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Protection of minors and perspectives of balancing fundamental rights *

*Tutela dei minori e prospettive di bilanciamento di diritti fondamentali **

ABSTRACT: L'articolo analizza il complesso tema della tutela dei minori nel contesto della circoncisione rituale, individuando i diritti fondamentali da bilanciare. Il testo si concentra, in particolare, sul panorama variegato delle politiche sanitarie regionali che, solo in alcuni casi, offrono copertura alla circoncisione non terapeutica, con evidenti disparità tra le varie regioni.

ABSTRACT: The article analyses the complex issue of child protection in the context of ritual circumcision, identifying the fundamental rights to be balanced. In particular, the text focuses on the diverse landscape of regional health policies, which only in some cases provide coverage for non-therapeutic circumcision, with clear disparities between regions.

SUMMARY: 1. Premise - 2. Circumcision and children's rights - 3. Circumcision in public health - 4. Perspectives.

1 - Premise

Ritual circumcision is a religious practice that highlights the delicate balance between the right to religious freedom and the right to health of minors. It is rooted in the Jewish and Islamic religious traditions but also, on a cultural level, in various groups, including Christians, mostly of sub-Saharan origin¹.

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¹ For an extensive discussion of the subject, refer to **A. LICASTRO**, *La questione della liceità della circoncisione "rituale" tra tutela dell'identità religiosa del gruppo e salvaguardia del diritto individuale alla integrità fisica*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (<https://www.statoechiese.it>), No. 22 of 2019, pp. 28-67. See also my book *Dietro la circoncisione. La sfida della cittadinanza e lo spazio di libertà religiosa in Europa*, Giappichelli, Torino, 2018, and V. FORTIER (ed.), *La circoncision rituelle. Enjeux de droit, enjeux de vérité*, Les Presses Universitaires de Strasbourg (PUS), Strasbourg, 2016.



In Italy, there is no state legislation in the matter and circumcision, outside the Jewish community, is often left to the family's financial availability². However, families are often not informed about the correct performance of the operation, sometimes resorting to people without the necessary medical skills who operate in inadequate hygienic conditions, resulting in serious risks to the health of minors. The result is that, in Italy, about thirty-five per cent of circumcisions are still carried out clandestinely with sometimes serious if not fatal outcomes³.

For Jews and Muslims, circumcision represents a fundamental rite, as well as a decisive symbol of personal identity and community belonging⁴. This highlights the complexity of the balancing between the requirements of religious freedom and the protection of the minor's physical

² It should be pointed out from the outset that, in Italy, the problems arise essentially because, in the absence of *ad hoc* regulations, circumcision, especially for Muslims, is almost forced underground because of the onerous costs involved in privatising such operations, with serious risks to the health and lives of minors. On this point, cf. also *infra*.

³ Cf., for the percentage figures quoted in the text, available at https://www.quotidianosanita.it/cronache/articolo.php?approfondimento_id=12771. For example, see some of the recent dramatic cases in the 2018-2019 Crime Chronicle, available on the following websites:
<https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5VT7-33N1-F148-53MG00000-00&context=1516831>; <https://www.lastampa.it/2018/12/23/italia/circoncisione-in-casa-a-monterotondo-muore-bimbo-dianni-grave-il-fratello-mx3k9WvD77Nxgm> F7Drh4BO/pagina.html;
<https://www.ilfattoquotidiano.it/2019/03/24/reggio-emilia-circoncisione-incasa-fatta-dai-genitori-muore-bimbo-di-5-mesi-i-genitori-indagati-per-omicidio-colposo/5059442/>;
https://www.corriere.it/cronache/19_marzo_24/reggio-emilia-circoncisione-casa-morto-bimbo-5-mesi-9c47ed04-4e2d-11e9-8f3f-b71cad3f7934.shtml;
<https://www.ilfattoquotidiano.it/2018/12/23/roma-circoncisione-in-casa-muore-unbambino-un-altro-e-ricoverato-in-gravi-condizioni/4856606/>;
https://www.ilmessaggero.it/roma/news/circoncisione_medico_nigeriano_bambino_morto_roma-4191019.html.

