifies their condition of disparity comparing to the Catholic Church: FOB hopes it will be withdrawn as soon as possible, in Lombardy as well as in Veneto where, in the weeks following to the approval of the Lombardy law, a similar bill has been introduced. FOB eventually reasserts the necessity to allow all Italians and all the people on the territory to enjoy same rights to freedom of religion and belief without discriminations that go even further their populistic origins and in fact the content of the law now affects all minority denominations, regardless they obtained or not an agreement with the Italian government.

*Board of Directors FOB (Freedom of Belief)
European Federation for Freedom Of Belief*



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Anti-mosque act, FOB report

Rome, 11 May 2015

To:

Mrs. **Anne Brasseur**, President of the PACE

Mr. **Mark Neville**, Head Private Office of the President

Mr. **James Clappison**, Chairman of the Committee on Legal Affairs and Human Rights

Mr. **Markus Adelsbach**, Head of the Secretariat of the Bureau of the Assembly

Mr. **Valeriu Ghiletschi**, Chairman of the Committee on Social Affairs, Health and sustainable development

Gisela Wurm, President of the Committee on Equality and Non-Discrimination

Pedro Agramunt, President of the EPP Group

Andreas Gross, President of the Socialists Group

Alexei Pushkov, President of the EDG Group

Jordi Xucla, President of the ALDE Group

Tiny Cox, President of the UEL Group

Robert-Jan Uhl, Legislative support officer in ODIHR (OSCE)

De Jong Dennis, co-chair of the European Parliament Intergroup on FoRB and RT

Katharina Von Schnurbein, European Commission

Stephanos Stavros, secretary of the ECRI at the Council of Europe.

Heiner Bielefeldt, UN Special Rapporteur on FoRB.

Greg Mitchell, co-chair of the IRF Roundtable in WDC.

Marie-Claire Foblets, coordinator of the Religare Project



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Dear ...

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The close examination elaborated by the vice-chairman, Dr. Alessandro Amicarelli, on behalf of FOB shows the picture of a regulation which, besides being conflicting with the Italian Constitution, violates also the principles of the European Convention on Human Rights and those included in the Guidelines of the FoRB programme issued by the Council of the EU, and that Italy is indeed called to respect. FOB also remarks that what has been underlined by the European Court of Human Rights on the occasion of several cases of disputes on the same subject is completely disregarded by the Lombardy law, opening further the possibility, in presence of all the prescribed requirements, of filing a complaint before the European Court in Strasbourg against the content of this piece of legislation.

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Comment on Lombardy law on worship places aka “anti-mosque act”

Rome, 11 May 2015

On the 27th of January 2015 the legislative assembly of Lombardy (Consiglio regionale della Lombardia), Italy has issued a piece of legislation no. 62/2015 on the construction of worship places titled “*Modifiche alla legge regionale 11 marzo 2005, n. 12 (Legge per il governo del territorio) – Principi per la pianificazione delle attrezzature per servizi religiosi*”.

This new law has been adopted in order to amend the already implemented law no. 12 of 2005 and declared partly non complying with the Italian Constitution by the Italian Constitutional Court in 2011.

Aim of the new act is clearly to impose stricter and tougher provisions on minority religion groups for which it becomes nearly impossible to comply with the law and then will be unable to build up any new religious buildings within the regional territory of Lombardy.

According to art. 72 par. 8 of the legislation as now amended, the new provisions do not have retroactive efficacy, namely it will not apply also to the buildings used for religious purposes as at the date it comes into force becoming effective.

It has to be noticed that such a retroactive effect was instead enforced when the previous legislation was implemented and this caused several churches and temples, owned and managed by minority groups, be forcibly closed down by the authorities as non complying with the law provisions.

The new legislation and the previous one, still enforced as now amended by the new one, for the reasons we will peruse afterwards below, are only applied to the minority religions and not also to the one which is deemed to be the largest and indeed the oldest one, i.e. the Roman Catholic religion.

