

DiReSoM

Diritto Religione Società Multiculturali
Law Religion Multicultural Societies

Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات
多元化社会中的法与宗教



**LAW, RELIGION
AND THE SPREAD
OF COVID-19
PANDEMIC**

EDITED BY
FABIO BALSAMO - DANIELA TARANTINO

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DiReSoM Papers

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**LAW, RELIGION AND THE SPREAD OF
COVID-19 PANDEMIC**

edited by

Fabio Balsamo - Daniela Tarantino

DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017 by Italian Scholars in Law and Religion.
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DiReSoM Papers 2 - Law, Religion and the Spread of Covid-19 Pandemic, edited by Fabio Balsamo, Daniela Tarantino, November 2020

Law, Religion and the Spread of Covid-19 Pandemic / [edited by Fabio Balsamo - Daniela Tarantino] / Pisa: DiReSoM, 2020 / 277 pp. (DiReSoM Papers: 2)

323.44

Civil and political rights; Freedom of conscience and religion; Rights of assembly and association; Pandemic and epidemic

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First edition: November 2020
©Pierluigi Consorti, Pisa, 2020
ISBN: 979 – 12 – 200 – 6405 – 7

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INTRODUCTION

Fabio Balsamo - Daniela Tarantino

The Covid-19 pandemic has affected many aspects of our lives, in many ways, all over the world. Public authorities in most countries have been taking a series of measures which they have deemed necessary to prevent or control the spread of the disease. Most of those measures correspond to a situation of “emergency”.

Therefore, the second book of the DiReSoM papers "*Law, Religion and the Spread of Covid-19 Pandemic*", created in continuity with the previous one, maintains the commitment of the DiReSoM research group to reflect on the study of the interaction between religion, law and Covid-19. This reflection continues to take place also on the website (www.DiReSoM.net) aimed at collecting legislation, jurisprudence and contributions relating to the impact of public restrictive measures adopted during the phases of the health emergency on the exercise of religious freedom and the reactions of religious communities in the face of such pervasive measures limiting the collective dimension of the exercise of worship. The book collects the contributions previously published online and aims to constitute an easy consultation tool for those wishing to deepen the interrelation between pandemic and "legal reactions", both secular and religious.

After the introduction, the book is divided into two parts. The first part is divided into three sections.

The first section, "Law and Religion" contains four contributions, which analyze the tension between law and religion during the Covid-19 emergency and the effects of the health crisis in the long run.

The second section, "State Law", consists of four contributions, focused on the impact of restrictive measures of collective exercise of religious freedom in several legal systems, examining the different answers ordinances offered in different contexts legal, social and cultural.

Finally, the third section collects five essays that investigate the attitude assumed by religious communities against restrictive measures state imposed and the more or less marked capacity of rights religious to adapt their rules internal to the emergency situation.

In its second part, to complete and integrate the issues addressed in the first, the contributions made in the Panel "*Law and Religion at the time of Covid-19*" of the 2020 edition of the International Conference of the European Academy of Religion are collected, on the theme "*The Power of Religion / Religion and Power*". Created this year in the form of a Webinar from 22 to 25 June 2020, the Panel held on 24 June - and divided into three sections (The dialogue between States and Religious Groups, The Covid-19 Pandemic and the Courts, Religious Law and Interreligious Dialogue) - was an extraordinary international opportunity for scholars and hermeneuts of the religious phenomenon to meet and reflect, through critical reading, communication, sharing and exchange open to civil society, on the main religious issues, in particular in the context of epochal transformation that humanity is going through.

The book is enriched by the Position Paper “*To continue celebrating safely: reordering the emergency*”, that the DiReSoM Research Group submits to the Italian Government and religious institutions, appropriately inserted in the second part. This position paper reflects on the possibility of allowing the celebrations of religious ceremonies in compliance with the measures necessary to prevent the contagion of the Sars-Cov-2 virus, the cause of Covid-19 disease. The DPCM dated 13 October 2020 (substantially replied in the subsequent one on 24 October) updated the measures to contain the contagion through both real rules and some recommendations, to prevent the suspension of certain fundamental rights, which unfortunately characterized the measures of the so-called 'Phase 1' and 'Phase 2'.

The contributions of the book therefore tackle highly topical questions, developing key issues relating to the controversial relationship between the protection of public health and the protection of religious freedom during the Covid-19 Pandemic, offering original food for thought in relation to new challenges and to new potential legal trajectories in the management of religious diversity, substantial equality and neutrality policies in a democratic society.

FIRST PART

LAW AND RELIGION

FORBIDDEN PILGRIMAGES DURING THE COVID-19 PANDEMIC*

Maria Luisa Lo Giacco

1. *Pilgrimages in various religions*

The pilgrimage is a universal form of worship. All world's religions have places, which we may define "sacred", to where believers go to pray, sometimes also to ask for healing or for protection by a disease¹.

In the Jewish tradition, pilgrimage appears as an obligation since the destruction of the Temple, that occurred in 70 A.D. by the Roman troops. In the Bible we can read that through Moses God said to his people to go to Jerusalem Temple to honour him three times a year, during the main holidays. Archaeologists recently unearthed a stretch of the ancient pilgrims' road, which dates back over two thousand years and which connected the Siloe swimming pool to the Temple². The mandatory pilgrimages ended

* Submitted: 9th May 2020. Published: 14th May 2020. For ITA version [click here](#).

¹ See M.L. Lo Giacco *Pellegrini, romei e palmieri. Il pellegrinaggio fra diritto e religione*, Cacucci, Bari, 2008; Id., *Pilgrimages: Law and Culture in Multicultural Societies*, in *AIMS – Geosciences*, 2016, no. 2, pp. 231-244.

² Y. Katz, *New Discovery in Jerusalem's City of David: 2,000-year-old pilgrimage road*, in *The Jerusalem Post*, June 30, 2019,

with the destruction of the Temple, but voluntary pilgrimages continue to the present day: the believers reach Jerusalem in order to pray where the temple stood. In 2019, nearly one million Jewish pilgrims traveled towards Israel.

The pilgrimage spread among Christians, already in the early centuries. Egeria (or Eteria), a roman pilgrim, in the IV-V century described in a Diary her pilgrimage to the Holy Land. Before her, in the third century, Eusebius of Caesarea described in his books the pilgrimages of believers that wanted to see with their own eyes the places where Jesus had lived. In the same period, believers became pilgrims to Rome, visiting the places of the martyrdom of the Apostles Peter and Paul. In the Middle Ages, shrines became important not only from the religious point of view, but also from the economic and cultural one, and pilgrimage became a particularly heartfelt expression of the Christian faith. Some pilgrimage routes were drawn, for example the Via Francigena, or via Romea, and the Camino of Santiago. The spirituality of the pilgrimage has come down to our days. The twentieth century witnessed a great flowering of shrines and pilgrimages, and the Popes themselves have given an example by making pilgrimages in many parts of the world. Unesco has declared several religious itineraries as a World Heritage Site.

In the Islamic faith, pilgrimage is particularly relevant. In fact, the pilgrimage to Mecca constitutes one of the five duties of the faithful, obligations which characterize membership in the *Umma*. This ritual pilgrimage must be done during the sacred month (*dhul-Hijjal*), though it is possible to visit Mecca all year round for a

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minor pilgrimage (*Umrah*). Among the rituals that pilgrims must do in Mecca one is closely linked to diseases: pilgrims go to the source of Zamzam, whose water is believed to be therapeutic, to drink it and take some with them when they return home. Islam also has other sacred places. The Shiites venerate some saints, and they go on pilgrimage to pray on their graves, as in the city of Karbala (Iraq). Pulau Besar, in Malaysia, holds some sacred sites that sufi pilgrims reach by ferry.

The pilgrimage is also practiced by the Hindu believers: in India the Char Dam Yatra road leads pilgrims towards four sanctuaries and it reaches the sources of the Ganges river³. Buddhism also has its places of pilgrimage, linked to the life of the Buddha (birth, awakening, first speech and death). In Japan, the pilgrimage route called Kumano Kodo leads to an important Shinto shrine: it has been listed in the UNESCO World Heritage Site since 2004⁴.

2. Pilgrimages and the spread of Coronavirus

The Coronavirus pandemic, which affected the whole planet, involved also pilgrimages, for several reasons. During the first weeks, when the extent of the infection and its dangerousness were still not completely clear, some pilgrimages became a vehicle of infection. In Iran, during the first days of March, pilgrims in the Shiite holy city of Qom gathered in the sanctuaries and, showed

³ See informations regarding the road in <https://www.hinduismtoday.com/modules/smartsection/item.php?itemid=5929>

⁴ <https://whc.unesco.org/en/list/1142/>

their reverence for the bodies of the saints kept there, kissing and licking the doors of the sanctuaries and the walls of the tombs, as an ancient custom suggests to do⁵. In the following days Qom became one of the areas most affected by the epidemic, and Iran one of the countries of the world with the most infections⁶. In Italy chronicles report that the first 5 contagions recorded in Trentino in early March are related to a pilgrimage, since the infected people had all travelled by bus to Assisi, together with a friar later identified as the patient zero of the region⁷.

Just to avoid the risks of spreading the virus, pilgrimages, like the other acts of worship that involve gatherings of people, were immediately suspended by all religions. Particularly relevant was the decision of the Saudi authorities, under whose jurisdiction the holy places of Islam are located, to stop pilgrimages to Mecca, both the voluntary ones, and the great annual pilgrimage, which in 2019 had seen 1,800,000 pilgrims gathering from all over the world⁸.

⁵ The news, reported by the New York Post, is also on the DiReSoM website (<https://DiReSoM.net/2020/03/02/ranians-licking-religious-shrines-in-defiance-of-coronavirus-spread/>).

⁶ See P. Tamimi Arab, *On Secularization and the Coronavirus in Iran*, in *Religious Matters in an Entangled World - Blogs*, 29 march 2020 (<https://DiReSoM.net/2020/04/01/on-secularization-and-the-coronavirus-in-iran/>).

⁷ <https://www.altoadige.it/cronaca/coronavirus-trentino-in-isolazione-43-pellegrini-e-15-operatori-sanitari-1.2280336>.

⁸The decision was taken at the end of February, just at the beginning of the spread of the epidemic, and firstly concerned only pilgrims coming from infected countries. See C. Giordano, *Coronavirus: Saudi Arabia bans all religious pilgrims and foreigners from virus-hit countries*, in *Independent*, February 27, 2020; <https://DiReSoMnet.files.wordpress.com/2020/03/coronavirus-saudi-arabia-bans-all-religious-pilgrims-and-foreigners-from-virus-hit-countries-the-pdf>. Just a

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This year the *Hajj* should have started in late July, but the Riad government has decided to suspend it several months in advance. It is an exceptional event, although not unique in history. Over the centuries it occurred several times that an epidemic spread during a pilgrimage to Mecca⁹. In 1865 a cholera epidemic killed 15,000 of the 90,000 pilgrims, arriving then in Europe through some of them¹⁰. In 2014 the Saudi government has not granted entry visas for the *Hajj* pilgrims coming from Guinea, Liberia and Serra Leone, countries that were afflicted at that time by an epidemic of Ebola¹¹. In general, the risk that such a large crowd could constitute fertile ground for the spread of infectious diseases has long led, in the Saudi authorities, to the decision to impose an obligation on all pilgrims to present, when booking the trip, a certificate of vaccination against meningitis and seasonal flu, and a certificate of

few days later, on March 4, 2020, the Saudi government decided to suspend pilgrimages altogether; see the news in <https://DiReSoMnet.files.wordpress.com/2020/03/coronavirus-larabia-saudita-sospende-i-pellegrinaggi.pdf>

⁹ See C. Gagliardi, *The caution Saudi health emergency in time*, in P. Consorti (ed.), *Law, religion and Covid-19 emergency*, DiReSoM, Pisa, 2020, pp. 129-135, (<https://DiReSoM.net/2020/05/07/DiReSoM-papers-1-ebook-law-religion-and-covid-19-emergency/>), also available in <https://DiReSoM.net/2020/05/01/saudi-arabias-caution-in-times-of-health-emergency/>

¹⁰ See M. Buitelaar, *The Hajj in Times of Epidemics*, in *Religion and Diplomacy*, April 1, 2020, <https://religionanddiplomacy.org.uk/2020/04/04/the-hajj-in-times-of-epidemics/>

¹¹ See U. Siddiqui, *Epidemics, war have impacted Muslim worship throughout history*, in *Aljazeera.com*, April 23, 2020, <https://www.aljazeera.com/news/2020/04/epidemics-war-impacted-muslim-worship-history-200420210254391.html>

good health. Even in Iraq authorities stopped pilgrimages to Karbala and promoted the disinfection of the sanctuaries¹².

In mid-March, Indian Prime Minister invited Sikh faithful not to go on pilgrimage to the Pakistani shrine of Kartarpur Sahib, closing the borders¹³. In Tunisia, the Jewish pilgrimage to Ghriba, the oldest African synagogue, which was supposed to be held in May and which traditionally gathers thousands of pilgrims from all over the world, has been cancelled¹⁴.

As for Catholic pilgrimages, in addition to the impossibility to visit Rome (11,000,000 visitors went to St. Peter's in 2019), pilgrimages to the Holy Land were cancelled (in 2019 630,000 visitors), in Lourdes (about six million every year), in Santiago de Compostela (347,578 pilgrims in 2019) and in all the other shrines, more or less known. On April 24, Belgian directors of organizations treating the trips to Lourdes decided to cancel all pilgrimages, until the end of August, because of "the poor health of many pilgrims"¹⁵.

These numbers not only tell us how the impossibility of visiting holy sites constitutes a limitation to freedom of expression of the popular religiosity, but they also show us how the suspension

¹² See the news in <https://www.lapresse.it/esteri/iraq-il-coronavirus-blocca-il-turismo-religioso-ke-rbala-2521296/video/2020-03-27/>

¹³ <https://www.newindianexpress.com/world/2020/mar/15/in-view-of-coronavirus-outbreak-pakistan-suspends-pilgrimage-to-kartarpur-sahib-2116987.html>

¹⁴ <https://www.lefigaro.fr/international/coronavirus-en-tunisie-annulation-du-pelerinage-annuel-juif-de-la-ghriba-prevu-en-mai-20200421>

¹⁵ See the news in <https://www.cathobel.be/2020/04/annulation-de-tous-les-pelerinages-a-lourdes-cet-ete/>

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of pilgrimages, and in general the blocking of religious tourism, will create a negative effect on the economy.

3. After Covid-19, will pilgrimages also change?

The decision to suspend pilgrimages, together with all other collective acts of worship, finds its justification both in Jewish law and in Islamic law. In fact, in the Talmudic tradition, in addition to the duty to protect one's own and others' health, there is a teaching that concerns epidemics. We read: "When pestilence is in the city, stay inside", which means that, in the event of an epidemic, you must not leave the house. The provisions that impose quarantine are therefore considered compliant with Jewish law, and also the suspension of pilgrimages is therefore justified. It should also be remembered that compliance with state regulations is itself a religious obligation, even more when this obligation tends to protect health and life¹⁶.

Even Islamic law knows provisions relating to the prevention of contagion in the event of epidemics. An "hadith" of the Prophet Muhammad prescribes: 'If there is a pestilence do not go to a land, if the land where you are is affected by a pestilence do not get out of it'¹⁷. On this basis, the Italian Islamic Association of Imams and

¹⁶ See E. Martinelli, *Il Talmud insegna: "Se in città c'è una pestilenza, ritira i tuoi passi"* (Bavà *Qammà* 60), in *DiReSoM Papers*, April 10, 2020, https://DiReSoMnet.files.wordpress.com/2020/04/martinelli_talmud_ita.DiReSoM.pdf

¹⁷ See V. Fronzoni, *From social distance to Muslim solidarity proximity at the time of Covid-19*, in P. Consorti (ed.), *Law, religion and Covid-19 emergency*, DiReSoM, Pisa, 2020, pp. 261-268,

Religious Guides has published recommendations¹⁸. We can therefore conclude that both Judaism and Islam know quarantine in their tradition (and therefore also the suspension of pilgrimages).

The Coronavirus epidemic instead introduces a change in the meaning of pilgrimage for the Catholic Church. In fact, the popular religiosity of Catholics, precisely in cases of danger and epidemic, resorted to intercession, processions and pilgrimages. The sick seek comfort and healing in prayer. Many pilgrimages were born, and still today they are made, to ask for a healing, or to thank for the recovered health.

In the Middle Ages, the practice of *incubatio* spread: the sick settled in the sanctuary where they had come as pilgrims, they slept and stayed all day in prayer until they recovered. One of the most well-known sanctuaries among those where sick people go is in Lourdes, France, but there are many, and not only in Europe.

Some sanctuaries guard the memory of saints who have been venerated for centuries just as protectors from epidemics. The chronicles say that in 1624 Saint Rosalie saved the city of Palermo from the plague. Saint Roc is always depicted with a plague sign on one leg, while it is said that Saint Rita dedicated herself to the care of the plague victims.

Prayer to a patron saint has always been considered a weapon of defence against epidemics; perhaps the most effective weapon

(<https://DiReSoM.net/2020/05/07/DiReSoM-papers-1-ebook-law-religion-and-covid-19-emergency/>), also available in <https://DiReSoMnet.files.wordpress.com/2020/04/fronzone-muslim-social-distance.pdf>

¹⁸ The document in <https://DiReSoM.net/2020/03/05/raccomandazioni-e-istruzione-dell'associazione-islamica-italiana-degli-imam-e-delle-guide-religiose/>

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in the past, when medical science did not have the treatments and the means of disease prevention that we have today. In the early days of the pandemic in Italy, an article on saints to be invoked during the epidemics appeared in the online version of the Catholic newspaper “Avvenire”¹⁹.

A trace of this tradition is also in the powerful image of Pope Francis who, in a deserted Rome, went alone on foot - precisely, on pilgrimage - to venerate the image of the *Madonna Salus populi romani*, kept in the Basilica of Santa Maria Maggiore; then he went to pray in the church of San Marcello al Corso where an ancient crucifix is venerated because, according to the tradition, it saved Rome from a plague epidemic²⁰. The two images were then brought to Saint Peter’s Square, where they were placed as background during the exceptional intercession prayer of March 27, and there they stayed during the celebrations of the Easter Triduum.

The pilgrimage has always been a typical form of religious expression, with a strong therapeutic meaning, which in the case of the coronavirus pandemic seems to have given way to the advantage of a prevailing precautionary attention, which has led to the prohibition of pilgrimages themselves. These decisions will probably change the attitude of the faithful towards these forms of prayer. It is possible that after Covid-19 the way the faithful will consider the places of popular piety will never be the same.

¹⁹ R. Maccioni, *La devozione. I santi da invocare contro l'epidemia*, in *Avvenire.it*, March 7, 2020, <https://www.avvenire.it/chiesa/pagine/santi-da-invocare-contro-l-epidemia>

²⁰ *Pope Francis' twin prayers for an “end to the pandemic”*, in *Vatican News*, <https://www.vaticannews.va/en/pope/news/2020-03/pope-francis-mary-prayer-crucifix-coronavirus.html>

IS THE LOCKDOWN OF CHURCHES AN AGGRESSION TOWARDS FREEDOM OF RELIGION OR BELIEF?*

Cătălin Raiu

1. Introduction

According to international standards, states cannot suspend FoRB during war or emergency state. However, religious freedom can be limited as an exceptional measure, to reestablish order and public security, or in the case of an epidemic as an exceptional measure and with the fulfillment of the following terms: 1. to be provided by law 2. to serve purposes of the political body in its whole (protection of security, public order, health, etc.) 3. to be nondiscriminatory in language and application 4. to strictly serve the purpose and announced period.

With reference to the Covid-19 pandemic, the World Health Organization recommends “states to maintain a fine balance between protection of health, the reduction of the negative economical and social impact and the fulfillment of human rights”.

If we understand FoRB in the normative sense, as a right that has its limits in the exercise of other rights (for example, the right

* Submitted: 20th May 2020. Published: 26th May 2020.

to a healthy life) than the governmental measures are not in fact restrictions, but instruments to democratically harmonize multiple rights. If we take religious freedom broadly, as one of the fundamental rights of democracy, susceptible to not having limitations precisely because it stands at the base of the human rights and freedoms pyramid, the governmental measures are restrictions, but are justifiable.

European states must worry more about closing churches than religious organizations, because it is the duty of the state to facilitate the exercise of rights and liberties, in the logic of liberal democracies the religious organizations being just one of the instruments by means of which free citizens freely associate with the purpose of exercising a common faith.

2. What is the emergency state in terms of political science?

The modern state resulted from the dissolution of plural medieval jurisdictions (guilds, churches, feudal estates, etc.) and was founded both with military power but especially through bureaucracy. Subsequent to that it liberalized consolidating its dimension of rule of law, separated political powers and constitutions were established. Passing from absolute monarchies to the constitutional ones or even forms of incipient republican governments was made by the gradual neutralization of the head of state, which in most cases kept attributes of the sovereignty, and in others it kept the executive power.

This state's spine is represented by the political neutrality and liberal separations in different areas and with different intensities: separates the government from the people, religion, art, culture and

science, the state from society and is grounded on the hypothesis (in accordance with the trend of the era – birth and explosion of the number of political parties) that in most parliament legislatures you will have coalition majorities. As liberal regimes become more democratic and have the Parliament as their core, as the representative organism of the people, the head of state, being monarch or president, remains with the attributes of sovereignty, even if he cannot be considered sovereign any longer.

This monarchic position being simultaneously in the center but also on the edge of the political regime, gives the president of the modern republic the attribute of neutral and intermediary power (*pouvoir neutre*, Benjamin Constant), power placed not above the constitutional powers, but by its side, separated and with specific competences. This is where his competences as a mediator between state, society and state powers begin. Being a mediator between the powers of state, the elementary logic tells us that he cannot be part of these.

From the 19th century continental liberal constitutions we can identify principles that have been borrowed in the actual constitutions (post-war and post-communist): the representation of the people belongs exclusively to the Parliament, to the will of which depends the Government, and the head of the state or more precisely the President of the republic has competences that tie him either to the Parliament (the voting of the state of emergency or international treaties signed lastly by the President), or to the Government (by the countersignatures of the ministers and/or of the prime minister). As such, the President of the republic, just like a secularized king, emptied of the legitimacy of the divine right, rules but does not govern.

The president as *pouvoir neutre*, chosen democratically directly by the people, plays a role that cannot be assumed by the Parliament. His independence to the Parliament and in equal his election directly by the people are consequences of him being detached from the particular interests of a parliamentary majority, reason for which during the exercise of his position he cannot be simultaneously neither member of the Parliament nor member of a political party. When the Parliament forces the Constitution in name of maximizing the rights and liberties or for populist public policies, the President, as a mediator authority, is the one that protects it and sends the law to the Constitutional Court. This neutral power is not in competition with the other powers which is precisely why it becomes active only during emergency situations or war.

Carl Schmitt understands the presidential position as the representation of the unity of the political will of the sovereign people, reason for which the President can skip parliament and can go directly to the people and calling for popular consultations. The President of the republic has the duty to create political consensus in the horizon of the reason of state itself and protection of democracy. He must be non-partisan, neutral arbiter, mediator and moderator, but also to withhold from deciding. The President as a representative of the national unity of the State is in fact the opposite of the Parliament as the people representative.

In the alternative in which the president is elected by Parliament, so in fact by a parliament majority, like in Italy or Hungary, the President is either extremely loyal to the dominant party, or nonexistent and without reaction to what takes place in the Parliament. He is a ceremonial annex, stripped of the real

capacity of being an arbiter and also of the power to act different to the will of the parliament majority.

In case of the emergency state, the President's duty is to simultaneously assume all qualities and attributes granted by the Constitution and can decree, initially by himself, and then with the agreement of the Parliament, to a certain period of time during which the political decision requires a quick reaction and cannot be subjected to the parliamentary debate but to a single authority. The authority least touched by vanity and political partisanship is the President. With eyes set on reason of state, by decreeing the emergency state, the President has the authority to place the interests of the state above the interests of the people (that for various reasons does not accept for example to self isolate) and assumes the executive power. The state revs its engine to the maximum to produce order and public security and leaves on a secondary level, without forgetting them, the citizen rights and liberties.

Romania may be counted in as a democracy at the fine border between semi-parliamentarism and semi-presidentialism, having both a President elected directly by the people for a term which does not overlap as length to that of the Parliament, but at the same time does not really have executive powers. The competition for power between the Parliament, President and Government makes the radical political decisions to not be implemented. This fact is a gain for democracy despite the fact that the Romanian political regime was not constituted with the best democratic intentions, but rather to harmonize the battle for power between different influential political actors.

3. How was religious freedom restricted?

The constitutional solution chosen by Romania was the establishment of the emergency state at the request of the president of the republic with the agreement of the Parliament for two periods of 30 days each. In these periods, the government appealed to several military ordinances as the main governing instrument. The military ordinances used a legal-political language centered on restrictions mainly addressed to the Romanian Orthodox Church (which holds 59% of all religious organizations in Romania and a total of 86.45% of members) and, if we read through the lines, the main activity limited until forbidding it is the holy communion of the faithful. The state does not restrict the participation of the clergy to the Holy Mass (where all participant priests have the obligation to take communion from the same Chalice), but restricts the communion of the faithful with the same teaspoon.

The solution thought of by the Romanian authorities is not appropriate as a public policy because is not centered on social distancing as a measure to prevent the spreading of the virus, but, on the one hand on the harsh restriction to give communion to the faithful from the same Chalice and with the same teaspoon, and, on the other hand the separation of the Church in clergy and people, a valid dichotomy theologically until one point, but incomprehensible in relation to the access of the faithful to the exercise of religious freedom. The clergy retains the privilege of communion from the same Chalice, although in the case of large parishes and monasteries we speak of 4-5 or event 10 clerics that perform mass at the same time in small altars and unavoidable without keeping the social distance of 2 meters. Instead, the

faithful is restricted from participating to the Holy Mass, for using the same teaspoon, reason that can be read through the lines.

The solution had in mind by the Romanian decision makers transpires from a corporate mentality and not a democratic one, meaning that it prioritizes the Church (the equivalent of the clergy body) as a social corporation to the detriment of the religious freedom as an individual right. Their intention seems to have been on the one side to ensure that the mass-media does not receive other images of the faithful receiving communion from the same Chalice and teaspoon, and on the other hand to not legislate too many prohibitions to the clergy.

Moreover, just to prove that the restrictions are not targeting the priesthood, the military ordinances, although they are meant to state restrictions and limit rights, add, without any legal logic, the fact that “religious/church servants (the term does not exist in legislation) can give communion to the ill in the hospital or at their place of residence”, which obviously was valid even before the outbreak of the pandemic. Furthermore, “the communion of the faithful” is not the practice of all religious organizations.

Further on, the expression “religious/church servants” not only does not coincide with the synonym it probably targets, which is “clerical staff” (legal and not discriminatory term established by Law No. 489 of 2006 regarding religious freedom), but is deeply discriminatory because it targets only those religious organizations that have instituted sacramental priesthood (Orthodox, Catholic, Protestant Churches, etc.) and exclude from the beginning some evangelical churches or the Jews and the Muslims, where the sermon directed by the clergy can be performed, in certain situations, by other members of the community.

The restrictions in the military ordinances target in fact practices specific to the Romanian Orthodox Church, leaving the apparent impression that it gives the Romanian Orthodox Church some free space (which is to perform sermons behind closed doors), but forbidding the access of the faithful to the sermon, which is the main gesture of exercising religious freedom.

In Romania's case the governmental positions are mediated arbitrarily by a mixture of anti-clergy (despite the fact that in democratic regimes the police force has the role to prevent and educate, the Romanian Police fined dozens of priest with the amount of 4.000 euro each for performing the memorial service with 4 to 5 people in the outdoors) and pietist ultra-conservatorism (the Police, neutral from a religious standpoint according to the legislation, offered to help within an agreement with the Romanian Orthodox Church, to spread the holy light in the night of the Resurrection, a gesture reserved solely to the clergy, and revoked because of the public pressure).

4. Further advancement of FoRB in Eastern Europe

The topic of restricting religious freedom, a right generally understood in eastern Europe as optional and not important, despite the recent experience of the communist regime and of the recent Western pressure, becomes for the next weeks a theme to think about for the Parliament, the guarantor of citizen rights and liberties. The Romanian Parliament has the chance to censor military vices and pay attention to the language and instruments used so that this period of crisis does not leave deep scars in the

democracy especially given that the ease of restrictions regarding religious life are about to happen all over Europe.

The call of US Ambassador at large for international religious freedom, Samuel Brownback, or that of Jan Figel, former Special Envoy for the Promotion of Freedom of Religion or Belief Outside of the EU regarding the release of political detainees abusively detained for religious purposes in many countries in the world, remain, for the moment, in countries such as Romania just a diplomatic speech and not concrete invitations to promote FoRB.

5. *What is to be done?*

- Replacing pro-/anti Church governmental positions with international guidelines to apply the principles of religious freedom for dignitaries, police officers, attorneys and judges;

- Branching the Romanian government to the International Alliance of Religious Freedom, organization launched by the US Department of State and which already includes almost all post-communist countries from Europe: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Greece, Hungary, Latvia, Lithuania, Slovakia, Slovenia, Ukraine;

- Collaboration with European institutions such as the Agency for Fundamental Rights of the European Commission and the Office for Democratic Institutions and Human Rights of OSCE which offers practical solutions for emergency situations, like the Covid-19 pandemic, etc.;

- The introduction of the culture of freedom of religion or belief in the public administration, at least on central level, starting

Cătălin Raiu

from the minimal effort to religiously alphabetize at least the political decision makers.

A TRUCE FOR THE COVID. FROM THE PANDEMIC AN OPPORTUNITY FOR PEACE?*

Stefano Picciaredda

1. *A persuasive appeal*

The pandemic has not spared the lands in war, where “worst is yet to come”. For this reason, the General Secretary of the United Nations Organization Antonio Guterres re-launched on April 3rd 2020 his appeal for a global ceasefire¹, which received support from many religious leaders, including Pope Francis. “There should be only one fight in our world today, our shared battle against Covid 19”, added Guterres. In the appeal of March 23rd he had used similar explicit, direct and effective expressions. He recalled that “the virus does not care about nationality or ethnicity, faction or faith because it attacks all, relentlessly”². Moreover, “women and children, people with disabilities, the marginalized and the displaced pay the highest price”³. In summary, therefore, “the fury of the virus illustrates the folly of war”.

* Submitted: 28th August. Published: 3rd September 2020. For ITA version [click here](#).

¹ <https://www.un.org/press/en/2020/sgsm20032.doc.htm>

² <https://www.un.org/press/en/2020/sgsm20018.doc.htm>

³ *Ibidem*

Guterres had therefore called for an “immediate global ceasefire in all corners of the world to help create corridors for life-saving aid. To open precious windows for diplomacy. To bring hope to places among the most vulnerable to Covid 19”.

Six days later, Pope Francis, in the speech delivered at the end of the Angelus prayer, had promptly associated himself with the appeal, inviting “everyone to follow it”⁴. And he had added:

May our joint fight against the pandemic bring everyone to recognize the great need to reinforce brotherly and sisterly bonds as members of a single human family. In particular, may it inspire a renewed commitment to overcome rivalries among the leaders of nations and the parties involved. Conflicts cannot be resolved through war! Antagonism and differences must be overcome through dialogue and a constructive search for peace⁵.

These pages focus on some scenarios of sub-Saharan Africa, the continent where most of the wars currently taking place on the planet are fought. I will try to illustrate the effects of the Guterres-Bergoglio appeal in local situations, effects obtained thanks to the commitment of Catholics, and I will try to understand if this has led to a turning point for pacification and a decrease of violence. Such initiatives undoubtedly belong to Catholics, from hierarchy to associations, to the faithful, and the commitment to restore peace must be a priority concern for Christians.

Pope Francis has reiterated this on several occasions, and he himself has given an example through his action for peace in the Central African Republic and in South Sudan. The current pope

⁴ See www.vatican.va/content/francesco/en/angelus.

⁵ *Ibidem*

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also asked that the commitment to peace always have an ecumenical and possibly interreligious character, that is, Catholics could involve other confessions and other religions in the work for reconciliation. There is a long lasting tradition that has to be remembered. Such as the recent involvement of bishops and episcopal conferences in the democratization and pacification processes in Africa, started in the late 1980s⁶. The apostolic exhortation *Africae Munus* (2011), at the end of the second Synod for Africa in 2009, is also significantly explicit, with the subtitle *On the Church in Africa in service to reconciliation, justice and peace*.

The appeal also seemed to be a way of not allowing the realities of wars currently underway to slide further into oblivion, especially the ones that are more distant, gangrenous and of "low intensity", in an era in which almost all media and public opinion attentions and concerns are focused on the trend of the pandemic, and on the economic consequences of it.

⁶ In Burundi, Rwanda and in the Democratic Republic of the Congo, the bishops' conferences have been involved in the reconciliation and forgiveness process among the population. In Zimbabwe, a bishop mediated the dialogue between the government and the opposition in the economic crisis. The cases of Swaziland, Liberia, Ivory Coast, Nigeria, Cameroon, Angola, Guinea Bissau, Sudan, Kenya, Zambia could also be mentioned. In Malawi, the entire process of opposition to President Kamuzu Banda's regime originated with the 1992 Lenten catechesis of Catholic bishops. A Mozambican bishop mediator in the peace process in his country said in 2003: "There is growing awareness in Africa that the Church must be an expert in resolving armed conflicts. We must intensify this awareness with the formation of the civil awareness of citizens ". On the role of an independent peacemaker of Christian origin such as the Community of Sant'Egidio see R. Morozzo della Rocca (ed.), *Fare pace. La diplomazia di Sant'Egidio*, San Paolo, Cinisello Balsamo (Mi) 2018.

2. *At war for language. The Cameroon case*

The case of Cameroon helps to understand the intertwining of conflict and pandemic. For three years a civil war has been bloodied the English-speaking regions in the southwest of the country. Outpatient clinics were few before the war. But many health centers have been closed, due to military attacks and to the escape of doctors. Today, people do not know where to turn if the symptoms of the infection occur, or if they get sick of any other pathology. It is estimated that at least one million Cameroonians have been forced to abandon cities and villages, and most of them have taken refuge in the forests. When the government decided to suspend humanitarian and commercial flights, due to the Covid emergency, supplies for humanitarian organizations could no longer be shipped, and the emergency has become more serious.

Guterres' appeal obtained the accession of Southern Cameroon Defense Forces (Scdf), but not of the others armed movements in the area - there are fifteen in all! -. One of these movements, an important one, the Ambazonia Governing Council, said a ceasefire would pave the way for government troop raids. The bishops did not stand by. Since the beginning of the hostilities, they have intervened in various ways. In these pandemic times, as early as February 2020, in an open letter addressed to the President of Cameroon Paul Biya, sixteen bishops from ten countries called for “a lasting solution to Cameroon’s problems through a mediated process that includes Anglophone armed-

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separatist groups and non-violent civil-society leaders”⁷. Andrew Nkea Fuanya, bishop of one of the dioceses most involved in the war, Bamenda, released on April 17th a pastoral letter, *Now is time for peace*, where we read: “As we should have all learned, it is easy to begin a war but it is never easy to end one. We lose everything through violence, killings and burnings; but, we can gain everything by sincerely seeking justice, reconciliation and peace”. Without going into the causes of the conflict, but recognizing the reasons of it, the bishop then affirms: “Each of us has the right and a reason to react against any injustices committed, but this does not mean that we must resort to violence. Seeking peace or a cease fire is not a sign of weakness or cowardice; on the contrary, it shows maturity and proper care for the fatherland and genuine love for others”⁸.

