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ID 1702 | PLANNING, PLURALISM AND RELIGIOUS DIVERSITY: THE SPATIAL REGULATION OF MOSQUES IN ITALY

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1 INTRODUCTION: PLURALISM, RELIGION, AND URBAN PLANNING

In recent times, regulations governing religious practices in European cities have generated widespread debate in many countries. In fact, the growing religious diversity in many cities has significant consequences on the urban environment, and primarily the new spaces that it entails (e.g. places of worship and burial grounds) and new forms of expression in public (e.g. types of dress connoting a particular religious conviction, such as the Islamic veil or the Sikh turban). These spaces and forms of

public expression engender complex problems of regulation, including specific questions related to urban planning.

In these circumstances, the otherwise abstract issues of cultural pluralism and religious freedoms suddenly become concrete and urgent within specific urban contexts (Moroni and Weberman, 2016). Consider, for instance, when a religious minority applies to the local council for planning permission to build a place of worship: in many cases, in several European countries, such applications run the risk of encountering forms of resistance – for instance, by local authorities, politicians or grassroots movements – in which the objection to the proposed scheme is framed in terms of planning issues (for some examples in different countries, see for instance: Dunn, 2001; Gale, 2005; Gale & Naylor, 2002; Germain & Gagnon, 2003; Isin & Siemiatycki, 2002; Jonker, 2005; Kuppinger 2011, 2014a, 2014b; Landman & Wessels, 2005; Qadeer and Chaudhry, 2000; Saint-Blancat & Schmidt di Friedberg, 2005; Torrekens, 2013; Vahed and Vahed, 2014; Villaroman, 2012).

Many planning theorists have attempted to untangle the complex web of issues surrounding urban pluralism and diversity in Western cities, sometimes doing so with specific reference to religious diversity (Burayidi, 2000a and 2015; Binnie et al., 2006; Dwyer, 2015; Dwyer et al., 2016; Eade, 2011; McClymont, 2015; Murtagh and Ellis, 2010; Qadeer, 1997 and 2016).

The main aim of this paper is to contribute to this debate on planning and (religious) diversity in the field of planning theory. In particular, it stresses the importance of focusing theoretically not only on positive action, but also on the role of planning and building rules, which is sometimes neglected in the discussion of many planning theorists on questions of pluralism. The starting point of our discussion is the case of a new planning law governing the construction and location of places of worship in the Lombardy region, Italy[1]. Although the issue concerns various religious minorities, this article will focus on Islam and hence on the construction of mosques, which in Italy (as elsewhere) is a frequent target of local government opposition. What concerns us here is not so much the current legislation of the Lombard authorities per se as the example that these regional regulations furnish for a critical rethinking of some fundamental issues currently affecting several Western countries and cities. In fact, the planning restrictions introduced by the Lombardy region are similar to restrictions in force in other Western countries (see for instance Gale, 2005, on the UK, Kuppinger, 2014, on Germany, Torrekens, 2013, on Belgium, and Villaroman, 2012, on Australia).

This article is divided into four sections. The first briefly describes the characteristics of religious diversity in Italy and its spatial repercussions. The second focuses on the case of the regulations governing the construction of places of worship in Lombardy, Italy. The third section contributes to the field of planning theory, with reference to ways and means of guaranteeing pluralism in cities through the tool of planning rules, suggesting some theoretical guidelines for reforming the planning system in order to promote and protect (religious) diversity. The last section draws conclusions.

2 THE FACTUAL AND LEGAL CONTEXT: RELIGIOUS DIVERSITY IN ITALY

2.1 IMMIGRATION AND RELIGIONS IN ITALY

Unlike other European countries, Italy is quite new to the phenomenon of immigration; it was not until the 1970s that the country began to see a flow of immigrants, an influx that peaked in the 1990s (Bonifazi, 2007). In 1971 the number of immigrants residing in Italy stood at around 120,000 (barely 0.2% of the population). In 1991 this figure was 356,000 (around 0.6% of the resident population). By 2015 the proportion had risen to 5,014,000 (8.2% of the overall population) (ISTAT, 2015)[2]. According to projections by ISTAT (2011), the number of immigrants in Italy will significantly increase in the coming years: the

[1] A very similar law has been recently approved (April 2016) by the Veneto Regional Council, Italy (Regional Law 12/2016).
[2] These data do not account for migrants illegally present in Italy: according to Caritas and Migrantes (2012) today these number around 500,000.

proportion of immigrants will rise to 14.6% in 2030: that is, 9.5 million immigrants out of 63.5 million residents[1].