⁴ For Jewish circumcision, see **A. DI PORTO**, *Circoncisione. Ebraismo*, in **VV. AA.**, *Salute e identità religiose*, 2th ed., Pliniana, Selci Lama, 2020, p. 137; **Y. DALSACE**, *La circoncision rituelle*, in **V. FORTIER** (ed.), *La circoncision rituelle*, cit., pp. 19-24; **D. LUCIANI**, *La circoncision, parcours biblique*, in **V. FORTIER** (ed.), *La circoncision rituelle*, cit., pp. 41-54; **L.B. GLICK**, *Marked in your flesh*, Oxford University Press, New York, 2005; **P. LILLO**, *La circoncisione ebraica: profili di diritto ecclesiastico*, in *Arch. giur.*, 2001, p. 377 ff., and in *Nuovi studi politici*, 2001, n. 2, p. 21 ff. With reference to Muslim circumcision, which is less well known than Jewish circumcision, it should be noted that its foundation is first of all to be found in a *hadith* of the Prophet Muhammad that includes it among the actions aimed at maintaining the body in a state of ritual purity congruent with the primordial one: the primordial nature of man or *fitra* requires, in fact, among the five qualities, circumcision, or *al-khitân*, as a prerequisite for the enjoyment of spiritual benefits. For some Islamic legal schools, however, circumcision is only recommended and not obligatory. Moreover, it is *Sunna* that it may be delayed until the age of thirteen, contrary to Jewish law, which requires circumcision, or *brit milah*, on the eighth day after birth. On Muslim circumcision, cf. **I. C. FERRERO**, *Circoncisione. Islam*, in **VV. AA.**, *Salute e identità religiose*, cit., pp. 137-138; **M. ABOU RAMADAN**, *Les débats sur la circoncision en droit musulman classique et contemporain*, in **V. FORTIER** (ed.), *La circoncision rituelle*, cit., pp. 25-38; **J.E. CAMPO**, *Circumcision*, in *Encyclopedia of Islam*, New York, Facts on File Inc., 2009, p. 149.



integrity, when it is performed without a medical reason and, even more so, on adolescents. Indeed, it is necessary to bear in mind, at the same time, the requirements of informed consent and correct operation; requirements that must not, however, eclipse the ritual meaning of the act.

It will look at non-therapeutic (mainly ritual) circumcision and suggest some ways of ensuring both religious freedom and the physical integrity of the child⁵. It will focus not so much on aspects that I have dealt with more extensively in the past, but on how public health, especially regional health, is seeking a solution⁶.

2 - Circumcision and children's rights

Almost a decade ago, the Parliamentary Assembly of the Council of Europe intervened in Resolutions 1952 (2013) and 2076 (2015) to emphasise the need to prioritise children's right to physical integrity⁷. In Resolution 1952, the Assembly called on Member States to clearly define the medical and sanitary conditions of certain practices, including non-therapeutic circumcision, while with Resolution 2076, although focused on *Freedom of Religion and Living Together in a Democratic Society*, the Assembly referred back however, to Resolution 1952, reaffirming once again the right of children to physical integrity and recommending that member states allow the ritual circumcision of minors as long as it is carried out by an expert person and under appropriate hygienic conditions, after informing the parents of the risks and contraindications of the act.

At the national level, as early as 1998, the National Bioethics Committee (CNB) had expressed itself in favour of the practice, in the sense that "communities, which due to their specific culture practice ritual male circumcision, deserve full recognition of the legitimacy of this practice"⁸. The CNB invoked both Article 19 of the Constitution and, in the case of Jewish circumcision, Law No. 101/1989 containing the "*Rules for the regulation of relations between the State and the Union of Italian Jewish Communities*".

The practice of ritual male circumcision involves the fundamental rights of religious freedom (Art. 19 Const.), the child's right to health

⁵ In particular, the proposals will concern Islamic circumcision and so-called cultural circumcision, since circumcision carried out in Jewish communities poses no problems.

⁶ Circumcision raises several issues that cannot all be analysed here.

⁷ Cf. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20174>, and <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22199&lang=en>. Cf. also Recommendation 2023 (2013) and Recommendation 2080 (2015) of the Parliamentary Assembly of the Council of Europe. Cf. D. MERCADANTE, *Il Consiglio d'Europa e la circoncisione*, in *Quaderni costituzionali, Rivista italiana di diritto costituzionale*, No. 2 of 2014, pp. 450-452.

⁸ Cf. the opinions of 25 September 1998 (*Circumcision: bioethical profiles*) and 16 January 2008 (*Bioethical issues in a multicultural society*), available at <https://bioetica.governo.it/it/pareri/pareri-e-risposte/la-circoncisione-profilo-bioetico/>.