The war, which started in 2017, has ancient roots. After the First World War the ancient German colony was assigned to France (about 80% of the territory) and the United Kingdom (the remaining 20%, the two most western regions, on the borders of eastern Nigeria). Hence the bilingualism of the country. It must be remembered that the tracing of regional and state borders was operated in Africa by European metropolitan powers, with little or no regard to the pre-existing ethnic and geographical subdivisions. Clashes began when the central government decided to “Frenchize” the two Anglophone provinces of the Southwest and Northwest. French speaking teachers went to the region, and new laws, written in French, not in accord with the Common Law system have been introduced. Subsequent protests led by teachers and lawyers were violently repressed. Then, there has been the

⁷ See Fides agency news: www.fides.org, 21.02.2020.

⁸ Fides Ag., 22.04.2020.

declaration of independence of the Ambazonia, the geographical name of the two regions involved. Since then, armed militias have rapidly multiplied and clashes have begun with the regular government army.

In their February letter, bishops recall that “the violence and atrocities committed by all parties to the conflict forced 656,000 Anglophone Cameroonians from their homes, kept 800,000 children far from school (including 400,000 from Catholic schools), caused 50,000 people to flee to Nigeria, destroyed hundreds of villages and resulted in a death toll of at least two thousand people”⁹.

3. *South Sudan at a crossroads*

It is almost useless to explain how much Pope Francis cares about the reality of South Sudan: the fact is well known.¹⁰ Images of Bergoglio kneeling at the feet of the two Sudanese leaders Salva Kiir and Riek Machar to implore them to make peace, at the end of a spiritual retreat convoked by the Pope himself in the Vatican, in April 2019, have gone around the world and aroused scandal. Anyway, that deliberately exaggerated gesture of submission has paid off. Peace negotiations in this young country (born in 2011) battered by a civil war preceded by years of struggles for independence, have resumed and led to an important result on the eve of the outbreak of the pandemic: on January 13th 2020 the

⁹ See the african section of the *La Croix* site: www.africa.lacroix.com.

¹⁰ About South Sudan see D.H. Johnson, *The Root Causes of Sudan's Civil Wars. Old Wars and New Wars*, James Currey, Suffolk (UK) 2016; Z. L. Ostrowski, *Les deux soudans*, L'Harmattan, Paris 2019.

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Rome Resolution was signed, a declaration which involved all the parties in conflict, even the “minor” groups hitherto excluded, and established a “road map” for the resolution of the differences starting from a ceasefire. On February 23rd, a new government of national unity was born, with the main antagonist of President Salva Kiir, Riek Machar, his former ally, as first vice president.¹¹

However, the situation on the ground remains troubled. The fighting has not stopped. South Sudan is still the country in the world with the highest share of citizenship dependent on international humanitarian aid in all, because of the war: seven million out of twelve inhabitants need the World Food Program gifts to survive. Until the end of May 2020 in South Sudan Covid has represented a threat more than a concrete reality. In the planet’s lowest average age country, there has been few cases recorded, but authorities have taken rigid measures since the month of March. They were worried not being able to cope with a large number of infections, with only one laboratory to analyze tampons, located in the capital, and just four respirators for all the country. The price of confinement has been obviously high, especially in the capital Juba, with the paralysis of the informal economy of subsistence that allows the population to live.

¹¹ The Rome Declaration was signed with the mediation of the Community of Sant'Egidio, which had previously supported the “Council of Churches of South Sudan”, an ecumenical representative body that played a non-secondary role during impasse moments impasse in previous negotiations, that resulted in the 2017 Addis Ababa agreements. The path to peace is long and not yet finished, but the synergy between Christians has produced not only appeals and invitations, but a direct involvement in the dialogues - as promoters, mediators or facilitators, according to the moments - which represents a significant case.

It is in this context that the interventions of the bishops are grafted. Among these, there is one of the witnesses of the price paid by the population to the civil war, the Tombura Yambo bishop, Msgr. Hiiboro Kussala, who spoke to combatants on several occasions. “Citizens are already traumatized by the Covid-19 pandemic, they do not need further violence”, he said to the agencies and publicly repeated. His words, addressed to the two main warring parties to resume negotiations, are simple and straightforward: “Let's avoid clashes, fighting or violence, let's not get involved in any conflict because of the desire for power. War does not help, instead it causes distractions and hinders development”.¹²

Missionaries that are in the country underline that the formation of a national unity government constituted a step towards new elections and a greater political stability, and that the Covid-19 epidemic did not stop this process, but it slowed it down: the appointment of local governors has been postponed and the agreement on natural resources proceeds distribution is delayed.¹³

Meanwhile, on Sunday March 22nd, the new archbishop of Juba, Stephen Ameyu Mulla, was finally able to take office, after lay and religious people protests. These groups have contested him because of his ethnic origins, triggering an investigation by the Holy See. The bishop's inaugural speech focused on the need for reconciliation in Covid times, and protests have since ceased. But the scenario is rapidly changing. At the beginning of June the news came that Covid hit Machar and other ministers. The former overcame the crisis, but some members of the government have

¹² In www.solidarityssudan.org.

¹³ See www.fides.org, 14.05.2020.

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passed away. Rumours of President Kiir's involvement have been disproved and he himself has appeared publicly healthy. The number of infections is growing, but it is difficult to estimate the precise quantity in the provinces far from the capital, due to the aforementioned absence of analysis laboratories. Observers predict further spread, following the return to the villages of many South Sudanese who have left the capital subjected to the lockdown. It will therefore be in the coming months that all fighters will have to decide whether to join forces in the fight against the Covid, renouncing the clashes and respecting the commitments made during the negotiation, or to make the pandemic the pretext for new attacks, with devastating consequences for the civilian population.

4. So many shadows, some light

In a press release dated April 2nd, Guterres took stock of the welcome to his appeal.¹⁴ Paragraphs dedicated to sub-Saharan Africa list movements and armed groups that accepted the invitation to ceasefire. Unfortunately, they're not many: some of those who blood the Darfur, and the Southern Cameroons Defense Forces, which have been mentioned. Government adhesions received from Gambia, Sierra Leone, Togo, Ivory Coast and Niger are then reported. No response and no sign of respite, however, in regions devastated by the attacks of new jihadist formations, self-proclaimed emanations of Isis, such as those that

¹⁴ Update on the Secretary-General's Appeal for a Global Ceasefire, 02.04.2020.

are raging in northern Mozambique. The province of Cabo Delgado has become “the stage of a mysterious and incomprehensible war”, said the bishops of the ecclesiastical province of Nampula. What is inexplicable is blind violence against innocent civilians, and attacks that have no other purpose than to sow death and destruction. “The dramatic consequences of this crisis are evident: village fires, destruction of economic and social infrastructure, frightened and hungry populations, fleeing families, confused and disoriented without knowing where to seek shelter and protection”, says the statement.¹⁵

To find light is necessary to go further south. On April 8, 2020, a BBC service spoke about “how corona virus inspired a gangland truce in South Africa”: “Rival gang leaders in Cape Town have stopped their endless turf wars to bring food to struggling households”.¹⁶

The “miracle”, in one of the African countries in which the violence of rival gangs constitutes a scourge and a serious threat to peace and security, occurred at the impulsion of a singular figure of pastor, Andie Steele-Smith, with a past in the world of finance and which now defines itself a social entrepreneur. He convinced leaders and militants of various groups in the Cape suburbs to lay down their arms and structure a food distribution service to families during confinement. “They’re the best distributors in the country. They’re used to distributing other [things]. They know everybody”, says Steele.¹⁷ What is more significant is that he persuaded gang members to mix themselves and deliver jointly.

¹⁵ Fides agency, 29.05.2020.

¹⁶ <https://www.bbc.com/news/av/world-africa-52205727>

¹⁷ <https://www.karunavirus.org/story/647/>

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Statements made to the media by the people involved report a success. While violence continues in many places of South Africa, data report a 75% decrease of violent crimes as a result of the lockdown in the country, the most affected by the virus in the whole Africa.

A challenge is underway on the continent. The hypotheses of a limited spread of the pandemic are unfortunately contradicted by the data. The virus has picked up speed. It took ninety-eight days to target the first one hundred thousand people, eighteen to infect another hundred thousand. However, the experience of the AIDS pandemic - a pathology obviously very different from Covid 19 - is clear: in the conflict areas the incidence of positivity grows exponentially. Will the same happen with the Covid or, on the contrary, will the concentration on the fight against the pandemic be a reason for pacification? The Mozambican experience sounds like a warning: the main Covid outbreaks in the country are precisely in the province of Cabo Delgado, devastated by jihadist attacks. Guterres' appeal therefore has its reasons, and would deserve more attention from African religious leaders.

THE COMMUNITIES OF ULTRA-ORTHODOX JEWS IN THE “STORM” OF COVID-19*

Enrica Martinelli

During the first lockdown imposed, in March, by the spread of the SARS-CoV-2 coronavirus pandemic, resistances, or even actual oppositions, were observed in Israel - and in the United States of America - by numerous communities of ultra-Orthodox Jews, who refused to obey government regulations and to follow the instructions of the health authorities.

International and Israeli public opinion - especially that of secular inspiration - expressed strong dissent and also manifest irritation at the attitudes of ultra-Orthodox religious communities, considered gravely irresponsible and dangerous to public safety.

Whereas the chief rabbi of Israel, David Lau and the rabbi Yitzhak Yosef, like other eminent rabbi throughout the world, in turn supported the government policies introduced to stop the spread of coronavirus - even if this would have meant closing places of study and worship¹ -some *Haredi* communities were

* Submitted: 23rd October 2020. Published: 28th October 2020

¹<https://www.haaretz.com/blocked?returnTo=https%3A%2F%2Fwww.haaretz.com%2Fisrael-news%2Fsynagogues-to-close-under-new-coronavirus-regulations-1.8708347>

shown to be obstinately unfavorable to the adoption of these measures².

The international press has reported numerous cases in which *Haredi* Jews have broken the rules on social distancing and the use of personal protective equipment, adopting dangerous behavior for their own community and for society as a whole, apparently with lack of common sense and without any plausible reason³.

The many episodes to note include the raid of the police forces on April 28 during the crowded funeral ceremony of an Orthodox Jewish rabbi in Brooklyn, in the presence of the mayor of New York, Bill de Blasio, who defined the event, held in violation of the rules that prohibited gatherings, "absolutely unacceptable"⁴.

Still in New York, the leader of a strictly observant Jewish community ordered members of his community to continue collective study and prayer in the synagogue until the end of March,

² In general, ultra-Orthodox Jews have displayed great reluctance to accept the restrictions envisaged by the Israeli government to contain the spread of coronavirus and hardly observed the rules on social distancing. During the *Purim* festival on 10 March (the liveliest celebration in the Jewish calendar, which can be compared to a sort of Carnival celebration), in much of Israel gatherings and public events were limited, but not in the ultra-Orthodox districts. This transformed the *haredim* communities into actual "hotbeds" of the pandemic.

³ <https://it.euronews.com/2020/03/31/israele-alle-prese-con-la-grande-diffusione-del-covid-19-tra-gli-ultraortodossi>; <https://www.agi.it/estero/news/2020-03-31/coronavirus-ebrei-ortodossi-israele-alto-rischio-contagio-8037053/>; <https://www.terrasanta.net/2020/04/zona-rossa-per-gli-ebrei-ultraortodossi-indisciplinati/>; <https://www.corriere.it/esteri/20-aprile-01/israele-virus-fuori-controllo-quartieri-ultraortodossi-rabbini-si-ribellano-quarantena-768e495a-73e8-11ea-b181-d5820c4838fa.shtml>

⁴ See <https://www.nytimes.com/2020/04/28/nyregion/hasidic-funeral-coronavirus-de-blasio.html>

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even though the pandemic had already killed thousands in that state⁵.

Faced with the tenacious resistance of the ultra-Orthodox communities, the Israeli government was forced to resort to force. On March 22, the police entered Me'a Sheimar, a populous *Haredi* neighborhood in Jerusalem, to put an end to public gatherings, close synagogues and *yeshivot*⁶. The police were met with curses, insults and stone throwing. Some *haredim* referred to the Israeli police as "Nazis"⁷.

As is known, after a temporary improvement in the health situation, in the second half of the summer, there was a new and unstoppable surge in the contagion curve⁸: Israel was, in fact, the

⁵ <https://www.nytimes.com/2020/04/28/nyregion/basic-funeral-coronavirus-de-blasio.html>

⁶ A similar situation occurred in BneiBrak, a city of about 200,000 inhabitants, known for being one of the centers where the presence of *haredim* is highest. During the first wave of the coronavirus epidemic, the city was designated a "red zone". The authorities sent over a thousand officers to monitor the area and patrol the streets, in order to ensure compliance with the health measures adopted. Dozens of checkpoints were set up at the entrances and exits of the city: citizens were not allowed to leave Bnei Brak except for well-documented reasons. In addition to travel restrictions, the inhabitants were obliged to stay at home and to go out only in case of absolute necessity. According to estimates by the Ministry of Health, 40 percent of the inhabitants of Bnei Brak would have tested positive for the coronavirus. <https://www.shalom.it/blog/news-in-israele-bc241/coronavirus-37-morti-in-israele-bnei-brak-dichiarata-zona-rossa-b804451>

⁷ <https://www.timesofisrael.com/jerusalem-ultra-orthodox-clash-with-cops-enforcing-virus-lockdown-3-arrested/>

⁸ Analysts note that it took six months for the country to exceed 100,000 total cases from the start of the pandemic and only 32 days for these to double. Over 60 percent of the deaths occurred from August onwards.

first country in the world to return to lockdown starting from the feast of *Rosh Hashbanah*, the Jewish New Year⁹, with even more restrictive measures on the eve of *Yom Kippur*, the most important day in the Jewish calendar¹⁰, extended beyond *Sukkot* (the Feast of Booths).

Hospitals and clinics are now at the limit of capacity, the Minister of Defense has given orders to build field hospitals. https://www.corriere.it/esteri/20_settembre_24/coronavirus-israele-chiude-tutto-domani-scatta-secondo-lockdown-totale-09efbb5c-fe31-11ea-a30b-35e0d3e9db56.shtml

⁹<https://www.ilfattoquotidiano.it/2020/09/18/israele-primi-paese-al-mondo-a-tornare-in-lockdown-da-oggi-scuole-alberghi-e-centri-commerciali-chiusi/5934972/>; <https://www.terrasanta.net/2020/09/covid-19-in-israele-si-irrigidisce-il-copri-fuoco-sanitario/>; <https://europa.today.it/attualita/covid19-israele-secondo-lockdown.html>; <https://formiche.net/2020/09/israele-secondo-lockdown-nazionale/>; <https://www.rainews.it/dl/rainews/articoli/Coronavirus-oltre-30-milioni-di-casi-nel-mondo-Israele-da-oggi-in-lockdown-bb3e0c6c-d4b9-4954-b530-9b9b0230f2c0.html>.

The government has decided to impose very restrictive measures to contain the contagion, closing all offices and businesses that are not considered essential, with the exception of supermarkets and pharmacies. The blocking of outgoing flights is also planned. The ban on going more than one kilometer from home extends to those wishing to participate in religious events or functions and the synagogues were closed after *Yom Kippur*, which began at sunset on Sunday September 27 and which entails twenty-four hours of fasting and expiation.

¹⁰<https://www.vicenzapiu.com/leggi/yom-kippur-2020-a-distanza-per-il-covid-ma-con-segni-di-pace-si-celebra-da-domenica-27-settembre-prima-del-tramonto-fino-al-crepuscolo-del-28/>

Not all ministers voted in favor of the restrictive measures. In fact, the opposition accuses Prime Minister Benjamin Netanyahu of using the new rules to disperse the protests in front of the residence on Balfour Street in Jerusalem: thousands of demonstrators have been meeting for months demanding the resignation of the government, found guilty of having

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Due to the health emergency - as already happened for the religious festivities of Pesach - traditional family reunions were banned and prevented by the restrictions imposed on travel; then, prayers in the synagogue were only possible for small groups. The meetings were limited to 10 people indoors and 20 outdoors, thus significantly limiting participation in religious celebrations.

Nonetheless, the spread of Covid-19 remains out of control, especially in neighborhoods and cities with an ultra-Orthodox majority, due to the ongoing opposition to government prescriptions, which has often led to episodes of real revolt¹¹ also conducted with violent means¹².

Israel is currently facing one of the worst infection rates in the world on a *per capita* basis and this is driving the country towards health meltdown¹³.

mismanaged the epidemic. See <https://www.reuters.com/article/us-health-coronavirus-israel-protests-idUSKBN2600XQ>

¹¹[https://www.lapresse.it/esteri/coronavirus_scontri_in_israele_tra_polizia_e_ultra_ortodossi_anti-lockdown-3051398/video/2020-10-07/;](https://www.lapresse.it/esteri/coronavirus_scontri_in_israele_tra_polizia_e_ultra_ortodossi_anti-lockdown-3051398/video/2020-10-07/)

<https://www.nytimes.com/2020/03/30/world/middleeast/coronavirus-israel-cases-orthodox.html?action=click&module=Top%20Stories&pgtype=Homepage>

¹²<https://www.haaretz.com/israel-news/EXT-how-covid-19-upended-ultra-orthodox-life-from-jerusalem-to-brooklyn-1.9226205>

¹³https://www.corriere.it/esteri/20_settembre_28/coronavirus-israele-ultraortodossi-festivita-spingono-paese-il-tracollo-sanitario-e577d80e-0178-11eb-af0b-6e1669518b1a.shtml. Fourteen religious schools have been transformed into what the Israelis call "corona hotels". *Yeshiva* students who test positive cannot leave the classrooms where they study the sacred texts day and night: the confinement in schools aimed to prevent the boys from returning to their families for *Yom Kippur* and infecting their elderly relatives. The installation of these makeshift hospitals on the outskirts of Tel Aviv has caused protests among the inhabitants of the nearby neighborhoods: the fear is that the observant young people do

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40% of the new Covid-19 cases diagnosed after *Yom Kippur* affect ultra-Orthodox Jews¹⁴.

According to the statements of the Israeli Minister of Health, Ronni Gamzu, in *haredi* communities the virus has a double incidence compared to the rest of the population: 28.6% of the swabs carried out among the ultra-Orthodox after the recent holidays, were in fact positive, while in the rest of the country the percentage does not exceed 11.6%¹⁵.

For this reason, part of public opinion - branded by the ultra-Orthodox as racism - blames them for spreading the epidemic with irresponsible conduct¹⁶ while many ultra-Orthodox Jews openly argue that the coronavirus is a lie, an anti-Semitic conspiracy devised to prevent community prayer, which is essential for "God-fearing" devotees.

This is how, rather than stimulating solidarity within the country, Covid-19 has contributed to exacerbating the old hostilities that are tearing Israeli society apart¹⁷.

not respect the anti-Covid rules and that reference to religious practice is much more binding for them than rules imposed by the state.

¹⁴https://www.ansa.it/sito/notizie/mondo/mediooriente/2020/09/30/coronavirus-israele-34-casi-sono-ebrei-ultraortodossi_048f1869-f35d-4ad9-be35-0272ad8b47bb.html;

<https://www.sbalom.it/blog/news-in-israele-bc241/coronavirus-sanita-israele-un-terzo-contagiati-sono-ultraortodossi-b975181>

¹⁵<https://www.rainews.it/dl/rainews/media/Coronavirus-Israele-il-virus-dilaga-tra-gli-ultraortodossi-b64a7740-bbfff4dcc-a732-4e81a985c2ce.htm#foto-1>;

<https://www.dv.com/en/israel-ultra-orthodox-communities-top-coronavirus-hot-spots/a-55222367>; <https://www.bbc.com/news/av/world-middle-east-52189059>

¹⁶<https://www.timesofisrael.com/haredim-have-finally-begun-embracing-social-distancing-why-did-it-take-so-long/>

¹⁷<https://www.nytimes.com/2020/09/08/world/middleeast/israel-coronavirus-ronni-gamzu-netanyahu.html>

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To try to shed light on the reasons why the *haredi* communities violate the rules of conduct imposed by the fight against the pandemic, it is useful to clarify their identity.

The *haredim* can be traced back to a vast panorama of ultra-Orthodox religious communities, united by the rigorous following of the *Halakha*¹⁸; from a very young age men attend the *yeshivot*, schools in which they exercise the study and practice of religious law, interpreted and implemented rigorously in the family and in the community. Since the daily study of the Scriptures and the *Torah* is a commandment in Judaism, *Haredi* adults gather to pray three times a day, and students of *yeshivot* or ultra-Orthodox seminaries spend many hours a day studying together. Common prayer and study constitute a way of life and are considered to be essential means for protecting life itself. According to the Jewish Sages, "whoever engages in the study of the Torah also protects the whole world". So, "without Torah the world falls"¹⁹.

The cogency of the precept of common study of the Divine Law explains why eminent ultra-Orthodox rabbis in Israel and elsewhere in the world continue to tenaciously reiterate the recommendation that "canceling the study of the Torah is more dangerous than the coronavirus"²⁰.

¹⁸<https://www.myjewishlearning.com/article/haredim-charedim/>

¹⁹ See A. Chiappini, *Amare la Torah più di Dio. Emmanuel Lévinas lettore del Talmud*, Giuntina, Florence, 1999, p. 119.

²⁰ When the first infections were recorded in Israel in February Rabbi Chaim Kanievsky, considered a top-level figure in Judaism worldwide, first publicly denied the existence of the disease, then stated that the epidemic would never reach the *haredim*, protected by study and prayer: <https://www.italiaisraeletoday.it/nayess-la-rivoluzione-haredim/> Even the former health minister and rabbi, the ultraconservative Yaakov Litzman, had called the measures put in

Many *Haredi* leaders have in turn continued to reiterate that meetings for pray and study are essential for the religious community.

These attitudes seem to justify anyone pointing out that the *haredim* reject science and medicine; in fact these groups dispute the use of sources of information provided by the *media*, which they consider to be a distraction with respect to the need to maintain intimate vicinity to God²¹.

Access to the internet, TV programs and some cell phone functions are generally limited if not completely prohibited. This effectively prevented *haredi* Jews from following the news and keeping up to date on the pervasive spread of the virus²².

place by the mayor of Ramat Gan "severely discriminatory". On April 1, Litzman tested positive for Covid-19. By his own admission, he repeatedly violated the measures on social distancing by participating in various public meetings, councils of ministers and celebrations in the synagogue and exposing numerous authorities in the country to contagion. His conduct and mismanagement of the epidemic in ultra-Orthodox communities forced him to resign from the executive.

<https://www.lastampa.it/esteri/2020/04/26/news/israele-si-dimette-il-ministro-della-salute-al-via-riapertura-limitare-1.38764643>

²¹ <https://www.agi.it/estero/news/2020-03-31/coronavirus-ebrei-ortodossi-israele-alto-rischio-contagio-8037053/>

²² The need to understand the severity and development of the health emergency connected to the spread of the coronavirus has made a "media contagion" of ultra-Orthodox communities essential, upsetting some of the fundamental dynamics that have governed their daily lives for hundreds of years. Especially in the younger generation *haredim* the use of *kosher* mobile phones (without access to the internet) is now accompanied by the use of smartphones and computers. This contamination, presumably destined for further developments in the future, could represent an epochal turning point in the world of

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Therefore, the *modern Orthodox* circles insist on their lack of scientific education, which would have made them unable to understand what was really at stake.

The most intransigent ultra-Orthodox rabbis have also been accused of having fallen into error regarding the interpretation of Jewish law.

In fact, it should be remembered that the fundamental precept relating to the safeguarding of human life (*Pikuach Nefesh*) cancels all religious obligations: when the life, even of a single human being, is in danger, the prescriptions of the *Torah* become null and void²³. Precisely in compliance with the *mitzvot*, modern Orthodox communities and other Jewish communities quickly ceased to meet to study the *Torah*, closed *yeshivot* and synagogues, trying to protect their own safety in the best possible way²⁴.

On the contrary, many of the *Haredi* Jews were refractory, since, despite their awareness like the others of the imperative *vis* of the precept, they were unable to identify - with shared consent - the moment in which the pandemic made the *pikuach nefesh* a halachic obligation.

At this point, the first delicate problem that lies upstream of the resilience of ultra-Orthodox faith communities emerges: rather than in the misinterpretation of the *Halakha*, the ultimate motivation lies in the innate distrust in the competence and ability

observant Jews, not without political implications. See <https://www.italiaisraeltoday.it/nayess-la-rivoluzione-baredim/>

²³ In a *Pikuach Nefesh* condition, one can, for example, eat *non-kosher* food, desecrate the *Sabbath*, and eat on *Yom Kippur*.

²⁴ <https://www.economist.com/united-states/2020/10/17/restrictions-and-rebellion-follow-new-york-citys-covid-19-surge>

of the civil authorities to assess when a danger is so serious as to force them to stop religious activities.

The *haredim* are in fact undoubtedly aware that the current epidemiological situation requires prevention and distancing: the *Torah* itself teaches: "Protect yourself and protect your soul"²⁵.

The basic question actually concerns authority and its concrete exercise. In other words, who is entitled to decide on the gravity of the danger and who can determine which religious obligations may be repealed in such situations.

Ultra-Orthodox Jews do not in fact recognize the authority of *Eretz Israel*. For them, a State which is not the secular translation of the *Torah*, which is not the permanent realization of the ancient mission of the Covenant, can never have any religious legitimacy: the divine law - in all its manifestations - must be the primary source, exclusive of any regulatory activity.

Unlike most Israelis - who see the existence of the state of Israel as the ultimate realization of their centuries-old history and recognize the military and police as essential protective factors - many of the *haredim*²⁶ are staunchly anti-Zionists and distrust the government and its officials. They are deeply convinced that God promised the Jewish people the land of Israel, but they refuse to believe that the promise can be fulfilled through human intervention, such as the establishment of a national state. The *haredi* ultra-Orthodox people describe themselves as a people still in exile and consider Zionism an apostasy because God gave

²⁵ (Deuteronomy 4: 9)

²⁶ They make up about 10% of the Israeli population, but are on the rise due to the considerable number of children in each family.

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precise instructions, according to which his people should still wait patiently for the moment of a more dignified realization.

However, with the constitution of *Eretz Israel*, Israeli society renounced the traditional and religious principles of Judaism in favor of secular values, abandoning God and his blessings.

For all these reasons, when the government authority imposed restrictions to contain the spread of the infection and the police entered their neighborhoods to prevent public prayer, to close synagogues and *yeshivas*, rather than perceiving the sense of protection by the State, the members of the *haredi* communities denied its authority with suspicion and hostility.

Indeed, particular attention must be paid to the stubborn opposition of ultra-Orthodox Jews to the prescriptions of the government and experts. In fact, this arises from the need to dedicate their entire existence to the study of the *Torah* and to daily prayer as privileged tools with which the whole of humanity is maintained and protected.

They therefore do not deny *a priori* the value and usefulness of medical science - which they can use if necessary - and yet, when science contrasts with tradition, they choose the latter without any doubts.

In other words, when the management of public affairs and political choices interfere with the activities of prayer and the study of sacred texts, the consequences, from the ultra-Orthodox point of view, could become much more disastrous than those caused by a pandemic. They could mean the very end of Jewish life, if not of all humanity.

Many of the *Haredi* Jews live in a peculiar spiritual orbit. They have unconditional faith in the Sages and their teachings; they trust in their blessings with absolute devotion, in the deep-rooted belief

that they are nevertheless protected by them. They live in strict adherence to tradition and practice its precepts to the letter because they believe that the observance of the *mitzvot* leads to a certain reward.

When they state that the study of the *Torah* represents the real weapon for the defense of Israel and not military service - from which they should consequently be exempted - they are truly convinced²⁷.

The *haredim* are considered old-fashioned, uninformed and irresponsible by most of secular and religious society. In reality they are absolute and uncompromising believers and their belief has already killed many of them²⁸.

More lukewarm faith and a more critical trust in the indications of religious leaders, along with greater information, would perhaps have allowed them better conditions and a more appropriate response in this case.

Until now, no *haredim* could dare to question the rabbinical teachings or doubt the protection granted by the study of the *Torah* without a profound doctrinal reversal. However, the current lethal outcomes of the coronavirus epidemic and the very high rate of spread of the infection within ultra-Orthodox communities have led some rabbis to think again: they have begun to warn communities about the risks of contagion and have started to wear protective masks and recommended social distancing.

²⁷ The radicality of this belief - and not a generic pacifist idea - is the reason for the clash between the ultra-Orthodox community and the Israeli government for refusal to undertake compulsory military service.

²⁸ <https://www.tabletmag.com/sections/belief/articles/covid-haredi-magical-thinking>

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And the unprecedented fact is that to be heard they used the media, they appeared on social networks, they resorted to the web²⁹.

Could it therefore be concluded that the SARS-CoV-2 pandemic has induced a significant - potentially epochal - change among "God-fearing" devotees? Could the dramatic outcomes of the Covid-19 disease have initiated a movement of unhinging secular traditions within the *haredim* communities, and perhaps inaugurate a different relationship with faith, with tradition, with rabbinic teachings?

It is premature to predict the future results of the transformation imposed by the epidemiological situation; however, it cannot be excluded that the dramatic experience that has taken place and the unfulfilled promises can at least contribute to attenuating - if not to putting an end to - the isolation of the ultra-Orthodox communities from the media as, alongside the ancient obligation of not knowing, they are beginning to understand the need to be adequately informed in order to protect their survival.

²⁹<https://www.italiasraeletoday.it/nayess-la-rivoluzione-haredim/>

STATE LAW

Religious Freedom Safeguard during “Phase 2”.

EVEN NON-CATHOLIC RITUALS START AGAIN. FOR THE FIRST TIME AGREEMENT WITH ISLAMIC AND OTHER “NO UNDERSTANDING” CONFESSIONS*

An Interview to Pierluigi Consorti

Pierluigi Consorti - Luigi Mariano Guzzo

Yesterday afternoon - the 15th of May 2020 -, at Palazzo Chigi, the new protocols for the expression of cults different from the Catholicism were signed. Denominations that have not signed the agreement with the Italian Government are included as well, pursuant to article 8 subparagraph 3 of the Italian Constitution.

These rules come from the exchange and the dialogue made by the Ministry of the Interior, starting from the video conference of the last 5th of May. The full Professor of Law and Religion at Pisa University Pierluigi Consorti, participated in it as well as consultant, together with Paolo Naso, Professor of Political Science at “La Sapienza” University of Rome (read here Consorti’s interview published in *Il Regno*). The recommendations resulting

* Submitted: 15th October 2020. Published: 16th October 2020. For ITA version [click here](#).

have then been clarified according to each religion's features and evaluated by the technical and scientific committee.

Protocols arranged among Religion, Public Health and Government are previously-unseen in the regulation of this emergency phase. Also the Parliament urged this and, particularly by the intervention of the Congressman Stefano Ceccanti, it decided that the execution of religious functions should be subject to the introduction of health protocols, set with the Catholic Church and other confessions.

The Italian Government chose a double-lane route, through a bilateral protocol (7th of May Protocol) with the Catholic bishops Conference first and several Protocols built on a “multilateral” dialogue then, that –hopefully- will be able to open a new era in the Italian ecclesiastical Politics.

We'll discuss it with Pierluigi Consorti, President of the religion legal regulation Professors (Adec) and coordinator of the research group “DiReSoM”.

Dear Professor, after a preliminary reading of them, what do you think about the Protocols signed by the religious denominations different from the Catholicism?

Surely it is a process that has to be welcomed favourably. We can say that the 5th of May meeting, described as memorable, bore its fruits. The strategy used goes beyond the traditional pact-related bilaterality; in fact it puts around the same table different religious communities and the Government representatives, all in search of the best solutions in order to balance the equal religious freedom for everyone and the prevailing need of preventing the infection.

Even Non Catholic rituals start again

Unfortunately, the Catholic Church has followed a solitary fast lane, but, however, starting a dialogical process, that was lacking during the initial phase of the emergency, can only be a positive thing. We are undoubtedly facing brand new examples of interreligious and secular dialogue.

It seems to me that Italian Ecclesiastical Law is going towards a new normative source, the one of the “Arranged health Protocols”. What do you think about it?

These kind of Protocols represent the solution for a practical problem: the one of assuring the freedom of worship in the context of a health emergency, that has already to cope with the lack of a clear legal regulation. When the pandemic started I wrote about the need of alternative solutions proposed by the jurists. I think that these protocols are actually a creative answer: they can meet the concrete needs, without ignoring the differences within the national religious pluralism. They are unusual, brand new tools that can't be explained via traditional schemes. They are not, strictly speaking, bilateral agreements, because they actually consist of spontaneous participation of the religious authorities in the prevention rules. This means that they don't come from an agreement between contrasting religious and public needs, but from a common and arranged examination of the best solutions, in order to start again the expression of the associated cults, without not so much health hitches.

Those who talked about the unfair restriction of the worship freedom made by the Government have missed the target. All the adjustments that religions are experimenting are not due to

government duties, but to the need of contrasting the pandemic and saving people's health and lives.

Six Protocols with denominations different from the Catholicism have been signed (Jewish communities; the Church of Jesus Christ of Saints of the Last Days; the Muslim communities; the Hindu, Buddhist, Bahai and Sikh confessions; the Protestant, Evangelic, Anglican Churches; the orthodox community). Some groups have been therefore formed, on the basis of their religious peculiarities. What about the parameters taken into account?

It seems to me that the criteria used have been of “religious familiarity”, so similar needs have been put together, where possible. Other solutions could have been adopted, but practical convenience and common sense have prevailed, and I consider it appropriate, given that we are still living through a stage of emergency. After all, the denominations different from the Catholicism have all shown two common features that make the difference from the Catholic Church. In fact, the main wish of the latter was to start again the celebration of the Mass, without much care for the prevention at the beginning; other confessions instead had already shut all their places of worship and suspended all the pastoral activities, in order to start them again only safely. They were waiting for detailed directions for the respect of the criteria and were asking for more ease of movement for their ministries of worship, or religious leaders, given that they act in areas that cover several towns and sometimes several regions.

Although they safeguard the denominations' specificities, these Protocols appear similar in content.

Yes, and this is a good thing. The underlying principle is common for all Protocols. Substantial differences would not have been possible. What makes sense, instead, is that any peculiarity comes up to avoid application problems. Sometimes, they are just terminological differences; for instance, as what regards the protocols signed with the Judeo-Christian group, they talk about “religious functions”, using the plural form; for the protocol signed with the Muslim communities we read “prayer”; for the protocols with Buddhist and Hindu we find “religious function”, with the singular form. Other times they examine ritual specificities: with Christian confessions it has been necessary to regulate the management of the Holy Communion, that is the most dangerous ritual on the health side; with the Muslim the social distancing has been strongly recommended even when kneeling down. An interesting fact is that, regarding the people responsible for the worship places, in the protocols with the Islamic communities and the “eastern” ones we read, in brackets, “men and women”. Italian Islam, therefore, acknowledges a responsibility role to women. Someone might be surprised.

In your opinion, has the Catholic Church been in some way privileged?

The Catholic Church has chosen a bilateral path, that reflects its peculiarity. It is still the faith of most Italian people, and culturally it is felt as a peer institution of the Government, who, on

its turn, struggles to gain full secularity. It doesn't seem to me that the Catholic Church has been privileged, and I think that its confinement represents a problem for its own self-perception.

After all, just two days ago the Pope joined the day of prayer and fasting proposed by the Covenant in favour of the universal brotherhood. Bishops, rabbis, imams and ministers gathered in many Italian squares. The common dialogue is surely a successful choice, and I think it should be expanded to atheist and humanist organisations as well.

And what about the denominations that wouldn't (such as Jehovah's Witnesses) or couldn't join the table and, therefore, have not signed the health protocol? What happens to them?