This increase in immigrants coming to settle in the country also brings to Italy customs and religious beliefs that differ from the traditional Catholic ones. According to Caritas and Migrantes (2012), 32.9% of migrants in Italy are Muslims (1,650,000), 29.6% are Orthodox Christians (1,482,000), 19.2% Catholics (960.000), 4.4% Protestants (223,000), 2.6% Hindus (131,000), 1.9% Buddhists (97,000) (on this topic, see also ISTAT, 2015). Hence, Italy is today characterised by a stable population of non-Catholic residents, for the most part immigrants (Allievi, 2000a, 2000b), including a sizeable number of Muslims. Islam is not only the religion practised by a third of the immigrants in Italy; it is also the country's second religion after Catholicism (Introvigne & Zoccatelli, 2013)[2].

The fact that, in recent years, Italy has experienced a shift from a Catholic majority to a tapestry of diverse religions (Pace, 2013a) is inevitably causing radical changes in the Italian social fabric, since Italy for centuries was a staunchly Roman Catholic country (and Catholicism continues to be the principal religion practised by those born in the country).

2.2 THE URBAN DIMENSION OF RELIGIOUS DIVERSITY IN ITALY

The significant and permanent presence of non-Catholic immigrants in Italy has major consequences also on the urban space. One of these consequences is the emergence of new places, some of which are specifically assigned for religious purposes (e.g. places of worship and burial grounds), while others are related to a particular practice influenced by religion (e.g. halal butchers). Further novelties include new patterns affecting both individual behaviour (dress codes like the Islamic veil or the Sikh turban), and collective ones (such as collective rituals linked to religious practices or calendars) in the public sphere and space, as well as the appearance of temporary spaces characterized by the codes or sensitivities of a specific religious minority – for instance, an area of a park where a group of Muslims gathers regularly at certain hours of the day (Agrawal, 2008; Allievi, 2000b; Becci et al. 2016; Chiodelli, 2015; Gökarıksel, 2010; Knott & Vasquez, 2014; Knowles, 2013; Kuppinger, 2014c).

In Italy, Islam in particular is having a significant impact on the city's spaces. One of the principal Muslim spatial 'markers' affecting the urban landscape is represented by Islamic places of worship (Chiodelli, 2015)[3]. In Italy there are two main types of Muslim places of worship. The first type is the purpose-built mosque (or formal mosque), usually in the classic form of the building, complete with a dome, minarets and Arabic script or symbols. The second is the informal prayer-hall[4], which is usually smaller, sometimes temporary, often arranged in former warehouses, private apartments or shops (Allievi, 2010b). The informal prayer room responds to the Muslim's everyday liturgical needs, but does not achieve the critical objective of establishing public recognition and visibility of Islam in the public arena, as would the construction of a purpose-built mosque (Metcalf, 1996).

Precise data on the number of Muslim places of worship in Italy are lacking at present, though today they may amount to around 1,000 (Chiodelli, 2015). It is worth noting that the informal prayer-halls account for almost all Islamic places of worship, and that there are fewer than a dozen purpose-built mosques in Italy. Lombardy's situation is paradigmatic: although around half a million Muslims reside in Lombardy (Menonna & Mirabelli, 2013), there is only one single purpose-built mosque in the region – that is, the small mosque (around 100 sq.m. of surface) of Segrate, near Milan.

One of the main reasons for this lack of purpose-built mosques in Lombardy (as well as in the rest of Italy) is the opposition by local population and authorities.

[1] Obviously, these data do not take into account the so-called 'second generation' (immigrant children who are born and grow up in the receiving country). Nowadays, second-generation immigrants in Italy are not significant from a quantitative point of view. However, their number is increasing rapidly (Caritas and Migrantes, 2012; ISTAT, 2012).
[2] A certain number of Italian non-Catholic worshippers must be added to non-Catholic immigrants. However, their number is not significant from a statistical point of view: for instance, Italian converts to Islam number about 70,000 according to the Italian Union of Islamic Communities; Italian Jews amount to around 24,000 (Pace, 2013b)
[3] See Pace (2013c) for an overview on the places of worship of various religious minorities in Italy.
[4] In the literature, they are sometimes also referred to as musallah (musallayat at the plural form).

There are several major cities in Lombardy where applications to construct a purpose-built mosque have been (repeatedly) presented to the local authorities, but rejected by them. This is for instance the case of Bergamo, Brescia, Lodi and Milano, to mention only some cities (Saint-Blancat and Schmidt di Friedberg, 2005; for similar cases in other Italian regions, see Allievi, 2010b and Galeotti, 2012). The president of the Lombardy Region, Roberto Maroni, has declared that mosques are “a virus whose spread we must prevent” (Montanari, 2014).