In the recent years any attempt to build up a religious building for the local Muslim community – which counts around 100.000 Italian and foreign people – was completely unsuccessful in Lombardy.

This was due to the many restrictions in the legislation: first of all a previous agreement required by law between the local authorities – Milan municipality in the specific case – and the religious community applying for the agreement – the Muslim community in that case.

Such an agreement could not be achieved for the simple reason that, with a series of stratagems, the authorities have delayed the procedure for long time, for instance requiring the different Muslim communities be united in order to represent the Muslim community as much at large as possible.



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Every effort taken and even a “super-association” of associations being constituted unifying some 80% of the Muslim communities of Milan and surrounding areas, was considered not to be enough in order to reach any agreement and years of works were literally wasted for getting no positive results for a community representing approximately the 10% of the local population.

The authorities’ behaviour was indeed based on a legislation whose only real aim is to prevent the construction of any new religious building by minority religious groups, namely Islam and other groups including those often referred to as sects or cults.

Without focussing too long on considerations about the lack of knowledge by the local authorities about different traditions inside religious groups, it is a fact that should such an agreement be required in order to build a Christian church, never would such a church be built for the simple reason there are several different Christian denominations that would not co-operate in order to get the authorisation or license for the construction of a new religious building. Every religion and every denomination has a right to build up their own religious building no matter how many people belong to the community. (see, inter alia, European Court of Human Rights, Judgement on case Church of Scientology of Moscow v. Russia federation, 2007 when the European Court considered it a stratagem, contrary to the European Convention, the behaviour of preventing a religious group from operating in the country on considerations based on the number of people belonging to that group).

Going straight to the point of the new law and its provisions, in fact it introduces a series of new criteria and entails particularly concerning the urbanistic and town-planning field.

Such new criteria and entails are added to the previously enforced ones, namely concerning representativeness of the groups and other administrative aspects too.

Three are the main critic points in the new legislation :

1. the groups to which they apply; 2. the powers of authorities during the negotiations and 3. the additional requirements the communities have to meet in order to get the building license.

1. the groups to which the law applies, that include also those with an agreement with the State based on art. 8 of the Constitution and even all other groups largely present and organised within the regional territory;
2. the need for the authorities during the negotiations with the religious groups to acquire advice from relevant organisations, committees of citizens, representatives of the law enforcement agencies, police headquarters, and prefectures with the aim of investigating and evaluating any public security issues, along with the possibility for the authorities to hold a public referendum on the matter;



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3. a series of ambiguous and weird requirements such as the obligation that the new building be constructed in an area of the town with adequately large roads that may allow the enhanced traffic not to congest the circulation; and in the lack of such large roads that they be constructed with funds from the religious community building up the new religious place; other requirement is that every new building be provided with ample car parking areas equalling at least the 200% of the gross floor area of the worship building; furthermore at their own expenses the communities have to arrange for the entire area being monitored with CCTV system being directly under the control of the police.

As per point concerning the groups to which the new provisions apply, according to art. 1 par. b of the new legislation (amending art. 70 par. 2 of the previous legislation dated 2005), the Lombardy regulation does ALSO (*anche* in Italian) apply to the entities of “other” religious confessions, that have concluded an Agreement with the State authorities on the basis of art. 8 par. 3 of the Italian Constitution and that such agreement has been approved by law.

According to art. 1 par. b (amending art. 70 par. 2 bis of the previous legislation dated 2005) has also emphasised that the new regulations does EVEN (*altresi* in Italian) apply to the entities of those religious confessions that are widely spread and organised and significant, i.e. well represented in numerical terms, over the regional territory.

It has to be said that the expression “other” religion in this field of Italian law refers to all the religions other than the Roman Catholic.

The referral to other religious entities that have to be widely spread and organised and significantly present in the territory (i.e. numerically speaking) implicitly refers to Islam.