As a general rule, even those communities that have not signed the Protocols have the authorization to observe the same health precaution during their celebrations. The freedom of worship is a constitutional law and doesn't depend on the agreements with the Government. The issue is to cope with a common enemy, the virus. However, those communities that have not taken part in this process may surely start a dialogue with the Ministry of the Interior right now. It could represent the chance to begin a relationship during the emergency that might be useful even afterwards.

Just a last question. So is the Ministry of the Interior the actual institution in charge of the dialogue with the religious denominations?

Even Non Catholic rituals start again

The Ministry of the Interior includes the Central Directorate for worship affairs, that is part of Immigration and Civil Freedom Department and that has always dealt with religious issues. To be honest, the most adequate office would be the Presidency of the Council of Ministers, that has competence in the field of relations with religious denominations. But the Government hasn't actually worried so much about ecclesiastical politics. We have been waiting for the designation of the Commissions in charge of this issue for over two years. The emergency lets us face problems that often come from the lack of routine maintenance, and this is a clear example of it.

I hope that something would be done soon: it would make everything easier.

EASTERN ORTHODOXY AND THE PANDEMIC. CULTURAL APPROACHES TOWARDS RULE OF LAW IN ROMANIA*

Cătălin Raiu

1. Introduction

Even if during the actual pandemic all states have imposed general restrictions regarding the conduct of religious activities, Romania is among the few democratic regimes in which the public authorities addressed liturgical recommendations. Fascinated by its despotic power, the state forced itself in the Chalice recommending abstention from the Eucharist. It did not do so for theological reasons, but from lack of democratic culture. Both international and national legislation are extremely precise regarding the regulation of worship: citizens are empowered with religious freedom, a right set at the base of the pyramid which is the rule of law and which is exercised also by taking part in the religious ceremonies conducted according to norms established by the religious organizations, based on their autonomy towards the neutral state from a religious standpoint.

As long as for the Romanian state, the usage of the unique spoon in administering the Eucharistic in the Eastern Churches did not represent a matter of hygiene overtime (other epidemics, viruses and seasonal flues), the discovering over night of the

* Submitted: 18th June 2020. Published: 26th June 2020.

potential to infect during the communion ritual is a nondemocratic approach. Why? The answer lies in the way in which the rule of law was thought and ideologically transformed in Romania by positive or negative approaches against Orthodoxy, but without relying on one of the oldest liberal and democratic rights, the religious freedom.

For recent historical reasons, the states which resulted from the incomplete dismemberment of the USSR and the transformation of the communist countries are weak states when it comes to bureaucracy and democratic culture. The legitimacy of the post-soviet and post-communist political regimes was built in most cases simultaneously with the public reconstruction of orthodoxy (e.g. the Romanian case) or even due to the positive image of the Church in society, the case of Georgia, where patriarch Elijah the 2nd is still by far the most influential Georgian public figure. When the state fails to politically legitimize itself with the constant effort to expand rights and liberties, it resorts to various forms of cultural legitimacy.

2. The rule of law in the Romanian modernity

The first academic systematization of the knowledge about rule of law belongs to the British Albert venn Dicey (1888): nobody can be punished unless the deed of which he stands accused is explicitly provided by law. Rule of law is the opposite of the discretionary and arbitrary authority of the people. The people are governed by law and only by law, while the law is not the source, but the consequence of the rights and liberties of the citizens. It is not the state that gives rights to people, but the citizens gifted with

rights which mandate the state to watch for the fulfillment of the rights of the citizens. Dicey makes a precious distinction between rule of law in the Anglo-Saxon approach, which is based on the Bill of Rights and has the purpose to further extend rights and liberties, and the French and German approaches of the rule of law, neutrally connoted in report with democracy. His distinction has had a prophetic value considering that the German *rule by law* hit its apogee right in the ideological foundation of the Nazi regime.

Following the experience of the 20th century, in which regimes on the course of democratization were dethroned by totalitarian regimes (the Weimar Republic is replaced by the Nazi regime), rule of law was defined eminently as a political system based on the the supremacy of rights and liberties (Joseph Raz).

The preliberal meaning of rule of law was not meant to maximize individual freedoms, but to never reach tyranny. It is a tradition beginning with Magna Charta (1215) and which imposes limits to the political authority. It is the meaning that contemporary non-liberal regimes assume by even postulating a divine vision of the good, especially in the Muslim ones, where the Sharia has equal or even constitutional value. The Afghan constitution, which inaugurates the Islamic Democratic Republic, provides equal rights between men and women, but also does not allows the application of any law contrary to Islam.

Within liberal societies there is no more ruling taking in account the divine right or the natural right. The legislative body is based on the Bill of Rights, the Declaration of Human Rights or other documents and international standards. Political liberalism completes the meaning of the rule of law: rule of law, not rule of men. The reign of law is the opposite of the rule of men (a

government of laws, not men), because the law is based on reason, while people can act according to passion. The law is objective, the man subjective. Italian political scientist Leonardo Morlino systematizes some dimensions of the notion of rule of law hierarchically: the protection of human rights, political independence of judges, political neutrality of bureaucracy, the increased capacity of the public administration to enforce the law in a professional and transparent manner, the civil control on military forces, etc.

The Romanians begin to know the rigors of the rule of law at the middle of the 19th century, when the customary Romanian law, mostly inspired from the practice and social teachings of the Church, was replaced with the principles of an imperfect liberalism, which drew its sap from the administrative law rigors, the French variant of the rule of law.

3. Governing the Orthodoxy

In the case of most orthodox majority countries, orthodoxy represented in the 19th century one of the essential pillars of the nation's founding, reason for which states are feeling culturally tied with orthodoxy and define their connection to the majority Church not in terms of religious freedom, but as "the default Church of the nation". The given Church, preexisting the birth of the nation, a cultural and moral guardian of the political body. The majority of the clerics believe that they are exhausting themselves as missionaries in this role as guardians of national morality and civic behavior and do not question the political regime itself. It is, otherwise, also one of the explanations for which post-communist

Eastern Orthodoxy in Romania

countries do not have civic movements (such as in Poland, Catholic country) brought to life by the Orthodox Churches. These stand on one hand far from politics, in terms of critic and rationing the political decisions, not clearly stated against or in favor of some political decisions as it happens in the West, and, on the other hand, the Church is too close to politics, doing this immense service to the state, taking its place in many situation, especially in that of the moral and behavior guardian of the society.

For historic reasons, the majority churches have the tendency to mistake their members with the entire population. From a theological standpoint it is a gesture of spiritual maternity, but which also lies against the democratic political representation. Orthodox and protestant churches act, together with the political representatives, as an *alter* representative of the people. For example, a certain Church can be against LGBT marriages for theological reasons, invoking their own theological tradition, or can make it for political reasons, invoking the evil concocted within the fiber and identity of the people. In the case of the second argument, the Church can either substitute the Parliament, giving voice to the political will of the people, or can feel the dominant position of the people and fall victim to a populist and theologically unfounded rhetoric.

The Romanian state was created simultaneously, in tandem and against orthodoxy: in tandem, because together they created the Romanian nation born Christian. Against orthodoxy, because it confiscated almost all social and civil duties of the Church, deeming it unworthy and irresponsible of being a partner in modernizing society. With the reforms from the middle of the 19th century, the state dismembered, in the Orthodox Church, what was the most valuable materialization of religious life in democratic

societies, American or British, namely the contribution of the Church to the generation of social capital. The Romanian Orthodox Church is unlawfully accused that it never developed a social philanthropy network. In fact, beginning with the secularization of AL. Ioan Cuza (1859-1866), the state took all material resources from the Church, and refused to ideologically observe and benefit from the social capital produced by the Church, in the form of the tightly knit relations of social aid at parish and family level.

Up to the year 2000, the Romanian state was afraid to use, in relation to the church, the phrase *religious freedom*, using instead variations of the mutual legitimization: The Romanian/national Church, dominant Church and the partner state, etc. The Church did not develop a culture of religious freedom and of the rule of law, because it understood about its repositioning in the center of society with the fall of the communist regime not as a consequence of religious freedom and democratization, but as a cultural legitimacy received from a state. Today, in spite of the fact that entire generations of orthodox theologians studied and activated in the West, the phrase *religious freedom* still frightens the diocese chancelleries or theology faculties, although it is the most legitimate type of response the Church can deliver to the society, more and more routinized in the form of robotized secularism.

The secularization of the wealth of the church (1863/4) did not only mean the nationalization of the properties, but also the changing of the Church into a ceremonial annex and moral guardian of the society. It divided the Church into bishops and the rest (priests and believers). Subsequently, the politicians privileged the relations with local bishops, while the Church, as an united social body, was not even a source of social capital for the state, let

alone a community mediated by religious freedom. Things are not different today, given that many politicians fill their public agendas with spiritual events speculated for electoral purposes, but do not think about the way Church serves society due to religious freedom. The false pietism shown at the celebration of the patron saints is directly proportionate with the real indifference towards the Church as the living community of people associated in the name of religious freedom.

For this reason, May 2020 government recommendations, to avoid the Eucharistic, are in fact the result of a 150-year-old manner of thinking, a way of thinking against the rule of law, meant to democratize society. During the pandemic, the Romanian state regulated the dimension of the religious life (weddings, baptisms, funerals), but did not show empathy with the faithful, by leaving cemeteries accessible to those who wanted to pray at the graves of their beloved ones. In the eyes of the state, the Church is a supplier of ceremonial public services, reason for which the state forced itself in the Chalice, not recommending the communion of the faithful.

Even if the gesture circumscribed to the state of emergency or alert, can be, without democratic bigotry, tolerated on a short term, there is the risk of it leaving painful scars in the social weave of Romania and open new paths to even worse attempts on the freedoms and liberties.

While Germany (April 30th), France (May 18th) or USA (May 29th), did not make worship recommendations, the constitutional control censored the anti-rule of law behavior of the authorities, reminding them that the limitations of religious freedom have to be made proportionate with the purpose of the general restrictions, whereas in Great Britain (May 15th), the government organized a

task-force including the religious organizations and independent experts, to jointly establish the time to lift restrictions in the field of religious life.

The Romanian state is placed outside of the democratic dynamics of a rule of law state and forces itself in the Chalice, which does not seem to be a source of religious freedom, but a mere cultural ceremony. In Romania, the government felt the need to especially regulate religious activities, and forbade the prayer inside places of worship, placing the Christians under the disapproval of the public, making them guilty *ab initio* for breaking social distancing. Setting aside that this is a political-theological humiliation of the faithful (the liturgy is by definition a private religious event, reserved only to the members of the Church), the common order of the health minister and of the internal affairs minister from May 20/22 of this year (an administrative document with lesser judicial power than that of a law) also provides a total and absolutely wrong redefinition of the public space and the (not) private character of the liturgy. The order distinguishes between private and public religious services.

In reality, international standards of freedom of religion or belief, as well as Romanian legislation, establish clearly the private character of all religious activities as a direct consequence of the exercise of religious freedom and of conscience, without the interference of the state. Even if the theological projection of the liturgy is a public one, the liturgy itself is still private, like the weddings, both religious events being addressed only to the invited people. The legal-political reconceptualization of the liturgy into a public event would mean that the state no longer recognizes its neutrality in matters of religious life, according to law. 486/2006 regarding religious freedom, or even make recommendations

regarding the liturgy, such as recently, when they recommended the abstention from the Eucharistic or from giving blessings by keeping a distance of 1 meter. Moreover, the fact that most Churches keep their doors open during a religious service to anyone willing to participate, does not change the private character of a religious manifestation in every democracy.

In equal measure, the fact that religious services are strictly private manifestations, does not mean that the social responsibility of the Church to anyone that sets foot inside the church is diminished or somehow discouraged. But, the simple questioning of the private character of religious services, is equivalent with placing the freedom of conscience of the faithful under the magnifying glass, and creates a very grave precedent for the Romanian democracy. Can we expect the Romanian state to give out necessary instructions regarding the content of the preaches, as it happens in Turkey?

4. Neoliberalism and anti-liberalism

The way in which religious life was restricted during the pandemic was predictable, given that the actual global political paradigm is characterized, among others, by the politic *judicialization* phenomenon (Pierre Rosanvallon). The growth of the power of the judges is directly proportionate with the decrease of citizen confidence in the political responsibility of the government. We know who signs a certain decision, but we do not know how that decision was made, given the many interests, bureaucracy

structures and expertise on multiple levels. Moreover, executive political decisions are more and more adjusted and calibrated not by Parliaments, but by constitutional/supreme courts. The language of citizen rights and freedoms became a very encoded and bureaucratized one, and common citizens, even those who temporarily populate parliamentary gatherings, do not have, regularly, access to the standards with which the international jurisprudence operates in different fields. In the area of religious life, states that gathered a luggage of expertise and openness towards the protection and promotion of religious freedom did not encounter serious issues of radicalization and social tensions during the pandemic.

In turn, although the neoliberal pattern described above seems to extend globally, in the case of Romania, the executive decisions of the pandemic period have been ideologically inconsistent: there were, on one side, highly conservative gestures, such as the initiative of the Ministry of Interior that the state should safeguard with uniforms and police logistics the distribution of the Holy Light on Easter, which shows that the state wants to be a super-warden of tradition. On the other side, the state denounced with Marxist tone the liturgical gestures considered all together dangerous to the health of the population, forgetting that religious manifestations are direct expressions of the private conscience and that they can only be censored similarly with non-religious ones. The decisions were not made based on the “rule of law”, which is the base of standards and international legislation compatible with democracy, but on the “rule by law”, based on some made up ideological frustrations, pro or against the Church and indifferent to the demands of religious freedom and democracy.

THE COVID-19 PANDEMIC IN MUSLIM COUNTRIES*

Caterina Gagliardi

The *Covid-19* approach to the health emergency of Muslim countries may prove to be of considerable interest if one considers their specific social and legal connotations. For this reason, even though without any pretension of exhaustiveness, the following analysis proposes, on the one side, to understand to what extent the governmental dynamics of prevention of contagion - some of which are still in progress - have affected the systems of guarantee of liberties and fundamental rights; on the other side, it is intended to verify what has been the role of the Islamic religion in the process of adoption of the institutional responses to the crisis.

On the subject, it was considered interesting to listen to the point of view of two scholars, of Islamic religion, who live in those realities. In particular, the direct opinions of Dr. Tehseen Nisar, a Muslim woman of Pakistan origin and expert in Sociology of Terrorism at the *International Security Observatory* of the *Luis Guido Carli* in Rome, and of Prof. Mohamed Arafa, of Egyptian origin, even if transplanted to the United States for years, and professor of law at *Indiana University* and *Alexandria University*, were collected.

* Submitted: 4th September 2020. Published: 9th September 2020. For ITA version [click here](#)

As it emerged, the fight against the pandemic crisis represented a deep concern for all the Muslim Countries which, even if characterized by a considerable heterogeneity from the political and constitutional point of view, aligned themselves, in different times and with different modalities, with the instructions and measures indicated by the scientific authorities as necessary for the containment of the contagion¹.

However, the recommendations of isolation and social distancing have ended up affecting, on a substantial level, the individual and collective exercise of the hard-won freedoms in many Arab-Islamic countries. With regard to it, it was inevitable, in the light of the *Shari'a*, to question the legitimacy or otherwise of the measures of prevention.

The question arose with regard to the restrictions on the celebration of rites shared among the faithful and whose suspension was necessary when the risk of contagion became highly significant.

As reported also by Tehseen Nizar, for example, the Islamic feasts of *Eid-ul-Fitr*, held at the end of *Ramadan*, and *Eid-ul-Azha*, celebrated in the last month of the Islamic calendar *Zil Hajj*, were

¹ In this regard, Tehseen Nizar reports that, although the alarm about the pandemic has been very serious in all Muslim countries, the measures adopted have been characterized by a substantial heterogeneity in terms of content and consequent effects. He adds, for example, that: "In Pakistan, in the first phase of the pandemic, a ban on religious gatherings and prayer in mosques was imposed; a ban that was slowly and gradually removed during the month of Ramadan. In Indonesia and also in Saudi Arabia, the most sacred places of Islam have been closed, as well as the Holy Kaaba (the House of God)".

Mohamed Arafa relates the diversity of approach to the different internal dynamics of state policies.

affected by the adoption of the rigid guidelines which, introduced in almost all the Muslim countries, forced the citizens to remain at home, without being able to share the celebrations. On the occasion of *Eid-ul Fitr*, in particular, the faithful were forbidden to embrace and shake hands in solidarity. In Pakistan, as elsewhere, there were fewer congregations attending mosques on the occasion of these festivities².

Even the closure of places of worship has ended up affecting the traditional practice of Islamic belief. On the one hand, it was considered that the impossibility of going to mosques caused general discontent among the faithful³; on the other hand, it was highlighted that the period of isolation was experienced as a great opportunity for spiritual growth. Many Muslims were, in fact, encouraged to better understand the teachings of the Koran and prophetic traditions, including those that explicitly refer to the instructions to be observed in cases of pandemic⁴.

In any case, whether one adheres to one or the other of the theses sustained, the role of the Islamic institutions has been and continues to be important in overcoming the serious social-health crisis of Covid-19. Their leaders widely shared the precautionary strategies, legitimising their content in the light of the revealed legal

² As Tehseen Nisar points out, in most cases both women and men have observed the *Eid* prayers at home because the greater the sense of protection from danger within their own homes.

³ Such is the opinion of Mohamed Arafa, who maintains that the Muslim faithful have certainly practised religious rites at home. However, this circumstance has not made them fully happy in view of their actual willingness to pray in the mosque.

⁴ This is what emerges from the reports of Tehseen Nisar who insists on highlighting the great spiritual opportunity that the pandemic has represented for the individual faithful, as well as for their families.

sources, Koran and Sunna. So different were the revised religious prescriptions.

In Egypt, the ban on assembly has suspended not only the *Eid*, but also the public *Iftar*, the *Itikaf*, pilgrimages and all charitable activities, at least in their typical form. Other derogations have been introduced with regard to religious taxes and with regard to the burial procedure for the deceased given the impossibility of observing traditional rituals.

The obligation of community prayer on Fridays also gave way to the need to protect the right to health. In this regard, the *Council of the Great Ulema of al-Azhar*, in a communiqué of 25 March, pointed out that the health of the body is one of the most important aims of the *Shari'a*, justifying the possibility of not going to the mosque and allowing the prayer to be performed directly from home⁵. The provision for a derogation is supported by the Council by referring to certain *Hadith* of the Prophet, specifically referring to the possibility of suspending religious customs in the presence of particular conditions, such as fear or illness⁶.

⁵ The text of the communiqué can be found at <http://www.azhar.eg/>.

⁶ The first of the Hadith recalled is taken from the *Sabih* of *al-Bukhārī and Muslim*: "On a rainy day 'Abdallah bin 'Abbās said to his muezzin: "When you say, 'I testify that Muhammad is the Envoy of God' do not say, 'Come and pray', but rather say, 'Pray in your homes'. People were amazed. He said then: "So did someone better than me. Friday prayer is an obligation, but I am sorry to put you in trouble by making you walk in the slippery mud. The second and third Hadith are taken respectively from the *Sunan* of *Abū Dāwūd* and the *Sabih* of *al-Bukhārī* and enumerate some conditions in the presence of which it would be possible to exempt the faithful from going to the mosque, such as fear, illness and the fact of having consumed some food with a particularly intense smell: "He who hears the call to prayer and has no justification for not going to the mosque - he was then asked what the justification was and answered that

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Neither does the *Emirate Council of the fatwa* deviate from this guideline, which, presided over by the *shaykh 'Abdallah bin Bayyah*, in *fatwa* no. 11 of 2020, insists on the need to comply with government directives on the prevention of contagion and considers Friday prayers at home rather than in the mosque to be lawful⁷.

Also with regard to the observance of *Ramadan*, in the context of the onset and spread of the pandemic, the question has been asked whether and when the safeguarding of individual and collective well-being can be said to prevail over the duty of fasting. In this regard, the different position of the main Islamic religious authorities emerged: the Sunnite ones insisted on the need to comply with this precept as the Pillar of Islam, while the Shiite ones didn't exclude the possibility of a renunciation in order to preserve the right to health.

It's possible to see, in n view of the foregoing considerations, how the need to combat the *Covid-19* pandemic has brought to the attention the relationship between medical ethics and Islamic ethics, fuelling within religious institutions the debate between those who recognize or don't recognize in modern science the instrument to rely on to control the evolution of nature. In this regard, Mohamed Arafa, though without going into the discussion of the question posed, believes that «it is good to pray. This doesn't mean, however, that we should rely only on the religious idea, without considering the scientific results and facts». The religious

it was fear or illness - the prayer he offers will not be accepted", and "He who ate garlic or onion, stay away from us. Or, he said, stay away from our mosque and stay home.

⁷ The content of the *fatwa* can be found at <http://binbayyah.net/english/wp-content/uploads/2020/03/Fatwa-11-COVID-19-final.pdf>.

representatives would also have the task of giving due recognition to the contribution of medical science.

Evident is, therefore, the mediation role assumed by the Islamic religious authorities between citizens and governments; a role that has generated quite a few doubts regarding their effective independence from political power. On the other hand, they are loaded with the burden of ensuring their communities the continuity of faith practices through the use of 'alternative' instruments of guidance and accompaniment. It was thus necessary, in Mohamed Arafa's opinion, not to dwell on individual questions connected to religion, but to have a broader overview⁸, also in a perspective of rethinking the prescriptions inherent to places of worship, symbols and rituals.

From the Islamic world has emerged, finally, the centrality that the juridical concept of solidarity, recalled in various *Koranic* verses and *Hadith* of the Prophet, can have in contrasting the pandemic emergency⁹. In this sense, for example, the proposal for a universal institution of the Zakat seems to be moving in this direction, with

⁸ In this sense Mohamed Arafa has expressed himself. Faced with the need to resolve the problems posed by the long suspension of collective religious life, he believes that «the Islamic clergy must act with an open mind, not closed on specific religious issues. They must be open-minded towards others. It is important for them to explain in a very broad way how precise the Islamic vision on freedom of religion and freedom of expression is».

⁹ Even if not exhaustively with respect to the objectives of the survey set at the basis of the proposed question, Mohamed Arafa highlights the need to fight the global crisis together, with respect for religions, believers and colours. There isn't a Muslim world and a Western world, but we must all stand together to counter the emergency.

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the intention of making solidarity the fundamental motor of every action and infusing new life into moral and human responsibility¹⁰.

Nevertheless, the dialogue with other religions may prove essential if we take into account the social responsibility of their leaders, which has become more evident as a result of the immediate approach with which they too have been called upon to contribute in the fight against the spread of the virus.

Taking up what *ayatollah Alireza Araf* - rector of the *International University at Mustafa in Qom* - said, religious leaders have the task of cooperating to face together not only the current health crisis, but also other contemporary emergencies afflicting global society: injustice, discrimination, inhuman sanctions, environmental crisis, war, terrorism. The 'physical' and 'spiritual' test to which the epidemic has submitted and continues to submit the whole of humanity - without distinction of race, faith, language, culture - could probably generate the conditions for the concrete construction of a community of religions at the service of humanity.

Interview to Prof. Mohamed Araf of the Indiana University and Alexandria University - May 30, 2020

a) With regard to the Islamic States, most of them - even if at different times and in different ways - have adopted the measures indicated by the scientific authorities as necessary to fight the pandemic. In spite of this more or less convergent

¹⁰ The news can be found at <https://www.agensir.it/quotidiano/2020/5/23/fine-ramadan>.

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orientation, however, there has been no lack of the position of some countries that have remained firm in denying the very existence of the problem within their borders. What is your opinion on this?

I think it's one of the main concerns now how countries will be acting within their borders in order to try to contain the pandemic and the spread of the infection. I think that it will be subject to each country policies and how the number of cases will raise, ups and down. For example, we can see in Latin America, like in Brazil, they are reaching their peak at the current moment, which means it's very high. So, I assume that a lot of countries, like United States, ban the travel from Brazil for a while now. It's very tricky at the current moment because of the virus, the wide spread of the cases. For example, here, in Egypt, we are still closing the borders and the flying. I assume from July 1st probably because I assume that Egypt will be in the peak in two weeks, something like that. I am not sure, but I assume that because we see now raising the cases.

b) The socio-sanitary crisis has required an immediate approach also from religions, which are also called upon to contribute to the fight against the spread of the virus. Their leaders agree on the isolation strategies indicated by science in order to oppose Covid-19 and call on their communities to strictly observe all the provisions and guidelines issued by government and medical authorities. In this regard, religions have used 'alternative' tools to guide and accompany the faithful, and digital communication has proved to be of great

support. How are the Islamic religious authorities close to the faithful to ensure the continuity of their faith practices?

I think it's interesting because here, as you know, in the Middle East, it is a bit different because people are very sensitive to religion so they are very sad that they are not going to the mosques or to the churches, even here there are Catholic people, also in Egypt because we have 18-20% of population is Catholic Christian. Churches are closed, all services are suspended for now so I think that the idea is that they are trying to practice the rituals at home of course and they do the prayers, but they are not feeling happy to do just at home because they want to do this at mosques or at churches. Here, people are very connected to the religion and now, since I have been living in United States for 12 years, people even feel that when you are outside, you get a little bit far from religion. Now you (Mohamed) are not religious as much as you have been before I moved to the United States. So, it's different, but when I came back in Egypt, I still can see how people are connected to religion and even they connect to the pandemic issue, at some point, to some religious. And I can tell you, like divine authorities, so it's most like a test from God and we have to wait, something like that.

c) As a result of the closure of the places of worship, the majority of religious services are therefore conducted at family level: each house becomes a small mosque. Given the position of those who remain anchored in the patriarchal tradition, do you believe that this circumstance could have repercussions on women's religious freedom?

I think that some restrictions, at some point, are imposed on women, but you can see that in much more conservative countries, like in South Arabia and United Emirates. But I can tell you that in Egypt, here, we cannot see that kind of restrictions because Egypt, Lebanon, Tunisia or Morocco or even Geordan are much more liberal within the application of the religion than the other countries. So, sometimes, we do have restrictions on women for sure, but there is no restriction like women have to wear the scarf as in South Arabia. So, here in Egypt, if woman wants to wear the scarf it's fine; if she doesn't like to wear this scarf it's ok too. So, there's no problem with that. This is of course different than the other area where women are forced to wear the scarf.

d) Islam, unlike other religions, has not found itself completely unprepared in the process of adapting to the civil rules of the emergency because there are several Prophet's Hadith who explicitly refer to the instructions to be observed in cases of epidemic. However, the long suspension of collective religious life seems to lead to the impossibility of celebrating certain rites which, connoted by the sharing among the faithful, are traditionally practiced at specific times of the year. What, in your opinion, are the main new problems that may arise from this point of view? Could the need to find a solution to them induce Islamic institutions to analyse religious practices, rethinking the prescriptions inherent places of worship, symbols, rituals?

When we talk about Middle East, specifically we see that the idea of collective religion is contained in three main religions,

mostly, Christianity, Jihadism, and Islam. Specifically, I can say that the most important two religions here, in Middle East, are Christianity and Islam. I think that the tricky part here is what about the atheistic or the agnostic or the people that are not believing in any kind of religion or in any kind of Hebraic religion. I can tell you that the freedom of religion on that point is not in a good shape. If people say that “I’m agnostic or I don’t believe in God, something like that”, it’s not welcomed here, in the Middle East. So, you can see that countries are putting some restrictions on that, so people have to follow a religion because of the government.

I agree with you on that. The Islamic institutions do have an important role to play in that problem. One of the main examples is that the Islamic clergies or the Islamic professors should act open-minded, not only just closed on specific issues, or focused on issues related just to women rights or any other just religious things. They have to be open-minded to others. It’s important for them to explain in a very broad way how accurate is the Islamic view on freedom of religion and freedom of expression. The human rights, in general, is very broad and not just ambiguous or vague in a way that they wanted to say or force people to do this or do that.

e) It is clear that this epidemic calls into question the protection of equally fundamental rights. In your opinion, can the safeguarding of individual and collective wellbeing - to which, moreover, Islamic doctrine confers significant importance - prevail over the religious duty of fasting? The need to combat the spread of the virus has fuelled debate

among those who recognise or do not recognise modern science as the instrument they can rely on to control the evolution of nature. What impact can the Covid-19 emergency have on the relationship between medical ethics and Islamic ethics?

Now, I see from the Islamic institutions, which is a good thing, that they are always advising people to rely on modern science and to make sure that we have to set up the facts and the scientific facts, specifically in order to combat the Covid-19 or any other viruses if it comes, like Coronavirus or other viruses. It's important to make sure that we rely on science and scientific facts. Not only the religious idea, which is fine, it is good to rely on religious ideas, but it's also important to give the medical experts and the scientists, their speciality to make sure that we are able to fight, to combat a pandemic or to combat the viruses not only in Egypt, but all over the world. This is why, for example, every country has to do a lot of work on the research and to make sure that we may get a vaccine soon in order to fight that. That it's in addition to the religious practices. If you want to pray, it's a good thing, but this does not mean that you have just to rely on that and to leave the scientific facts.

f) What contribution can the Islamic concept of 'solidarity' - recalled in various Koranic verses and Hadith of the Prophet - give to the overcoming of this universal crisis? In this sense, for example, the proposal of a universal institution of the Zakat seems to be moving in this direction, with the intention

of making solidarity the fundamental motor of every action and to infuse new life into moral and human responsibility.

I think it's important for the Western approaches. Since, I have been living for 12 years in the United States or in the Western early, I can see that there is a kind of misunderstanding of Muslim people or Muslim population. Mostly, a lot of people thinks that Muslims are terrorists, Muslims are close-minded, Muslims are whatever. This is a kind of bias and untrue and inaccurate. Of course, religion is totally different on that. So, the important thing now is that the Muslim people or the Islamic world have to play, to send up a message to all the Western, to the universal land: everybody is united in this, we are totally unified in this, east and west. There is no Muslim world and Western world. We are all united because this is a kind of global crisis. The world has to be united in respect of the religions, in respect of the believes, in respect of the colours. Now it's the time that we have to stand all together, to fight that thing. That's one of the main things that I really like here in Egypt when I came for this vacation that was unexpected (too long vacation for me now, for almost two months) is that the Islamic institutions are encouraging people to send a message to the Western people, to friends and colleagues in the West or even here to just make sure that we are totally united. That's the message that any religion, either Hebraic or non-Hebraic.

Interview to Dr. Tehseen Nisar of the LUISS Guido Carli University - 03 June 2020

a) With regard to the Islamic States, most of them - even if at different times and in different ways - have adopted the measures indicated by the scientific authorities as necessary to fight the pandemic. In spite of this more or less convergent orientation, however, there has been no lack of the position of some countries that have remained firm in denying the very existence of the problem within their borders. What is your opinion on this?

First of all, I would like to bring to notice that it will be better to use the word Muslim countries or countries in the Muslim world rather than Islamic states. Second, while it is true that in many Muslim countries there have been very serious alarm concerning the pandemic, the measures taken are quite different from each other. In Pakistan for example, in the first phase of the pandemic, there was a ban on religious gatherings and prayer in mosques but slowly and gradually this ban was removed during the month of Ramadan. However, there were strict ban on religious congregations in Indonesia and even in Saudi Arabia, where Islam's holiest places were closed and there was a complete lockdown of the Holy Kaaba (The House of God).

b) The socio-sanitary crisis has required an immediate approach also from religions, which are also called upon to contribute to the fight against the spread of the virus. Their leaders agree on the isolation strategies indicated by science in order to oppose Covid-19 and call on their communities to strictly observe all the provisions and guidelines issued by government and medical authorities. In this regard, religions

have used 'alternative' tools to guide and accompany the faithful, and digital communication has proved to be of great support. How are the Islamic religious authorities close to the faithful to ensure the continuity of their faith practices?

The isolation period is marked as a great opportunity by many religious scholars in the Muslim world to focus within. There has been emphasis on following the footsteps of Prophet Mohammad (PEACE BE UPON HIM) and his injunctions that call on communities to stay in the place of their station and not to leave the place to any other place. The lockdown has encouraged thousands even millions of Muslims to better understand the teachings of the Qur'an (The Holy Book) as well as the teachings of the prophetic traditions. Emphasis is put on the power of prayer and its continuity and since Muslims pray five times a day, there is surely a lot that has been emphasised as the power of prayer to keep away from epidemics and diseases in spiritual way.

c) As a result of the closure of the places of worship, the majority of religious services are therefore conducted at family level: each house becomes a small mosque. Given the position of those who remain anchored in the patriarchal tradition, do you believe that this circumstance could have repercussions on the women's social and legal condition? In Pakistan, however, the protection of women within the domestic borders is guaranteed by the law "Punjab Protection of Women against Violence Act", passed in 2015.

I think in many Muslim countries, like many others in the West, the pandemic has been a great opportunity and blessing in disguise, a time most needed for family reunion and gathering which otherwise was not possible as children who worked stayed at work and apparently having provided a chance for families to be with all and each other, coming together to talk, to share, to discuss, to agree and to make the most out of this time.

I think there seems to be a misconception about Muslim women not being free to do whatever they want in the West; this seems to be a complete fallacy and a colonial percept. However, one fact that I must mention here is that the pandemic has certainly exacerbated the cases of domestic violence in both Western and non-western societies, a trend which should be analysed in great detail and length in anthropological and sociological dimension.

d) With regard to the observance of the Ramadan, the Sunnite authorities insisted on the need to comply with this religious precept as the Pillar of Islam; the Shiite authorities didn't exclude the possibility of a renunciation in order to preserve the right to health. This epidemic call into question the protection of equally fundamental rights. In your opinion, can the safeguarding of individual and collective wellbeing - to which, moreover, Islamic doctrine confers significant importance - prevail over the religious duty of fasting?

I will answer the second part of the question before the first. Observance of faith in Islam though relies on following the doctrines, including fasting, yet the Qur'an specifically mentions the conditions of fasting, its rules and obligations and even permits

to unfollow fasting while being sick, in travel and in difficult situations. In Chapter 2 of the Qur'an, Surah Baqarah, God Almighty mentions that Saum or fasting can be delayed in the following months after Ramadan. The point is that whoever wants to follow the Qur'an will follow as it is explicitly mentioned in the Quran (LA IQRAHA FID DIN) which means there is no compulsion in religion. Now, to the first question, I think there is a lot of damage caused to understanding Islam by dividing it into binaries: i.e. The Sunnites and the Shiites. Policies relating to the pandemic could be differently conceived and envisaged by many countries. It will be better and sensible not to really split the essence of Islam.

e) Islam, unlike other religions, has not found itself completely unprepared in the process of adapting to the civil rules of the emergency because there are several Prophet's Hadith who explicitly refer to the instructions to be observed in cases of epidemic. However, the long suspension of collective religious life seems to lead to the impossibility of celebrating certain rites which, connoted by the sharing among the faithful, are traditionally practiced at specific times of the year. What, in your opinion, are the main new problems that may arise from this point of view? Could the need to find a solution to them induce Islamic institutions to analyse religious practices, rethinking the prescriptions inherent places of worship, symbols, rituals?

The practice of two festivals in Islam called Eid- ul Fitr which is celebrated at the end of Ramadan and Eid-ul-Azha which is also

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called the festival of sacrifice based on Abrahamic sacrifice is celebrated in the last month of the Islamic calendar Zil Hajj-are very special to the Muslims all across the globe. The two festivals are celebrated with friends and family. The tradition is practiced by hundreds of years like Christmas and Easter in Christianity. The charm of celebrating the two festivals thus remain elusive among Muslims just like Christians celebrate their two main festivals. In the times of COVID 19 however, the general guidelines to stay home without going out and celebrating with larger and extended families have been observed fervently by many Muslim countries. Eid Ul Fitr was celebrated recently under strict conditions where people were obligated not to embrace each other and not to even shake hands in solidarity. Many countries like Pakistan saw a smaller number of attendances at the Eid congregations in Mosques. Many Muslims across Europe also performed Eid prayers at home. People in general preferred to be safe and protected within their homes and did the Muslim prayer domestically. In most cases both women and men observed Eid prayers at home.