The case of Milan is particular striking. Although over 80,000 Muslims reside in Milan (Blangiardo, 2013), there is not a single purpose-built mosque. For around twenty years (from 1993 to 2011), the city was governed by right-wing governments which always opposed the construction of a purpose-built mosque in various ways. However, in the past five years, the city has been run by the left-wing administration of Giuliano Pisapia, which has declared on several occasions that it intends to remedy the lack of mosques in Milan. For instance, a couple of years ago Mayor Pisapia announced that a temporary purpose-built mosque would be constructed for the 2015 World Exhibition in Milan, and that it would become permanent after the Exhibition (Coppola & Santucci, 2014a, 2014b). However, the temporary mosque for Expo was not built. The only progress in this regard is the fact that, in September 2015, the Milan Municipality allocated through a public competition three public areas for the building of a place of worship for religious minorities. Two areas were assigned to Muslim associations for two purpose-built mosques (Dazzi, 2015a). However, the actual construction of these mosques will probably take time, and many bureaucratic hurdles may slow down the process (Dazzi, 2015b).

As will become clear in the following sections, this can happen also because the Italian framework of rules governing the construction of places of worship for minorities leaves ample decision-making power to the local public authorities: indeed, town councils have a de facto, and in some cases also de jure, faculty to block the building of a place of worship in their jurisdiction if they deem it undesirable.

2.3 THE NATIONAL LEGISLATIVE FRAMEWORK IN ITALY GOVERNING PLACES OF WORSHIP

The Italian Constitution recognises and defends the freedom of individuals and groups to profess the religion of their choice (e.g. articles 3, 7, 8, 19, and 20). Places of worship are deemed a functional part of exercising this constitutional right: in fact, the principle of religious freedom cannot be reduced to inward prayer, but must also be expressed through group worship (Bettetini, 2010). The availability of places of worship as intrinsic to the constitutional right of religious freedom is enshrined in several judgements passed by the Italian Constitutional Court (for instance, ruling no. 59/1958 and particularly no. 195/1993); similar judgements have been expressed by the European Court of Human Rights (see Manoussakis et al. vs Greece, 16 September 1996). Note that the national laws impose no special restrictions on the construction of new places of worship, whatever the religion (Tozzi, 2007): religious buildings are subject only to the standard set of building and planning regulations.

Despite this apparent latitude in terms of constitutional principles and national legislation, the reality at local level is very different. A constitutional law passed in 2001 (Legge costituzionale 3/2001, Modifiche al titolo V della parte seconda della Costituzione) ruled that town planning legislation was to be transferred to the regional authorities. The snag is that, in many cases, the regional laws on religious building lack the general and abstract character of the national law, with the result that forms of discrimination arise (Tozzi, 2010; D'Angelo, 2008), particularly as regards certain religious minorities such as Islam. As we shall argue in the following section, Lombardy in particular presents a blatant case of partiality in this respect (for an in-depth discussion on other regions of Italy, see Bettetini, 2010, Bolgiani, 2013, Rocella, 2008).

Note that this situation of discrimination at the local level is possible because Italy lacks a specific national law regulating the detailed and concrete aspects of the Constitutional right of religious freedom for all creeds, just as Italy also lacks a model of integration of (or relation with) migrants. In this regard, differently from several other countries, for instance France, Germany or the UK, in Italy “there has been no real reflection on the legislative process, even less in order to build a coherent model [of integration of (or relation with) migrants]. Conflicting approaches have prevailed in different moments, characterizing different laws. It is not by chance that practically all the more important laws on migration have been linked to a sanatoria (a regularization), discussed and approved often using the term ‘emergency’ and always bearing an emergency situation in mind” (Allievi, 2010a, pp. 91-92; see also Russo Spena, 2010). In the

absence of such a national law – and of a national strategy for the integration of migrants – the current situation is characterized by a high level of fragmentation and differential treatment. Besides the privileges granted to the Catholic Church (Casuscelli, 2007b), which are linked to its great influence on modern Italian history (Pollard, 2008), every creed can negotiate special arrangements with the State by signing a concordat (intesa). These arrangements refer to different aspects: for instance, the automatic access of ministers of religion to state hospitals or prisons; civil registry of religious marriages; the facilitation of special religious practices regarding funerals; access to public funds through a voluntary check-off on taxpayer returns (the so-called 8 per mille). In Italy, many creeds have signed a concordat with the State – Judaism, Buddhism, Hinduism, or the Waldensian, Lutheran, Apostolic, and Orthodox churches (Tozzi, 2009; Lariccia, 2007; Casuscelli, 2007a) – but for a variety of reasons, Islam is not among them (Allievi, 1996, Ferrari, 2000).

3 THE SPECIFIC CASE OF THE PLANNING LAW ON PLACES OF WORSHIP IN LOMBARDY, ITALY

Lombardy is Italy's most populous region and has some 10 million inhabitants. Not surprisingly, therefore, the region has the largest number of immigrant residents: at the start of 2015 records show that around 1,152,000 non-Italians lived in the region, equal to 11.5% of the total population. The immigrants registered in Lombardy amounted to 23% of the total of immigrants legally resident in the country (ISTAT, 2015), a significant proportion of whom were Muslims (39.6%) (Menonna & Mirabelli, 2013). Nevertheless, recent regional laws have imposed tight restrictions on the allocation of Muslim places of worship.