(Art. 32 Const.) and the parents' right and duty to educate their children also from a religious perspective (Art. 30 Const.). In relation to the limit of public morality under Article 19 of the Constitution, ritual circumcision does not constitute a violation of it because it is not performed with acts that offend or violate the intimate sphere and sexual morality of the individual or the community. Nor does it violate the right to health under Article 32 of the Constitution, since the concept of health is substantiated, according to the interpretation of the Constitutional Court, in a state of psycho-physical-relational well-being⁹. In this sense, the CNB has stated that circumcision "does not produce [...] when properly performed, impairments or alterations in male sexual reproductive function". Limiting or prohibiting ritual circumcision could not only expose minors to risks associated with 'domestic' practices, but could also cause psychological discomfort for the minor and his family, discomfort that would affect not only the sphere of identity, but also the perception of one's own person as different from the other members of his religious community, with the consequent risk of social and relational isolation¹⁰. Finally, pursuant to Article 30 of the Constitution, the parents' right-duty is expressed in the possibility of making religiously oriented educational choices for the child.

Beyond the constitutional coverage that seems to many Authors expresses a certain *favor religionis*, ritual circumcision is not regulated at the legislative level in the Italian legal system, although Article 18 of Law No. 101/1989 approving the agreement between the State and the Union of Italian Jewish Communities (UCEI), while not expressly mentioning it, seems to offer implicit protection to this practice, even if only for Jews, where it states that "Jewish communities provide [...] for the fulfilment of the religious needs of Jews according to Jewish law and tradition"¹¹.

Jurisprudence has also commented on the legitimacy of circumcision. In particular, the Criminal Court of Cassation, section VI, with sentence no. 43646/2011, recalling the aforementioned constitutional provisions, the law approving the agreement with the UCEI and the CNB, distinguished between ritual circumcision and

⁹ Cf. again, my *Dietro la circoncisione*, cit., p. 38, footnote 9, e G. CESANA, *Il ministero della salute. Note introduttive alla medicina*, Società Editrice Fiorentina, Firenze, 2000.

¹⁰ It is worth recalling, moreover, that the principle of substantive equality pursuant to Article 3, paragraph 2, of the Constitution imposes on the Republic the task of "removing obstacles of an economic and social nature that, by limiting de facto the freedom and equality of citizens, prevent the full development of the human person". While the right to an equal measure of freedom could be derived from Article 8, paragraph 1, of the Constitution also in access to the enjoyment of the right to worship and celebrate the rites - not contrary to public morality - of one's faith. Thus, from Article 117, paragraph 2, letter m, of the Constitution should derive the appropriateness of extending, also to the right to religious freedom, the need to ensure throughout the national territory the essential levels of services concerning the civil and social rights of persons, in compliance with the principle of subsidiarity pursuant to Article 118 of the Constitution (thus Constitutional Court, Sentence No. 67/2017).

¹¹ Article 26 also points in the same direction: "according to Jewish tradition, religious requirements include those of worship".



cultural or ethnic circumcision, i.e. not religious or even therapeutic circumcision. As far as ritual circumcision is concerned, the Court held that it is, in any case, a practicable ritual, provided that it is performed by a doctor and with the consent of the parents, pointing out that, when it is performed for cultic reasons, it becomes an act whose “pre-eminent religious value” “overrides the medical one”, thus making its performance by a *mohel* possible¹².

It should not be forgotten, however, that the debate on ritual circumcision, which is considered permissible in Italy, contrasts with a current of legal thought in (especially) Germany which, more than a decade ago, raised significant objections to the legitimacy of this practice. In particular, German jurisprudence emphasized the primacy of the child’s right to physical integrity and self-determination over the parents’ right to religious education. German courts hold that the right of parents to direct the religious upbringing of their children must be limited to those actions that promote the child’s well-being, a criterion from which circumcision would seem to be excluded. According to this German jurisprudence, although circumcision may remove a cause of possible marginalization within the religious community to which the child belongs, it involves a permanent and irreparable alteration of the child’s body. The matter is further complicated when one considers the child’s freedom of religion, in particular his or her right to change religious beliefs in the future. According to German jurisprudence, this right is not directly affected by the practice of circumcision, but it imposes an indelible sign of belonging to a particular religious denomination, which may be incompatible with the child’s future personal choices regarding his or her faith. According to this interpretation, circumcision not only violates the child’s right to bodily