COVID-19 BETWEEN THE CHINESE PATRIOTIC CHURCH AND THE UNDER-GROUND CHURCH IN THE DIOCESE OF SHANGHAI (CHINA)*

Angela Patrizia Tavani

1. In this frenetic succession of regulatory provisions in Italy, it seems that in a single stroke Covid 19 has deeply compressed religious freedom, reducing it almost to an abstraction, when the Catholic Church (as well as other religious confessions) and citizens- Catholic faithful have had to observe the provisions of the Italian State, with evident sacrifice of their fundamental rights of religious freedom and freedom of worship, for the benefit of the protection of the right to health and life, a priority in the acute phase of the pandemic.

However, looking at the provisions observed by the Chinese people in Shanghai, it is evident that the Italian Republic has, in fact, aligned itself with the contemporary limitations of freedom of worship, adopted in China: with the closure of the Churches and with the preclusion for the faithful to participate in masses.

It seems that a virus has managed to reduce the distance between countries which, despite having different forms of government, have at times found consonance in the - albeit temporary - compression of the right to religious freedom and freedom of worship.

* Submitted: 25th October 2020. Published: 29th October 2020.

For the first time in the history of humanity, the way in which each believer lived his faith was identical and unique: privately, in his own home, with his family only, using technological tools to share his worship at least virtually.

This study is aimed at analyzing five documents (published in the appendix), which occurred during the lockdown caused by the Covid 19 pandemic, relating to the Diocese of Shanghai.

Perhaps not everyone knows that the Bishop of Shanghai, Mons. Taddeo Ma Daqian, has been substantially under house arrest since 2012, for publicly declaring, immediately after his ordination, that he wants to leave the patriotic association. He lives near the Sheshan shrine and is not recognized by the Chinese Patriotic Church as a bishop, but only as a priest¹. He can now move around with some limits, but is not permitted to exercise his episcopal functions publicly.

2. That said, it should be noted that the provisions restricting freedom of religion in Shanghai were not the result of official enactments by the Chinese government; there was no regulatory or legal provision that prohibited the celebration of masses.

We mentioned above how the provisions restricting of freedom of worship implemented by the Chinese government did not originate from any official law or decree of a legal nature. Starting from 24 to 26 January 2020 (which fell on Sunday) the request for the suspension of the celebration of masses until a date to be determined by the Diocese circulated on the social networks of Catholic groups, but without any state regulatory source being to base on.

¹ Cfr. www.asianews.it.

Covid-19 in the Diocese of Shanghai

In the face of a total absence of legislation on the restriction of freedom of worship requested by the Prevention and Control Commission of the Council of State or by the Local Councils and disclosed through press releases and social media, here are some documents posted to places of worship from the Diocese of Shanghai.

1) In the Shanghai St. Peter's International Parish, celebrations used to be held in both Chinese and English. As soon as the lockdown period began, two separate notices were posted on the same date on January 24, 2020, having the same object: all masses are suspended and the faithful are exempted from the obligation to attend mass.

However, the first notice in Chinese is different from the second one in English: it is addressed to all parishes, not to individual parish priests; although it bears the stamp of the Diocese, it does not have the Bishop's signature; much less is it a question of communication addressed by the Bishop to the parish priests, as it should have been². The other, in English, also bears the stamp of the Diocese of Shanghai, but is regularly signed by the chaplain for the English-speaking community and addressed to the faithful³.

The latter case is more in conformity with canon law and, in particular, with can. 519 of the Code of Canon Law, according to which the parish priest is the proper pastor of the parish entrusted to him; he exercises the pastoral care of the parish community under the authority of the diocesan Bishop, with whom he is called

² Document dated 24 January 2020 no. 1, in the appendix.

³ Document dated 24 January 2020 no. 2 in the appendix signed by the parish priest Br. Antony Ruiqi Chen.

to participate in the mystery of Christ, to perform the functions of teaching, sanctifying and governing in accordance with the law.

In support of the validity of the parish priest's decree are a) can. 562 of the Code of Canon Law, according to which the rector of a church, under the authority of the local Ordinary is obliged to ensure that sacred functions are celebrated in the church according to the liturgical norms and the provisions of the canons and the obligations are faithfully fulfilled; b) can. 838 § 4 of the Code of Canon Law, according to which it is up to the diocesan Bishop in the church to which he is entrusted to give norms on liturgical matters, to which all are bound.

The analyzed documentation, published for the first time as an appendix to this contribution, highlights the discrepancy between two different approaches: in the first the governmental imprint is evident: the figure of the priest and the government official almost coincide; in the second, a purely pastoral and ecclesial approach prevails. Furthermore, the stamps are different, not only in color but also in the logo (the Chinese one, in red, reproduces the design of the facade of the Parish is the stamp of the Diocese of Shanghai, the other, in blue, depicting the symbol of the crucifix with a written “Church of Saint Peter” in Chinese, and the words “Dioecesis Shanghai” and “Eccl. Sancti Petri” in Latin).

2) The divergence highlighted above seems to be attenuated in a notice of March 29, 2020 from the St. Peter's Church, in which the priest, in the first part, aseptically reports what was decided by the Diocese of Shanghai on the closure of churches during Holy Week. Then follows a nice speech with a spiritual content of

Covid-19 in the Diocese of Shanghai

encouragement that he addresses directly to his parishioners⁴, not failing to remember Pope Francis, alone in St. Peter's Square, during the *Urbi et Orbi* of 27 March 2020.

3) Another communication dated April 13, 2020 provides for the suspension of pilgrimages in the month of May to the Shrine of St. Mary Help of Christians in Sheshan⁵, the most important and visited shrine in China⁶, under the watchful eye of the police⁷.

The document bears only the stamp of the Diocese of Shanghai, perfectly identical to that contained in the document in Chinese language above. The strong governmental imprint in the restrictive provisions of Catholic worship appears evident, which does not seem to leave any space for ministers of worship, not even for communications addressed to the faithful.

⁴ Document dated 29 March 2020 no. 3 in the appendix.

⁵ Document of 13 April 2020, no. 4 in the appendix.

⁶ May 24 is the feast of Mary Help of Christians, invoked in China for the Help of Christians, in the National Shrine of Sheshan, in Shanghai, as recalled by Pope Francis: «On May 24, we will all spiritually join the Catholic faithful in China, on the of the Blessed Virgin Mary “Help of Christians”, venerated in the shrine of Sheshan in Shanghai. To Chinese Catholics I say: let us raise our gaze to Mary our Mother, to help us discern the will of God regarding the concrete path of the Church in China and to support us in generously accepting her plan of love. Mary encourages us to offer our personal contribution for the communion among believers and for the harmony of the whole society. Let us not forget to bear witness to the faith with prayer and love, keeping ourselves open to encounter and dialogue, always». See Pope Francis at *Regina Caeli* 21 May 2017. See *website* www.vatican.va. In fact, on May 24, 2017, the day of prayer for the Church in China, announced by Benedict XVI exactly ten years earlier, was celebrated in all the Dioceses of the world.

⁷ As reported on the website www.famigliacristiana of 24 May 2017.

This decree also does not conform to canons 562 and 838 § 4 highlighted above. In this case, the signature of the rector of the sanctuary or the Diocesan Bishop is missing (cann. 1230-1234 Code of Canon Law).

4) After the closure of churches and oratories for months, there was a timid recovery in July. This is documented by another notice dated 8 July 2020, also unpublished⁸. This is a communication from the Xujiahui Cathedral located in one of the largest commercial districts of central Shanghai, announcing the possibility of attending the Eucharistic celebrations starting from the following 10 July, provided that the total capacity of 30% is not exceeded, equal to about 360 seats. The notice requires showing the health code and temperature taking at the entrance, as well as respecting social distancing. It is specified that the celebrations will be held in Chinese only and that there will be no catechism.

After the lockdown throughout Shanghai there is a resumption of the celebration of mass only in the Cathedral and in St. Peter and few other churches, where only three or four celebrations are held a week, always subject to registration, following which a pass that allows you to attend the celebration of the chosen mass. The Church of St. Peter, which traditionally hosts the international community, despite the opening for worship after the lockdown, is not yet very popular. It is possible that some faithful do not feel very safe due to the checks resulting from the registrations required for access (the wind can change, and those belonging to the under-ground Catholic Church could be registered).

⁸ Document of 8 July 2020 no. 5 in the appendix.

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Many other churches remain closed. Nor are celebrations held in languages other than Chinese. All without publishing circulars or decrees. On the other hand, in some rural areas of China, far from the metropolises, churches, large cathedrals in the desert, may have remained open.

From the analysis of the documents in the appendix, one can still guess a rift, albeit on the mend, between the patriotic Church and the Church under-ground. Certainly, there is a wound within the Chinese Church that must be healed. But it is very likely that over time there will be a merger between the patriotic Catholic Church (in which the Bishops are appointed by the Chinese Communist Party) and the clandestine one, in which, according to the Code of Canon Law, the Bishops are appointed by the Pope, to reach the compromise of the appointment of Bishops directly by the Pope, but at the same time welcome to the Chinese Communist Party. The extension of the Agreement stipulated on 22 September 2018 between the Holy See and China that has just occurred may be of help. The future is characterized by the proclamation of the Gospel according to the parameters dictated by politics, by the ideology of Chinese society. But the Church is called, adds Li Shan, to use Chinese culture to interpret doctrine and express faith, to the point of shaping a Catholic culture with Chinese characteristics. This is what Pope Benedict XVI hoped when he referred to an Asian or Chinese Christianity. And perhaps this is what Pope Francis, a Jesuit, hopes in his heart, who cannot fail to recall the presence in China, rich in not only cultural meanings, of another Jesuit: Matteo Ricci. The CCP also hopes for a more “Chinese” Church, perhaps a Church more obedient to the government apparatus.

A thousand bodies with one heart. This is how the Chinese sing the national anthem. Certainly, it cannot be denied that, despite the materialist ideal professed by the government, the Chinese people possess a high spirituality that has distinguished them in an even more remote era than in the West.

During the lockdown in Shanghai, all the Catholic faithful immediately adapted to the requirements of the Zone Council through WeChat: they feel part of a family, led by a “mother” state that cares about their well-being. Nobody dares to comment on or reject anti-Covid prescriptions restricting freedom of worship. In the face of the legitimacy disputes regarding the anti-Covid19 provisions adopted by the Italian government, in China there is an attitude of total trust towards the government, in the awareness that all initiatives are taken to protect the “children” of the state that lived as a big family. It is a concept of obedience comparable to that which exists within the Church.

The Chinese citizen does not obey the law or the judge directly, as happens in the Italian State, but obey the official who represents the administrative authority. That is, the central bodies give their directives to the lower level administrative bodies and so on, up to the network of authorities that relate directly to the citizen. In this way the normative acts follow and do not precede the application process. All this also happens thanks to the criterion of obedience, through which a virus was fought tenaciously⁹.

⁹ Cfr. the careful analysis of H. Pazzaglini, *L'obbedienza nell'ordinamento cinese nell'attuazione delle misure sanitarie anti covid-19*, in www.apertacontrada.it, 24.4.2020.

Covid-19 in the Diocese of Shanghai

While the hypothesis of a new lockdown is now open for Italy with the Prime Minister's Decree of 25 October 2020 (although no restrictions on freedom of worship are prescribed), China appears to be out of danger. Right now one of the objectives to be pursued is to carry on the great anti-epidemic spirit and focus on coordinating the promotion of epidemic prevention and control and economic and social development (弘扬伟大抗疫精神着力统筹推进疫情防控和经济社会发展)¹⁰.

Finally, thousands of faithful will be able to return to pay homage to the tomb of the great Jesuit Matteo Ricci, buried there.

¹⁰ Cfr. www.xuexi.cn.

Angela Patrizia Tavani

Appendix

Document no. 1 dated 24 January 2020 Shanghai St. Peter's
International Parish

紧急通知

上海教区各堂区（点）、各部门：

因新型冠状病毒感染疫情防控工作需要，为了切实保障众教友生命安全和身体健康，教区作出以下决定：自今日起 2020 年 1 月 24 日 12 点起，各堂区（点）、各部门，暂停开放及暂停集体宗教活动的紧急通知。

- 1、 自元月 24 日 12 点起至疫情缓解为止，各堂区（点），各部门，暂停一切公共礼仪（主日弥撒，平日弥撒等）具体恢复时间另行通知。
- 2、 此期间主日义务自动豁免，但务必诵经祈祷，恭念玫瑰经，尤其为除疫祈祷。

请神长、教友们支持、理解，严格执行。

求主恩赐早日消除疫情！



2020 年元月 24 日

Covid-19 in the Diocese of Shanghai

Document no. 2 dated 24 January 2020
Shanghai St. Peter's International Parish

**English Masses Temporary Suspension
Notice**

January 24th, 2020

Dear parishioners,

Happy Chinese New Year!

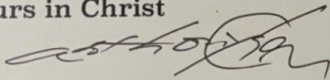
Due to the coronavirus situation in Shanghai, the Diocese of Shanghai suspends all Masses in churches starting today. St. Peter's church is closed to public. English Mass will be suspended temporarily until further notice. We will keep you posted of further Masses arrangement.

Sunday Mass obligation will be dispensed during this period.

Let us pray for healing and mercy from our Lord Jesus Christ!

I keep you all in my prayers.

Yours in Christ



Fr. Anthony Ruiqi Chen
Pastor of St. Peter's International parish



Angela Patrizia Tavani

Document no. 3 dated 29 March 2020
Shanghai St. Peter's International Parish



March 29, 2020

St. Peter's Church Will Remain Closed During Holy Week

Dear Sisters and Brothers in Christ,

Peace be with you!

Our diocese has announced that all the churches will remain closed during Holy Week. All priests must follow the diocesan pastoral directive in the COVID-19 pandemic. Therefore, there will be no public Masses in the church during Holy Week. All the faithful are encouraged to attend (watch) Mass spiritually by means of livestreamed Mass online if they can get it. But, above all, we should not give up our daily prayers in this holy season. Our faith will be strengthened by reading and meditating on the daily Mass readings; our hearts will be satisfied by spiritually receiving Holy Communion; and our family will be truly united by praying together.

The coronavirus crisis can become a grace for us if we use this time to live out our Christian life. Pope Francis encourages us to have faith in the Lord Jesus Christ in this time. Let us pray to our Lord Jesus and trust his mercy. The Lord Jesus is with us all the time and never abandons his Church. Let us pray daily in union with the Universal Church.

I also encourage you to read Pope Francis' whole homily before his *Urbi et Orbi* blessing on March 27, 2020. Our Holy Father shows us the genuine way to face this coronavirus pandemic. I would like to quote his words here as my message to you also. He says:

Embracing his cross means finding the courage to embrace all the hardships of the present time, abandoning for a moment our eagerness for power and possessions in order to make room for the creativity that only the Spirit is capable of inspiring. It means finding the courage to create spaces where everyone can recognize that they are called, and to allow new forms of hospitality, fraternity and solidarity. By his cross we have been saved in order to embrace hope and let it strengthen and sustain all measures and all possible avenues for helping us protect ourselves and others. Embracing the Lord in order to embrace hope; that is the strength of faith, which frees us from fear and gives us hope. (Urbi et Orbi blessing on March 27, 2020)

I assure you that I keep you all in my prayers and daily Mass. May the Crucified Lord heal our wounds and comfort our hearts and bring peace to the world. Amen! Alleluia!

Peace and joy in the Lord,

Fr. Anthony Chen
Pastor at St. Peter's International Parish

Covid-19 in the Diocese of Shanghai

Document no. 4 dated 1 April 2020
Shrine of St. Mary Help of Christians in Sheshan



通告

各位教友：

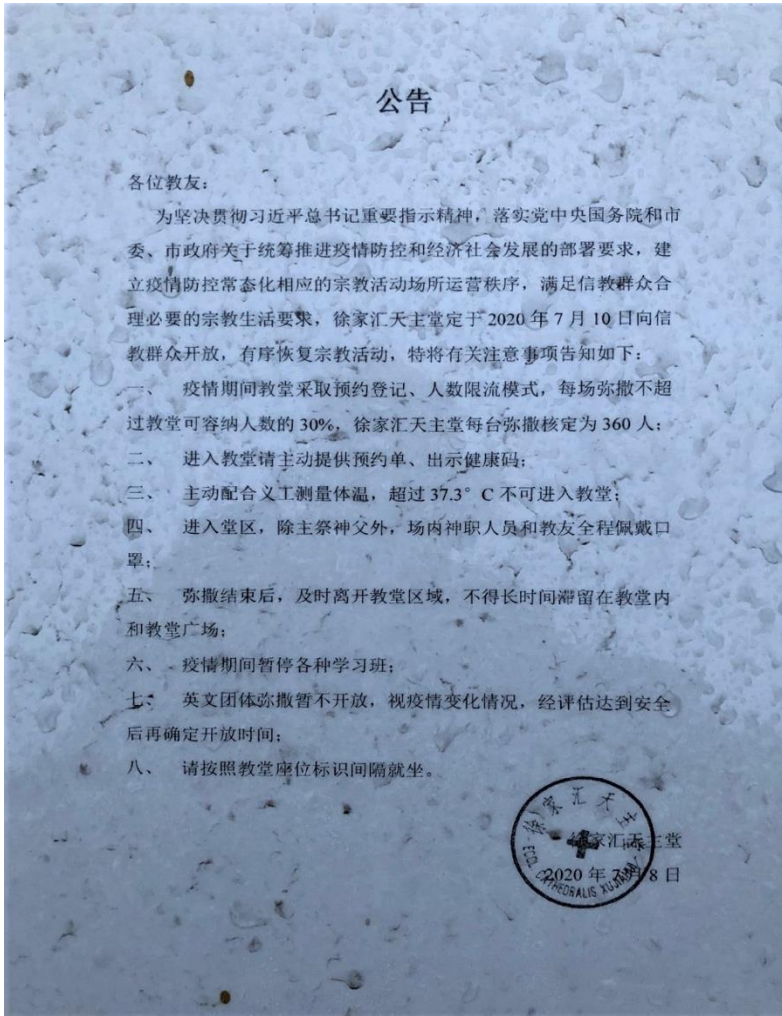
当前新冠肺炎正在全球蔓延，为积极配合全市疫情防控工作，避免人员聚集可能带来的疫情反弹，特别是境外输入带来的风险，保障广大教友的健康与安全，经教区会议决定，暂停举办今年五月佘山和浦东唐镇的朝圣活动。

届时教区将对佘山山顶大堂、中山教堂、浦东唐墓桥天主堂及相关区域实行封闭管理，不组织朝圣活动，不举行集体宗教活动，不接待任何朝圣团队和个人，敬请谅解和配合！

希望各位教友积极配合，相互转告，参照复活节期间的做法居家祈祷：身在家里、翘首远望、佘山圣母、祈我等之母后、聊亦回目，~~怜悯我众~~，驱逐疫情。亚孟！

天主教上海教区
2020年4月13日

Document no. 5 dated 8 July 2020 Xujiahui Cathedral



RELIGIOUS LAW

THE «CHARTER OF THE NEW ALLIANCE OF VIRTUE» FACING THE COVID-19 EMERGENCY*

Antonio Fuccillo

1. The «Charter of the new alliance of virtue»

Scholars and religious leaders that signed «The charter of the new alliance of virtue» - in Abu Dhabi on December 2019 - share the statement that religious freedom belongs to the ontological status of the human being¹. The sponsor of the Forum for Promoting Peace in Muslim societies, and especially his leader H.E. Shaykh ‘Abdallah Bin Bayyah, Chairman of the United Arab Emirates Fatwa Council and President of the Forum, suggest that Abrahamic religions can support a new wide view on religious relations offering a helpful way to overcome the barricades of intolerance. According to this statement, the Abrahamic family can live together having common and distinct theological and ethical traditions, each of which values human virtues, and each of which requires peace and mutual respect and tolerance in order to flourish. This is an important affirmation to confirm the necessity of religious cooperation to overcome differences and to aim towards tolerance and respect as mankind goals.

The Charter includes the important affirmation, that is: «another is rights that exist prior to the state and inhere in each

* Submitted: 8th May 2020. Published: 11th May 2020.

¹ The document is available on the website [here](#).

human being by virtue of his or her existence. Such rights are typically understood as deriving from a greater-than-human source, such as God or nature, for the believer or non-believer. These rights must be acknowledged and protected by any just state. They should be understood as necessary to human dignity, as well as social flourishing. It is also mean that religious freedom occurs to the human race like a fundamental right». This is directly linked to human dignity, and in this perspective, it states that «All people, irrespective of their diverse races, religions, languages, and ethnicities, by virtue of the divine soul breathed into them, are endowed with dignity by their Omnipotent Creator».

2. The new borders of religious freedom, tolerance and respect.

All societies must preserve freedom of conscience and religion or belief. It is the responsibility of the State to protect religious freedom, including diversity of religions, which guarantees justice and equality among all members of society². It is important to support the idea that there is no compulsion in religion.

Tolerance is the central theme of the Abu Dhabi Chart. The beliefs of others must be legally protected and culturally respected; differences should be seen as a source of enrichment, not as a conflict. These are the new borders to be torn down in terms of religious freedom.

² A. Fuccillo, *Legal-economic Koinè and the Religious Nomopoiesis*, in *Calumet - Intercultural law and humanities review*, On-line Review, (www.calumet-review.it), 2018, 1-20.

The «Charter of the New Alliance of Virtue»

The believers have the right to exercise their worship individually and collectively, and they have also the right to participate in the rites of their religion, and to manifest their faith. This freedom is guaranteed by the constitutions in many countries around the world, and by the most important international charters of rights (e.g. art. 9 of the ECHR). The coronavirus pandemic that has hit humanity, has led to huge compressions of the rights of the faithful all over the world. These limits to religious freedom have a deep impact to all mankind lifestyle.

People cannot participate in collective rites and attend to worship activities, because they are potential vehicles of contagion. At the same time, many limitations have been placed on access to religious buildings, and place of worship, sometimes substituted by ceremonies carried out on the web.

The new Alliance of virtue has been inspired by the Marrakesh Declaration, a document signed by many scholars, personalities, intellectuals and religious leaders from all over the world³. The Marrakesh Declaration is not simply a formal statement of principles, since it aims to give practical advice on actions to achieve social cohesion using a bottom-up model, which implies an expanded concept of citizenship and no law enforcement by the State, as the “state religion”⁴. The teachings of the religions and their rules of behaviour are decisive for this path. The method outlined by the Marrakech declaration proves valid, and on these principles the teachings of the New Alliance of

³ The document is available on the website <http://www.marrakeshdeclaration.org/>.

⁴ A. Fuccillo (ed.), *The Marrakech Declaration. A Bridge to Religious Freedom in Muslim Countries?*, Editoriale Scientifica, Napoli, 2016.

Virtues are more concretely applicable and ready to overcome new challenge.

3. Faith deprivations in Covid-19 emergency. A new challenge for religious authorities.

The impact of deprivation is very serious for the faithful of the religions. For Christians the deprivation of religious activities was then particularly suffered given the concomitance with the “holy week” and the Easter rites. All Catholics in the world will remember upset the images of the Pope in their hearts in an empty Piazza San Pietro delivering the *Urbi et orbi* blessing on March 27th, Palm Sunday, the *Via Crucis*, the Mass of the resurrection. For Muslims all over the world the pandemic limitations fall during the holy month of Ramadan. They also had to suffer many limitations in regard to the Friday’s prayer.

Religious authorities demonstrated an uncommon sensitivity in specifying alternative ritual paths to the faithful, accepting the limitations imposed by governments, well aware of the risks of spreading Covid-19. The principle of State-religions cooperation in defence of the health of citizens-faithful has been filled with new values. In that way, the Fatwa council of UAE clarifies that Al Fitr prayers should also be performed at home if mosques remain closed⁵.

⁵ UAE’s fatwa on fasting and prayers in Ramadan 1441, 19 April 2020, which rules that « the Taraweeh prayers will not be allowed in mosques during Ramadan. They could be performed individually at home, or the male family member who has the most responsibility for taking care of and making decisions about the household may lead the prayer for his

The «Charter of the New Alliance of Virtue»

The religious authorities' behaviour is even more appreciable, as the ordinances of the national and regional governments limited people's religious freedom, that is one of the primary rights to be protected. These restrictions also invaded matters within the competence of the ecclesiastical authorities.

In this field is really important to verify the correct balance of the constitutional values. Restrictions on stakeholder's religious freedom are perhaps possible. In these prospective a light compression of liberty of worship is almost possible especially in relation to people's right to health and in defence of public safety. All of these prohibitions are allowed only if it is contained within a well-defined and certainly not excessively long space-time limit, and in strict compliance with the hierarchy of sources of law.

By the way, it is clear that effective cooperation of States with religious authorities is the best way to achieve this important result.

The global pandemic indeed requires an effort from society as a whole in order to prevent the transmission of the virus.

Despite the assumption of secularism of the public sphere, the relationship between religion and law is still present in the daily practice of interpreters of principal law systems. Religious rules apply sometimes directly through the activity of religious courts,

family by either reciting the Quranic verses or reading from the Quran. The council warns against congregating to perform prayers, as this could endanger lives. It stresses that performing Friday prayer is not permissible during the suspension of mosque services. Instead, Muslims should perform their Dhuhr (noon) regular prayer at their homes; if the pandemic continues until the time of Eid Al Fitr, people may perform Eid Al Fitr prayer individually at their homes or in a group with their respective family members without a sermon».

sometimes indirectly through a religiously oriented application of legal rules⁶.

In this context, religions acted in a double way. From one side, in order to protect the individual and public health, religious denominations encouraged the faithful to practice autonomously and issued a worldwide suspension of all rites, observances and pilgrimages⁷. At the same time, religious leaders have turned to online platforms and apps to ensure religious services to their communities⁸. The pandemic also strengthened inter-religious dialogue as demonstrated by joint statements of religious leaders and interfaith moments of prayer⁹.

It is then more than clear that the sensitivity of religions is what has made this really possible; especially in regard to the preservation of the rights of the faithful from undue invasions caused by political power.

The sufferings of the faithful for the deprivations of their right to access worship activities, was felt by many important religious leaders. The problem is most evident as many laws prevent the use

⁶ A. Fuccillo, F. Sorvillo, L. Decimo, *The courts and the code. legal osmosis between religion and law in the cultural framework of civil law systems*, in *Stato, Chiesa e pluralismo confessionale*, Online Journal, (www.statoechurchiese.it), no. 28-2017.

⁷ I.e. Holy Week rituals organised by the Catholic Church in the Vatican City were closed to public for the first time in history - <https://bit.ly/3bpNZ0l>; Saudi Arabia suspended the entry of pilgrims for the Umrah - <https://bit.ly/3aw1GcR> -

⁸ I.e. the Ahmadiyya Muslim Jama`at Canada launched a virtual Ramadan campaign - <https://bit.ly/3bv7Ivr> -

⁹ I.e. religious leaders from around the world held a virtual interfaith moment “for hope and solidarity,” organized by the NGO ‘Religions for Peace’ - <https://bit.ly/3eEA7S5> -To learn more: <https://bit.ly/2VODq0f>.

The «Charter of the New Alliance of Virtue»

of places of worship and prayer, but maybe the faithful might still be able to access them in compliance with the security protocols. There is also a difficulty to get their holy place also due to the limits of the permitted travel.

4. The Statement of Solidarity of the New Alliance of Virtue.

Religions are withstanding the exceptional difficulty of the moment and, at the same time, inviting the faithful to demonstrate their faith through concrete acts of solidarity, as promoted by the Forum for Promoting Peace in Muslim Societies, which produced the important document called “a Statement of Solidarity of the New Alliance of Virtue”¹⁰ shared by eminent personalities belonging to various religious denominations. It contains essential references to the unity of mankind, the solidarity and harmony of the “Abrahamic” religions in the defence of each “soul”.

It states that «In this extraordinary moment, we invite believers to reflect on a number of points: First, in the face of the blows of fate, we must contemplate human fragility and seek strength and mercy from God with the hope that God may grant us success and guidance in our efforts to overcome adversity and crisis». It also contains an important admonition to all mankind: «this virus, which does not recognise territorial boundaries or distinctions between races, or between the rich and the poor, is an opportunity for us to remind ourselves of human equality and to take to heart and remember the teaching of our Abrahamic religions that every soul—whoever that soul may be—represents

¹⁰ The document is available on the website [here](#).

all of humanity. Our religions oblige us to seek the safety, well-being, and protection of every soul from all forms of harm, whether they be epidemics, pandemics, oppression, or wars».

This document also includes the important results recently achieved on the front of inter-religious dialogue.

Faced with the pandemic emergency, the Churches responded with a great sense of responsibility in the core moment of their tradition. The recommendation to the faithful is placed in this perspective to follow up their rituals «as we are in the midst of Easter and Passover and approaching the holy month of Ramadan, we recommend following the instructions and guidance which best ensures the preservation of lives and the maintenance of the public good». The success of the fight against the disease it is up on them and their conduct.

It is necessary to use the prudence of the jurist however, to prevent that a “suspended faith” from being transformed into “forbidden faith”.

The religious freedom of individuals and groups can shape and adapt in the balance with other fundamental human rights, but it can never completely move back or worse disappear.

FRATERNITY. A PROPOSAL FROM RELIGIONS TO STATES TO OVERCOME THE COVID-19 EMERGENCY*

Maria Luisa Lo Giacco

1. Introduction

A world day of fasting and prayer was held on May 14, 2020 to free humanity from the Coronavirus pandemic. The day was organized by the Higher Committee for Human Fraternity, an interreligious organization founded in the United Arab Emirates, that has among its members representatives of the three Abrahamic religions, as well as representatives of international cultural institutions. In the heart of Abu Dhabi, the Committee has created a little town of the dialogue, the Abrahamic Family House, where it was built a synagogue, a church, a mosque and a cultural center, the one next to each other.

The Higher Committee was founded after the Pope Francis' apostolic journey to the United Arab Emirates¹. For the first time in history, a Catholic Pope has gone to the Arabian Peninsula, that is the cradle of the Islamic religion; it was an extraordinary event and, as the Pope himself said, it occurred on the eighth centenary

* Submitted: 15th May 2020. Published: 20th May 2020. For ITA version [click here](#).

¹ Journey of 3-5 February 2019

of the meeting between St. Francis of Assisi and the sultan al-Malik al-Kamil².

Pope Francis attended the interreligious meeting organized, during the Global Conference of Human Fraternity, by the Muslim Council of Elders, an important organization of Sunni Islam. As we can read on the [website](#) of the same organization, the Muslim Council of Elders was founded on July 2014, and it aims to promote the peace within Islamic communities. According to its site, “The Council unites Muslim scholars, experts and dignitaries who are known for their wisdom, sense of justice, independence and moderateness”; they are engaged in the solution of conflicts and in spreading the values of the tolerance. The President of the Council of Elders is Ahmed Al-Tayyib, the great imam of the Al-Azhar University of Cairo³; in the past he had already met Pope Francis. During his apostolic journey to Egypt, on 28 April 2017, the Pope was present to an “international peace conference” organized by Al-Tayyib at the University of al-Azhar⁴, and the Great Imam has been received three times in Rome by the Pope.

2. Freedom, equality and fraternity in the Abu Dhabi Declaration

² See Francis, [Interreligious Meeting. Address of His Holiness](#), 4 February 2019.

³ Al-Azhar University is the most important religious and cultural institution of Sunni Islam. The Great Imam is considered to be the most important Sunni religious leader and his doctrinal authority is universally recognized.

⁴ See the text [here](#).

Forbidding Pilgrimages during the Covid-19 Pandemic

The Abu Dhabi meeting ended with the signing of an important document on [*Human Fraternity for World Peace and Living Together*](#); the document is remarkable also from a juridical point of view, since it is based around the three principles, freedom, equality and fraternity, that are the basis of the modern idea of democracy.

It recalls that “each individual enjoys the freedom of belief, of thought, of expression and of action”. In particular, religious freedom means dialogue, respect for the other’s faith and for his places of worship, condemnation of religious terrorism⁵. Freedom is also defined as the freedom to be different.

Equality is described like a consequence of God’s willing; to obtain the equality it is necessary to bridge the gap of gender, wealth, age and it is “crucial to establish in our societies the concept of full citizenship and reject the discriminatory use of the term minorities”.

The Declaration remind us that the principles of freedom and equality are internationally recognized, but they will be really achieved only thanks to the principle of fraternity. The fraternity, in fact, “embraces all human beings, unites them and renders them equal” and free.

In this document, therefore, it acquires a central dimension a principle that constitutes, together with freedom and equality, the slogan of the French Revolution, the event that marked the separation of the state from religion: fraternity. Of course, from the historical point of view, the *fraternité* of revolutionaries is something very different from the fraternity of religions, but

⁵ About the right of religious freedom according to the Abrahamic religions, see A. Fuccillo, [*The “Charter of the new alliance of virtue” facing the Covid-19 emergency*](#), 11 may 2020, in *DiReSoM.net*.

perhaps it is precisely the difficulty of giving a content to this principle that has made it marginal in the juridical debate. For example, the principle of fraternity is in the art. 2 of the French Constitution, but only recently, a sentence of the Constitutional Council of 6 July 2018⁶, has recognized it as a principle having full constitutional value⁷.

3. Fraternity/ solidarity to get off the Covid-19 emergency

With the Abu Dhabi Declaration, the Catholic Church and Sunni Islam show to governments, and politics in general, a vision of society that is rebuilt starting from the principle of fraternity, a principle that has at the same time a religious and a secular meaning.

The same principle is proposed again to politics in pandemic times, and it is pointed out as the foundation for the reconstruction. On March 30, the Catholic Pontifical Academy for Life published a document with the title *Pandemic and Universal Brotherhood*; in it we read a reflection on the meaning of freedoms and rights. The first ones, during the emergency, turned out to be “intertwined and overlapped, for better or for worse”, but also the rights are interdependent and there is “no right that does not have a resultant corresponding duty”. The pandemic has clearly showed this interdependence but, the document notes, the interdependence does not automatically turn into solidarity. This occurs also in the relationships between the states, that can’t

⁶ Decision no. 717/718, 6 July 2018, available [here](#).

⁷ See G. Canivet, *La fraternité dans le droit constitutionnel français*.

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confront the pandemic by reasoning in terms of exclusive defense of the national interest, since a global threat requires global responses. “An emergency like that of Covid-19 is overcome with, above all, the antibodies of solidarity”.

In the same days, the Higher Committee for Human Fraternity proposed a day of prayer, fasting and charity, in order that the world will be freed from the pandemic, becoming more fraternal. The day was celebrated on 14 May 2020 and it was, obviously, a religious celebration, but it was also an event with a political meaning. Pope Francis, in the homily of the morning mass of May 14, said that the Coronavirus pandemic is not the only pandemic that affects the world, since there are others such as the hunger pandemic or the war pandemic; [according to the Pope](#), only thanks to fraternity humanity will be able to overcome the pandemics.

During the pandemic, religions reminded politics of the value of fraternity, the revolutionary principle that underlies modern democracies. In the Italian Constitution, it can be identified in the political, economic and social solidarity referred to in the art. 2. This rule, in fact, recognizes and guarantees the fundamental rights, but it also requires the fulfillment of the mandatory duties of solidarity⁸. It is precisely the necessity to fulfill these duties that justified the compression of fundamental rights imposed by the government to face the epidemic emergency. But it is the same solidarity that, after the first phase, the cd. lockdown, must be the basis to go beyond the emergency and to plan the future.