The regional law in Lombardy that regulates urban planning is law no. 12/2005 (Legge per il governo del territorio), which has been modified several times over the years, including its provisions on places of worship. In this regard, the most recent significant adjustment was made in February 2015: regional law no. 2/2015, Modifiche alla legge regionale 11 marzo 2005, n. 12 - Principi per la pianificazione delle attrezzature per servizi religiosi (for a detailed overview of the legislation regarding religious buildings in force in Lombardy, see Marchei, 2014, and Rocella, 2006, 2008).

In general terms, the law states that both the regional authorities and local councils must promote the construction and maintenance of places of worship. This happens in two ways: first, by specifying in the municipal planning document (the Piano di governo del territorio) areas where a given place of worship may be created; second, by determining how public funds are allocated for the creation and maintenance of places of worship. To be noted is that the public funds allotted for places of worship are considerable in their amount: for example, from 2006 to 2011 the municipality of Milan assigned around 19.6 million euros (UAAR, 2014). By law, the recipients of these measures include both the Catholic Church and religious minorities.

Despite its declared principles, this regional law includes certain clauses that raise severe obstacles to religious minorities (and particularly Islam) in terms of their access to the benefits envisaged by the law itself; but it also hampers the chances of constructing a house of prayer even without any public funding.

Before analysing three main restrictions which are particularly relevant in this regard, a point should be stressed. A fairly recent modification to the regional planning laws (regional by-law no. 3/2011) extended the definition 'facilities for religious purposes' to include any kind of place with some connection to religion (such as religious schools and cultural centres). As a result, the restrictions that apply to places of worship proper, which we shall analyse below, now also apply, for instance, to cultural centres and religious association headquarters. Consequently, it is no longer possible to set up an Islamic cultural centre, and appoint a room for occasional prayer, if it does not abide by all the rules referring to religious facilities proper. Note that this situation persists despite the fact that various court 9

rulings (e.g. Tribunale Amministrativo Regione Lombardia - Brescia, Sentenza no. 242/2013) have determined that gathering for prayers on the premises of a cultural or social association is insufficient to qualify the space in question as a religious facility as such (Fabbri, 2013).

3.1 RESTRICTIONS ON THE CONSTRUCTION OF A NEW RELIGIOUS BUILDING

The regional law in Lombardy regulating urban planning sets three main obstacles to the construction of a new religious building for certain religious minorities: a widespread, organised and stable presence in a certain municipality; the presence of a plan for religious facilities; respect for the local landscape.

First obstacle: the requisite of a widespread, organised and stable presence. According to the regional planning law, if a religious minority has not signed a special agreement with the State (as stressed, this is the case of Islam), it must have a “widespread, organised and stable presence within the council’s jurisdiction” (regional law no. 2/2015) in order to access the benefits of the law. However, this requisite sounds particularly vague: what does a widespread, organised and stable presence mean exactly? What are the precise criteria on which its assessment must be grounded? The law does not answer these questions. Hence, such fuzzy criteria create leeway for discretionary decision-making in each council area. In fact, a municipal administration may simply reject an application by a Muslim association if it deems that the number of followers of Islam in its jurisdiction does not reach a certain – and otherwise unstated – quota (Casuscelli, 2009). The predictable consequence of this high degree of discretionality is the fact that creating a new mosque will become even more difficult than in the past because the majority of local councils in Lombardy are run by political parties and coalitions which are hostile to the presence of (Muslim) immigrants on their territory.

Second obstacle: local plans for religious facilities, and the ‘mosque referendum’. The recent modification made to regional planning law (regional law no. 2/2015) made it obligatory for all local councils to draw up a ‘Plan of Religious Facilities [Piano delle attrezzature religiose]’. In this scheme each council must identify specific areas in which to address the needs of the various communities of worshippers on its territory. This document is self-contained and distinct from the other specific plans constituting a local master plan according to the regional planning law, namely the ‘Strategic Plan [Documento di Piano]’, the ‘Public Services and Facilities Plan [Piano dei Servizi]’, and the ‘Regulatory Plan [Piano delle Regole]’. If this plan of religious facilities is lacking (for instance, because it is in the drafting phase; note that in Italy the drafting and approval of a spatial plan can take years), no new places of worship can be built.

To be noted is that houses of prayer are the only collective places that are granted a specific, dedicated plan in the planning system, separately from the Public Services and Facilities Plan, which allocates the spaces for all other public amenities such as schools, hospitals, and parks. Before the aforementioned legal modification was enacted, religious facilities were included in the Public Services and Facilities Plan.

When a municipality draws up a Plan of Religious Facilities, it is required by law to consider the opinions of civic committees, the police force, and the prefecture in order to evaluate the related issues of public security. The underlying concern seems to be that places of worship can pose a threat to public security. This impression would appear confirmed by the fact that the law makes it mandatory for new religious facilities to install CCTV cameras connected to the local police department, from where the authorities can monitor comings and goings at the building’s entrance.