¹² The reference is to Jewish circumcision. The Court of Cassation specified, in fact, that “never could the *mohel* incur the crime of abusive exercise of the medical profession and his conduct, which objectively integrates the crime of personal injury, is excused, if it does not determine an appreciable injury and does not show signs of negligence, imprudence or inexperience. Ritual circumcision will not be in conflict with our legal system and the religious component will, on closer inspection, override not only the medical component, but also the penal component”. As far as Islamic ritual circumcision and cultural circumcision are concerned, the obligation of medicalization remains. Other judgments on the subject worth mentioning are: Court of Pavia, Criminal Section, Judgement No. 539 of 26 September 2003; Criminal Court of Cassation, Section V, sentence 8 May 2007, No. 17441; Court of Padua, Criminal Section, sentence 9 November 2007; Criminal Court of Padua, Criminal Section, sentence of 5 December 2007; Court of Como, Criminal Section, judgment 14 January 2013, No. 1339. As a comment on the cited case law, cf. for example, **A. LICASTRO**, *La questione della liceità*, cit., in particular footnote 36; **A. ANGELUCCI**, *Libertà religiosa e circoncisione in Italia: una questione di specialità confessionale*, in *Stato, Chiese e pluralismo confessionale*, cit., No. 35 of 2016, pp. 13-18; **A. CESERANI**, *Quando la circoncisione maschile diventa reato culturalmente motivato*, in *Il Diritto Ecclesiastico*, No. 1-2 of 2012, pp. 389-402; **E. D’IPPOLITO**, *Kulturnormen ed inevitabilità dell’errore sul divieto: la Corte di cassazione riconosce l’errore determinato da “fattori culturali” come causa di esclusione della colpevolezza*, in *Cass. pen.*, No. 11 of 2012, p. 3706 ss.; **A. CESERANI**, *Note in tema di circoncisione “rituale” maschile*, in *Il Diritto Ecclesiastico*, No. 3-4 of 2008, pp. 771-794.



integrity, but may also restrict the child's future freedom of religious choice¹³.

This raises important ethical and legal questions about how to reconcile children's rights with the cultural and religious practices of the communities to which they belong, a challenge that continues to stimulate a lively debate that seems to be resolved by looking to the medicalization of the act as a way forward.

3 - Circumcision in public health

The issue of medicalization - to better protect the physical integrity of minors in Islamic ritual circumcision and cultural circumcision - is a delicate one, since the question of whether the National Health Service (SSN) should cover the costs of non-therapeutic circumcision surgery is rather complex. Currently, there is a lack of unambiguous regulations and no national guidelines on the subject. For this reason, the National Bioethics Committee, in the above-mentioned opinion, had stated that there is no rule in the Italian legal system that imposes an obligation on the National Health Service to cover such costs¹⁴. The Prime Ministerial

¹³ Cf. German jurisprudence: Landericht of Cologne, judgment 7 May 2012; Oberlandesgericht of Hamm, judgment 30 August 2013; Bundesverfassungsgericht, order 13 February 2013. On comment, see **A. LICASTRO**, *La questione della liceità*, cit., pp. 43-46; **J. GREVE**, *The German debate on male circumcision and Habermas' model of post secularity*, in *Bioethics*, 2018, p. 1 ff.; **B. KRESSE**, *La circoncisione rituelle au regard du droit allemand*, in V. FORTIER (ed.), *La circoncisione rituelle*, cit., p. 127 ff.; **S.R. MUNZER**, *Secularization, Anti-Minority Sentiment, and Cultural Norms in the German Circumcision Controversy*, in *University of Pennsylvania Journal of International Law*, No. 37 of 2015, p. 503 ff.; **H. PEKÁREK**, *Circumcision Indecision in Germany*, in *Journal of Law, Religion and State*, No. 1, 4 of 2015, p. 4; **W. BEULKE**, **A. DIEßNER**, "... Un piccolo taglio per un uomo, una grande tematica per l'umanità". *Perché la sentenza del Landgericht di Colonia sulla circoncisione di un minore per motivi religiosi non convince*, in *Riv. it. dir. e proc. pen.*, No. 2 of 2013, p. 858 ff.; **S. GATZHAMMER**, *Commento alla sentenza del Landgericht Köln del 7 maggio 2012 in tema di circoncisione e commento alla nuova normativa § 1631 del codice civile tedesco, BGB*, in *Il Diritto ecclesiastico*, No. 1-2 of 2013, p. 355 ff.; **S. MANCINI**, *Germania: Una corte tedesca vieta la circoncisione per motivi religiosi*, in *Forum di Quaderni cost.*, 17 July 2012; **V. PACILLO**, *La circoncisione, in Germania, tra corti e legislatore*, in *Veritas et Jus*, 2012, p. 105 ff.; **A. RATTI**, *Circoncisione rituale maschile: riflettendo su una recente decisione della corte distrettuale di colonia*, in *www.diritticomparati.it*, 17 September 2012.