⁸ See F. Giuffrè, [Alle radici dell'ordinamento: la solidarietà tra identità e integrazione, in Rivista dell'Associazione Italiana dei Costituzionalisti](#), no. 3/2019.

COVID-19 IN AFRICA AND LATIN AMERICA. CERTAIN FORMS OF RELIGIOUS NEGATIONISM FAVOR THE PANDEMIC*

Stefano Picciaredda

1. Introduction

In the universe of religious worlds, reactions to the spread of the pandemic have been very different. As it has been observed,¹ there have been examples of underestimation, exploitation, or even radical denial of Covid-19 harmful effects. Interpretations based on millenarianism have also flourished. Some examples of such conceptions in Africa and Latin America, are examined in the following pages.

2. Two happenings in Cameroon

«L'archevêque garde secrète sa composition médicamenteuse, à laquelle il n'a pas encore donné un nom commercial», remarks a journalist of the DW, a German broadcast. The TV report talks about the Archbishop of Doula, Msgr. Samuel Kleda, who choose

* Submitted: 29th August 2020. Published: 3th September 2020. For ITA version [click here](#)

¹ See P. Consorti, *La religione e il virus*, 09.03.20; C. Lupi, *The Saffron Wave against Virus. The Hindu Nationalists and the Covid-21 emergency*, 19.03.20; M. Introvigne, *Lesson from the Shincheonji Case in South Korea: Monitoring without Scapegoating*, 23.03.20. All in www.DiReSoM.net

journalist of the DW, a German broadcast. The TV report talks about the Archbishop of Douala, Msgr. Samuel Kleda, who choose not to reveal the composition of the herbal mixture he created, apparently effective against Covid 19, and not to "baptize" it with a commercial name.² Since the spread of the news, the Archdiocese of Douala has become an address of Hope and has attracted thousands of people eager to obtain the new natural medication. In an interview with *La Croix* on April 28th, 2020, the prelate said he had been interested "in healing illnesses with the help of medical plants of the African pharmacopoeia for thirty years". He started when he was the rector of a minor seminary, and continued to cultivate his passion even after his appointment as a bishop, first of Baturi and later of Douala. It is important to stress that Msgr. Kleda has never stated that he has found a treatment against Coronavirus, "because there would need serious studies to get to such a conclusion". With a sense of responsibility, he carried on saying he had abstained from observing the symptoms of Covid 19 and from creating some treatments out of medical plants suitable to mitigate them, "and patients feel better".³

The news has had a wide echo in the country and abroad. According to the correspondent of *La Croix* Msgr. Kleda's recipe has raised great hopes in a country where health authorities are about to be overwhelmed by the multiplication of the number of

² Henri Fotso's reportage for "Deutsche Welle", 15.05.2020, in www.dw.com.

³ Jean-François Channon Deenwo's interview for "La Croix", 28.04.2020. In www.africa.la-croix.com. See also F. Kouté, *Samuel Kleda, l'archevêque de Douala, a-t-il trouvé la potion magique contre le coronavirus ?*, in "Jeune Afrique", 22.5.2020.

cases".⁴ Many intellectuals and media have remarked the goodness of an "African response". The latter has been compared to the Artemisia-based solution created by the President of Madagascar, another well-known anti-covid herbalist.⁵ Meanwhile, in Cameroon, the evidence of healed or of improved patients is multiplying. Something that should not surprise, because restorative and anti-inflammatory treatments – which have been proved not to be harmful - can certainly produce an improvement in the patient's general conditions. This story should be related with a wider phenomenon context: some religious leaders insist on the need to abandon scientific medicine increasingly more. This is not a health-conscious movement that promotes natural care to decrease the use of allopathic medicine chemicals, rich in side effects. It is the systematic and radical request to the faithful to abandon all kinds of diagnostic means and pharmacological treatments prescribed and administered under medical control. The Christian who relies on a doctor shows a weak faith, he performs a "betrayal" towards the pastor and his ability, as an intermediary, to implement the thaumaturgical power of God: "C'est Dieu l'Unique Médecin" as Elisabeth Olangi Wosho loved to repeat. She is the founder of one of the largest awakening

⁴ Cameroon has 16.157 people affected by Covid-19, and therefore is the seventh African country (on July 18th 2020). Source: *European Centre for Disease Prevention and Control*. For a general bibliography on Cameroon see M. DeLancey, R. Neh Mbuh, *Historical Dictionary of the Republic of Cameroon*, The Scarecrow Press, Lanham – Toronto – Plymouth 2010. About the crisis in the English-speaking regions see P.K. Bouopda, *La crise anglophone au Cameroun*, L'Harmattan, Paris 2018.

⁵ See E. Sari, *Andry Rajoelina, VRP en Afrique du Covid-Organics*, "Jeune Afrique", 23.05.2020.

churches in the Congo Democratic Republic, the so called *Ministère du Combat spirituel*, now widespread also in Europe.⁶

In short, those who take drugs despise God and have no hopes of recovery, according to the pastors of the new churches of various denominations. This is not the case of Msgr. Kleda and of the Catholic Church of Douala, which has implanted and still maintains numerous health centers. But it is enough to take a few steps further, without moving from the second city of Cameroon, to find an example of such unscientific preaching. Franklin Ndifor, was a well-known 39-year old man from Cameroon. He was the head of the Kingship International Ministries Church and had run for the last presidential election in 2018. After the outbreak of the pandemic, he had presided over thaumaturgical prayer sessions in his Church, summoning covid-19 affected and laying his hands on them to invoke healing from God. Ndifor died on Saturday May 16th 2020, after a few days of suffering and worsening from difficulties. The coroner who examined his body ascribed death to Covid-19, and requested the intervention of sanitation and protection teams, to transport his body safely. His family locked themselves away in the house to prevent Franklin's body from being taken away. Meanwhile, the news, quickly circulated and attracted hundreds of faithful to the Bonaberi district. They gathered around his residence and began a spontaneous session of songs and prayers, to invoke the resurrection of the pastor. The same faithful did not let the doctors enter shouting that the pastor

⁶ See J. Ndaya, «Prendre le bic ». *Le combat spirituel congolais et les transformations sociales*, Leiden, CEA 2008, p. 94. See also B. Meiers, *Le Dieu de Maman Olangi. Ethnographie d'un combat spirituel transnational*, Academia-Bruylant, Louvain-la-Neuve 2013.

was not dead but "in spiritual retreat with God",⁷ and that he did not have to be buried. During the day, the tension grew, and only in the evening, with the intervention of the troops and of special vehicles using tear gas, the authorities managed to disperse the gathering and allowed medical teams to enter the house after taking all the necessary measures for safety.⁸ Journalists have reported the dismay and concern widespread among the families of the sick persons who had entrusted themselves to Ndifor. The event has attracted the attention of the international media, but many other cases took place away from the spotlight. The reality of the new churches, "neo-Pentecostal", "of awakening", or otherwise defined, constitutes, especially in Africa and Latin America, a galaxy in continuous development, with thousands of denominations, large and small, with a multinational extension or limited to a single suburban area. It is the so-called "Third Church", which is, according to some observers, the image of the Christianity of the future.⁹ In these churches, relationship with medicine is often characterized by distrust. "I was diagnosed with

⁷ M. E. Kindzeka, *Panic Grips Faithful After Cameroon COVID Pastor Dies*, in www.voanews.com, 17.05.2020.

⁸ J. Nkouam, *Franklin Ndifor : des fidèles tentent de ressusciter le pasteur décédé du Covid-19*. In www.bbc.com/afrique, 17.05.2020.

⁹ H.J. Cox, *Fire from Heaven: The Rise of Pentecostal Spirituality and the Reshaping of Religion in the Twenty-First Century*, Addison-Wesley Reading (MA) 1995; P. Jenkins, *The Next Christendom. The coming of global christianity*, Oxford University Press, Oxford 2003. About this phenomenon see P. Schirripa, *Terapie religiose. Neoliberismo, cura, cittadinanza nel pentecostalismo contemporaneo*, Edizioni CISU, Roma 2012; J. Robbins, *The Globalization of Pentecostal and Charismatic Christianity*, in "Annual Review of Anthropology" 33, 2004, pp. 117-143; S. Picciaredda, *Il cristianesimo del futuro? Cenni storici e linee di sviluppo del pentecostalismo contemporaneo*, in "Mantua Humanistic Studies", IX, 2020, pp. 215-240.

diabetes, but now that I have approached God I have discovered that diabetes is a spiritual disease. The drugs I was taking were of no use, only God heals”, said Deborah, a Congolese woman resident in Holland, to Julie Ndaya who interviewed her.¹⁰ In sub-Saharan Africa, this kind of belief has led to dramatic consequences in the case of another pandemic, HIV-AIDS syndrome, especially when the most effective cure - the so-called tritherapy - has finally become available. Among the many witnesses, I have chosen the one dating back to a few years ago and relating to Uganda and its capital Kampala. The coordinator of the Baylor College of Medicine Children's Foundation Uganda, who is treating over four thousand HIV-positive children and young people, already in 2010 reported the trend "among adolescents and their tutors to let their spiritual guides decide about their medical treatment against HIV / AIDS. Some of them spend every spare moment listening to the Gospel on television, reading the Bible or praying in church. Unfortunately it happens that when they realize that their 'therapy' is not working it is too late to go back to treatment with antiretroviral drugs "¹¹.

¹⁰ Ndaya, *op. cit.*, p. 21.

¹¹ Ag. Fides, *Aumentano gli adolescenti sieropositivi che abbandonano gli antiretrovirali per curarsi da sedicenti leader religiosi*. In www.fides.org, 09.10.2010.

¹² D. Glez, *Top 10 des « fake news » sur le coronavirus*, « Jeune Afrique », 04.04.2020.

3. *Covid's plot*

With these trends, African public opinion is now strongly disoriented and frightened. The virus has started to run together with the fake news. On March 4th the authoritative weekly *Jenne Afrique* published a "top ten" of theories of fantasy that grew up around Sars-cov 2 and how to protect oneself from it: application of sesame oil on the body, consumption of garlic, conspiracy of pharmaceutical laboratories, virus spread via 5G network¹². In April the editor of the weekly *François Soudan* returned to the news, wondering about the reasons why "these theories penetrate and influence the social media of the continent so fast, although this is the least affected, so far, by the pandemic". For Soudan there is a twofold explanation. One is linked to the cultural peculiarities of the continent:

The disease, especially in central Africa, is often perceived as a weakness. When the pathology is transmissible, it becomes a stigma to be ashamed of. A testimony to this is the following announcement which appeared at the end of April on a Congolese website: "Following the death of his sister at the Makelekele hospital, Mr. [...] specifies that the disappearance is due to a long and painful chronic disease without ties with covid 19, as people in bad faith insinuate. It is regrettable to speculate on the illness or death of a third party". In the eyes of many Africans, coronavirus disease is a "bad death". Its causes must be sought in curse, witchcraft, revenge, punishment and the night world.

A second reason has a more "global" vision: just like everyone else, Africans prefer conspiracy, that makes simple things

complicated, especially in the eyes of those who don't have advanced education, an indispensable antibody against fake news about the virus. Adhering to a conspiracy theory removes the senses of impotence and dispossession that an unknown pathogen generates, for the benefit of a false impression of control, of knowledge and of being initiated into a hidden truth.

Soudan cites, as an example of conspiracy theories, elaborated "from above" the one of Donald Trump and Fox News, "according to which Covid 19 was conceived in the Wuhan P4 laboratory and then imported to the United States to bring its economy to ruin", and the one "of the Chinese government, relaunched by the Russians, for which the virus, manufactured in the laboratory of the US Army in Fort Detrick, Maryland, was knowingly sown in Wuhan in October 2019 by CIA agents during a military sports competition, with the aim of undermining the Chinese economy".

These theories have effectively circulated, and have been revived by authoritative personalities, at least towards the Catholic faithful. This is the case of the "Justice and Peace" Commission of the Mozambican Episcopal Conference, which, in a document of May 11th 2020, entitled *Reflexão Pastoral sobre o Covid 19*, denounced: "The shadow of the doubt about the origin of the virus and the possibility that it was created in laboratory for obscure and unmentionable purposes extends over the wonderful commitment of healthcare professionals around the world".¹³ The concerns are also about the "new vaccines that are appearing and the real goals they pursue". Responsibility is identified in the pharmaceutical

¹³ The paper, not signed, was published on June 9th 2020, and it's available on www.jupax.org.

industries. They do not always deploy the same commitment made by health personnel, that is, by those who administer the drugs that those industries produce". These considerations are not left isolated, like a sterile complaint, but immediately followed by an invitation to the concrete action of the faithful, which is worth reporting in full:

The challenge: whatever is the origin of the virus causing the current pandemic, natural or artificial, the time has come to raise your voice all over the world against the pharmaceutical industry's business on citizens' health and to criminalize profits thus obtained. It is time to defend once and for all the dignity of every human being and the right not to be used as a guinea pig anywhere in the world. It is time to raise your voice to express well-founded suspicions about the creation of viruses in laboratory to be used as biological weapons or with the aim of achieving ever closer control over citizens. Closure of these laboratories should be demanded. It is time to live closer to nature and to trust that it can provide us with remedies against viruses, which it creates by itself to renew itself, instead of spending a lot of money on research that produces profit for the few, and poor health for many.

4. The Latin American setting

In Latin America, the phenomenon has turned to be particularly serious due to the high rates of the virus spread in some countries like Brazil. Indeed, notoriously close to the country's main neo-Pentecostal Church, the *Igreja Universal do Reino de Deus* (IURD), the Brazilian president has shared with them some of their

positions in refusing medicine and scientific vision on that, as well as for the African case.¹⁴ It is therefore worthy to remember IURD principles and their belief on the relationship between disease and faith. The rise of pathologies has always been interpreted as a sign of the presence of evil forces in man's body. A place where physical and spiritual forces meet and where the fight between goodness and evil, God and devil, takes place. Indeed, as Eleonora Pagnotta remarks, "evil is the personification of the devil, who acts in the world, and every miracle, exorcism or conversion is considered a divine victory. Illness, sufferance, physical and mental diseases are caused by being possessed by the daemon".¹⁵ The strength of IURD, similarly to other experiences of the neo-Pentecostal galaxy, is precisely the power of the Christian churches: to see themselves as intermediaries between man and the divine power, in the duty of "freeing" the faithful from this "possession". The central moment of the long worship sessions is precisely that of the exorcism, of the "live" miracle, which the faithful can witness, checking weekly the effectiveness of the community to which they have joined:

The IURD action takes the form of offering a spiritual treatment: each temple is defined by the organization itself as a "spiritual first aid". In Iurd theology, the Holy Spirit performs

¹⁴ About spreading of Pentecostalism in Latin America and Brazil in particular, see J.-P. Bastian, *Pentecôtisme et médiation politique au Brésil*, in "Revue d'histoire et philosophie religieuses", 96/1, 2016, pp. 57-70 ; R. Chesnut, *Competitive Spirits: Latin America's New Religious Economy*, Oxford University Press, Oxford 2003; M. Russo, *I protestanti brasiliani e la modernità*, in R. Morozzo della Rocca (ed.), *La modernità e i mondi cristiani*, Il Mulino, Bologna, 2010.

¹⁵ E. Pagnotta, *Dal pentecostalismo al transpentecostalismo. Il caso della Iglesia Universal del Reino de Dios in Messico*, Aracne, Rome, 2016, p. 151.

healing miracles. [...] To obtain the miracle it is necessary to awaken the faith of the believer through a series of acts and behaviors well defined by the Church: the economic contribution (tithing and offerings), attendance at the temple, the use of blessed water, the laying on of hands accompanied by anointing with oil. In theology, "healing" means leading people to salvation, removing them from the causes of evil, from demons. This is why patient care and exorcistic practices basically represent two sides of the same coin.¹⁶

As it is well known, President Jair Bolsonaro has long refused to adopt rigid containment measures, invoking conspiracy theories and asking people for spiritual resistance. His positions echoed those of the country's best-known pastors, like the leader of the *Igreja Mundial do Poder de Deus* Valdemiro Santiago (a former IURD member), who declared that the virus constitutes a divine punishment, and of the founder and head of the IURD Edir Macedo, who states that the coronavirus - satanic work - has no power over the faithful who are not afraid of it.¹⁷

The closest pastor to the President and his spiritual guide, Silas Malafaia, has daily intervened against the lockdown, source, in his opinion, of social unrest that would cause many more victims than those caused by the virus. This time, however, the faithful have not let themselves be deceived. Some observers have noticed the half-empty temples - open despite the anti-gathering measures -, a situation that has forced the pastors to broadcast the sermons and conceive new systems to collect tithes. On the other hand, as Francisco Borba Ribeiro Neto, of the Catholic University of Sao

¹⁶ *Ivi*, p. 152.

¹⁷ Cit. from T. Milz, *How evangelicals in Brazil are spinning COVID-19*, in www.dw.com, 06.04.2020.

Paulo, remarked in an interview, it is true that thanks to the pandemic they find themselves confronted with the reality of what the various *Igrejas* propose: “Fundamentalists see a world full of dangers and hidden enemies. In it, our only salvation from evil is strict adherence to norms and doctrines. The pandemic only serves to reinforce this terrifying vision of the world”.¹⁸

In the short and long term, however, by leaving aside the human losses they cause, this kind of visions could generate a dramatic decrease of consent and a more public awareness on both the current Brazilian presidency and the world of "maxi churches". As the sociologist of religions Clemir Fernandes states, as a matter of fact, behind the contrast to the containment measures, there is nothing but an economic concern. And a pastor like Malafaia “is a religious entrepreneur trying to protect his interests like everyone else”.¹⁹ But in the Evangelical world, and in its robust parliamentary representation, there are a good number of doctors and politicians “who know a thing or two about science”, personalities who appear increasingly less willing to accept such a shamelessly irrational policy. The reality, as always, is something complex and contradictory. The IURD's website offers an overview of research on vaccines and of Covid contrast treatments, without any criticism in the foreground, on the homepage²⁰. Church leaders are currently much too warned about totally rejecting some scientific theories. On the contrary, a more nuanced attitude would be more appropriate. This is because later it may be easier to change it in a way or in another, according to the situation.

¹⁸ *Ibidem.*

¹⁹ *Ibidem.*

²⁰ www.universal.org

THE RAMADAN IN THE DAYS OF COVID-19. A GLANCE FROM ITALY*

Rosa Geraci

1. When religious freedom meets the rights to health

The Coronavirus emergency has led the Government and local authorities to adopt measures restricting religious freedom. The Ordinances and Decree-Laws of recent weeks have actually ordered the suspension of collective rites and worship and the limitation of access to sacred places, in order to deal with the emergency situation and protect the health of citizens. The state of major emergency has forced the Government to take some specific measures, which obviously must be proportional and appropriate to the risk, including the suspension of civil and religious ceremonies and the limitation on entering places of worship.

The Central Directorate for the Affairs of Religious Cults highlighted that liturgical celebrations "*are not forbidden ex se, but can continue to take place without the participation of the faithful, to avoid groupings that could become potential opportunities for contagion. Liturgical celebrations without the participation of the faithful and limited only to the celebrants and acolytes necessary for the officiating do not fall within the normative prohibition, since these are activities involving a limited number of*

* Submitted: 17th September 2020. Published: 22th September 2020.

people and, respecting appropriate distance and caution, do not represent groupings or cases of potential contagion that could justify a normative intervention of a restrictive nature". Similar considerations, according to a note, can be made for marriages "*which are not prohibited in themselves*" but only in order to avoid gatherings that are an opportunity for viral contagion. Conversely, the right to pity of the deceased is literally suppressed¹.

The measures taken if, on the one hand, they are felt to be necessary even by religious denominations themselves, on the other hand, lead one to question their legitimacy, since it is necessary to consider that religious freedom cannot be restricted, although some of its manifestations can be compressed in compliance with the rules of the constitutional order. In fact, this freedom is guaranteed by the constitutional charters of many countries of the world, and by the important international charters of rights (e.g. art. 9 ECHR).

It is unanimously agreed that restrictions on freedom of worship, introduced by the decrees, do not imply any infringement upon it, as they are functional to protect what is the only right defined as fundamental by the Constitution: the right to health, constitutionally also qualified as the interest of the community. It is clear, therefore, that this right weighs more heavily than all the

¹ On the above, cfr. L. Decimo, A. Fuccillo, M. A. Salem, *Fede interdetta? L'esercizio della libertà religiosa collettiva durante l'emergenza COVID-19: Attualità e prospettive*, in *Calumet – intercultural law and humanities review*, pp. 87-117 ff.; M. L. Lo Giacco, *In Italia è in quarantena anche la libertà di culto*, in www.DiReSoM.net, 12.03.2020.

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others, since life is the supreme good that every legal system tends to achieve².

Nevertheless, there are divergent points of view on the suspension of religious ceremonies and the opening of places of worship. The former, certainly adequate for the protection of health, has been considered disproportionate because it excessively penalizes freedom of worship. On the contrary, the opening of places of worship was considered adequate to satisfy the interests of worship but, even with the observance of all other legal precautions, insufficient and not proportionate to the risk of contagion. The debate is open³.

² It is important to consider that the limit on freedom of religion for health reasons is expressly laid down in the European Convention on Human Rights.

³ N. Colaianni, *La libertà di culto al tempo del coronavirus*, in *Stato, Chiese e Pluralismo confessionale*, Online Journal, (www.statoechiese.it). On the topic, also see: P. Consorti, *Religion and virus*, in P. Consorti (ed.), *Law, Religion and Covid-19*, DiReSoM, Pisa, 2020, pp. 15 ff.; L. M. Guzzo, *Law and Religion during (and after) Covid-19 Emergency: the Law is Made for Man not Man for Law*, *ibidem* pp. 19ff.; A. Mantineo, *I have a dream: restarting, but going where?*, *ibidem*, ff. 29 ss.; M. L. Lo Giacco, *In Italy the Freedom of Worship is in Quarantine*, *ibidem*, pp. 37 ff.; F. Balsamo, *The loyal collaboration between State and religions at the testing bench of the Covid-19 pandemic. A perspective from Italy*, pp. 47 ff.; G. Fattori, *Religious freedom at the time of coronavirus*, pp. 57 ff.; M. Carnì, *Vatican City State and Covid-19 emergency*, pp. 173 ff.; D. Tarantino, *“Non in pane solo vivet homo”. Catholics in front of Covid-19*, pp. 195 ff.; M. d’Arienzo, *Is the suspension of mass in public form legitimate?*, pp. 251 ff., all in P. Consorti (ed.), *Law, religion and Covid-19 emergency*, DiReSoM, Pisa, 2020 (<https://DiReSoM.net/2020/05/07/DiReSoM-papers-1-ebook-law-religion-and-covid-19-emergency>)

2. Protocol with Islamic communities

The need to adopt measures to contain SARS-CoV-2 epidemiological emergency makes it necessary to draw up a Protocol with religious denominations. Since 18th May faithful have been allowed to attend religious services in accordance with containment measures on Coronavirus, according to the protocols signed at Palazzo Chigi, seat of Italian Prime Minister, with religious communities, including Islamic ones, even if non-signatories of agreements with the State⁴.

⁴ According to the protocol agreed with the Islamic Communities on 15th May "1.1 Any celebration religious is permitted in compliance with all the precautionary rules on the containment of the current outbreak. In particular, participants are required to wear suitable protective equipment and must maintain interpersonal distances of at least one metre. 1.3 Those entering places of worship for prayer shall be required to wear masks. [...]

1.5 Religious authorities are entrusted with the responsibility of identifying suitable forms of prayer in order to guarantee interpersonal distancing, by enforcing all safety requirements. 1.6 Access to place of worship, in this transitional phase, is restricted and regulated by volunteers and/or collaborators [...] Whereas the expected participation significantly exceeds the maximum number of admissions allowed, consideration should be given to increasing the number of functions. [...]

2.1 In order to promote compliance with the rules of distancing, it is necessary to reduce to a minimum the presence of officiating ministers, who are, however, always required to respect the minimum distance. [...]

3.2 Entering the place of worship, masks and cleaning fluids must be available for those without them, and an external security officer, chosen by the religious authorities and wearing a badge, will ensure that the social distancing is respected and will limit access until permitted number of faithful. [...]

4.2 At the entrance, a notice with essential information will be posted: - the maximum number of participants admitted, in relation to the capacity of the building; - ban on entering for those who have

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The Protocol, while respecting the right to freedom of worship, ignores the existence of bilateral agreements, balancing the exercise of religious freedom with the needs to contain the current epidemic.

As we read in the brief introduction "the need to adopt measures to contain the SARS-CoV-2 epidemiological emergency requested a Protocol with religious denominations to be drawn up. The Protocol respects the right of freedom to worship, and is not related to the existence of bilateral agreements, thus reconciling the exercise of religious freedom with the need to contain the current epidemic".

Rather, the aim here is to guarantee all religions that have expressed an interest in signing the protocols the exercise of worship in an associated form, albeit still in emergency conditions, balancing it with the constitutional asset of health, being a "fundamental right of the individual" and, at the same time, a "collective interest".

As for regulatory aspects of the protocol with Islam, like all the other protocols, it is divided into five sections. The first part is dedicated to regulating "access to places of worship" "during prayer". Religious celebrations and meetings are permitted, whatever form they may take in practice, in compliance with all the precautionary rules provided for to contain the outbreak. Participants are required to wear suitable respiratory protective equipment and to maintain social distance of at least one meter. Those who have a body temperature equal to or higher than 37.5°C

flu/respiratory symptoms, body temperature equal to or higher than 37.5° C or have been in contact with people positive for SARS-CoV-2 in the previous days".

will not be admitted, the same applies to "those who have been in contact with people positive for SARS-CoV-2 in the previous days", though such a circumstance is difficult to verify.

In order to comply with the distancing measures, the legal representative of the entity shall identify a person responsible of the place of worship who shall establish the maximum capacity of the worship building. In doing so, he shall take into account the ventilation systems and the minimum safety distance above mentioned; in any case, no more than 200 people may be admitted at the same time.

The following are some organisational requirements: volunteers and/or collaborators "equipped with" adequate personal protective equipment, disposable gloves and identification badge are in charge of regulating access⁵.

Finally, there is a closing clause, contained in Art. 1.10, according to which "in relation to particular aspects of worship which might involve close contacts, the competent religious authorities are responsible for identifying, for each confession, the most suitable forms of maintaining the necessary precautions" (Art. 1.10). It will therefore be left to the autonomy of the religion, within the framework of the protocol but without further specification by the Ministry, to identify, according to prudence, the cult practices that may require particular attention.

⁵ A. Tira, *Normativa emergenziale ed esercizio pubblico del culto. Dai protocolli con le confessioni diverse dalla cattolica alla legge 22 maggio 2020, no. 35*, in www.giustiziainsieme.it; M. L. Lo Giacco, "A CHIARE LETTERE" - CONFRONTI" - I "Protocolli per la ripresa delle celebrazioni delle confessioni diverse dalla cattolica": una nuova stagione nella politica ecclesiastica italiana, in *Stato, Chiese e pluralismo confessionale, Online Journal*, (www.statoechiese.it).

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The provisions in sub 2 are dedicated to "precaution to be observed in liturgical services/religious celebrations/prayer". First of all, there is the need to "reduce to a minimum number the presence of officiating ministers, who are, however, always obliged to respect the minimum distance" (art. 2.1). Then there is the question of liturgical music or the accompaniment of ceremonies, providing that "the presence of only one cantor and one organist, suitably spaced out, is permitted".

With regard to the methods of communication of the prevention regulations, according to art. 4 religious authorities must publicize the protocols "through the methods that ensure the best diffusion".

In the last section, under the heading "Other suggestions", art. 5 contains a first provision for which "If the place of worship is not in compliance with the regulations of this Protocol, the possibility of carrying out the functions outdoors, ensuring the dignity and compliance with health regulations, with up to 1,000 people, may be assessed". A second provision follows, in which it is specified that "the place of worship will remain closed if it is not possible to comply with the measures regulated above". Actually, this provision seems to have the purpose of avoiding meetings of faithful who do not respect the rules of health precaution set out in the previous articles, confirming the determination of the Islamic Community to avoid meetings of the faithful outside the respect of the rules of prevention so far illustrated.

3. Islamic vision of right to health

On all sides, Islamic authorities remind the faithful of the necessary distancing from one another, accompanying the

prohibitions with a series of health and hygiene recommendations such as the sanitation of all premises and the prohibition to shake hands during the greeting and to limit oneself to the verbal greeting of peace. This is how the fatwa containing *Recommendations and instructions in the light of updates regarding the "Coronavirus" alert*⁶ of the Italian Islamic Association of Imams and Religious Guides, as well as the Circular of the Union of Islamic Communities containing *Coronavirus emergency provisions for the Islamic communities of Italy*, were issued.

The burial of the deceased Muslims is particularly important in this context. In this regard, the Union of Islamic Communities and Organizations in Italy (UCOII) has specified that, given the current ban on repatriating bodies to their countries of origin, the relatives of the deceased are required to bury their loved ones on Italian national territory, possibly in Muslim cemeteries or, alternatively, in the area pertaining to non-Catholic cult, so that the

⁶ Such rules, in addition to being in line with state legislation, find full legitimacy within the sacred texts. One of the fundamental principles of the Islamic religion is, in fact, that of the sacredness of life. V. Cor 5:32 “[...] he who slays a soul unless it be (in punishment) for murder or for spreading mischief on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind”, hence the obligation for the human being to safeguard his psychophysical integrity. Also consider the Prophet’s words: Cleanliness is part of the faith, by virtue of which the Muslim faithful are obliged to wash their faces and hands before every prayer (Cor 5:6 “*Believers! When you stand up for Prayer wash your faces and your hands up to the elbows, and wipe your heads, and wash your feet up to the ankles*”).

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religious dignity of the deceased can be eternally assured. With reference to the rituals to be followed, the UCOII document specifies that in the case of an actual risk of contagion, one must limit oneself to wrapping the deceased in the shroud, without the ritual washing of the body. The funeral prayer is allowed, but in compliance with fixed measures: presence of a maximum of three people in addition to the Imam to avoid crowding, distance of one meter between those present and use of gloves and masks. It is also forbidden to hug and shake hands. However, the above indications encounter considerable difficulties in balancing public health needs and funerary religious freedom. In fact, it often happens that the Muslim faithful, by virtue of the importance recognized to the event of death (and the rituals connected to it), refuse to bury their loved ones in non-Islamic cemeteries. In order to resolve this situation, the UCOII has requested the government and the National Association of Italian Municipalities (ANCI) to facilitate the burial of the dead Muslims in Islamic cemeteries, even if from other provinces or regions⁷.

The importance that the Islamic view attaches to the protection of individual and collective health can be seen not only from health and hygiene regulations, but also from the Koranic principle that Islam intends to 'facilitate' and not 'obstruct' the life

⁷ V. Fronzoni, *From social distance to Muslim solidarity proximity at the time of Covid-19* in P. Consorti (ed.), *Law, religion and Covid-19 emergency*, DiReSoM, Pisa, 2020 (<https://DiReSoM.net/2020/05/07/DiReSoM-papers-1-ebook-law-religion-and-covid-19-emergency>), pp. 261 ff.; S. Al Bukhari, *Al-Maktaba al-'Asriyya*, Beyruth, 1427 H., IV, no. 5728; A. Fuccillo, *La religione "contagiata" dal virus? La libertà religiosa nella collaborazione Stato-Chiesa nell'emergenza covid-19*, in *Osservatorio delle Libertà ed Istituzioni Religiose*, www.olir.it, 21/04/2020;

of the faithful and the community⁸. Therefore, in a state of necessity, if life of individuals is in extreme danger, it is possible to break the Law⁹.

What was said above is consistent with the central and pivotal role that the interest of the community (*Ummah*) has compared to the individual one. The supremacy of the interest of the *Ummah* over that of the single *Homo Islamicus* would justify, in itself, a derogation of religious obligations, considering the current emergency, which puts the survival of the individuals at risk. Moreover, this hypothesis finds further confirmation, in a suggestion of the Prophet according to whom, in the case of epidemics, it is necessary to avoid fleeing from the zone of contagion in order to contain as much as possible, its spread¹⁰.

4. *The celebration of Ramadan during quarantine*

The suspension of religious ceremonies ordered to the whole national territory by the Prime Minister's Decree (DPCM) of 8th and 9th March 2020, and restated in the decree of 26th April 2020, is certainly the largest and most widespread restriction of religious freedom in Republican Italy.

⁸ Cor. 4:28 "Allah wants to lighten your burdens, for man was created weak".

⁹ Cor 16:115 "[...] As for those who are compelled to sin, without desire and without intention of sin, God is forgiving and compassionate".

¹⁰ "When you hear that [a plague] is in a land, do not go to it and if it occurs in a land that you are already in, then do not leave it, fleeing from it".

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For the above many priests, following the example of Pope Francis, broadcasted live streaming masses. Nevertheless, the strict nature of these requirements is clear, and is perceived even more strongly during these days by the Muslim community. Considering that *Ramadân* is underway, and is one of the five pillars of Islam, together with the Koranic prohibitions of *ribā*, *ghârar*, and *maysîr*, and the obligation of *zakât*, the coronavirus epidemic has left an unsettling stain on its celebrations this year.

Fasting during the month of Ramadan from sunrise until sunset has a precise Koranic basis in the Sura II, verse 185. Here we read: *"The month of Ramadhan [is that] in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion. So whoever sights [the new moon of] the month, let him fast it; and whoever is ill or on a journey - then an equal number of other days. Allah intends for you ease and does not intend for you hardship and [wants] for you to complete the period and to glorify Allah for that [to] which He has guided you; and perhaps will be grateful."*

Some social and cultural rites and traditions characterize *Ramadân*. Among them the *tarawih*, a prayer that is said only during this period immediately after the evening prayer in mosques or at home; the *iftar*, the fast-breaking meal eaten after sunset shared with neighbours and friends; the *Laylat al-Qadr*, literally "the Night of Power", which this year takes place on 20th May, marks for the Sunni tradition the night when the Koran was first revealed, and for the Shiites it coincides with the night the first imam Ali was killed. Muslims consider *Laylat al-Qadr* as a blessed night in which believers are invited to pray and recite the Koran invoking forgiveness for their sins.

A rather different celebration of Ramadan is the one that more than 1.8 billion Muslims in the world are experiencing these days,

without the prayers of *tarawih* in the mosque, nor *iftar* with others. The mosques are closed and the *Umrah*, the pilgrimage to Mecca, is suspended. Likewise, considering the situation, it will not be possible to celebrate as usual the *Id al-Fitr*, the great feast that marks the end of fasting, and which this year will begin on the evening of 23rd May.

Nevertheless, the obligatory fasting in *Ramadân* is confirmed, even though, considering the outbreak, it should be noted that the Islamic Shari'a provides for softening and exceptions¹¹.

It should be pointed out that it is not the first time in history that the sacred celebrations of Muslims are restricted due to outbreaks and wars. Indeed, in 1400 years of Islam history the collective prayer had to be suppressed several times.

Think of what happened in 930, in the Abbasid era, when the annual pilgrimage to Mecca was cancelled due to an attack to the most sacred place of Islam by the Carmates, Shiites from present-day Bahrain, who for about a hundred years took control of the east coast of the present Saudi Kingdom and Kuwait¹².

In the 19th and 20th centuries, cholera forced the suspension of the Hajj in 1837 and 1846 respectively. In those years twenty-seven outbreaks struck the pilgrims, with a subsequent closure of

¹¹ Traditionally, people who are travelling, or engaged in combat, pregnant and breastfeeding women, or during menstruation, and the sick, may postpone fasting, and the elderly and the seriously ill may abstain. Another legitimate cause of abstention from fasting is death threats.