The above-mentioned expressions “also” and “even” do imply that recipients of the new regulation – which explicitly limit for instance the external religious freedom of religious groups in respect of their right to assembly in order to pray – are all the religions and their entities operating within the Lombardy territory; including those having an Agreement with the State and those widely present over the territory as well as those that don’t have such an agreement and those that are not widely present in the region.

The expressions “also” and “even” are indeed aimed at extending the efficacy of the regulation on all the religious groups in the territory, those regulated or not, namely with or without an agreement and those more or less widespread over the territory.

This makes it clear that even though the local authorities – linked to political parties that advocate against immigrants – have adopted the new legislation in order to prevent religious minorities belonging to immigrants from building up new religious places, instead the new legislation, on the basis of the



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said provisions should apply to all the religious entities within the Lombardy territory, belonged to by immigrants and local citizens too.

It is a fact that the majority of the immigrants belong to denominations linked to the Christian Charismatic (Pentecostal) tradition as well as to the Islamic tradition.

In many cases in Italy Pentecostal entities are affiliated to the Association of Assemblies of God in Italy, which has an Agreement with the State on the basis of art. 8 of the Constitution and as such they fall under the provisions of art. 1 par. b (2.) of the new regulation which reads “also”; and practitioners of Islam fall under the provisions of art. 1 par. b (2 bis), which reads “even”, being present widely and consistently over the territory of the Lombardy region.

This will make the new regulation be applicable to both the above groups as well as to all other groups with or without an agreement and either widely or not widely present in the region including many minority groups.

Such assumptions are based on the law’s own words “also” and “even” and the reason behind the adoption of the new law and indeed its practical enforcement is to inhibit the rights of immigrants and of those belonging to groups not particularly welcome by the local authorities.

Then we can say it is very likely that the new regulation will affect the Christian communities belonging to the Charismatic tradition and will be applied to other minority Christian groups with or without an Agreement, as well as to Muslim entities and entities of different traditions and to all those groups roughly called sects and cults too; at the same time it is very unlikely that such legislation will be applied in any way to entities of the Roman Catholic Church, since even though it has an Agreement with the State, called Concordate, and is widely spread over the region territory, all the matters regarding such denomination are in fact regulated through the same Concordate, which is not a simple Agreement between the Italian Republic and a religious entity as in the case of non Catholic entities, but instead an International Agreement between two independent states, Italy and the Vatican, and whose provisions cannot be modified or non-applied through local regulations as the one passed in Lombardy.

As per the negotiation and the other weird requirements contained in this piece of legislation they clearly infringe the national and European and International human rights standards for a series of reasons such as they limit the constitutional right to equality in treatment of people whatever their religion or belief and of religious groups (art. 3 and 8 Italian Constitution) right to express and develop own personality (art. 2) and right to assembly and exteriorise own religious beliefs through external acts and worship and education too (art. 19); they infringe the content of the European Convention on Human Rights (ECHR) provisions protecting the right to religious freedom in particular art. 9 in so far as the groups to which the law applies are also overcharged with disproportionate burdens



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in comparison to other groups (art. 14 against discrimination), they are prevented from the right to assembly acknowledged by the ECHR (art. 11 on right to assembly) and as well as private and family life art. 8 ECHR.

For the same reasons such legislation is also likely to infringe the provisions of the International Covenant on Civil and Political Rights (ICCPR) of the United Nations and particularly art. 18 about freedom of thought, conscience and religion.

It has also to be said that on 23 June 2014 the Council of the European Union has issued the EU Guidelines on the promotion and protection of freedom of religion or belief (FORB Guidelines) aimed at providing a series of best practices and right ways to be followed by States in all matters of religions and beliefs and which the present legislation would literally infringe for instance in respect of right to manifest one's religion or belief (FoRB Guidelines p. 3).

