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Possession and Production of Narcotic Substances for Devotional Purposes. Between Exculpatory Freedoms and "Geometric" Uses of Legal Categories

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Summum ius summa iniuria, wrote Cicero in *De Officiis* (I, 10, 33), referring to the legalistic applications of law by those who, in the name of a literal interpretation of statutes, ended up generating the worst injustices and the most subtle deceptions. In a sense, a similar situation involved two Hindu devotees, followers of the God Shiva and members of the Hare Krishna[1] movement, who, for cultic and ritual reasons, cultivated and consumed marijuana in an isolated area of the Tuscan-Romagnan Apennines, only to find themselves charged with the crimes of possession and production of narcotic substances[2].

Indeed, in January 2023, the judges of the Court of First Instance of Bologna, attributing predominant weight to the violation of narcotics legislation (D.P.R. 309/1990), sentenced the defendants to five months and ten days of imprisonment and a fine of eight hundred euros each[3]. Other circumstances, such as the absence of criminal activities related to the sale of the substances and the profile of the subjects - both with clean records and economically selfsufficient - were evaluated in their favor only at the subsequent appeal stage. However, it must be clarified that with the decision of the Court of Second Instance, the decisive element leading to the conclusion of the proceedings was the recognition of the exercise of religious freedom as an exculpatory cause, resulting in the acquittal of the defendants and the qualification of their conduct as devotional practices.

The central aspect of the case, observed from the perspective of legal studies on religious phenomena, concerns the manner in which religious freedom was recognized and appreciated in the balancing act with other legally relevant interests; specifically, within an interpretative framework where both the formulation of the charges and the first-instance decision were developed according to the traditional hermeneutical schemes of legal positivism. Furthermore, the very recognition of religious freedom as an exculpatory cause can be understood as the result of a "geometrically ordered" legal qualification operation: in light of constitutional coordinates and prevailing regulations, the acts of production, possession, and consumption of substances were appreciated as ritual and cultic activities, with a consequent redefinition of their relevance vis-à-vis security requirements.

Justice has been done! At least superficially, this might seem to be the case. However, the rulings in question raise significant issues regarding their reception by public opinion. A minimal empirical analysis of reactions expressed on social media reveals a widespread misunderstanding of the technical-legal premises underlying the second-instance judge's decision[4]. Thus, a dual and opposing "folk" interpretation of religious freedom emerges: on one hand, it is understood as a general justification for criminally relevant conduct; on the other, as a recessive value or even incompatible with other interests such as public order and security. Such readings ultimately reveal a distortion of the correct systematic

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[1] See: https://www.harekrsna.it/chi-siamo/iskcon

[2] See: https://tg24.sky.it/cronaca/2026/04/04/marijuana-

[3] See: https://www.ansa.it/sito/notizie/

[4] Two examples could be founded here: https://www.instagram.com/reel/DWtvZmaEYzq/ ; https://www.facebook.com/repubblica.bologna

framing of religious freedom, which is treated merely as an exculpatory ground and thus devalued as a fundamental right in the balancing between inviolable rights.

Beyond the various opinions and potential political rhetoric concerning the dissemination of the news, what emerges less from the surface of experiences like this is the generative force of law. The semantic malleability of legal categories - a characteristic, at least theoretically, typical of law and his capacity to generate new meanings via interpretation – could indeed launch, in the public debate, alternative ideas concerning the theme of justice.

In the case at hand, beyond the various elements that contributed to strengthening the defense's thesis (the rudimentary cultivation of the plants and the lack of measures to conceal them; the absence of evidence of drug dealing and the personal profile of the accused), it was above all the presence of a votive altar in the hermitage and the investigators' knowledge of information regarding their isolated lifestyle that legitimized an interpretation of religious freedom as an exculpatory cause for the acquittal of the two devotees. In a sense, through a "demonstration" of their degree of "religiosity", the act of possession and production of narcotics was relocated into a category distinct from that of security. A step that must be celebrated for its respect for fundamental rights, the contextualization capacity of the Appeal Court judges, and their liberation from a merely formalistic application of the law, but which must also be evaluated for what it does not say and what it does not do. To understand: what would have happened, for example, if the judges not deemed the conduct of the devotees "sufficiently" religious? Are we sure that the best judgment technique in reality is to employ existing structures of meaning, rather than remolding them case by case?