¹² On that occasion, besides attacking Mecca, the symbols of Islam were desecrated". Among them the Black Stone, in the centre of the Kaaba, from which pieces were supposedly removed and stolen, and the Well of Zemzem, where the bodies of the murdered faithful were supposedly thrown.

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ports and imposition of quarantine for those coming from Saudi Arabia.

Another event that led to a suspension of the sacred celebrations for the Muslims was the Great Mosque seizure in 1979, an armed attack that began on 20th November and ended only the following 4th December, led by a former Saudi soldier and militant, Juhayman ibn Muhammad ibn Sayf al-Otaybi. On that occasion four to five hundred armed men took hundreds of pilgrims hostage and occupied the Great Mosque. In the fire fights that followed, about 130 people were killed, including Saudi policemen and assailants.

Though, our present should not be clouded by past experiences. Today, as a matter of fact, all religious confessions, without posing issues about the division of competences between civil and religious authorities, have taken an active role in identifying the appropriate measures to ensure respect for national rules also in the fulfilment of worship.

The peculiarity of the emergency we are facing requires us, however, to keep in mind the framework outlined by the Constitution, which gives particular attention and protection to the religious phenomenon. It differentiates it from other social phenomena, and recognizes autonomy and independence of all religious denominations, even if in a less marked way than the Catholic religion. Constitutional guarantees, if on the one hand they aim at preventing believers from being conditioned to some extent by political power, on the other hand they impose a balance between the different constitutional rights, but always within the limit established by the right to health.

It follows that the religious interest, although deserving protection, has to surrender to the superior interest of the State to

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preserve the health of people, including those who would like to participate to religious rites.

THE PRACTICE OF NICHIREN DAISHONIN BUDDHISM AT THE TIME OF THE PANDEMIC*

Marco Gensini - Roberto Minganti - Enza Pellicchia

1. Soka Gakkai Buddhism

All Buddhist traditions, including that of the Soka Gakkai, derive from the historical Buddha, Shakyamuni. After enlightening himself to the Mystic Law, Shakyamuni decided to share this wisdom with all people. The central message of his teachings - set forth definitively in the Lotus Sutra - can be summarized in the principle that Buddhahood is a condition of absolute happiness inherent in every living being. Soka Gakkai Buddhism is based on the teachings of The Buddha Nichiren Daishonin (1222-1282), and consists of the daily recitation of "Nam-myoho-renge-kyo" (the Mystic Law) and the reading of the Hoben and Juryo chapters of the Lotus Sutra. The Lotus Sutra states that human beings - regardless of gender, individual abilities and social condition - are all potentially Buddha, endowed with compassion, wisdom and courage and therefore worthy of the utmost respect.

The Buddhist practice in the Soka Gakkai Sangha (the community of believers) is based on the compassion for every

* Submitted: 18th October 2020. Published: 22nd October 2020.

living being: only through this attitude is it possible to achieve individual happiness.

The Soka Gakkai International (SGI), of which the Istituto Buddista Italiano Soka Gakkai (IBISG) is a member, is a secular organization spread over 192 countries and territories that promotes peace, culture and education based on the Buddhist humanism of Nichiren Daishonin. The individual members of the SGI are committed, as citizens of the world, to the improvement of their local communities.

The SGI is active in building a culture of peace through dialogue based on the principle that individual happiness and the realisation of a peaceful world are inextricably linked.

The SGI organizations present in the various nations with the common goal of contributing to peace, culture and education promote inter-religious dialogues, exhibitions and conferences suited for the cultural contexts of each country.

Every year, since 1983, Daisaku Ikeda, the third President of the SGI, has written Peace Proposals addressed to the international community in which, starting from an analysis of the global situation, it suggests concrete solutions rooted in the philosophy of Buddhist humanism.

2. The life of the Italian Sangha

In 2016 the IBISG obtained an agreement with the Italian State (Law 130, G.U. 164 of 15/07/2016).

Buddhist "practice" has a strong component of "physicality" and relationship: the voice is used to "chant" Nam-myoho-renge-kyo and the Lotus Sutra individually or together with other

practitioners; we meet weekly in small groups in private homes for study meetings, discussion meetings and the sharing of experiences. In the 17 Italian cultural centres, larger meetings are regularly organised, such as seminars for the study and the deepening of Buddhism. Personal meetings are also at the centre of the Sangha's activities. A "frontal" ritual with a celebrant in front of fellow members does not belong to our religion: all our activities are based on meeting, sharing and above all on daily Buddhist practice.

3. The Pandemic

On 23rd February 2020, unexpectedly in just one day, all fellow members were not able to continue their daily activities with one another. With the public notice issued by the IBISG on that date it was decided, in agreement with the headquarters in Tokyo, to stop all activities "in presence".

This measure was taken in advance of the Prime Ministerial Decrees, in line with the protection of the Sanctity of Life, which is the foundation of our religious DNA. In a writing by the founder Nichiren Daishonin, who lived in 1200, it is written that "Life is the most precious of all treasures. Even one extra day of life is worth more than ten million ryō of gold"¹.

The interruption of the usual activities generated a lot of suffering in people, who found themselves without the direct support and encouragement to which they were used to, at such a

¹ *On Prolonging One's Life Span*, The Writings of Nichiren Daishonin, vol. 1, p. 955, Soka Gakkai

crucial time. A sense of bewilderment and disorientation spread in the Sangha, as it did throughout society, in Italy and elsewhere.

It was precisely at that very moment that the encouragement by Daisaku Ikeda, who over all these decades has taught us (first of all by example and actual proof) to "transform every poison into medicine", arrived, promptly: he has encouraged us repeatedly not to lose hope and to look at technology as a way to continue to develop relationships in the community at this time. The Buddha Nichiren Daishonin states in one of his letters: "There are not two lands, pure or impure in themselves. The difference lies solely in the good or evil of our minds"². This means that - not only hatred - but above all compassion can be carried out through the Internet. With this spirit, the IBISG has reinvented its activities. The Soka Gakkai Sangha consists of around 94,000 fellow members, there are relatively few employees (around 35 as well as some collaborators) and all our activity is based on volunteering.

4. Resilience phase 1

The IBISG is committed to making that desire for happiness and global peace, that Buddhism has enabled us to discover, re-emerge in everyone's hearts. In this way, gradually, a resilience has manifested that we have never had an opportunity to bring out before. It was perceived that only in the greatest difficulties is it possible to measure the real strength of the community and develop further capacities. The Sangha's response was not long in

² *On Attaining Buddhahood in This Lifetime*, The Writings of Nichiren Daishonin, vol. 1 p. 3, Soka Gakkai.

coming: the youth launched the "1, 2, 3 be the light" campaign, which consists of doing 1 hour of individual Buddhist practice each day, 20 minutes of Buddhist study and three phone calls to as many friends, not necessarily practitioners, to convey courage and resilience. The spirit of this activity is also summarized in this principle of Nichiren Daishonin: "If you light a lantern for another, it will also brighten your own way" (Gosho Zenshu, p. 1598). On March 9th the editorial staff of our fortnightly newspaper "Il Nuovo Rinascimento" (*The New Renaissance*), started to publish free Newsletters in pdf format, distributed by mail, facebook and whatsapp, in order to reach everyone. The Newsletters contain encouragements, almost in real time, from Daisaku Ikeda, news of the IBISG, and many experiences of fellow members who tell how they have faced and won over their personal difficulties. This joyful experience has been so successful that it has led us to study a radical reform of the editorial project, which will profoundly change from next year. Without this "crisis" it would not have been possible. We also started to organize, thanks to the youth, who patiently paved the way, virtual meetings using online platforms, and in this moment we managed to reestablish contacts with a good percentage of members, creating group meetings, individual meetings and real virtual home visits. Aware that many people do not have the possibility or the will to use these tools, we are determined to reach everyone by phone, and not to leave anyone behind. Going forward along this road, more and more courageous and ambitious projects have been developed: exciting online meetings, full of experiences, enabled members to be close together again also on a national level. The members of Bergamo, in the eye of the storm of the pandemic in Italy, encouraged everyone by sharing the spirit with which they faced their tragedy!

In March, at the most difficult moment, and precisely on the 17th, our Institute (which in June 2020, following the agreement with the Italian State, would have received the proceeds of the *eight per thousand tax* for the first time) through its decision-making body (the National Council) decided to allocate the entire amount to the coronavirus emergency, and in addition, from our funds, the sum of 500,000 euros (which corresponds to a substantial part of the offerings of the members) to the coordination of the emergency through the Civil Protection. Nichiren Daishonin, the founder of our Buddhist School, says: "More valuable than treasures in a storehouse are the treasures of the body, and the treasures of the heart are the most valuable of all. From the time you read this letter on, strive to accumulate the treasures of the heart!"³. All this has been done, with a pure heart, exactly with the spirit of the sentence just mentioned, in which "the treasures of the heart" are the most important. At that moment there was a need for the cohesion of everyone and the IBISG has rightly done its part. The vast majority of members felt proud of being part of the Soka Gakkai, and this gesture finally brought courage into the hearts of the people who were isolated at that time. On 13 May the IBISG firmly joined the World Day of Prayer promoted by Pope Francis.

5. Resilience phase 2

On 17 May, following the Prime Ministerial Decree on "Phase 2", the Protocol for religious bodies with the Presidency of the Council of Ministers was signed (the IBISG is in Group No. 4), for

³ *The Three Kinds of Treasure*, The Writings of Nichiren Daishonin, vol. 1 p. 851, Soka Gakkai

the safe resumption of religious activities. We have studied it thoroughly and have endeavoured to combine this protocol with our real way of practising and our usual prudence, drawing up an Internal Protocol formula, inspired by the utmost attention and consistent with the Buddhist principle of protection of life: no one should in any way risk being infected because of religious commitments.

The activity that more than any other that was blocked was that of the Ceremony for becoming member and the relative conferral of the Object of worship: these ceremonies take place in the places of worship present in the Soka Cultural Centres. A protocol was therefore studied to make these ceremonies happen and, just to give one parameter a distance of two metres was set between people inside the centres. However, in agreement with the Soka Gakkai International, we have chosen, for further prudence, not to cultivate this path because, besides the ministers of worship and the new members, there would be other people involved: those volunteers who carry out the service of reception, protection and support, of which friends and family of those who receive the Object of worship normally participate. We therefore studied and adopted in mid- June, a new internal protocol, with further restrictions, again in agreement with the one signed on 17 May with the Presidency of the Council of Ministers, which provides for the performance of individual ceremonies. What we used to do for fifty or one hundred people with friends and relatives in tow, with rooms often brought to the limit of capacity, we did with one person at a time and with only one companion. We welcome each person individually into the IBISG to whom we give our Object of worship for their personal practice, maintaining the meaning and solemnity of the ceremony itself. Great prudence and maximum

attention; every gesture is studied, planned and tested in detail, each Cultural Centre or place of worship has its own internal implementation plan of the National Protocol approved by the Anticovid Committee of the Institute.

6. Conclusions

Surely all fellow members have suffered for these situations that prevent our collective practice from taking place, but the pandemic has been and will also be a unique opportunity to get even more to the heart of the deep meaning of Buddhist practice, which is to support and encourage each person to believe in the infinite potential that exists in his or her life: the same present in the infinite universe. Buddhist activity has been totally challenged, and an even greater challenge has arisen: to encourage all people individually. Thanks to this culty it has been possible to deepen the care of each individual person as the basis of our practice through a direct heart-to-heart relationship. The spirit of the Soka Community is, and will always remain, that of Buddhism and Daisaku Ikeda: to contribute individually, through their own personal human revolution, to the progress and prosperity of our social and natural environment as good citizens and good citizens inspired by the values of peace, culture and human rights education. As Daisaku Ikeda teaches us: "In life there is suffering and pain. In nature there are mountains, rivers and valleys to cross.

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The deeper the river of sadness and the higher the mountain of suffering, the greater the joy and happiness of overcoming them”⁴.

⁴ See the tentative translation from Daisaku Ikeda, *22 settembre La Mappa della Felicità*, Esperia.

POSITION PAPER

TO CONTINUE CELEBRATING SAFELY: REORDERING THE EMERGENCY*

edited by DiReSoM

As professors and researchers of Law and Religion in state universities, the research group "DiReSoM" – which during this pandemic activated the first international web portal on law, religion and coronavirus (www.DiReSoM.net) – we submit to the Italian Government and confessional institutions a second contribution¹. This position paper reflects on the possibility of allowing the celebrations of religious ceremonies in compliance with the measures necessary to prevent the contagion of the Sars-Cov-2 virus, the cause of Covid-19 disease.

The DPCM of 13 October 2020 updated the measures to contain the contagion through both real rules and some recommendations, to prevent the suspension of certain fundamental rights, which unfortunately characterized the measures of the so-called 'Phase 1' and 'Phase 2'.

In relation to the issues that most closely affect the expression of religious freedom, it is worth pointing out that last May seven different protocols with religious denominations were concluded.

* Published: 15th October 2020. For ITA version [click here](#)

¹ The first *Position Paper* "Proposal for a safe resumption of religious celebrations in Italy", in *DiReSoM*, 27 April 2020 can be read here: <https://DiReSoMnet.files.wordpress.com/2020/04/position-paper-DiReSoM-1.pdf>. See also, P. Consorti (ed.), *Law, Religion and Covid-19 Emergency*, DiReSoM Papers, 2020, pp. 271-277.

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These protocols dictate rules shared between the state and religions to allow the safe resumption of collective religious practices, which had been suspended in March. Such are rules conceived in the epidemiological framework present at the time, which were partly overcome, also by virtue of subsequent clarifications that regulated the gradual resumption of cult activities.

Unfortunately, the overlapping of national, regional – sometimes municipal – and confessional rules, which in turn operate at different levels, has created situations of application uncertainty, which in fact show their uneven application on national territory, with dangerous repercussions on personal and collective health security.

In recent days the epidemiological curve has gradually resumed rising, so the Dpcm enacted on 13 October has laid down new rules and introduced some recommendations, which on the religious side are summarized in the postponement (art. 1, paragraph 6, point p), for the performance of religious functions with the participation of people, "in compliance with the Protocols" published in May.

The reference to these acts signed by the Italian Government and the religious representatives, on some occasions, may appear problematic, precisely because in the meantime some rules have been revised - also through ministerial circulars - and others have fallen into disuse. In fact, we have verified the uneven and increasingly relaxed application of those rules, which help to produce a decline in collective attention.

We observe that the reference to the Protocols signed in May produces different effects for the Catholic Church compared to Protocols assumed with all the other religious confessions. These latter Protocols (to which the Protocol with the Congregation of

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Jehovah's Witnesses, of 25 May 2020, not mentioned in the annex to the Dpcm, should also be added) in fact follow a more secular approach, which essentially defers to responsibility of the religious authorities the task of adapting the celebration of rites to the contagion prevention rules dictated by the state authorities. This mechanism guarantees confessional autonomy and allows religious authorities to comply more easily with the health rules established from time to time. However, it seems useful to point out that some of these religious denominations have preferred to follow a very precautionary approach, and therefore have not yet resumed collective worship activities.

The situation of the Catholic Church appears to be partially different and more complex. In this case, the Italian Government just checked the health compatibility of a Protocol produced by the Italian Bishops' Conference, which provides very detailed rules regarding the method of celebrating Masses and other Sacraments, together with internal provisions of the Church itself (such as the dispensation from the festive precept). The full reference to the Protocol signed on 7 May 2020, which is also attached to the Dpcm dated 13th October 2020, therefore poses some problems of compatibility with subsequent amendments, taken "shortly" in an interpretative way and sometimes just with a mere exchange of letters. This informal procedure, which is justified by the emergency nature of rules that must be suitably adapted to the epidemiological situation, has resulted in an uneven application of the rules, as already underlined, and too often the attention and precautions still necessary often appear to be disregarded.

On the other hand, we cannot fail to observe the problems associated with the lawmaking characterizing the management of the health emergency, that has generated a certain disorder in the

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hierarchy of sources with a consequent greater interpretative complexity. In the case that interests us more closely, we observe that some provisions have been modified or abrogated through ministerial circulars, despite the fact that they were provisions expressing regulatory power, referred to in a legislative source.

Now that the new Dpcm explicitly refers to the Protocols signed in May, which are even annexed to the text of the Decree, the problem of interpretative coherence moves our reflection: on one hand, it is evident that formally the rules literally referred to in the last Decree must be applied, on the other hand, it is basically legitimate to refer also to the changes subsequently made, although without sufficient formality.

As we began to think about these difficulties, the National Office for Social Communications of the Italian Bishops' Conference, specified that the Protocol of 7 May must be considered integrated with the subsequent indications of the Technical-Scientific Committee, communicated during the summer, and therefore clarified: – the non-mandatory glove for the minister who distributes communion, who must, however, carefully sanitize his hands; - the possibility of celebrating the Confirmation; - the possibility of celebrating with choirs and singers, who must still maintain safe distances; - the possibility for newlyweds not to wear masks; – the possibility for members of the same household or for cohabitants/relatives/relatives with stable attendance, not to comply with the obligation of distancing.

However, these appropriate clarifications do not solve the fundamental problem. Since these are exemptions from the provisions of the Protocol of 7 May – recalled in the DPCM of 13 October, we repeat them – the result of communications spread from time to time by the Presidency of the Bishops' Conference,

which informed of an interlocution with the Italian Government, or, on other occasions, from notes from the Head of the Department of Civil Liberties and Immigration of the Viminale.

This informality produces an inevitable regulatory disorder that affects the protection of rights and freedoms and weakens respect for the supreme principle of *laicità* (secularism), which also governs the system of sources of Italian law. While from a practical point of view the Press Release of the Italian Bishops' Conference is to be welcomed, it cannot fail to be pointed out that we are faced with the interpretation of a government measure carried out by the religious authority. This way of proceeding can only lead to confusion: for example, it is realistic to ask whether the police forces responsible for monitoring compliance with the DPCM of 13 October will have to comply only with the Italian regulatory source or even with the press note of the bishops.

In our opinion, such disorderly solutions do not help citizens to orient themselves consciously, and inevitably have negative effects on the effective fight against contagion, especially at a time that is once again particularly critical.

Unfortunately, today our studies make us aware that, everywhere around the world, public worship is a major risk factor for infection. Although necessary, containment measures disposed by religious Authorities can barely be enforced by ministers or those who are in charge of places of worship. In fact, they often cannot verify and ensure an appropriate compliance with such rules and measures.

Furthermore, the effectiveness of such rules largely depends on a qualified organization, so measures taken for structures ruled professionally like hospitals; residential care homes; schools and so on, probably will not reach the same effect if applied elsewhere by

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non-professional operators. It is clear, indeed, that churchgoers, common worshippers and volunteers, who usually provide religious organizations with their help, can hardly go beyond common sense, diligence or the “standard of good housekeeping” while attending their assignment.

In our opinion, it is necessary to provide rites and celebrations as safe as they can be for personal and common safety; at the same time, we notice an increasing carelessness about measures, which have been enforced by *Protocols* in May 2020, although such rules are certainly in force. Therefore, we ask civil and religious authorities to take a clear position, possibly in the full respect of legal steps and formalities, especially about the following topics, that seem to be let in the shadow or even misapplied:

a) is it still mandatory to expose billboards at the gates of churches and places of worship, declaring the compliance with social distancing rules?

b) is it still mandatory to ensure the various protective measures and restrictions, enforced by the May *Protocols*, about the diminished number of people allowed in a single place of worship, and also to fix *in any case* the maximum number of 200 people inside each place of worship?

c) is it still mandatory to supervise admission to public worship places, where public ceremonies are celebrated?

d) is it still necessary to enforce the rule compelling everyone (worshippers and celebrants) to wear face masks during the public worship?

e) must the number of celebrants be minimized?

f) is still the presence of choir and cantors still forbidden? If it is not, can common faithful sing hymns?

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g) is it necessary to wear disposable gloves while distributing Holy Communion and celebrating other sacraments that imply physical contact?

h) is it still forbidden to pick up offerings between benches during ceremonies?

i) is it mandatory, once again, to postpone the celebration of the sacrament of Confirmation?

l) in Canon law, can a Catholic faithful be exempted from attending public worship because of his/her age or illness?

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SECOND PART

EUARE 2020 – VIRTUAL CONFERENCE

LAW AND RELIGION AT THE TIME OF COVID-19

THE DIALOGUE AMONG STATES AND RELIGIOUS GROUPS

THE DIALOGUE AMONG STATES AND RELIGIOUS GROUPS*

Maria Luisa Lo Giacco

1. Introduction

The article is focused on a research in which the DiReSoM research group¹ is involved since the beginning of the Covid-19 emergency. The title of the paper is: “The dialogue among states and religious groups” and I’ll examine this topic in three steps; then, I’ll try to imagine how the dialogue could be the method for the future relationships, when states and religions will probably afford other situations of emergency.

In the first part I’ll examine the dialogue as a secular method in the European Union.

In the second step I’ll explain the experience of the Italian protocols for the resumption of the religious celebrations. In the third part the dialogue will be drafted as a method for the relationships among religions.

* Submitted: 24th October 2020. Published: 29th October 2020.

¹ DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017. It is coordinated by Prof. Pierluigi Consorti, full professor in the University of Pisa.

Conclusion: the dialogue is the method for the future, after covid-19 emergency.

2. *The dialogue is a secular method in the European Union*

In Italy, during the first phase of the pandemic, we were saying that after the covid-19 emergency nothing will be the same. There was the common idea that our way of life, our jobs, our travelling, our schools and universities, our interpersonal relationships, will change and that we need to learn the lesson of the pandemic.

When the Italian government decided to limit the freedom of movement of the citizens, as a measure to stop the increasing of the diseases, also the freedom of the public cult was limited². In this first phase, the phase of lockdown, the government didn't ask the religious authorities advice, and there was no dialogue among them. The necessity to preserve the public health prevailed over the necessity of the dialogue³. Some scholars said that this approach was incoherent with the Italian tradition of bilateral relationships⁴. Other European governments have had a different approach. In France, President Macron has joined together in a video call the religious leaders and the representatives of secular

² See M. L. Lo Giacco, *In Italy the Freedom of Worship is in Quarantine, too*, in P. Consorti (ed.), *Law, Religion and Covid-19 Emergency*, cit., pp. 37-44

³ See F. Balsamo, *The loyal collaboration between State and religions at the testing bench of the Covid-19 pandemic. A perspective from Italy*, in P. Consorti (ed.), *Law, Religion and Covid-19 Emergency*, cit., pp. 47-55.

⁴ See V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in www.olir.it, 16 marzo 2020; Id., *La libertà di culto al tempo del coronavirus: una risposta alle critiche*, in *Stato, Chiese e pluralismo confessionale, Online Journal*, (www.statoechiese.it), no. 8-2020, pp. 85-94.

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organizations, explaining them the restrictive measures the France was going to introduce, and asking their help in the social matters involved with the pandemic⁵. In my opinion, this approach is coherent with the Treaty on the Functioning of European Union, art. 17, n. 3, where we can read: “Recognizing their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organizations”. The “transparent and regular dialogue” with the religions and the non-theistic organizations is therefore the method chosen by the secular Europe⁶. This dialogue is also necessary for the implementation of the principle of horizontal subsidiarity.

3. The Italian Protocols for the religious celebrations

The second step is the experience of the Italian protocols for the religious celebrations. The DiReSoM research group have played an important role in the realization of the protocols. On 26th April, 2020, when the Italian prime minister announced the beginning of the “phase two” and the gradual resumption of the economic and social activities, it seemed that the churches, and the

⁵ See M.C. Ivaldi, *La via francese alla limitazione delle libertà e il dialogo con le religioni al tempo del coronavirus*, in *Stato, Chiese e pluralismo confessionale*, *Online Journal*, (www.statoechiese.it), no. 14-2020, pp. 80-89.

⁶ See D. Durisotto, *Unione Europea, chiese e organizzazioni filosofiche non confessionali (art. 17 TFUE)*, in *Stato, Chiese e pluralismo confessionale*, *Online Journal*, (www.statoechiese.it), no. 23-2016, pp. 1-39; F. Colombo, *Interpreting Article 17 TFUE: New Openings towards a European Law and Religion System*, in *Stato, Chiese e pluralismo confessionale*, *Online Journal*, (www.statoechiese.it), no. 1-2020, pp. 17-31.

freedom of public cult, were forgotten by the government⁷. In fact, while Catholic church and the other religious confessions were sure that the new decree would authorize the celebration of the cults, the prime minister announced that only funerals would be allowed, with up to fifteen relatives of the deceased. He said nothing about the other rites, but he promised that in the coming days the government would study a protocol for safe participation in religious celebrations.

The day after, the DiReSoM research group published a “Position paper for a safe resumption of religious celebrations in Italy”⁸ and the paper was the ground for a meeting, a video conference with the ministry of internal affairs, the leaders of sixteen different religious groups, and two professors with the role of mediators. One of them was the professor Pierluigi Consorti, the director of the DiReSoM research group⁹. After the meeting, in few days, there was the signature of the protocols¹⁰. It is important to underline the method that has conducted the parts to the signature of the protocols. The method is the dialogue, the transparent and inclusive dialogue of the art. 17 TFEU, and it is a secular method. It’s not the fruit of a negotiation, but it is a text open to the adhesions of other religious communities, if they want

⁷ In <http://www.governo.it/it/articolo/conferenza-stampa-del-presidente-conte/14518>.

⁸ The Position Paper is now published in P. Consorti (ed.), *Law, Religion and Covid-19 Emergency*, cit., pp. 271-277.

⁹ L. M. Guzzo, *Riprendono anche i riti non cattolici. Per la prima volta accordi con islamici e confessioni senza intesa. Intervista al Prof. Pierluigi Consorti*, in www.DiReSoM.net, 16 maggio 2020.

¹⁰ The Protocols in www.DiReSoM.net.

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to adhere¹¹. We can say that the pandemic caused an evolution, it opened a new season in the Italian state-churches relationships, until now blocked in the hierarchic, bilateral model.

4. *The dialogue among religions*

The third step is the dialogue among religions. During the pandemics the Catholic Pontifical Academy for Life published a document with the title “Global Pandemic and Universal Brotherhood”¹²; in it we can read a reflection on the meaning of freedoms and rights. The first ones, during the emergency, turned out to be “intertwined and overlapped, for better or for worse”, but also the rights are interdependent and there is “no right that does not have a resultant corresponding duty”. The pandemic has clearly showed this interdependence but, the document notes, the interdependence does not automatically turn into solidarity. This occurs also in the relationships among the states, that can’t confront the pandemic by reasoning in terms of exclusive defense of the national interest, since a global threat requires global responses. “An emergency like that of Covid-19 is overcome with, above all, the antibodies of solidarity”. In the same days, the Higher

¹¹ M. L. Lo Giacco, *I “Protocolli per la ripresa delle celebrazioni delle confessioni diverse dalla cattolica”: una nuova stagione nella politica ecclesiastica italiana*, in *Stato, Chiese e pluralismo confessionale*, Online Journal, (www.statoechiese.it), no. 12-2020, pp. 107-114.

¹² http://www.academyforlife.va/content/dam/pav/documenti%20pdf/2020/Nota%20Covid19/Nota%20on%20the%20Covid19%20emergency_ENG.pdf

Committee for Human Fraternity¹³, an interreligious organization born after the Abu Dhabi Declaration¹⁴, proposed a day of prayer, fasting and charity, in order that the world will be freed from the pandemic, becoming more fraternal. The day was celebrated on 14 May 2020 and it was, obviously, a religious celebration, but it was also an event with a political meaning. Pope Francis, in the homily of the morning mass of May 14, said that the Coronavirus pandemic is not the only pandemic that affects the world, since there are others such as the hunger pandemic or the war pandemic; according to the Pope, only thanks to fraternity will humanity be able to overcome the pandemics. During the pandemic, religions reminded politics of the value of fraternity, the revolutionary principle that underlies modern democracies, which must be the basis to go beyond the emergency and to plan the future¹⁵.

5. Conclusion

The World Health Organization launched a program called “Solidarity”. This program is an international clinical trial to help

¹³ <https://www.forhumanfraternity.org/>

¹⁴ The Document on “Human Fraternity for World Peace and Living Together” was signed in Abu Dhabi by the Pope Francis and the Grand Imam of Al-Azhar Ahmad Al-Tayyeb on 4 February 2019, in http://www.vatican.va/content/francesco/en/travels/2019/outside/documents/190204_documento-fratellanza-umana.html

¹⁵ M. L. Lo Giacco, *Fraternity. A proposal from religions to states to overcome the Covid-19 emergency*, in www.DiReSoM.net, 20 May 2020

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find an effective treatment for COVID-19¹⁶. As we can read in the internet homepage of the organization: “The Solidarity Trial will compare four treatment options against standard of care, to assess their relative effectiveness against COVID-19. By enrolling patients in multiple countries, the Solidarity Trial aims to rapidly discover whether any of the drugs slow disease progression or improve survival. Other drugs can be added based on emerging evidence”.

In my opinion, the use of the word “solidarity” as the slogan of the program is not accidental. Solidarity, or fraternity, seems to be the answer in post Covid-19 pandemics. We have seen the role that solidarity played in State-religions relationships as a secular method, and the importance of fraternity in interreligious relationships. Dialogue and solidarity (or fraternity) is the method for the future.

¹⁶ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/global-research-on-novel-coronavirus-2019-ncov/solidarity-clinical-trial-for-covid-19-treatments>.

DIALOGUE AND COOPERATION BETWEEN FRENCH INSTITUTIONS AND RELIGIOUS GROUPS*

Maria Cristina Ivaldi

1. Preliminary remarks about French secularism

The Law of 9 December 1905¹ established the State separation from the churches, excluding state funding of faith-based organizations. This system of secularism since the 1946 Constitution has assumed the specific form of French *laïcité*². It is

* Submitted: 21st October 2020. Published: 25th October 2020.

¹ Law 9 December 1905 *concernant la séparation des Églises et de l'État*, in *Journal officiel de la République française*, 11 décembre 1905, no. 336, also available in the version currently in force on the website of France Law at www.legifrance.gouv.fr where all the legal measures mentioned in this text can be consulted. This Law is not applied in certain territories of Metropolitan France and Overseas. For an exhaustive analysis of French legislation on religious matters, see F. Messner, P.H. Prélot, J.M. Woehrling, I. Riassetto (Eds.), *Traité de droit français des religions*, II ed., LexisNexis, Paris, 2013, (1317 pp.) *passim*.

² See art. 1 French Constitution 1958 – «France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralised basis». See also *Conseil constitutionnel*, decision no. 2013-297 QPC of 21 February 2013 (www.conseil-constitutionnel.fr/decision/2013/2012297QPC.htm) which identified six distinctive characteristics of secularism: 1) the neutrality of the State; 2) the non-recognition of any religion; 3) the respect for all

a system which appears to be characterized on the one hand by the affirmation of the principle of strict neutrality of public institutions and on the other hand by the recognition of the religious freedom of individuals which, over time, has been posed limits, especially in terms of external manifestations³. Furthermore, there are no special relationships between the State and the different religious institutions.

The French legal system does not define formally what a religion is or what secularism consists of. Reference should therefore be made to the different laws and their interpretation by case law⁴. It is indeed possible to identify a certain evolution of secularism, albeit always in maintaining a strict separation between what is relevant for the State and what is relevant for religions⁵.

beliefs; 4) the equality of citizens without distinction of religion; 5) the free exercise of religion; 6) the exclusion of public funding.

³ In the lack of a constitutional provision recognising religious freedom – as well as other rights and freedoms – reference should primarily be made to the Rights of Man as defined by the Declaration of 1789, confirmed and integrated by the Preamble to the Constitutions of 1946 and 1958. As regards the right to religious freedom, it is necessary to refer to art. 10 of the Declaration and art. 1 of the Law on the separation of the Churches and the State. Both articles prescribe the limit of public order.

⁴ Especially from *Conseil d'État* case law. On this point M.C. Ivaldi, *The meaning of "Religion" in French case law. The judgement of the Conseil d'État*, in *Stato, Chiesa e pluralismo confessionale*, Online Journal, (www.statoechiese.it), no. 39, 2017, p. 111 ff.

⁵ Among the most recent sensitive issues that have arisen are the wearing of religious symbols at school (*loi 15 mars 2004, n. 2004-228 encadrant, en application du principe de laïcité, le port de signes ou tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*) and the admissibility of the wearing of face veils in the public space (*loi 11 octobre 2010, n. 2010-1192 interdisant la dissimulation du visage dans l'espace public*).

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The SARS-CoV-2 pandemic – in France as elsewhere – has been characterized by the enactment of emergency rules, often discussed from the point of view of constitutional compliance, through the pandemic-related important powers attributed to the Government and ministries, outside effective parliamentary control⁶. The exercise of these powers has affected the exercise of important fundamental rights such as freedom of movement, assembly, and religion.

Freedom of religion has been since the beginning one of the key issues of this period from several points of view, also in the unintentional spread of the coronavirus, as happened in the annual meeting of one evangelical megachurch (the Christian Open Door Church) which took place in Mulhouse (*Département du Haut-Rhin, Région du Grand Est*) between 17 and 24 February 2020. This was one of the most important clusters in the spread of contagion across Metropolitan France as well as in its overseas territories. It has been estimated that a significant segment of the participants (more of 2500 people) was infected by the coronavirus⁷, taking it home with themself⁸.

⁶ It should be noted that the state of health emergency or its extension is declared by laws based on a Government draft. These laws have empowered the Government to act by decrees and granted it very broad powers. See Law no. 2020-290 of 23 March 2020 (declaration of the state of health emergency); Law no. 2020-546 of 11 May 2020 (extension of the state of emergency) and Law no. 2020-856 of 9 July 2020 (exit from the state of health emergency).

⁷The official releases of the aforementioned Church on this regard are available at [//porte-ouverte.com/information-covid-19](http://porte-ouverte.com/information-covid-19).

⁸ For other phenomena of contagion related to religious practices, see also the cases related to the South Korean Shincheonji Church of Jesus

A detailed analysis of the wide range of rules⁹ adopted since the beginning of the Covid-19 outbreak goes outside the purposes of this essay. Nevertheless, this analysis will take into account the Government decrees marking the main phases of the period (total lockdown, phase 1 of lockdown lifting and so on) insofar as they have interfered with the exercise of religious freedom.

2. Lockdown (from 17 March progressively extended until 11 May)

The Decree no. 2020-293 of 23 March 2020 prescribed a severe lockdown, imposing numerous closures (schools, business, venues, facilities, amenities). In other words, only essential commercial (food shops, pharmacies, banks, etc.) or public services (first of all hospitals) were allowed to remain open. This Decree enacted further restrictions like the banning of all non-essential movement (mandatory home confinement) and contact with people outside home including non-cohabiting family members and relatives. Citizens were also asked to avoid gatherings of more than 10 people in public places.

As regards the limits placed on the freedom of movement (within one kilometer from home, with specific exceptions) it remained possible to go out to work, buy essential goods, and for health or family reasons or brief individual physical exercises (under the requirement to bring along a signed declaration stating

Temple of the Tabernacle of the Testimony and the Shiite pilgrimages to the city of Qom in Iran.

⁹ For a review of the rules approved over time see www.vie-publique.fr/covid-19-les-textes-publies-au-journal-officiel.

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the reason for the movement). These rules limited the possibility for believers to go to a place of worship for individual prayer.