¹⁴ The National Bioethics Committee (CNB) has issued an opinion that reflects the complexity of the balance between respect for religious traditions and the responsibilities of the State in the field of public health. The CNB argues that, from an ethical point of view, it would be desirable for communities that practise neonatal circumcision for ritual reasons to turn to private practitioners or to use public hospital facilities, but on a freelance basis. This practice is already common among citizens of the Israelite faith and offers a model of how ritual circumcision could be handled without burdening the community. The principle of secularity of the State, which includes the religious and cultural phenomenon, plays a central role in this issue. However, the CNB stresses that there are no ethical or health reasons to justify public funding of ritual circumcision, suggesting that it should remain the responsibility of the individual or religious community concerned. The CNB's position raises important questions about the management of cultural and religious practices within a public



Decree of 29 November 2001 on the “*Definition of levels of care*” and the Prime Ministerial Decree of 12 January 2017 on the “*Definition and updating of essential levels of care*” have repeatedly excluded ritual circumcision (and *a fortiori* cultural circumcision) from the Essential Levels of Care (LEA).

Moreover, since the Regional Health System can be better than the national one, the decision of whether or not to cover the costs of non-therapeutic circumcision was taken by the individual Regions, alarmed by the damaging or fatal outcomes that some clandestine practices had had, with the consequent increase in public health spending¹⁵. Thus, some Regions have already decided on the matter, while others have not yet taken a definitive position, and the regional regulatory scenario now presents itself very differentiated¹⁶. There are regions where circumcision is still paid for by the family, such as Basilicata, Calabria, Campania, Molise, Lombardy, Apulia, Sardinia, Umbria and the Autonomous Province of Trento¹⁷. In other regions, on the other hand, ritual circumcision is included in the LEA and is fully paid for by the SSR, as in

health system. Encouraging the use of independent hospital facilities helps to ensure that procedures are carried out in a safe and hygienic manner, reducing the health risks associated with clandestine or unregulated practices. At the same time, this modality allows the principle of secularity of the State to be respected, ensuring that public funds do not directly support specific religious practices, but are used to guarantee the accessibility and quality of health care in general. Ultimately, the CNB's proposal aims to strike a balance between respect for religious traditions and the efficiency of the public health system, without directly using the issue of secularism, but rather that of health protection. It proposes a viable way to address the issue of ritual circumcision in an ethically and legally sustainable way, taking into account both the needs of religious communities and the principles of equality and secularity of the state. This strategy not only reflects an inclusive approach that respects cultural and religious diversity, but also strengthens individual and community responsibility in dealing with practices that have deep personal and collective meaning.

¹⁵ In fact, the reform of Title V of the Constitution gave the regions the power to use their own resources to expand the supply of services and health benefits in addition to those included in the national LEAs.

¹⁶ In this regard, cf. **COMMISSIONE PARLAMENTARE PER L'INFANZIA E L'ADOLESCENZA**, *Relazione sulle problematiche connesse alle pratiche di circoncisione rituale dei minori*, 7 July 2021, available at <https://www.senato.it/service/PDF/PDFServer/DF/362164.pdf>. On the issues that have arisen, see also *l'Appello del Centro islamico culturale d'Italia, diramato in una nota a firma del Segretario generale, Abdellah Redouane, contro le circoncisioni rituali eseguite al di fuori delle strutture sanitarie, in ambiente domestico e da persone non idonee* (2019), available at <https://www.altoadige.it/salute-e-benessere/circoncisione-in-casa-grande-moschea-roma-farla-in-ospedale-1.195277> 6; **Parere dell'ASSOCIAZIONE MEDICI DI ORIGINE STRANIERA IN ITALIA (AMSI)**, *Dati sulla circoncisione in Italia*, 25 March 2019, available at <https://www.dire.it/newsletter/odm/anno/2019/marzo/25/?news=N01>; **GARANTE PER I DIRITTI DELL'INFANZIA E ADOLESCENZA**, *Circoncisione rituale, raccomandazione dell'Autorità garante al ministro della Salute*, 15 April 2019, available at <https://www.garanteinfanzia.org/sites/default/files/15-04-2019-nota-circoncisione.pdf>.

¹⁷ Cf., for example, Provincia autonoma di Trento: D.G.P. 17 June 2011, No. 1306, *Direttive all'Azienda provinciale per i servizi sanitari per l'erogazione di prestazioni sanitarie aggiuntive - anno 2011* (in B.U. Trentino-Alto Adige, 12 July 2011, No. 28, Suppl. No. 1).