Thinking that acts or facts must be translated according to pre-existing categories, in one way or another, not only contributes little to the knowledge of the religious phenomenon in the vastness of its anthropological scope[5], but reiterates a classic dynamic of law: its tendency to turn its gaze toward normative facts, either through subsumption or deduction. But if facts, along with the emotional, psychological, cultural, and experiential lived realities of those who enact them, were instead to become the primary parameter of hermeneutical activities carried out in courts? And if, going even further, one attempted to overcome the epistemological - almost teleological - split between facts and values, factuality and validity[6], which so deeply involves the cognitive habitus of the jurist? The occurrence that two subjects, although subsequently acquitted, still had to undergo an entire judicial process raises questions about how the legal system intercepts and evaluates, at least in the initial phases, conduct that, conversely, if there were adequate knowledge of cultural and religious phenomena, would not even be considered illicit. This event makes even more visible a symptomatic condition of an order too accustomed to the usual technique of "case by case", and much less intent on comprehensively revising the semantic coloring of its categories and the rigid use made of them. Therefore, situations analogous to that of the two faithful are not only destined to pass again under the spotlight of the "judicial camera", but are also forced, in the decisions concerning them, to depend on the skill of the defenses and the culture and sensitivity of the judges called upon to evaluate them each time.

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[5] On this, see JULIEN RIES, *Alla ricerca di Dio. La via dell'antropologia religiosa, vol. I,* Jaca Book, Milano, 2009.

[6] On this see, for a critical stance, MARIO RICCA, *How to Undo (and Redo) Words with Facts: A Semio-enactivist Approach to Law, Space and Experience,* in *International Journal for the Semiotics of Law,* vol. 36, 2023, pp. 313-367. On the "rightness" of that epistemological division see, instead, JÜRGEN HABERMAS, *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia,* a cura di LEONARDO CEPPA, Laterza, Bari, 2013.

Summum ius summa iniuria, therefore, not for the single case read in its final outcomes, but for the case viewed in its entirety and its three-year duration which, if by mere "fortunate" contingencies did not end in a sanctioning verdict, risks remaining confined to the databases of jurisprudence and legal journals, without producing those broader effects on the level of social awareness and public debate, indispensable for the creative regeneration of the social pact on whose basis the life of the citizens should constantly be founded and refounded.

Unlike what happened in the past regarding the debate on the use of the Islamic veil, sometimes interpreted as an expression of the subordination of women to men[7], or the issue of the alleged correctness of the punishability of Sikhs harshly linked to the need for conformity to Western values[8], one should avoid hypostatized visions of the legal method supported by relativistic or ideological fears[9], and instead valorize intercultural pedagogies that influence the overall formation of the jurist from the outset, sensitizing him to the semiotic continuity of the socio-cultural lived experience.

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[7] For a general overview on this topic see MARTHA NUSSBAUM, *La nuova intolleranza. Superare la paura dell'Islam e vivere in una società più libera,* con prefazione di STEFANO RODOTÀ, trad. di STEFANIA DE PETRIS, il Saggiatore, Milano, 2012; more specifically, on the long-standing issue of French secularism (laïcité) and its neutralising, religionaverse tendencies - particularly with regard to the wearing of the Islamic veil - see instead MARIA D'ARIENZO, *La laicità francese: "aperta", "positiva" o "im-positiva"?,* in *Diritto e religioni,* anno VI, n. 2, 2011, pp. 354-368.

[8] Hence, the judgement of the Italian Corte di Cassazione, No. 24084/2017.

[9] On the concept of "ideology" see SERGIO FERLITO, *Tradizioni religiose e ordine sociale. Alle origini dell'immaginario giuridico,* Carocci editore, Roma, 2022, pp. 39-41.