Furthermore, the law stresses that the local councils are entitled to conduct a public ballot on the contents of the Plan of Religious Facilities; a popular vote that the press promptly dubbed the ‘mosque referendum’. Note that the law refers to the possibility of a local referendum only with reference to places of worship, but not, for instance, with reference to dangerous facilities like factories handling volatile substances or involving other health-risk activities (such as landfill sites).

Third obstacle: respect for the local landscape. The new regional by-law places yet another obstacle in the way of completing new facilities for religious minorities. It states that the “aesthetics and architecture of the new buildings must be congruous with the particular characteristics of the Lombard landscape” (regional law no. 2/2015). But what is the ‘Lombard landscape’? What are its specific features? Note that Lombardy covers a huge area amounting to 24,000 square kilometres (falling just short of the entire state of Belgium, and around half of Switzerland or the Netherlands), and has several distinctly different types of ‘landscape’ (mountains, plains, swampland, riverside) characterised by a marked variety of historical, natural, and settlement characteristics. One consequently wonders to what exactly this regional law is referring. Without specifying precisely what the distinctive characteristics of the Lombardy landscape are, in this case, too, the rule gives free rein to interpretation – and hence to improvisation and random discrimination.

3.2 RESTRICTIONS ON THE USE OF AN EXISTING BUILDING AS A PLACE OF WORSHIP

As pointed out earlier, in Italy most Islamic places of worship consist of informal prayer-halls, which in many cases are located in buildings whose original function was (or still is) quite unrelated to prayer, or whose main function is not worship. This applies for instance to the many Islamic cultural centres dotted around the country, where prayer is just one of the many functions performed alongside a busy schedule of social, cultural, and recreational activities. But it applies also to the headquarters of some immigrant associations where prayer is sometimes performed, or to secular buildings converted to prayer rooms. Consider that, in several of these places, prayer is practised only occasionally, since it is usually limited to Friday prayers or holiday prayers. In many cases, Muslims in Italy (but this applies also to Jehovah's Witnesses, for instance) have made up for the lack of official places of worship by establishing such informal prayer rooms.

However, the regional law on urban planning introduced several obstacles to this practice. It not only, as said, extended the definition 'facilities for religious purposes' to include any form of recreational centre or association locale with some connection to religion, so that all the requisites analysed in the previous section applies to them. The law set another obstacle to the creation of prayer-halls as well.

The regional by-law no. 12/2005 (art. 52) relaxed the regulations limiting changes to a property's end-use that did not require building alterations. Since then, such changes in end-use no longer require permits from the council planning department[1]. The snag is that another by-law issued the following year (Legge regionale 12/2006, Modifiche e integrazioni alla legge regionale 11 marzo 2005, n. 12 "Legge per il governo del territorio") ruled that this relaxation of regulations no longer included places of worship, meaning that anyone wishing to change the end-use of a property for religious purposes must now apply for a building permit. (Note that Lombardy is now the only region in Italy in which changes of end-use for religious purposes are given special treatment: Fabbri, 2013).

Normally, a building permit is a standard document certifying that a specific transformation conforms to the standards laid down in the planning and building codes; hence, on paper, the purpose of the permit is merely to ensure compliance with the regulations, with no room for discretional decisions by the public authorities (Mengoli, 2014). That said, in Italy the issue of a permit may be subject to all sorts of bottlenecks and red tape – legitimate or otherwise – implemented by municipal planning departments and other public bodies, as has been documented in a number of cases (D'Angelo, 2008, Rocella, 2008). This is exemplified for instance by the case of the mosque in Maderna Street, Milan. In 2013 the Islamic Turkish association Milli Gorus bought a warehouse and started work in order to transform it into the first purpose-built mosque of Milan, with a (small) dome and a (low) minaret. The renovation work on the warehouse was done in compliance with all the planning and building regulations. However, according to the regional law, in order for the building to be used as a house of worship, it had to receive authorization from the Municipality for a change in end-use, which it never obtained (Liso and Vanni, 2013).

3.3 RULING 63/2016 BY THE CONSTITUTIONAL COURT

The Italian Constitutional Court has recently examined the constitutionality of the Lombard by-law no. 2/2015, following a request by the Italian government. The government asked the Court to review various parts of the law; among them, also some of the provisions analysed in the previous sections: for instance, the requisite of the 'widespread, organised and stable presence' and that of respect for the local landscape. The ruling of the Court (Italian Constitutional Court, ruling 63/2016) was complex: it accepted several of the government's objections to the regional law, while it rejected some others. In particular, it declared unconstitutional the requisite of the widespread, organised and stable presence of a religious minority as a condition for accessing the benefits of the law, because this determines a situation of discrimination against certain religious minorities, which is in contrast with several articles of the Italian Constitution. By contrast, some other provisions of the law were not condemned by the Court. This is the case of respect for the local landscape, which, for the Constitutional Court, is a legitimate criterion on which assessment of a building project can be grounded. Despite the Court's judgement, this criterion

[1] Only in the case of premises with a floor area exceeding 150 square metres must prior notice be given to the municipality.

remains very vague, and, in our opinion, leaves a degree of discretionality to the municipalities which is too broad, creating the possibility of discrimination.