Emilia-Romagna, Marche and Tuscany¹⁸. Lastly, whether it is paid for by the family or by the SSR, in some cases it is possible to have access to the operation as a health service with a doctor's referral and with a cost-sharing fee, as in Friuli-Venezia Giulia, Lazio, Piedmont, Sicily, Umbria and Veneto, with very different contributions ranging from one hundred and fifty/two hundred and eighty euro in Piedmont to four hundred / four hundred and fifty euro in Veneto, up to one thousand euro in Friuli-Venezia Giulia¹⁹. Italian and foreign minors resident in the Region; foreign minors holding a regular residence permit and registered with the Regional Health Service; persons registered with the Regional Health Service with an STP / ENI card are entitled to the service²⁰.

The same dissimilarity can be seen regarding the type of care required by the health authorities. In Tuscany circumcision is performed as an ordinary inpatient procedure; in Friuli-Venezia Giulia, Piedmont, Sicily, Tuscany, Umbria and Veneto as day surgery; in Latium, Emilia-Romagna, Piedmont, Tuscany as outpatient procedures²¹.

4 - Perspectives

In the face of the variegated panorama described above and the open issues, especially for the Islamic communities and those who wish to perform circumcision for even only cultural reasons, clear answers must be found to safeguard the correct balancing of the constitutional principles at stake²². Such interventions can be envisaged at both national

¹⁸ Cf., for example, Regione Marche: D.G.R. 29 giugno 2020, No. 795, *Modalità di accesso alle prestazioni di circoncisione rituale maschile* (in B.U. Marche, 10 July 2020, No. 62); Regione Emilia-Romagna: D.G.R. 2 August 2021, No. 1228, *Modalità di accesso alla circoncisione rituale/culturale per la prevenzione degli eventi avversi: approvazione documento* (in B.U. Emilia-Romagna, 18 August 2021, No. 256).

¹⁹ Cf., for example, Regione Piemonte: D.G.R. 20 March 2006 No. 39-2418, *Approvazione della sperimentazione relativa alla circoncisione rituale in day surgery presso A.S.O./OIRM S. Anna di Torino*, and Regione Piemonte: D.G.R. 2 November 2002, No. 49-12479, *Aggiornamento del nomenclatore tariffario regionale delle prestazioni di assistenza specialistica ambulatoriale*; Regione Friuli-Venezia Giulia: D.G.R., 4 September 2008, No. 1754, *Approvazione del Progetto Sperimentale di offerta di circoncisione rituale maschile in struttura sanitaria pubblica della Regione FVG* and Friuli-Venezia Giulia: D.G.R. 31 March 2010, No. 600, *Prestazioni rese dal SSR: circoncisione rituale maschile* (in B.U. Friuli-Venezia Giulia, 14 April 2010, No. 15).

²⁰ The card is issued by the Regional Health Service Bodies (SSR). Cf., for example, <https://bur.regione.emilia-romagna.it/bur/area-bollettini/bollettini-in-lavorazione/agosto-periodico-parte-seconda-2a-quindicina.2021-08-17.6993333211/modalita-di-accesso-alla-circoncisione-rituale-culturale-per-la-prevenzione-degli-eventi-avversi-approvazione-documento/documento-circoncisione>.

²¹ The data are taken from the **PARLIAMENTARY COMMISSION FOR CHILDREN AND ADOLESCENTS**, *Relazione sulle problematiche*, cit., p. 16.

²² On the other hand, there are no problems whatsoever with circumcision in Jewish communities that have been organised for years to guarantee religious practice while respecting the physical integrity of the child. Cf. in this regard and on the establishment of the National Register of *Mohalim*, available at <https://moked.it/ame/files/2021/08/PROTOCOLLO-MILAH-e-ministero-18.04.2019.pdf>.



and regional levels.

At the national level, the first instrument that could guarantee the Muslim confession and, therefore, the practice of circumcision, is the

“The UCEI in cooperation with LARI and the AME, the Jewish Medical Association has jointly defined the requirements necessary for *Mohalim* to perform ritual circumcisions within the Italian Jewish Communities in absolute health safety. To this end, a national Register of authorised ritual circumcisers is established. The Register is deposited at the headquarters of the Union of Italian Jewish Communities and published in the relevant media. So that those who hold full certification and authorisation to operate in accordance with the *Rabbanut* and in compliance with health security are publicly recognised. Enrolment in the Register is approved, at the interested party's request - see attached form - by the ARI Council, after hearing the opinion of a representative of the UCEI and of the Jewish Medical Association, who shall ascertain the possession of the following requirements

1. Training curriculum with certification issued by recognised international Jewish bodies (e.g. OU, UME, Initiation Society, Central Rabbinate of Israel) and proven practical experience.