Also the European Court of Human Rights has intervened several times in cases concerning the right to religious freedom issuing judgements in which the Strasbourg judges have stated that the religious communities have *ipso iure* a right to manifest their religion and practise their rituals as clearly affirmed in art. 9 of the European Convention on Human Rights which reads anyone has the right to freedom of thought, conscience and religion which includes the "...freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance" (the many ways in which religion can be exteriorised have been recalled by the European Court several times – inter alia Metropolitan Church of Bessarabia and Others v. Moldova, 2001 par. 114). On the basis of such provisions the right to have a worship place is something belonging to religious groups and individuals and does not need to be recognised by State that instead have to guarantee it; State could indeed place limitations and restrictions to the provisions of art. 9 ECHR provided, as happens with any of the human rights contained in the Convention, such restrictions are "...necessary 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" ECHR art. 9 par. 2. Furthermore States have to remain neutral and are allowed no interference in respect of most matters concerning religious freedom as the European Court has stated many times, for instance in respect of the legitimacy of the nomination of leaders appointed by the communities, such as in case Hasan and Chaush concerning the Muslim community of Bulgaria (ECtHR, 2000) or the right of the different denominations and religions, however weird or peculiar they may look to State authorities, to exist and operate in the state territory, such as in case Church of Scientology of Moscow v. Russia (ECtHR, 2007)) and indeed without any interference of the authorities in respect of any inclusion or exclusion of people from the community life such as in case of employment, being it a prerogative of groups to decide about such matter (e.g. Schut v. Germany 2010).



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In this regard there is indeed no evidence that the Lombardy legislation may meet in any way such requirements as there is no proof that a general legislation for either closing down existent religious places or preventing new ones from being built up will as such be enforced to protect public order and moral or security or other people's rights. Limitations and restrictions can certainly be placed and they have to clearly meet these requirements and accordingly States are prohibited from putting into place any discriminatory legislation only aimed at preventing minority groups from enjoying rights they are entitled to in exactly the same way like all people in the relevant countries.

As said such legislation is not aimed at being applied with retroactive effect, nonetheless as reported by local media, soon before the approval of the new legislation some buildings managed by minority groups have been visited by local law enforcement officers and this may lead to suspect the new provisions may be applied in some ways to existing buildings, as happened before, which means it can be used to close down churches and temples that do not meet the new criteria, this clearly being *contra legem* i.e. contrary to law and in the light of the European Convention on Human Rights it is done also in violation of art. 9 par. 2 which states that limitations have to be prescribed by law and be knowable by people through accessible and sufficiently clear legislation as emphasised by the European Court of Human Rights (e.g. case Liberty v. UK and Kruslin v. France); it is a fact such legislation evidently did not exist at the time the old temples had been constructed and evidently, should the new provisions be applied retroactively, we would say the Lombardy Assembly used a stratagem to deny basic human rights to a large portion of the local population on the grounds of discrimination, prejudices and illegitimate aims contrary to the content of the European Convention and of the FORB Guidelines to which both Italy is bound.

The intent of the Lombardy legislator as seen is that of discriminating against minority groups through a legislation only applying to such groups and this is contrary to law in respect of freedom of religion and non-discrimination provisions at National, European and International level too.

In the recent weeks another Northern Italian region, namely Veneto, has passed a similar legislation, and in the meantime the Italian government has promptly legally contested the Lombardy legislation for the concerns may raise also on the consideration that the legislation passed in 2005 was declared partly unconstitutional in 2011.

At that time many abusive requirements were re-called by the Constitutional Court along with several restrictions for the religious communities wishing to build up or even only renovate pre-existing temples or even wishing to change the use of a building from premises of a cultural association to worship place; it is apparent that restrictive provisions, in an even tougher form, are present in the newly passed legislation.



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The hope indeed is that such legislation be withdrawn and deleted, allowing all people in Lombardy as well as in Veneto regions and likewise in the rest of Italy may enjoy the same rights in respect of religion and belief issues and such a goal may only be reached either fairly applying the national legislation to all religious groups in compliance with European and International provisions, or re-organising the entire matter with the approval of a single piece of legislation on religious freedom at national level for all religious groups in Italy.

Alessandro Amicarelli, spokesman

on behalf of FOB,

European Federation for Freedom of Belief