4 DISCUSSION: A CRITICAL ASSESSMENT OF THE LOMBARDY LAW AND A NORMATIVE PROPOSAL

4.1 A POSSIBLE REFORM

"The fact of pluralism […] emerges as self-evident. […] By definition, therefore, 'diversity' is an inescapable feature of human societies" (Triandafyllidou et al., 2012: 2). This unavoidable demand for pluralism is strikingly urgent in many European cities, and the growing complexities of ethnic, cultural and religious diversity pose new challenges to planning the urban environment (Qadeer, 1997; Moroni and Weberman, 2016).

We maintain that a specific reform of the planning system (for instance, of the Italian planning system) could help guarantee pluralism – including religious pluralism, at least in terms of its physical presence in the urban space. In particular, this reform should comprise a radical revision of traditional systems of spatial regulation, so as to ensure an impartial application of rules of a specific type, that is, rules curbing the negative side-effects of urban functions, instead of rules regulating the functions themselves, as happens at present. To achieve this end, three simultaneous conditions must be fulfilled, which we will analyse in the following sub-sections. (When describing these conditions, we shall imagine that the reform is applied to the Italian legislative system, but, in some respects, one may consider its application in other countries as well).

First condition: ensuring a system of more 'general and abstract' rules. Essentially, the rules to be applied must be as general as possible (i.e. referring to standard situations or actions, not to specific ones), and also abstract (i.e. applying equally to all, not to particular individuals or groups). The goal is to achieve equal treatment, but in a version more radical than the one currently advocated (Somaini, 2012).

At present, the above-mentioned rules introduced by the Lombard regional authorities are neither abstract nor general. Quite the opposite: they are tailored expressly to deal with specific subjects (e.g. specific religious faiths), and hence give rise to forms of discrimination born upstream, as it were. As stated above, the Lombard by-law no. 2/2015 determines different requirements depending on whether the religion in question is (or is not) 'widespread, organised and stable'. Furthermore, this Lombard by-law envisages certain special requirements that apply exclusively to religious facilities (such as drafting a specific Plan of Religious Facilities), and which do not pertain to any other kind of public facility or community amenity.

One might concede that these general and abstract rules are in truth only a question of degree. Nevertheless, once their status has been acknowledged (and formally enshrined in the legislation more strictly than happens at present), it is no longer difficult to distinguish between blatant violations of these principles and sincere attempts to address the situation as best as possible. In other words, it is not difficult to grasp whether a rule satisfies the ideal only to a certain extent simply because one is progressively trying to reach the ideal in the existing conditions; or whether this occurs for other unacceptable reasons in light of the ideal itself (in the second case, any actor can legitimately object, even through the courts).

Second condition: preferring negative rules. Although the introduction of more general and abstract rules would per se address several problems of discrimination regarding the creation of places of worship for religious minorities (for instance in Italy), this approach would not be enough on its own. In fact, the implementation of a particular type of (abstract and general) rules is necessary. In particular, in our opinion, regulations should be applied not to the uses of land and buildings as such, but to the consequences incurred (e.g. by referring to a checklist of predefined negative side-effects or externalities). For instance: irrespective of a building's actual function, a regulation could limit the decibels of noise that it may produce; this rule would apply equally to a bar, a sports complex, a Catholic church or a mosque, and be implemented for all areas assigned for new construction or modification (without distinction).

This bypasses the traditional planning practice of drawing up in advance an exhaustive list of the permissible and inadmissible end-uses (of both land and buildings) within a given territory, and of

assigning these according to distinct areas. In short, our contention is that planning regulations should apply only as means to curb any negative external side-effects resulting from activities performed in a given building; they should not in any way regulate the activity itself (Corkindale, 1998; Moroni, 2012; Rogge, 1979). It is essential to stress that the negative side-effects under discussion here are not ones that would hinder the socio-economic efficiency of a given area (the customary interpretation supplied by neoclassical economics). This has nothing to do with the oft-cited market failures: at stake here are the rights of the individual, and the crucial issue is finding the institutional requirements to reduce interpersonal conflict between individuals endowed with basic rights, and thereby broaden their chances of addressing different goals in a constantly evolving social and cultural flux (Cordato, 1980,1994).