All religious gatherings were forbidden, even though places of worship could remain open. Only one exception was provided for: funeral ceremonies attended by a maximum of 20 people including the celebrants and the funeral home staff were allowed¹⁰. In any case, it should be noted that many religious groups, even before the lockdown, had decided a self-limitation¹¹ or ordered the total closure of the places of worship, in compliance with the respect for human life, which should be prioritized also over the exercise of religious freedom. This was the case with the Jews, Muslims and Buddhists who first announced the suspension of prayers and then the shutting of synagogues, mosques, and pagodas¹². By contrast, the greatest part of churches, especially Catholic ones, remained open throughout the lockdown.

The suspension of in-person worship during the Covid-19 pandemic made religions lead virtual services and prayers that were broadcast on traditional media (radio and tv)¹³ and on new social

¹⁰ See art. 8, IV, Decree no. 2020-293 – «Worship establishments ... are allowed to remain open. Any gathering or meeting within them is prohibited, except for funeral ceremonies with a limit of 20 people».

¹¹ As for example is the case of the French Bishops' Conference which prohibited the celebration of masses in assembly before it was imposed by law ([/ / eglise.catholique.fr/sengager-dans-la-societe/sante/coronavirus-covid19/495218-covid-19-message-de-eric-de-moulins-beaufort-a-freres-eveques/](http://eglise.catholique.fr/sengager-dans-la-societe/sante/coronavirus-covid19/495218-covid-19-message-de-eric-de-moulins-beaufort-a-freres-eveques/)).

¹² For Muslims see: Conseil Français du culte Musulman, *Communiqué: Appel à la fermeture de toutes les mosquées de France à compter de dimanche 15 mars et jusqu'à nouvel ordre*, 14 March 2020, (www.cfm-officiel.fr/2020/03/14/fermeture-des-mosques-de-france-a-compter-du-dimanche-15-mars-et-jusqua-nouvelordre/).

¹³ It should be remembered that in France the most important religions have access to the public radio and television system through dedicated

ones (youtube, facebook, etc.), to maintain a bond with the believers during the temporary moratorium on public worship. The prohibition of public worship raised and still raises some important doctrinal issues for the different religious groups, especially for those whose rites are not considered as admissible in the virtual form. This is the case of the Orthodox Jews who are forbidden to use electricity during the Shabbat and other festivities and, consequently, are prohibited from using televisions and computers¹⁴.

It goes without saying that the measures taken at that stage – as well as at the subsequent ones – were adopted unilaterally by the state authorities. Nevertheless, the President of Republic Emmanuel Macron, in his speeches to the Nation, has always called for French unity and national cohesion. That was the spirit that inspired the first video-conferenced meeting on 23 March 2020 between the President and the representatives of the major religious and philosophical groups (including masonic, atheistic, and agnostic ones). This meeting was followed by another one in less than one month – on 21 April 2020 – and a third one,

broadcasts. To limit ourselves to the France 2 broadcaster this is the case of *Le Jour du Seigneur* (www.lejourduseigneur.com/), *À l'origine, Berechit* (www.alorigine-berechit.com/), *Islam* (www.france.tv/france-2/islam/), *Présence protestante* (www.france.tv/france2/presence-protestante/), *Chrétiens orientaux* (www.cbretiensorientaux.eu/), *Sagesses Bouddhistes* (www.france.tv/france-2/sagesses-bouddhistes/).

¹⁴ See, as a balancing effort, the online celebration of pre-shabat, the day before of its beginning.

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announced by President Macron, to be held in the future to address the post-pandemic situation¹⁵.

These meetings represented a communication channel at the highest level through which President Macron announced the Government's health crisis-related measures to the participants. At the same time, they allowed to understand the instances of the different stakeholders and to take into account the collaboration that they could offer both spiritually and materially. The invitees were not all denominations¹⁶ – but only the participant of the *Conférence des responsables de culte en France* (i.e. Conference of Worship Leaders in France)¹⁷, namely, Catholics, Protestants, Orthodox, Jews, Muslims and Buddhists.

In the second meeting, they were joined by the *Conseil national des évangéliques de France* (i.e. National Council of Evangelicals of France)¹⁸, probably for both their relevance in terms of members,

¹⁵ Both events were included as formal meetings in the President's agenda and were also attended by the Minister of the Interior, who is in charge with the regulation of the relationships with religious denominations.

¹⁶ The French term for denomination is "culte", which – unlike its English equivalent – has not a derogatory meaning. See Cf. P. Rolland, *Qu'est ce qu'un culte aux yeux de la République?*, in *Archives de sciences sociales des religions*, no. 129, 2005, pp. 51-63 (online at [//journals.openedition.org/assr/1109](http://journals.openedition.org/assr/1109)).

¹⁷ It was founded on 23 November 2010 with the aim of achieving regular consultation, encouraging inter-religious dialogue and social cohesion, respecting other currents of thought in society, and working for the common good. It is currently chaired by the Protestant pastor François Clavairoly. See [//lacref.fr](http://lacref.fr).

¹⁸ This Council, created on 15 June 2010, represents about 70% of the Evangelical churches of France (www.lecnef.org).

and the circumstance that they have unintentionally started one of the most important clusters in the Country¹⁹.

Apart from general issues, specific questions were addressed. One concerned the creation of freephone numbers for psychological and spiritual assistance by the different religions, and their transmission through the Ministry of the Interior to other public institutions, first of all municipalities and hospitals²⁰. Another question was about the treatment of mortal remains and burial. These issues were the object of a subsequent meeting with the above-mentioned Ministry; local authorities in charge of cemeteries were also involved.

Emmanuel Macron guaranteed that people who died in France during the coronavirus outbreak would be buried in accordance with their religious beliefs and traditions, thus excluding all mandatory cremation, which is a practice forbidden by Judaism and Islam. Likewise, the treatment of the deceased according to religious prescriptions was allowed within certain limits, that is, the health-related measures meant to avoid contagion.

A specific problem was posed by the French Muslim Worship Council (*Conseil Français du Culte Musulman*)²¹ regarding the lack of adequate space in the Islamic areas of cemeteries. This issue

¹⁹ The above-mentioned cluster in Mulhouse.

²⁰ See Ministère de l'Intérieur, *Communiqué de presse. Dispositif d'écoute et de soutien spirituel*, 9 April 2020 (www.interieur.gouv.fr/Actualites/Communiqués/Dispositif-d-ecoute-et-de-soutien-spirituel).

²¹ The CFCM is a non-profit association created in 2003 under the Law of 1 July 1901, upon the invitation of the State to identify a unified representative of French Islam.

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originated from the impossibility to bury the deceased in their own country of origin, which is a very common practice among Muslims (and Jews alike).

The above-mentioned meetings, although including the representatives of non-religious groups, were criticized as a threat to French *laïcité*²². This circumstance shows a certain short-sightedness on the part of those who cannot appreciate the extent to which religious institutions, in a circumstance like the pandemic, have provided (spiritual and non-spiritual) support to citizens and non-citizens²³ beside helping to maintain national cohesion.

3. Phase 1 of lockdown lifting (11 May-2 June)

During the second meeting (21 April) President Macron announced the first steps to restore public worship by mid-June at the earliest. Likewise, on the occasion of the presentation of the plan for the progressive lockdown lifting to the Parliament (28 April and 4 May), the Prime Minister announced the re-opening of schools and many commercial activities and the authorization of movement of people within 100 km – but not of the celebration of religious ceremonies, which was further postponed.

²² G. Chevrier, *Laïcité: pourquoi Emmanuel Macron a commis une erreur en consultant les représentants des cultes*, 8 May 2020, in «www.marianne.net/debattons/billets/laicite-pourquoi-emmanuel-macron-commis-une-erreur-en-consultant-les-representants».

²³ It is worth mentioning the countless subsidiary initiatives on the part of third-sector organizations for the weakest (poor, refugees, foreigners), regardless of any distinction of belief or affiliation, widely reported by the websites of the different religions.

With the notable exception of the Catholic Church, all the religions referred to in the above-mentioned Conference readily accepted the situation; all of them were constantly guided by the need to give the highest priority to the protection of life. The French Bishops' Conference, in a press release dated 28 April 2020²⁴, considered it regrettable that the restarting of religious ceremonies was not authorized, while other behaviors and practices – equally liable to create situations for contagion – were permitted.

Decree no. 2020-548 of 11 May 2020 was issued despite the French Episcopate's criticism, while negotiations among the different religious groups and the Ministry of the Interior were envisaged in order to prepare a protocol for the future restoration of religious rites.

The decision on this issue made by the Council of State²⁵ at the request of some private citizens, Catholic traditionalist associations and a political party, pressed the Government to review its position and restore the exercise of collective religious freedom. According to the Council of State – which issued a preliminary ruling in accordance with the procedure known as *référé liberté* – the ban of all religious gatherings was «disproportionate with regards to the objective of preserving public health» and caused «damage that was seriously and manifestly illegal». For this purpose, it ordered the Government to amend the impugned measures within 8 days.

²⁴ Conférence des Évêques de France, *Suite aux annonces du Premier Ministre concernant le déconfinement*, 28 April 2020 (http://eglise.catholique.fr/espace-presse/com_muniques-de-presse/498364-suite-aux-annonces-premier-ministre-concernant-deconfinement/).

²⁵ Decision of 18 May 2020 available on database *ArianWeb*.

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The Government complied with the decision by issuing Decree no. 2020-618 of 22 May 2020, which allowed the immediate resumption of religious celebrations. At the same time, the Minister of the Interior – acknowledging the constant dialogue between French institutions and the mentioned religious groups – recommended to make the resumption of public worship start only from 2 June, despite noting that it would have been possible to do so immediately. This press release of 28 May 2020²⁶ was accompanied by the publication of the guidelines on the fight against outbreak of coronavirus during religious ceremonies, drawn up upon consultation with the religious representatives²⁷. In other words, the exercise collective worship had to abide by several conditions, including the wearing of masks, keeping a distance of at least one meter among worshippers (social distancing rule), washing hands and sanitizing objects and premises, being the administrators of the place of worship liable under civil and criminal law. Beside these prescriptions, others were given by each religious group, which took into account their peculiarities. Such prescriptions were published on their respective websites and affixed outside each place of worship)²⁸.

²⁶ Ministère de l'Intérieur, *Communiqué de presse. Reprise des cérémonies religieuses*, 22 May 2020 (www.interieur.gouv.fr/Le-ministre/Communiqués/Communiquede-presse-de-Christophe-Castaner-sur-la-reprise-des-ceremonies-religieuses).

²⁷ *Recommandations générales en matière de la lutte contre la pandémie de Sars-CoV-2 lors des cérémonies cultuelles*, available, among others, at [//eglise.catholique.fr/wp-content/uploads/sites/2/2020/05/Lignes-directrices-concernant-la-luttecontre-la-pandemie-de-COVID-pour-la-reprise-des-cultes.pdf](http://eglise.catholique.fr/wp-content/uploads/sites/2/2020/05/Lignes-directrices-concernant-la-luttecontre-la-pandemie-de-COVID-pour-la-reprise-des-cultes.pdf).

²⁸ For the Hebrews see Consistoire National – Consistoire de Paris-Île de France – Association des Médecins Israélites de France, *Protocole de*

Only the Catholic Church took advantage of the immediate resumption of religious gatherings, while the other faith communities restarted progressively.

4. Phase 2 of lockdown lifting (3-14 June)

This and the subsequent phases marked the progressive decrease of interference with the exercise of collective religious freedom, although the need to respect barrier gestures while performing all acts of worship was confirmed.

The new phase was regulated by Decree no. 2020-663 of 31 May 2020, and subsequent amendments. The restrictions on movements within metropolitan France were lifted and this benefitted the religious communities which are not deeply rooted in the territory, since from that moment religious ministers were no longer restricted by the limits previously laid down (respectively 1 kilometer and 100 kilometers). Bars and restaurants as well as museums could re-open, always in compliance with the rules of social distancing.

As announced by the Prime Minister in Parliament²⁹, the celebration of civil marriages (also same-sex ones), religious marriages and PACS (*Pacte civile de solidarité* – civil partnerships) – which had been suspended during the pandemic except in the case of danger of death and similar cases – were authorized to restart from 3 June. This was an important development, given the fact

réouverture des synagogues, (www.consistoire.org/2020/06/02/reouverture-des-synagogues/).

²⁹Video Available at www.gouvernement.fr/partage/711591-conference-de-presse-sur-la-deuxieme-etape-du-deconfinement

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that French law only recognizes the validity of civil marriages, whose celebration must precede that of religious ones³⁰.

That phase was thus characterized by the reopening of places of worship, including those of the Jews and Muslims, who decided to follow the Government's recommendation to re-open after June 2.

On the other hand, the *Grande Pagode de Paris* was still closed at the date of submission of this essay³¹.

5. Phase 3 of lockdown lifting (15 June-10 July)

The same day of its announcement in Macron's speech to the French on 14 June 2020³² the Decree no. 2020-724 was enacted. By amending Decree no. 2020-663, it started a new phase setting progressive deadlines (15, 22, 28 June and 1 July) until 10 July, that is, the end of the state of emergency as fixed by the above-mentioned Law no. 2020-546.

In fact, at that stage, no new provisions were issued that interfered substantively with the right to religious freedom. Nevertheless, it was a period when each religious group took the opportunity to reflect in depth on the period just elapsed, both

³⁰ Pursuant to art. 433-21 of French Criminal Code any religious minister who habitually conducts religious ceremonies of marriages without being presented beforehand with the marriage certificate issued by officials responsible for civil status is punished by six months' imprisonment and a fine of 7.500 euros.

³¹ 22 October 2020. Notice at www.bouddhisme-france.org/la-grande-pagode/activites-a-la-pagode.

³² E. Macron, *Adresse aux Français*, 14 June 2020, at www.elysee.fr/emmanuel-macron/2020/06/14/adresse-aux-francais-14-juin-2020, where both the video and the transcript of the presidential address are available.

individually³³ and collectively. The collective dimension of this reflection was characterized by the meeting among religions, which are members of the above-mentioned Conference of Worship Leaders in France (CRCF), held on 23 June 2020 at the *Collège des Bernardins*³⁴. In that phase of an attenuated pandemic, the initiatives (even the State-led ones) aimed at investigating the impact of the crisis also on the religious sphere did not stop. On July 2, the Parliamentary Office for the Evaluation of Scientific and Technological Options (*Office parlementaire d'évaluation des choix scientifiques et technologiques*) issued two notes concerning respectively religions facing Covid-19 in France³⁵, and the funeral crisis were issued³⁶.

³³ For examples see Fédération Protestante de France, *Plaidoyer pour une transformation écologique, solidaire et démocratique*, 21 April 2020 (www.protestants.org/articles/54249-plaidoyer-pour-une-transformation-ecologique-solidaire-et-democratique) and for the Catholic Church, E. de Moulins Beaufort, *Le matin, sème ton grain. Lettre en réponse à l'invitation du Président de la République*, Bayard - Cerf – MamE, Paris, 2020, *passim*.

³⁴ Meeting titled «Les religions pendant et après l'épreuve: Quels constats? Quels regards sur l'avenir?». The meeting, which lasted more than two hours, was held upon the initiative of the *Collège des Bernardins* and the *Institut des hautes études du monde religieux*, which also received the patronage of the Ministry of the Interior and the *Observatoire de la laïcité* (www.gouvernement.fr/observatoire-de-la-laicite) can be viewed at www.collegedesbernardins.fr/content/les-religions-pendant-et-apres-lepreuve-quels-constats-quels-regards-sur-lavenir.

³⁵ Office parlementaire d'évaluation des choix scientifiques et technologiques, *Note à l'attention des membres de l'Office. Les cultes religieux face à l'épidémie de Covid-19 en France*, 2 July 2020, in www.senat.fr/fileadmin/Fichiers/Images/opect/quatre_pages/OPECST_2020_0028_note_cultes_covid19.pdf, pp. 38.

³⁶ Office parlementaire d'évaluation des choix scientifiques et technologiques, *Note à l'attention des membres de l'Office. Crise du funéraire en*

6. *The Law organizing the exit from the health emergency (22 July-30 October)*

A government draft law to declare the end of the lockdown was discussed in Parliament and was approved as Law no. 2020-856 of 10 July 2020. Under the law, the Government has retained important powers in the event of a resurgence of the coronavirus pandemic, including the power to declare a new state of health emergency³⁷. The same day the Decree no. 2020-860³⁸ was approved to implement the provisions on the collective exercise of worship by confirming the same, specific legal provision³⁹. At the

situation de Covid-19: mort collective et rituels funéraires bouleversés, 2 July 2020, in www.senat.fr/fileadmin/Fichiers/Images/opekst/quatre_pages/OPECST_2020_0027_note_rites_funeraires_covid19.pdf, pp. 20.

³⁷ Art. 2, II, Law no. 2020-856.

³⁸ *Décret prescrivant les mesures générales nécessaires pour faire face à l'épidémie de Covid-19 dans les territoires sortis de l'état d'urgence sanitaire et dans ceux où il a été prorogé* or Decree prescribing the general measures necessary to deal with the Covid-19 epidemic in the territories exiting from the state of health emergency and in those where it has been extended.

³⁹ Art. 47, Decree no. 2020-860 – «I. Les établissements de culte ... sont autorisés à recevoir du public dans le respect des dispositions qui leur sont applicables et dans des conditions de nature à permettre le respect des dispositions de l'article 1^{er} [*i.e.* respect of barrier gestures].

Toutefois, les personnes appartenant à un même foyer ou venant ensemble dans la limite de dix personnes ne sont pas tenues de respecter une distanciation physique d'un mètre entre elles dans ces établissements. II. Toute personne de onze ans ou plus qui accède ou demeure dans ces établissements porte un masque de protection.

L'obligation du port du masque ne fait pas obstacle à ce que celui-ci soit momentanément retiré pour l'accomplissement des rites qui le nécessitent.

moment, the date of the third meeting between the French President Macron and the representatives of the religious denominations, freemasonry, humanistic and atheistic associations has not been arranged yet. Despite much criticism of Macron, who allegedly breached a certain – uncompromising – declination of French *laïcité*, the consultation practice which has been introduced should be appreciated also in the light of article 17 of the Treaty on functioning of the European Union, which enshrines the principle of constant dialogue with churches and non-confessional organizations⁴⁰. On several occasions President Macron has resorted to consultation, highlighting a notion of secularism which does not oppose religion, but which is declined as neutrality. In the meantime, religions have not stopped asking questions and confronting each other on the dramatic challenges emerged during the outbreak. This has been the case of the above-mentioned

II. Le gestionnaire du lieu de culte s'assure à tout moment, et en particulier lors de l'entrée et de la sortie de l'édifice, du respect des dispositions mentionnées au présent article.

IV. Le préfet de département peut, après mise en demeure restée sans suite, interdire l'accueil du public dans les établissements de culte si les conditions de leur organisation ainsi que les contrôles mis en place ne sont pas de nature à garantir le respect des dispositions mentionnées au présent article».

⁴⁰ Among others see F. Colombo, *Interpreting Article 17 TFEU: New Openings towards a European Law and Religion System*, in *Stato, Chiese e pluralismo confessionale*, Online Journal, (www.statoechiese.it), no. 1-2020, p. 17 ff.; A. Portaru, *In Search of a Soul: Article 17 TFEU and its Functioning*, in «Nottingham Law Journal», no. 26, 2017, p. 37; S.A. Mudrov, *Religion in the Treaty of Lisbon: Aspects and Evaluation*, in *Journal of Contemporary Religion*, (www.tandfonline.com/doi/full/10.1080/13537903.2016.1109863), no. 1, 2016, p. 1; P. Annicchino, *Religion and eu Institutions*, in *Ecclesiastical Law Society*, no. 15, 2013, p. 326.

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meeting held at the *Collège des Bernardins* in mid-June 2020. That is the same place where two years before, on 9 April, President Macron, invited by the French Bishops' Conference and in the presence of the representatives of other religions, took the opportunity to expound his vision of secularism: this principle should not deny the spiritual in the name of the temporal nor replacing the divine transcendence with a republican creed⁴¹.

7. *The new emergency*

Since the second part of the summer and especially in September there has been a resumption of contagions leading to a new series of local⁴² or general provisions⁴³, adopted taking into

⁴¹ The video of the speech and its complete transcript are available at www.elysee.fr/emmanuel-macron/2018/04/09/discours-du-president-de-la-republique-emmanuel-macron-a-la-conference-des- eveques-de-france-au-college-des-bernardins. For a comment that highlights the parts of Macron's speech recognizing the Catholic specificity in French history and identity while respecting other faiths, see B. Bourdin, *Le discours de Macron aux Bernardins*, in *Études*, no. 6-2018, pp. 67-76 (www.revue-etudes.com/article/le-discours-de-macron-aux-bernardins-19292).

More generally, on the President of the Republic's approach to religion, see S. Malka, *Dieu, la République et Macron*, Édition du Cerf, Paris, 2019, 224 pp., *passim*.

⁴² For examples see the Press Release of 27 August 2020, whereby the prefectures of the area of Paris make the wearing of the mask in public spaces compulsory from the following day ([/ /cdn.paris.fr/paris/2020/08/27/f617109e20b041e6574451de1772194b.pdf](http://cdn.paris.fr/paris/2020/08/27/f617109e20b041e6574451de1772194b.pdf)). The Council of State has also decided on the lawfulness of this measure (decisions available at www.conseil-etat.fr/actualites/actualites/dernieres-decisions-referes-en-lien-avec-l-epidemie-de-covid-19).

⁴³ See for example the classification of the French Departments according to the Covid-19-related alert grade (*i.e.* reinforced alert,

account the spread of the virus in different areas of the State⁴⁴. The increase in the numbers of infected people led to the declaration of a new state of health emergency⁴⁵, announced by the President of the Republic⁴⁶ during a television interview on 14 October 2020 and then illustrated in greater details by the Prime Minister the following day⁴⁷.

The relevant measures were adopted by Decree no. 2020-1262 of 16 October 2020. The main one is the introduction of curfew in specific departments⁴⁸ (the most affected ones by the spread of Covid-19⁴⁹) which prohibits movement outside the place of

maximum alert or simple alert). This classification was partially revised in the second half of October.

⁴⁴ For the basic information on the epidemic crisis, see the Government web page at www.gouvernement.fr/info.coronavirus.

⁴⁵ Decree no. 2020-1257 of 14 October 2020 *décretant l'état d'urgence* pursuant to art. L. 3131-13 of the Public Health Code.

⁴⁶ www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-intervien.

⁴⁷ www.facebook.com/watch/live/?v=2774942479449357&ref=external. The interview is also available on the dedicated website www.gouvernement.fr/info.coronavirus.

⁴⁸ Decree no. 2020-1262, Annex 2. See also the draft law no. 3464 of 21 October 2020, *autorisant la prorogation de l'état d'urgence sanitaire et portant diverses mesures de gestion de la crise sanitaire* (www.assemblee-nationale.fr/dyn/15/textes/l15b3464_projet-loi) and the State Council opinion no. 401419 of 20 October 2020, ruling in favour of the extension of the state of health emergency until 21 April 2021 (www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-autorisant-la-prorogation-de-l-etat-d-urgence-sanitaire-et-portant-diverses-mesures-de-gestion-de-la-crise-sanitaire).

⁴⁹ Cf. art. 51, Decree no. 2020-1262 giving powers to the departmental prefects.

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residence from 9.00 p.m. to 6.00 a.m.⁵⁰, whereas at the moment there are no substantial changes with respect to religious practice⁵¹.

However, the evolving situation may require the adoption of new measures restricting collective religious freedom as it has been the case with the introduction of the limit on gatherings of more than one thousand people in the French capital⁵². This restriction will once again force religions to adapt their precepts and practices. At the moment there has not been a new meeting between the representatives of the religious denominations and President Macron on the subject of Covid-19, but there has been one concerning the draft of a new law aimed at fighting separatism, primarily the Islamic-oriented one. This took place on 30 September 2020⁵³ when the contents of the draft law were illustrated in the presence of the Minister of the Interior⁵⁴. On 2

⁵⁰ In the first phase the curfew affected not only Paris and *Ile de France* but also the 8 metropolitan cities of Grenoble, Lille, Lyon, Aix-Marseille, Montpellier, Rouen, Saint-Etienne and Toulouse.

⁵¹ Cf. art. 47, Decree no. 2020-1262.

⁵² This is a limit that the *Grande Mosquée de Paris* has taken into account since the beginning. See for example the *Communiqué* of 1 October 2020, concerning the access restrictions for Friday prayers (www.mosqueedeparis.net/priere-du-vendredi-salat-al-jumab-la-capacite-daccueil-de-la-gmp-a-nouveau-reduite/).

⁵³ www.elysee.fr/agenda-septembre-2020.

⁵⁴ The Ministry of the Interior has also met single religious representatives on this matter, as shown by his agenda (www.interieur.gouv.fr/Le-ministre/Agenda-du-ministre).

October Macron presented it to the French⁵⁵. The most relevant points include the neutrality of public services and the preservation of public order; the exclusion of any support to associations which do not respect equality between men and women or which are the expression of sectarian deviations, the control of faith-based educational institutions, the limitation of home-schooling, and the legal regime of associations managing mosques.

The President of the Republic stressed the intention to present a draft law on 9 December 2020, 115 years after the issue of the Law on separation of the Churches and the State, as a way to reinforce secularism and consolidate the Republican values⁵⁶.

Beside the fight against what Macron has defined as separatism rather than communitarianism⁵⁷, the Presidential has recognized the freedom of blasphemy related to freedom of conscience: this occurred in the speech he delivered on 1 September 2020 during a visit to Beirut⁵⁸. The occasion for such a

⁵⁵ *Discours du Président de la République sur le thème de la lutte contre les séparatismes*, 2 October 2020. Video and speech transcript available at www.elysee.fr/emmanuel-macron/2020/10/02/la-republique-en-actes-discours-du-president-de-la-republique-sur-le-theme-de-la-lutte-contre-les-separatismes. President Macron has also met separately representatives of the *Conseil français du culte musulmans* on October 19, after the previous meeting on September 26 (www.elysee.fr/agenda).

⁵⁶ See the above-mentioned video of 2 October 2020, minute 22.19 ff.

⁵⁷ Cf. www.elysee.fr/emmanuel-macron/2020/02/18/protoger-leslibertes-en-luttant-contre-le-separatisme-islamiste-conference-de-presse-du-president-emmanuelmacron-a-mulhouse.

⁵⁸ Video available at www.youtube.com/watch?v=oP5c71Dgyns. For an earlier example see www.lemonde.fr/societe/article/2020/02/12/affaire-mila-emmanuel-macron-reaffirme-le-droit-au-blaspheme_6029272_3224.html. On the freedom of blasphemy see N. Colaianni, *Il presidente Macron e la libertà di blasfemia*,

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statement was the decision of the satirical weekly magazine Charlie Hebdo to republish the satirical cartoons concerning Islam, on the occasion of the beginning of the appeal process for the massacre of 12 people of the editorial staff on 7 January 2015. Soon after, on 16 October 2020, the satirical cartoons costed the life of Professor Samuel Paty⁵⁹.

This confirms and stresses even more the French commitment to a better protection of public order and republican unity against what can be described as “pathological” aspects linked to certain kinds of religious affiliation. On the other hand, this rigor goes hand in hand with the repeated dialogue with religions – at least some of them⁶⁰ – understood as a positive force for the country.

21 October 2020, in www.questionegiustizia.it/articolo/il-presidente-macron-e-la-liberta-di-blasfemia.

⁵⁹ This news was reported among others by www.lemonde.fr/societe/article/2020/10/16/decapitation-dans-les-yvelines-l-assemblee-nationale-debout-denonce-un-abominable-attentat_6056355_3224.html.

⁶⁰ The dialogue always included only the members of the above-mentioned Conference of Worship Leaders in France (*supra* fn. 16).

THE COVID-19 PANDEMIC AND THE COURTS

RECONCILING THE PROTECTION OF PUBLIC HEALTH WITH RELIGIOUS FREEDOM: THE VIABILITY OF SHARED RESPONSES*

Adelaide Madera

The Coronavirus pandemic has generated an unprecedented health emergency, that has severely affected our daily lives. Government “alarmed”¹ responses, aimed at limiting the devastating impact of the health crisis “have led to a resurgence of authoritarianism, particularly in Western democracies,”² resulting in unimaginable restrictions of fundamental rights and liberties. In this framework, the pandemic has had serious implications on religious freedom, as measures restricting gatherings have deeply affected faith communities’ practices and rituals.

Undoubtedly, in a first phase, the pressing need to safeguard the compelling interests of public health and safety prevailed. However, the pandemic has also emphasized the crucial interplay

* Submitted: 20th October 2020. Published: 24th October 2020

¹ See S. Ferrari, *In Praise of Pragmatism*, in A. Ferrari, S. Pastorelli (eds.), *The Burqa Affair Across Europe: Between Public and Private Space*, Routledge, London-New York, 2016, pp. 10-11.

² See M. Hill, *Locating The Right to Freedom of Religion or Belief Across Time and Territory*, in S. Ferrari, M. Hill, A. Jamal, R. Bottoni (eds.), *Routledge Handbook of Freedom of Religion or Belief*, Routledge, 2021 (forthcoming), *Introduction*.

between competing rights and the courts have often had the difficult task of reaching a reasonable balance between the conflicting claims of individual liberty and preservation of health³.

In the U.S. context, state restrictions on religious freedom claims have been fiercely litigated during the lockdown, resulting in complex dynamics between state governors, federal courts and the US Department of Justice⁴. Two cases concerning state limitations on religious assemblies reached the U.S. Supreme Court. Both of them raise crucial concerns; what is the proper standard of judicial review? What is the role of the judiciary during a health crisis?

In *South Bay United Pentecostal Church, et al., v. Gavin Newsom, Governor of California, et al.*⁵, a highly “polarized”⁶ Supreme Court denied a church's request to enjoin California’s Executive Order

³ See C. McCrudden, *Democracy, Protests and Covid 19: the Challenge of (and for) Human Rights*, in UKCLA, 19 June 2020, <https://ukconstitutionallaw.org/2020/06/19/christopher-mccrudden-democracy-protests-and-covid-19-the-challenge-of-and-for-human-rights/>.

⁴ See A. Madera, *Some Preliminary Remarks on the Impact of COVID-19 on the Exercise of Religious Freedom in the United States and Italy*, in *Stato, Chiese e Pluralismo Confessionale*, Online Journal, (www.statoechiese.it), no. 70-2020; C. Graziani, *Libertà di culto e pandemia (COVID-19): La Corte Suprema degli Stati Uniti divisa*, in *Consulta on Line*, 357, 2020 (www.giurcost.org); A. Licastro, *Normativa anti Covid vs. Free Exercise Clause nella giurisprudenza della Corte Suprema USA: un ritorno alla dottrina della “neutralità” nell’interpretazione dei principi costituzionali in materia religiosa?* in *Stato, Chiese e Pluralismo Confessionale*, Online Journal, (www.statoechiese.it), no. 34-2020.

⁵ See *South Bay United Pentecostal Church, et al., v. Gavin Newsom, Governor of California, et al.*, 590 U.S._ (2020).

⁶ See M.O. De Girolami, *Constitutional Contraction: Religion and the Roberts Court*, in P. Annicchino (ed.), *La Corte Roberts e la tutela della libertà religiosa*, European University Institut, Fiesole, 2017, p. 23.

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restricting attendance at houses of worship to 25 percent of a building's capacity or a maximum of 100 people. Immediately, some commentators claimed that “The Supreme Court just completed a contentious term in which it handed down some [significant legal victories for the religious right](#). The Court’s Republican majority, which includes Roberts, is [often quite sympathetic](#) to religious objectors who claim they should not have to follow laws that burden their religious beliefs. So it’s more than a little surprising that the church did not prevail in *Calvary Chapel*⁷.

Actually, the *Jacobson* rationale⁸ governs the ruling⁹. Although there is no majority opinion, Justice Roberts explained, in his own

⁷ See I. Millhiser, *The Supreme Court’s Surprising Decision on Churches and Pandemic, Explained*, in *Vox*, 25 July 2020, <https://www.vox.com/2020/7/25/21338216/supreme-court-churches-pandemic-covid-samuel-alito-brett-kavanaugh-calvary-chapel>.

⁸ See *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 31 (1905). According to this landmark decision: “If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that, if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law.”

⁹ According to Justice Roberts “The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically ac-countable officials of the States “to guard and protect.” [] When those officials “undertake [] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” [] Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to

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opinion, the reason of the dismissal of the church's claim: the churches had been treated equally to comparable secular businesses. However, the *South Bay* case underlines the blurred boundary between equal treatment of churches and selective discrimination, that is strictly connected to the identification of "the most appropriate secular comparator"¹⁰. This is a crucial issue, and the judges show conflicting understandings of it, emphasizing the sharp division between them¹¹.

assess public health and is not ac-countable to the people". See *South Bay United Pentecostal Church, et al., v. Gavin Newsom, Governor of California, et al.*, cit. However, see C.M. Corbin, *Religious Liberty during a Pandemic*, 70 *Duke Law Journal Online* 1, 8 (2020). According to the Author, "In *South Bay United Pentecostal Church v. Newsom*, it is not altogether clear whether the Justices thought *Jacobson*, *Smith*, or some other test should control, as five of the Justices did not join a written opinion. Chief Justice Roberts never explicitly mentioned *Smith* or its test in his concurring opinion, and neither did the dissent. As stated above, I think the better approach is to follow the usual standards with an eye toward the present exigencies."

¹⁰ See A. Madera, *Some Preliminary Remarks*, cit., p. 111.

¹¹ See *South Bay United Pentecostal Church, et al., v. Gavin Newsom, Governor of California, et al.*, cit. According to the Chief Justice Roberts: "Although California's guidelines place restrictions on places of worship, those restrictions appear consistent with the Free Exercise Clause of the First Amendment. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time. And the Order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods." According to the dissenting opinion of Justice Kavanaugh: "As a general matter, the "government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits." The claimant Church "would suffer irreparable

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In *Calvary Chapel Dayton Valley v. Sisolak*¹², the Supreme Court rejected in a one-sentence order a claim from Calvary Chapel Dayton Valley to hold services on the same terms as other secular facilities in Nevada (such as casinos). The underlying rationale is that religious organizations have to comply with valid and neutral laws of general applicability and they cannot ask for specific exemptions from them. However, the order disfavored houses of worship because it limited attendance to a maximum of 50 people while it allowed secular undertakings (casinos, gyms, bars and restaurants) to operate at 50 percent of the building capacity.

In his sharp dissent, Justice Alito pointed out: “That Nevada would discriminate in favor of the powerful gaming industry and its employees may not come as a surprise, but this Court’s willingness to allow such discrimination is disappointing. We have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility”¹³.

harm from not being able to hold services on Pentecost Sunday in a way that comparable secular businesses and persons can conduct their activities.” Furthermore, it is upon state authorities to provide a “compelling justification for distinguishing between (i) religious worship services and (ii) the litany of other secular businesses that are not subject to an occupancy cap;” also, the state has “substantial room to draw lines, especially in an emergency” and the state cannot “assume the worst when people go to worship but assume the best when people go to work or go about the rest of their daily lives in permitted social settings.” See *South Bay United Pentecostal Church, et al., v. Gavin Newsom, Governor of California, et al.*, cit.

¹² See *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, 591 U.S. (2020).

¹³ See *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, cit. (Justice Alito, dissenting opinion).