2. Qualification to practise as a medical surgeon is an advantage.

3. Jewish religious conduct.

4. Membership of the Union of European *Mohalim* (UME).

5. Commitment to observance of the operational protocol.

6. Registration with an Italian Jewish Community.

The ARI Board may decide, in the event of lack of the indicated requirements or non-compliance with these instructions, the suspension/ cancellation of the membership.

Operating protocol

This section describes the operating procedure that the *Mohel* undertakes to follow.

Before circumcision

- Examination of the newborn with verification of his or her health condition permitting the procedure and at the same time to inform both parents about the modalities of the circumcision and to acquire informed consent.

- Inform the paediatrician attending the newborn of the upcoming circumcision and check together the health conditions permitting the operation.

- Obtain signed informed consent from both parents.

- Inform the community to which the newborn baby's family belongs of the commission received.

During circumcision:

- Implementation of all rules and precautions to ensure the safety of the newborn (asepsis, bleeding control, etc.).

- Use of sterile or disposable instruments.

- Circumcision: Direct sucking is discouraged and may only be permitted after a diagnostic assessment of the infectious state of the infant and the circumciser.

After circumcision:

- Ensure availability within 24 hours after circumcision.

- Follow up the infant until healing is complete.

- Keep a record of the circumcision (accessible for inspection) with forms attesting to the consent received and compliance with all health and hygiene rules and conditions and any complications.

- Once healed, the certificate of circumcision must be sent to the community to which the newborn child belongs”.

Cf. also <https://moked.it/ame/files/2021/08/Scheda-iscrizione-albo-mohalim.pdf>; **G. MORTARA**, *Impegno per una milà più sicura*, available at <https://www.mosaico-cem.it/vita-ebraica/ebraismo/impegno-per-una-mila-piu-sicura>. Cf. also my article, *La circoncisione non terapeutica in Italia, tra valetudo e religio: criticità e prospettive per un simbolo religioso nello spazio europeo della libertà religiosa*, in B. SERRA (ed.), *Valetudo et Religio: intersezioni fra diritto alla salute e fenomeno religioso*, Giappichelli, Torino, 2020, pp. 3-16.



agreement under Article 8, paragraph 3 of the Constitution, which is, to date, still a mirage²³. In any case, its bilateral nature would allow confessional needs to be properly taken into account, on the model of the agreement concluded with the UCEI, which, as can be seen from the case law of the Supreme Court, guaranteed the possibility also for *mohalim* to perform the ritual practice beyond the hospitalisation of the act. The second instrument that would be useful is a unilateral State law on the model of the German one, since, simply by means of a bill, a balance could be found between religious freedom and the health of the minor, while respecting his religious identity and that of the community to which he belongs²⁴.

Still at the national level, administrative responses would be needed, however, faster than the legislature. The Central Directorate for Religious Affairs of the Ministry of the Interior, in collaboration with the Ministry of Health, could play a key role in achieving certain important objectives in the area of ritual circumcision first of all, in informing the Muslim communities present on the national territory with respect to the legal regulation of ritual circumcision; secondly, in disseminating clear and accessible information material in different languages, also raising awareness among local administrations in order to promote knowledge of the issue of circumcision and the need to perform the practice safely, balancing religious freedom and the health of minors, through meetings and seminars also to encourage the dissemination of good practices of cooperation between hospital companies and religious communities thirdly, in promoting programmatic meetings with the State-Regions Conference and the Muslim communities to discuss these good practices and to draw up guidelines to develop a model convention/protocol between Muslim communities and local health authorities and to guarantee a minimum threshold of health safety in the field of ritual circumcision. Targeted ministerial guidelines could standardise procedures nationwide and define standard protocols for access to ritual circumcision; specify the professional skills needed to perform the procedure; establish requirements for pre- and post-intervention diagnostic tests. They would also improve collaboration with Islamic representatives to carry out an awareness-raising campaign aimed at

²³ Cf. my article, *Ancora sul concetto di confessione religiosa e alcune note sulla natura confessionale dell'Islam*, in *Quaderni di diritto e politica ecclesiastica*, No. 1 of 2019, pp. 21-48.