Note that with this system, the issue of changing a building's end-use no longer applies, and the need for authorisation likewise disappears: if the plan does not contain a priori indications of a building's or land plot's end-use, then every change in a building's or land plot's end-use is always possible, provided that it does not cause negative side-effects. This would also solve another problem made clear by the Lombardy case: preparing a traditional zoning plan regulating the functions of lands and buildings is today made no easier by the difficulty of defining precisely what a place of worship is in the case of religious minorities. Is it only a specific building that has distinct religious connotations both internally and externally, or also, more generally, any building adapted for religious purposes? Is it only where rites are performed on a regular basis, or also a locale that occasionally doubles up as a house of worship? A place where only religious services are held, or where other events take place? And not least, how many people must gather in prayer to classify a building as a place of worship?

Third condition: impartial application of the (abstract, general and negative) rules. In liberal democratic states, an unbiased and impartial application of statutory laws and rules is a standard requisite (Sartori, 1957); this should be an inalienable principle. As we know, however, in practice things go very differently in some countries. This is for instance the case of Italy: discrimination against religious minorities occurs also through the biased application of the law, such as sluggish administration, bureaucratic holdups, and extra red-tape reserved for 'special interest' groups. Which is why it is crucial to eliminate any risk of discretional procedure regarding (also) the implementation of planning and building regulations. For instance, one way to do this is to make the issue of building permits automatic if and when the transformations proposed conform to the regulations: thereby removing discretionary power of whatever kind from public officers in the planning department. Actually, this could be expedited by placing the application system online, either partially or entirely (Meijer and Visscher, 1998 and 2006; National Institute of Building Sciences, 2002). Note that all this is possible once the legislation has been purged of ambiguities like those found in Lombard's planning framework, a fuzziness that leaves the door open to interpretation and discriminatory practices, even in the application of the rules.

4.2 A COMPARISON WITH OTHER PERSPECTIVES

As well-known, numerous authors have inquired how urban planning can contribute to the growth of diversity and pluralism in general, and to the growth of religious diversity in particular (Burayidi, 2000a and 2015; Binnie et al., 2006; Dwyer et al., 2016; McClymont, 2015; Murtagh and Ellis, 2010; Qadeer, 1997 and 2016)[1]. Even in the diversity of viewpoints and proposals, many of them declare that some kind of 'positive action' (i.e. 'affirmative action') by the public authorities – and by the planners as well – is of paramount importance. A 'positive action' implies that members of disadvantaged groups (such as Muslims) would be the target of specific measures in order to ensure them access equal to that of the majority population, for instance in terms of having a voice in the planning process and seeing their needs satisfied by urban policies. Among the various positive actions in the planning domain there are: developing methods for promoting participation in the planning process

which reflect the cultural specificity of different minority groups (Sandercok, 2000; Main and Rojas, 2015); appointing an officer specifically to deal with the problems and specificities of different cultural and religious communities, and training local authorities and planners in conflict negotiation and cultural sensitivity (Thompson, 2003); designing specific planning documents to deal with the needs of a multicultural and multi-religious city (Uyesugi and Shipley, 2005).

[1] For an overview on planning and diversity, see also Fincher et al., (2014), and van der Horst and Ouwehand (2012).

The discretionary power of mayors has been of fundamental importance in allowing the construction of mosques in several Belgian cities, despite the opposition by local councils and population (Torrekens, 2013). And "flexibility in planning norms and practices" (Qadeer, 1997, p. 493) is considered to be an key element of the Canadian approach to ethnic, cultural and religious diversity. In this regard, it is considered essential that individual planners and local authorities are encouraged (and trained) to become culturally inclusive, and to develop sensitivity to diversity in all its guises (Thompson, 2003). "It hardly needs to be said that the success of this kind of planning work depends very much on the skills and wisdom of the practitioners involved" (Sandercock, 2000, p. 27; see also Vahed and Vahed, 2014). The importance of this sensitivity appeared clear in the case, for instance, of some municipalities in Australia (Thompson, 2003); and it is an important element in the planning departments of several US and Canadian cities dealing effectively with diversity (Qadeer, 2015).

In many cases, scholars stressing the need for positive actions highlight the limits of a 'normative approach' to problems of pluralism and diversity in the urban sphere. As Sandercock (2000, pp. 15-16) argues, planning systems and regulations express the norms and values of the culturally dominant majority – that is, in Italy as well and in many Western countries, a Judeo-Christian, male and white majority. Hence, these norms are insensitive to religious minorities, in particular minorities distant from the mentioned traditions such as Muslims (on this topic, see also Burayidi, 2000b; Keetch and Richards, 1999; Diver and Thompson, 2007; Dunn, 2001; Fincher at al., 2014; Qadeer, 1997; Watson, 2005; Villaroman, 2012).

While we recognize that certain forms of positive action can be helpful (in particular, promoting various forms of participation, training officials and planners to deal with multicultural contexts, appointing specific public officers to address the problems of minorities), we believe that the principal reform must concern the background legal framework. The fact that the current legal framework is in many countries (as in Italy, particularly at the regional level) biased does not mean that it is impossible to create a more impartial one. A more impartial legal framework, based on a radical idea of equality of treatment, entails a profound revision of local plans and regulations.