²⁴ Cf. § 1631 d) of the *Bürgerliches Gesetzbuch* (BGB), under the heading *Circumcision of a male child*: "Parental responsibility for the child also includes the right to consent to a medically unnecessary circumcision of a male child who is unable to self-determine in this respect, if the circumcision is carried out in accordance with the rules of medical science. This does not apply if the child's welfare is endangered by circumcision, also in view of its intended purpose. In the first six months after the child's birth, persons commissioned by a religious community may also perform circumcision within the meaning of paragraph 1 above, if they have special experience in the matter and, although they are not physicians, have equivalent competence in performing circumcision". Similarly to Germany, albeit with some restrictions, the legislation in Sweden and Norway: cf. A. LICASTRO, *La questione della liceità*, cit., p. 41.



parents and communities, emphasising the importance of performing circumcision in safe environments and by qualified personnel to protect the health and well-being of minors. Finally, they would encourage the organisation of information campaigns with general practitioners, paediatricians, family advice centers and municipal counters, facilitating safe access to the practice through the presence of a linguistic-cultural mediator²⁵. The objective could be the establishment of a register of Muslim circumcisers on the model of the national *Mohalim* register²⁶, since Islamic communities have no protocols regarding the performance of ritual circumcision²⁷.

The fact remains that the ritual nature makes it difficult to include religiously motivated circumcision in the LEAs, even though its introduction has been called for by several parties, such as, for example, the Italian Society of Paediatrics, which has long been requesting directives to ensure that parents who wish to subject their child to ritual circumcision can effectively access public health facilities or those affiliated with the SSN while respecting privacy²⁸. Similarly, the National Federation of the Order of Surgeons and Dentists (FONOMCeO), the Association of Doctors of Foreign Origin in Italy (AMSI) and the Garante per i diritti dell'infanzia e adolescenza (Guarantor for the rights of children and adolescents) have asked the Ministry of Health to include circumcision in the LEAs²⁹.

In any case, it seems simpler at the moment to take the regional route, making the most of the role that the State-Regions Conference and the Conference of the Regions and Autonomous Provinces could play, the former by inviting local health authorities to standardise access to circumcision, at least under the *infra-moenia* free profession regime, and by indicating prices that are regulated and standardised at the national level; the latter by facilitating harmonisation and monitoring at the regional level.

Collaboration between regional bodies, territorial authorities and

²⁵ For minors of the Islamic faith (as for those who are circumcised for cultural reasons) it would be desirable to promote the medicalization of ritual circumcision. This would not diminish the religious and / or symbolic value of the practice; on the contrary, this solution would, on the one hand, protect the minors' right to health; on the other hand, it would guarantee the right to religious freedom. In other words, medicalization would allow circumcision to be performed in a safe environment and by qualified personnel, reducing the risks of complications and respecting the religious significance of the practice for the Muslim community. Moreover, collaboration between religious and health authorities would facilitate the dissemination of accurate information on ritual circumcision, help families make informed decisions, and contribute to constructive interfaith dialogue, constituting a step forward in protecting the rights of Muslim children and respecting religious freedom.

²⁶ Cf. footnote 22.

²⁷ On this point cf. COMMISSIONE PARLAMENTARE PER L'INFANZIA E L'ADOLESCENZA, *Relazione sulle problematiche connesse alle pratiche di circoncisione rituale dei minori*, cit.

²⁸ Cf. <https://www.sip.it/wp-content/uploads/2017/09/CIRCONCISIONE.pdf>.

²⁹ Cf. https://www.quotidianosanita.it/cronache/articolo.php?approfondimento_id=12771, cit.; <https://www.garanteinfanzia.org/sites/default/files/segnalazione-ministro-salute.pdf>.



Islamic communities would, in conclusion, help to reaffirm the fundamental right of religious freedom, which often struggles to find concrete application in daily life, especially to the detriment of the Muslim denomination³⁰.



³⁰ However, there are still areas for reflection that are important for the secularity of the State, in particular the justification for public funding of religious practices such as circumcision. The fragmentation of regional policies leads to a lack of uniformity in the treatment of the fundamental rights at stake, which calls into question the principle of equality before the law and public services of primary importance. It would therefore seem more appropriate for the central government to intervene with a national law on freedom of religion, including the conditions under which circumcision can be practised, thus ensuring a balance between respect for religious freedoms and the protection of individual rights throughout the country. This approach would not only ensure consistency and uniformity of policy, but also provide a balanced solution that respects both the secular nature of the state and the needs of religious communities.