As we argued with reference to Lombardy, here local authorities are not only reluctant to promote actions in favour of religious minorities; they often take advantage of the opportunities offered by the planning law in order to discriminate against them. At the same time, while the criticisms of a 'normative approach' to problems of diversity are convincing on certain points, they sometimes fail to consider some opportunities offered by this perspective. In many cities, building and zoning laws and practices have been revisited in order to accommodate the different needs emerging from cultural diversity (Burayidi and Wiles, 2015).

5 CONCLUSIONS

Religious diversity is a basic characteristic of a great many European cities, and is now an everyday reality of Italy's urban environment. This diversity affects also the city's physical structure, for instance through the appearance of new places with a religious characterization. This is the case, for example, of houses of worship of religious minorities. The spread of such 'new' places has inevitable repercussions also in terms of planning (theory and practice).

From this viewpoint, the case of the Lombardy region in Italy is paradigmatic: even if Italy's Constitution explicitly guarantees the right of all religious minorities to create and enjoy places of worship, in practice this basic right is thwarted by the mesh of regional planning law and local planning practices. This is because the regional planning laws are prone to discriminatory decision-making by bureaucrats and policy-makers which violates the Constitutional right to religious freedom.

Planning theorists have often asked what it would take to foster and ensure diversity and pluralism in today's cities and societies. Numerous proposals have been put forward in this regard. Although with several differences, roughly speaking we can state that the majority of these approaches claim that some type of 'positive action' is required on the part of the public authorities; at the same time, they often claim that any intervention on planning regulations would be insufficient and ultimately unsuccessful.

As we argued in the previous sections, we believe that in certain situations – as in the case of Italy – these positive actions run the risk of being ineffective simply because, for many reasons (for instance, political

ones), they are not implemented by local authorities. In Italy, contrary for instance to many US and Canadian cities, planning practice is not already responsive to ethno-cultural diversity, and planning departments have not already adopted pluralistic standards for the development of places of worship (Qadeer, 2015).

On the contrary, the efforts of many Italian local authorities are devoted to discriminating against certain religious minorities, something made possible by the discretionary power assigned to them by regional laws. This is why, when basic rights are at stake (including religious freedoms), it is crucial to ensure that rights are protected against the random impositions of the public authorities. This crucially refers also to planning and building regulations, since, as we stressed, in Italy it is exactly here, at the local level, that infringements of these rights occur.

For this reason, all regulations regarding land-use must be 'airtight' in how they work, and under no circumstances must they clash with the basic rights of individuals: they must function 'correctly' (that is, respect constitutional rights) even when employed by 'incorrect' public authorities (that is, public authorities willing to violate those rights).

Regrettably, the current Italian planning system (but this applies to other Western countries as well) seems more eager to satisfy the (presumed) needs of the urban fabric before it addresses the basic rights of the citizens themselves. This discrepancy is glaringly obvious in the case of the failure by certain Italian municipalities to ensure that religious minorities have their rightful places of worship, as required by the Italian Constitution. What is sorely needed at present is an inversion of the ratio between the government powers over the territory and religious rights (Rocella, 2008): along with other constitutional rights, the right for appropriate places of worship should have priority over planning decisions; and the town plan itself must ensure that those constitutional rights are honoured to the full. Faced with communities and institutions that frequently display hostility to the presence of ethnic and religious minorities on 'their' soil, endowing local administrations with discriminatory powers puts the democratic process in jeopardy. For this reason, it is essential to eliminate a priori the faculty of local councils to exercise differentiation (i.e. discrimination) through land use planning, thus avoiding any backlash on the basic rights of the citizen.

To achieve this, we suggest that radical changes should be made to the way in which land-uses are planned, governed and regulated. In particular, it is important to evolve towards systems composed of more general and abstract rules that deal first with the possible harmful side-effects, rather than interfere with the end-uses (i.e. preference should be given to forms of 'nomocratic planning': Moroni, 2012; Holcombe, 2013)[1]. This is obviously just an 'ideal', which may prove difficult to implement immediately and which would require several adjustments in order to be put into effect. However, we think it important to place it at the centre of the thoughts of planning theorists working on problems of (religious) diversity, who do not always consider the potential of a 'normative approach' to these questions.

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[1] Note that this does not involve introducing any special (and controversial) new 'group rights' or 'collective rights' into the system – something that many advocate as a means to provide minorities with better chances of building and managing places of worship (Calder et al., 2014). Instead, our proposal lies comfortably within the sphere of the universal rights of the individual. Indeed, it is worth noting that certain proposals that concern group rights actually seem to stem – as in the present case – from the notion that planning bodies can freely differentiate and decide specific land-uses at will.

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