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According to Alito's dissenting opinion, Nevada's discriminatory treatment infringes the First Amendment; also, on the basis of an empirical analysis, he claims that the State's argument that religious gatherings cause greater risks than other secular activities (such as casinos) is "hard to swallow"¹⁴, as well as the idea that the State's supervision over casinos guarantees compliance with the health measures in a more effective way than local authority enforcement of the provisions for houses of worship is not "compelling enough to justify differential treatment of religion"¹⁵. Although in phase one a robust restrictive public response was acceptable, in the long run, "public health emergency does not give Governors and other public officials *carte blanche* to disregard the Constitution for as long as the medical problem persists"¹⁶, but a more careful balance has to be reached that takes into consideration all the competing rights. For all these reasons, restrictions upon religious assemblies are not "neutral and of general applicability" and should be subject to strict scrutiny. This implies resorting to a three-pronged test: that the government must show that substantially burdening religious freedom is the least restrictive alternative to pursue a compelling state interest¹⁷. Furthermore, the directives favor "secular expression in casinos"

¹⁴ See A. Howe, *Justices Decline to Intervene in Dispute over Nevada COVID-19 Restrictions*, in *Scotusblog*, 24 July 2020, <https://www.scotusblog.com/2020/07/justices-decline-to-intervene-in-dispute-over-nevada-covid-19-restrictions/>.

¹⁵ See *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, cit. (Justice Alito, dissenting opinion).

¹⁶ See *Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, cit. (Justice Alito, dissenting opinion).

¹⁷ See *Sherbert v. Verner*, 374 U.S. 398 (1963).

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over “religious expression in houses of worship”, so they not satisfy the standards required by the Free Speech Clause too¹⁸.

In his dissenting opinion, Justice Kavanaugh raised similar concerns, adding his own remarks. Kavanaugh distinguished four classes of laws affecting religious organizations¹⁹. He complained that “fourth are laws—like Nevada's in this case—that supply no criteria for government benefits or action, but rather divvy up organizations into a favored or exempt category and a disfavored or non-exempt category. Those laws provide benefits only to organizations in the favored or exempt category and not to organizations in the disfavored or non-exempt category”²⁰.

During a pandemic, a state choice to discriminate religious activities compared to certain secular counterparts, as they do not generate a profit, would not be coherent with the protection of religious freedom that is at the core of the constitutional framework²¹. He also emphasized that although during a pandemic

¹⁸ See [*Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada, cit. \(Justice Alito, dissenting opinion\)*](#).

¹⁹ See [*Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada, cit. \(Justice Kavanaugh, dissenting opinion\)*](#): “(1) Laws that expressly discriminate against religious organizations; (2) laws that expressly favor religious organizations; (3) laws that do not classify on the basis of religion but apply to secular and religious organizations alike; and (4) laws that expressly treat religious organizations equally to some secular organizations but better or worse than other secular organizations.”

²⁰ See [*Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada, cit. \(Justice Kavanaugh, dissenting opinion\)*](#). See J. Blackman, *The Three Dissents in Calvary Chapel Dayton Valley v. Sisolak*, in *The Voloch Conspiracy*, 25 July 2020, <https://reason.com/2020/07/25/the-three-dissents-in-calvary-chapel-dayton-valley-v-sisolak/>.

²¹ See [*Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada, cit. \(Justice Kavanaugh, dissenting opinion\)*](#): “Nevada's 50-person

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courts should embrace a “deferential” approach towards government guidelines, “COVID–19 is not a blank check” that allows any form of state discrimination against “religious people, religious organizations, and religious services,” as “there are certain constitutional red lines that a State may not cross even in a crisis”, namely, “racial discrimination, religious discrimination, and content-based suppression of speech”²².

As this is well documented, lower courts embraced different standards of judicial review when they had ruled the legitimacy of COVID-19 restrictions to the exercise of religious freedom. Some of them required a strict scrutiny, which implies that a substantial burden can be imposed on religious freedom only in the pursuit of a compelling state interest and whether it is the least restrictive means to achieve that interest. Other courts had been more inclined to prefer the *Smith* rationale, that implies that as long as a public measure is religiously neutral and generally applicable there

attendance cap on religious worship services puts praying at churches, synagogues, temples, and mosques on worse footing than eating at restaurants, drinking at bars, gambling at casinos, or biking at gyms. In other words, Nevada is discriminating against religion. And because the State has not offered a sufficient justification for doing so, that discrimination violates the First Amendment.”

²² See [*Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada, cit. \(Justice Kavanaugh, dissenting opinion\)*](#): “This Court’s history is littered with unfortunate examples of overly broad judicial deference to the government when the government has invoked emergency powers and asserted crisis circumstances to override equal-treatment and free-speech principles. The court of history has rejected those jurisprudential mistakes and cautions us against an unduly deferential judicial approach, especially when questions of racial discrimination, religious discrimination, or free speech are at stake”.

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is no need to accommodate religious practices²³. The only limit is that government cannot selectively target religion²⁴. The latter approach imposes a heightened standard of review compared to the *Jacobson* ruling, that would allow a “more deferential” attitude toward state authorities, and would bypass a strict “constitutional analysis”²⁵. However, these judgements emphasize all the risks of a formally neutral approach. Comparing different kinds of settings to identify the most appropriate “secular comparator” is extremely difficult. The judicial analysis has to take into considerations many nuanced distinctions requiring a careful context-sensitive analysis. Distinctions can be founded on “essentialness” of goods and services: these factors have given rise to different judicial responses about what is “essential”²⁶. However, how can we qualify religion as less “essential” than secular assets during an unprecedented health crisis?²⁷ Also, the assessment of the level of health risk in

²³ See *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990).

²⁴ See *Church of the Lukumi Babalu Aye, Inc., v. Hialeah*, 508 U.S. 520 (1993). A law cannot be considered neutral if “the object of the law is to infringe upon or restrict practices because of their religious motivation” (533) and it is not of general applicability if it “in a selective manner imposes burdens only on conduct motivated by religious belief.” (543).

²⁵ See C.M. Corbin, *Religious Liberty during a Pandemic: Constitutional Challenges to Mass Gathering Bans*, in *Canopy Forum*, 2 October 2020, “Law, Religion, and the Coronavirus in the United States: A Six-Month Assessment”, <https://canopyforum.org/2020/10/02/religious-liberty-in-a-pandemic-constitutional-challenges-to-mass-gathering-bans/>.

²⁶ See C.M. Corbin, *Religious Liberty during a Pandemic: Constitutional Challenges to Mass Gathering Bans*, cit.

²⁷ See W.C. Durham, Jr., *The Coronavirus, The Compelling State Interest in Health, and Religious Autonomy*, in *Canopy Forum*, 2 October 2020, “Law, Religion, and the Coronavirus in the United States: A Six-Month Assessment”,

different settings, so as to define fair coronavirus restrictions, is connected to multiple factors (social distancing, compliance with sanitation rules, number of attending people, indoor/outdoor, building's capacity). Last but not least, uniform restrictions on religious gatherings underestimate U.S. religious diversity, which implies a different impact of Covid-19 limitations on various religious communities with different convictions, practices, and rituals²⁸. All the dissenting opinions in *Calvary Chapel Dayton Valley v. Sisolak* raised concerns about the difficulty to guarantee an effective equal treatment²⁹ to religious organizations compared to their secular counterparts³⁰. In an age of deep economic crisis, the risk of state guidelines and reopening plans giving priority to

<https://canopyforum.org/2020/10/02/the-coronavirus-the-compelling-state-interest-in-health-and-religious-autonomy/>.

²⁸ See W.C. Durham, Jr., *The Coronavirus, The Compelling State Interest in Health, and Religious Autonomy*, cit.; M. Faggioli, *Pandemic and Religious Liberty in the USA; Between Privatization of the Church and Neo-Integralism*, in *DiReSoM*, 8 April 2020, <https://DiReSoM.net/2020/04/08/pandemic-and-religious-liberty-in-the-usa-between-privatization-of-the-church-and-neo-integralism/>.

²⁹ See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. __ (2017): “denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified, if at all, only by a state interest ‘of the highest order.’”; *McDaniel v. Paty*, 435 U. S. 618, 639 (1978): “government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits.”

³⁰ See C. Lund, *Quarantines, Religious Groups and Some Questions About Equality*, in *Canopy Forum*, 2 October 2020, “*Law, Religion, and the Coronavirus in the United States: A Six-Month Assessment*”, <https://canopyforum.org/2020/10/02/quarantines-religious-groups-and-some-questions-about-equality/>.

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activities generating a profit is emphasized, to the detriment of genuine religious claims³¹.

The inability of public authorities to give adequate legal responses could give rise to harsh reactions of faith communities, resorting to religious autonomy as their last defense³². I agree that an analysis focusing on discrimination underestimates that the right of faith communities to gather is one of the fundamental aspects of religious practice, closely connected with religious autonomy³³. Also, courts are not equipped to intrude into internal church matters and identify “adequate” substitutive ways of worshipping, as this would imply that the courts unduly judge how individuals comply with the commands of their religious faith³⁴.

However, during the age of COVID-19, a synergic interaction between religious leaders and state authorities is increasingly urged in the pursuit of shared responses. Religious communities are required to make a “responsible” use of the constitutional freedom

³¹ See *Cahvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada*, cit. ([Justice Kavanaugh, dissenting opinion](#)): “Nevada's rules reflect an implicit judgment that for-profit assemblies are **important** and religious gatherings are **less so**; that moneymaking is **more important** than **faith during the pandemic**.”

³² See *Hosanna-Tabor Lutheran Evangelical Church & School v. EEOC*, 565 U.S. 171 (2012).

³³ See W.C. Durham, Jr., *The Coronavirus, The Compelling State Interest in Health, and Religious Autonomy*, cit.

³⁴ See *Elim Romanian Pentecostal Church and Logos Baptist Ministries v. Jay Robert Pritzker, Governor of Illinois*, No. 20-1811, 7th Circuit, 16 June 2020; S.J. Levine, *Hands-Off Religion in the Early Months of Covid-19*, in *Canopy Forum*, 2 October 2020, “*Law, Religion, and the Coronavirus in the United States: A Six-Month Assessment*”, <https://canopyforum.org/2020/10/02/hands-off-religion-in-the-early-months-of-covid-19/>.

they enjoy³⁵. Religious leaders can not only provide guidance to their communities, solicit behaviors that do not affect the rights of others and facilitate the implementation of health measures³⁶, but they can also propose “reasonable alternatives”³⁷. On their part, state authorities should recognize the relevance of the role of religious organizations in civil society³⁸ and the contribution that religious authorities can offer in developing plans to cope with the coronavirus threat³⁹.

Certainly the right to practice religion is not absolute⁴⁰ and health protection is a compelling state interest. However, in the

³⁵ See A.C. Carmella, *The Protection of Children and Young People: Catholic and Constitutional Visions of Responsible Freedom*, in 44 *Boston College Law Review*, 1031, 2003.

³⁶ See F. Sanei, *Re-Centering Religious Freedom v. Public Health Debate*, in *Canopy Forum*, 29 April 2020 (https://canopyforum.org/2020/04/29/recentering-the-religious-freedom-v-public-healthdebate/?fbclid=IwAR2VLBQc5ei863R1N20S7jxY7W70FfruthLPBDiCt7iYMHqgQ0Jm_ita6c).

³⁷ See W.C. Durham, Jr., *The Coronavirus, The Compelling State Interest in Health, and Religious Autonomy*, cit.

³⁸ See A. Madera, *The Impact of Coronavirus on Public Funding of Religious Organizations*, in *Canopy Forum*, 2 October 2020, “*Law, Religion, and the Coronavirus in the United States: A Six-Month Assessment?*”, <https://canopyforum.org/2020/10/02/the-impact-of-coronavirus-on-public-funding-of-religious-organizations/>.

³⁹ See K.A. Brady, *Covid-19 and Restrictions on Religious Institutions: Constitutional Implications*, in *Canopy Forum*, 2 October 2020, “*Law, Religion, and the Coronavirus in the United States: A Six-Month Assessment?*”, <https://canopyforum.org/2020/10/02/covid-19-and-restrictions-on-religious-institutions-constitutional-implications/?fbclid=IwAR351bf2Z5t9eqRxlJW548cZ4vpxYYWb9NSWWI Z41PansCO-IsUcZWqC2HAK.A>.

⁴⁰ See *Prince v. Massachusetts*, 321 U.S. 158 (1944).

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long run, a pluralist and democratic society requires “narrowly tailored” measures and a careful monitoring of the effective health risk in different geographical contexts⁴¹, and the role of the courts is to properly balance the protection of public health and the claims for reasonable accommodation of religion of various religious groups, in order to prevent uncontrolled state discretion that arbitrarily discriminates primary religious needs⁴². According to Gorsuch’s words, “The world we inhabit today, with a pandemic upon us, poses unusual challenges. But there is no world in which the Constitution permits Nevada to favor Caesars Palace over Calvary Chapel”⁴³.

⁴¹ See K.A. Brady, *Covid-19 and Restrictions on Religious Institutions: Constitutional Implications*, cit.

⁴² See F. Sanei, *Re-Centering Religious Freedom v. Public Health Debate*, in *Canopy Forum*, cit.

⁴³ See [*Calvary Chapel Dayton Valley v. Steve Sisolak, Governor of Nevada, cit. \(Justice Gorsuch, dissenting opinion\)*](#).

STATE OF EMERGENCY AND RELIGIOUS FREEDOM: CONSTITUTIONAL STRESS IN GERMAN LAW (ART. 4 OF THE BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY)*

Stefano Testa Bappenheim

1. De qua agitur

The proliferation and spreading of the Covid-19 epidemic has meant that even in various European states, and not only in Italy, gatherings of people have been prohibited with the issuing of specific rules, which have also included community religious celebrations. This has resulted in a certain friction in various countries with the relative constitutional provisions for the protection of religious freedom. The case of a State that intervenes on religious functions depicts a complex and needy picture of specialists, thus calling into question the comparative ecclesiastical law which again, in the current situations, fulfilled the prophecy that saw it, for “the intermediate position within the juridical disciplines” and “the undeniable historical-political

* Submitted: 27th May 2020. Published: 1th June 2020. For ITA version [click here](#)

assumptions”, “not as a science in the process of exhaustion, but as a bank of evidence of the most delicate dogmatic problems”¹.

2. Introduction

The emergency rules issued in the various states have already been the subject of an appeal. The objection of unconstitutionality for violation of religious freedom was raised in Spain before the *Tribunal constitucional*²; in France, before the *Conseil d'État*³, and in Italy at the Lazio Regional Administrative Court⁴, while in Germany the issue has already come before the *Bundesverfassungsgericht* three times, on the basis of cases developed before the administrative jurisdictions. This shows how it is a problem common to countries that are very distinct and distant according to the Habermasian articulation of the three well-known paradigms: on the one hand the “absolute” secularism

¹ M. Tedeschi, *Sulla scienza del diritto ecclesiastico*, Giuffrè, Milan, 1987, p. 55; P. Consorti, *La scienza del diritto ecclesiastico in Germania*, in *qdpe*, 1992, pp. 119 ff.

² https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2020_048/NOTA%20INFORMATIVA%20N%C2%BA%2048-2020.pdf;
https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2020_048/P%202054-2020.pdf

³ Ordonnances nn. 440361, 440511, 440512, 440519, 440366 ss., 18 mai 2020, <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-rassemblements-dans-les-lieux-de-culte>

⁴ <https://www.centrostudilivaitino.it/ricorso-al-tar-lazio-contro-la-sospensione-delle-cerimonie-religiose/>

(French model)⁵, at the extreme, opposing the “open-minded” one (Italian-Hispanic model⁶, for various historical reasons), and, in the middle, the “neutralist” one (German-style).

This system presents a particularly complex constitutional framework for the protection of fundamental rights, conditioned partly by the emergency situation, foreseen by the constitutional rules, and partly by the principle of *Verhältnismäßigkeit* elaborated by the constitutional jurisprudence itself. As is known, the German *Grundgesetz* [*Basic Law for the Federal Republic of Germany*] contains, in the preamble, an explicit reference to God⁷, which is

⁵ See P. Consorti, *Dalla Francia una nuova idea di laicità per il nuovo anno*, in *Stato, Chiese e pluralismo confessionale*, Online Journal, (www.statoechiese.it), no. 1-2018; M. d’Arienzo, *La “religione della laicità” nella Costituzione francese*, in P. Becchi, V. Pacillo, *Sull’invocazione a Dio nella Costituzione federale e nelle Carte fondamentali europee*, Lugano, 2013, pp. 139 ff.; Eadem, *La laicità francese secondo Nicolas Sarkozy*, in *DeR*, 2008, pp. 257 ff.; Eadem, *La laicità francese: “aperta”, “positiva” o “im-positiva”?*, in *Stato, Chiese e pluralismo confessionale*, Online Journal, (www.statoechiese.it), 2011; P. Valdrini, *La ‘laicità positiva’. A proposito del discorso del Presidente Sarkozy al Laterano (20 dicembre 2007)*, in *Aa.Vv., Le sfide del diritto*, Rubbettino, Soveria Mannelli, 2009, pp. 409 ff.; Id., *Il principio di laicità nel diritto francese. Neutralità dello Stato e libertà dei cittadini*, in *Eph.*, 2015, pp. 39 ff.; P. Cavana, *Laicità, politica e religioni in Francia*, in *Iustitia*, 1998, IV, pp. 365 ff.

⁶ B. Pellistrandi, *Catolicismo e identidad nacional en España en el siglo XIX*, in P. Aubert (edited by), *Religión y sociedad en España*, Madrid, 2002, pp. 91 ff.; V. Carcél Ortí, *Historia de la Iglesia en la España contemporánea (siglos XIX y XX)*, Madrid, 2002, pp. 249 ss.; L. Diotallevi, *Religione, Chiesa e modernizzazione, il caso italiano*, Roma, 1999, passim; E. Galli Della Loggia, *L’identità italiana*, Bologna, 1998, passim; G.E. Rusconi, *La religione degli italiani - Religione civile e identità italiana*, in *Il Mulino*, 2003, 409, pp. 832 ff.

⁷ J. Ennuschat, *‘Gott’ und Grundgesetz*, in *NJW*, 1998, pp. 953 ff.; S. Testa Bappenheim, *‘Veluti si Deus Daretur’: Dio nell’ordinamento costituzionale tedesco*, in J.I. Arrieta (edited by), *Ius divinum*, Venice, 2010, pp. 253 ff.; P. Häberle, *Gott im Verfassungsstaat?*, in Id., *Rechtsvergleichung im Kraftfeld des*

moreover deeply rooted in the German cultural-historical milieu⁸ (and European one in general⁹).

On the basis of the *Gesetz zur Verhütung und Bekämpfung von Infektionskrankheiten beim Menschen (Infektionsschutzgesetz, IfSG, §§ 28 ff.)*¹⁰, the State can order restrictions and limitations also on constitutionally recognised fundamental rights, the implementation of which is then entrusted to the various *Länder* that act with their own regulations.

In this contribution we will address the judicial phenotypes produced in these two months, all revolving around the importance and relevance of the fundamental right of religious freedom even in conditions where its protection has been exposed to high levels of constitutional stress. Alongside the many ‘collective’ disputes, on the problem of the prohibition of religious celebrations with the presence of the faithful, however,

Verfassungsstaates, Berlin, 1992, p. 216; S. Mückl, *In der Welt, nicht von der Welt. (Staats) Kirchenrechtliche Implikationen einer Entweltlichung der Kirche*, in AA.VV., *Theologia Iuris Canonici. Festschrift für Ludger Müller zur Vollendung des 65. Lebensjahres*, Berlin, 2017, pp. 115 ff.

⁸ M. Thelemann, *Als die Germanen zu Christus kamen*, Stuttgart, 1934, pp. 73 ff.; W. Andreas, *Deutschland vor der Reformation: eine Zeitenwende*, Stuttgart, 1948, pp. 372 ff.; K. Stadtwald, *Roman Popes and German patriots: antipapalism in the politics of the german humanist movement from Gregor Heimburg to Martin Luther*, Geneva, 1996, pp. 82 ff.; F. Marti, *Il favor fidei in the ius novum*, in *IE*, 2014, pp. 359 ff.; M. D’Arienzo, *Il contributo del pensiero riformato del XVI secolo all’ermeneutica della laicità*, in *AGFS*, 2018, pp. 697 ff.; S. Testa Bappenheim, *Cenni sulla costituzionalizzazione delle radici cristiane in Germania*, in *IE*, 2006, pp. 755 ff.; J.I. Arrieta, *Le articolazioni delle istituzioni della Chiesa e i rapporti con le istituzioni politiche*, *ivi*, 2008, pp. 13 ff.

⁹ P. Bellini, *Respublica sub Deo. Il primato del Sacro nell’esperienza giuridica dell’Europa preumanista*, Firenze, 1981, *passim*.

¹⁰ <https://www.gesetze-im-internet.de/ifsg/ifsg.pdf>

there is also an ‘individual’ one, relating to personal spiritual assistance, which therefore, proceeding from the particular to the universal, we will address first.

3. *Spiritual assistance*

The intervention of the *Amtsgericht* of Altenburg, in Thuringia, was requested by a Lutheran minister of worship who wished to go to give spiritual assistance to his own parishioner, hospitalised with fever. It involved an eighty-nine year old woman, suffering from respiratory diseases considered incurable and undergoing palliative care, and the Lutheran pastor would go to visit her weekly, as a pastor with care of souls, having spiritual talks with her.

Thuringian regulatory provisions to combat coronavirus (*Zweite Thüringer Verordnung über erforderliche Maßnahmen zur Eindämmung der Ausbreitung des Coronavirus SARS-CoV-2*, more¹¹, briefly *2. ThürSARS-CoV-2-EindmaßnVO*)¹², however, have ‘sealed’ the places of treatment, preventing access even to ministers of worship, even if they were willing to comply with all the necessary health precautions to prevent contagion. The Court, questioned by the pastor, proved him right, on the assumption that his visits were not of a personal nature, but - says the sentence - constituted the exercise of a truly central element in the heart of

¹¹ AG Altenburg, judgement of 14 April 2020, no. 26/ar(bd)/24/20.

¹² Version of April 7, 2020, in <https://corona.thueringen.de/behoerden/ausgewaelte-verordnungen/>

the mission of a minister of worship¹³, particularly in times of epidemic, according to the example given by Martin Luther himself on the occasion of the bubonic plague epidemic in Wittemberg, in 1527¹⁴.

The afore-mentioned federal law on the health emergency explicitly provides that in the case of quarantine, the minister of worship engaged in the care of souls “must absolutely” always be admitted, in compliance with all the safety procedures, to visit the sick person (art. 30 paragraph 4), while ‘other persons’ (for example a psychologist, relatives, friends, etc.) “may” be accepted at the discretion of the attending physician. The judges observe that the care of souls constitutes the heart of the duties of Churches. For this reason the norm does not foresee any limitation that can be imposed on the minister of worship, to whom an absolute right is recognised, reflecting the right of religious freedom foreseen by art. 4 of the Basic Law for the Federal Republic of Germany. On these conceptual bases, the legislator of the coronavirus emergency, which has also tightened certain rules established by the *Infektionsschutzgesetz*, has left the rule in question unchanged.

The law is an expression of the pro-religious neutrality of the Basic Law for the Federal Republic of Germany¹⁵, which balances

¹³ See, for the general theoretical approach, P. Consorti, M. Morelli, *Codice dell'assistenza spirituale*, Giuffrè, Milano, 1993, passim

¹⁴ P. Consorti, *Introduzione*, in Id. (edited by), *Law, Religions and Covid-19 Emergency*, cit., p. 9.

¹⁵ See F. Fede, S. Testa Bappenheim, *Dalla laïcité di Parigi alla nominatio Dei di Berlino, passando per Roma*, Milano, 2007, pp. 39 ff.; J.T. Martin De Agar, *Libertà religiosa, uguaglianza e laicità*, in *IE*, 1995, pp. 199 ff.; A. Melloni, *Laïcité, mot fallacieux*, in *AA.VV.*, *Idee per una scuola laica*, Rome, 2007, pp. 49 ff.; A. Riccardi, *Cos'è (diventata) la laicità: una chiave di lettura*

the protection of collective health with the spiritual needs of those forced to quarantine, who can benefit from a relationship with the minister of worship.

This relationship between the quarantined faithful and the minister of worship cannot be subjected to any temporal limitation, and indeed must be facilitated, for example by making telephones or IT tools available.

Since federal law expressly provides for this absolute right to the spiritual assistant (without prejudice to the protection procedures: gowns, masks, gloves, etc.), it follows that the regulations of the individual *Länder* must comply with them, as it explicitly establishes the sentence, and therefore we can say that throughout Germany the fundamental right to spiritual assistance is recognised as immune from the effects of the quarantine, a segment of the multifaceted right to religious freedom pursuant to art. 4 of the Basic Law for the Federal Republic of Germany.

The same cannot be said, however, of the right to religious services, on which the jurisprudence, in the space of only two months, has been copious, constantly present, despite being an expression of the Courts of various and different *Länder*, and has already arrived three times before the Judges of Karlsruhe.

4. Compression, not infringement

storica per comprendere il pluralismo, in AA.VV., *Il filosofare per le religioni: un contributo laico al dialogo interreligioso*, Rubbettino, Soveria Mannelli, 2016, pp. 21 ff.

A Society of Berlin apostolic life of pontifical right¹⁶, linked to the celebration with the Extraordinary Rite¹⁷, presented an administrative appeal against the *Verordnung über erforderliche Maßnahmen zur Eindämmung der Ausbreitung des neuartigen Coronavirus SARS-CoV-2* (abbreviated to *SARS-CoV-2-Eindämmungsmaßnahmenverordnung*, or even *SARS-CoV-2-EindmaßnV*)¹⁸ of Berlin, which, in the context of the containment measures of Covid-19, while expressly allowing individual visits to places of worship, had at the same time prohibited religious celebrations open to the public, outdoors or indoors, as a harbinger of potentially dangerous gatherings.

¹⁶ <http://www.institut-philipp-neri.de/index.php>; on SVA, see S. Testa Bappenheim, *La vita fraterna. Fenotipi storico- canonistici dei consacrati a Dio*, Lecce, 2006, pp. 239 ff.; G.F. Ghirlanda, *Iter per l'approvazione degli istituti di vita consacrata a livello diocesano e pontificio e delle nuove norme di vita consacrata*, in *Periodica*, 2005, pp. 621 ff.; F. Puig, *La consacrazione religiosa. Virtualità e limiti della nozione teologica*, Milano, 2010, pp. 289 ff.; O. Condorelli, *Sul principio di sussidiarietà nell'ordinamento canonico: alcune considerazioni critiche*, in *DE*, 2003, pp. 942 ff.; L. Navarro, item *Incardinación*, in *Diccionario General de Derecho Canónico*, IV, Pamplona, 2012.

¹⁷ See, for the general theoretical approach, A.S. Sanchez-Gil, *Gli innovativi profili canonici del Motu proprio 'Summorum Pontificum' sull'uso della Liturgia romana anteriore alla riforma del 1970*, in *IE*, 2007, pp. 689 ff.; J. FOSTER, *Reflexiones canonicas acerca de Universae Ecclesiae, Instruccion sobre la Aplicacion de Summorum Pontificum*, in *IC*, 2012, pp. 191 ff.; J.M. Huels, *Reconciling The Old With The New Canonical Questions On Summorum Pontificum*, in *The Jurist*, 2008, pp. 92 ff.; C.J. Glendinning, *The significance of the liturgical reforms prior to the second Vatican council in light of Summorum Pontificum*, in *SC*, 2010, pp. 293 ff.; J. Miñambres, *Attribuzione di facoltà e competenze alla Commissione "Ecclesia Dei"*, in *IE*, 1991, pp. 341 ff.

¹⁸ https://lexcorona.de/lib/exe/fetch.php?media=rechtsakteland:berlin:ber_eindammungsmasnahmenvo-nach-senat-2020-03-22.pdf

Constitutional stress in German Law

The application was rejected by the *Verwaltungsgericht* of Berlin, as the prohibition to participate in public religious celebrations certainly constitutes a compression, but not a violation of the right to religious freedom, as it is a proportional balance with other fundamental rights, also recognised by the Basic Law for the Federal Republic of Germany, such as the right to life and physical integrity, pursuant to art. 2 paragraph II of the Basic Law for the Federal Republic of Germany.

The Basic Law for the Federal Republic of Germany, moreover, provides for a state of emergency, with the constitutionally legitimate possibility of compressing, for a limited period of time, in the face of an absolutely emergency situation, certain fundamental rights, concentrating the forces to guarantee the vital energies necessary for the survival of the State, which is the foundation, with its existence, of all guarantees and protection for all fundamental rights; the compression of the right to religious freedom is also admissible because it is partial, as both the possibility of going individually to pray in places of worship and that of attending religious services via television or via the Internet is always permitted¹⁹.

The SVA appealed before the Berlin-Brandenburg *Oberverwaltungsgericht*, whose 11th Senate confirmed the day after the outcome of the first instance, placing the principle of *Verhältnismäßigkeit*, proportionality, as *ubi consistam* of its reasoning; the fact that the right to religious freedom, pursuant to art. 4 paragraphs I and II of the Basic Law for the Federal Republic of Germany, is affected by the contested measures is beyond doubt. It is in any case necessary to establish whether it is

¹⁹ VG Berlin, ordinance of 7 April 2020, no. 14/L/32/20.

subject to compression, as deemed in the first instance judgement, or a violation or aggression, as the appellants claim²⁰.

For the Berlin-Brandenburg Higher Regional Court, the limitation measure is not preordained in order to compress religious freedom, but this compression is the indirect result of very general measures aimed at limiting the spread of the coronavirus, i.e. measures in compliance with art. 2 paragraph II of the Basic Law for the Federal Republic of Germany, that is the protection of life and physical integrity, which are also constitutional rights that could not have been achieved otherwise.

The right to religious freedom, the Court states, has not been harmed: because there was no intention of it, because places of worship have always remained open to allow people to enter to pray, and finally because it is possible, and indeed it is seen that religious communities have made extensive use of the streaming transmission of religious services. If therefore religious celebrations continued to be celebrated and seen by the faithful, and the latter continued to be able to go to their buildings of worship for prayer, taking into account the emergency situation, we can say that the restrictive measures did not affect the substance of religious freedom, but rather its methods of organisation, which undoubtedly underwent such a forced disarticulation, though limited in scope and duration.

The Administrative Court of Appeal, then, concludes that freedom of religion can also be limited in the event of a collision with fundamental rights of third parties, or collective rights of constitutional rank, but it is, in fact, a limitation-compression, in the sense that, apart from the cases mentioned above, the right to

²⁰ OVG Berlin-Brandenburg, judgement of 8 April 2020, no. 11/S/21/20.

religious freedom expands again; this orientation is shared by the Leipzig Administrative Court²¹, called to judge an appeal against art. 7 letter a of the ad hoc legislation of Saxony²².

5. Health protection (art. 2 of the Basic Law for the Federal Republic of Germany)

The reasoning explained by the Hamburg Administrative Court²³, which was called to pronounce on the appeal against the *Verordnung zur Eindämmung der Ausbreitung des Coronavirus SARS-CoV-2 in der Freien und Hansestadt Hamburg (HmbSARS-CoV-2-EindämmungsVO)*, is more detailed and complex³⁷, in § 2, no. 1, a general prohibition of demonstrations and meetings, public or non-public, expressly also referring to churches, mosques, synagogues and other religious denominations: hence the appeal for violation of religious freedom pursuant to art. 4 of the Basic Law for the Federal Republic of Germany²⁴.

For the judge of Hamburg, religious freedom protected pursuant to art. 4 of the Basic Law for the Federal Republic of Germany certainly also includes participation in community religious functions, public or non-public, however religious freedom is not without limits: since art. 4, paragraphs 1 and 2, of the Basic Law for the Federal Republic of Germany does not

²¹ VG Leipzig, judgement of 3 April 2020, no. 3/L/182/20.

²² https://www.coronavirus.sachsen.de/download/20-03-31/AllgV-VeranS_Verbot-von-Veranstaltungen.pdf

²³ VG Hamburg, judgement of 9 April 2020, no. 9/E/1605/20.

²⁴ <https://www.hamburg.de/rechtsverordnungen/13876036/2020-04-24-rechtsverordnung/>

foresee specific limits, they must be inferred from the Basic Law for the Federal Republic of Germany itself, and are the fundamental rights of third parties and those of the community.

The applicant claimed that religious freedom, i.e. art. 4 of the Basic Law for the Federal Republic of Germany, had been violated because the prevalence of art. 2 of the Basic Law for the Federal Republic of Germany had been applied to the closure of places of worship and not also to supermarkets, whose opening has continued to be allowed, but the Hamburg Regional Court clearly refuted this topic. On the basis of scientific evidence, in fact, the risk of contagion rises exponentially when being in contact for more than 15 minutes with a sick person. In the case of the supermarket, however, as it is a place where people move about, it is very unlikely to be constantly in the vicinity of a sick person for 15 minutes, while in a religious building, on the occasion of a religious function, people remain in their places for the duration of the rite. For this reason there is a substantial difference between the danger rate of contagion in supermarkets and that in places of worship, which justifies, on the basis of the protection of the fundamental right to health and physical integrity, the compression of the right to religious freedom.

The applicants then claimed that these prohibitions would deprive them of the possibility of celebrating Easter, a central solemnity in the Christian religion and not postponed to another date, which would constitute a double injury to their fundamental right to religious freedom.

According to the Hamburg Regional Court, however, the compression of the right to religious freedom, which certainly exists, however, was not so intolerable, concerning only a subset thereof, that is, that of community participation in religious

celebrations, given that, in effect, the faithful maintain full freedom to practice their religion in a different way, with individual prayer, at home or by going individually to places of worship, and religious celebrations themselves are not denied to them *in full*, their *streaming* transmission being possible and indeed organised by the ministers of worship themselves. It is understandable that this is not a perfectly equivalent substitute, however it is suitable to compensate for the limitations imposed by the special regulations for the epidemic emergency.

6. *Human dignity (art.1 of the Basic Law for the Federal Republic of Germany)*

The Weimar Higher Regional Court²⁵, which dismissed an appeal against the *Zweite Thüringer Verordnung über erforderliche Maßnahmen zur Eindämmung der Ausbreitung des Coronavirus SARS-CoV-2* (2. *ThürSARS-CoV-2-EindmaßnVO*)²⁶, prohibited, pursuant to § 3 no. 1, meetings and gatherings of more than two people, explicitly specifying how this prohibition also extended to churches, mosques, synagogues and to the buildings of worship of other religious denominations and philosophical organisations.

The applicant claimed that this prohibition, not including exceptions for religious services even at Easter, a very important Christian holiday, violated not only art. 4 of the Basic Law for the Federal Republic of Germany, but - as religious freedom is an expression of human dignity - also art. 1 of the Basic Law for the

²⁵ OVG Thüringen, judgement of 9 April 2020, no. 3/EN/238/20.

²⁶ <https://corona.thueringen.de/behoerden/ausgewaehlte-verordnungen>

Federal Republic of Germany, which precisely protects it, so that religious freedom should be evaluated as pre-eminent with respect to other fundamental rights, given that precisely metaphysical thought - religious, atheist or philosophical in general - is a specific characteristic of man.

This new topic, namely religious freedom as a phenotype of human dignity, and therefore also protected by art. 1 of the Basic Law for the Federal Republic of Germany, is not contested by the Higher Regional Court, which however develops a more pragmatic reasoning. Fundamental rights in general, and those defined by the Basic Law for the Federal Republic of Germany in particular, are not self-fulfilling, but need a state apparatus that guarantees and defends them. So, before asking if the right to religious freedom, being a phenotype of an anthropological *quid peculiaris*, also falls within the protection of human dignity pursuant to art. 1 of the Basic Law for the Federal Republic of Germany, and therefore prevails over art. 2 of the Basic Law for the Federal Republic of Germany which protects health and physical integrity, it is necessary and appropriate to recognise that no fundamental right can be concretely enforced without an efficient state apparatus. Therefore, in an epidemic situation, the objective contemplated by art. 2 of the Basic Law for the Federal Republic of Germany, being in the absence of protection of health and physical integrity, the epidemic could spread also affecting the state apparatus, weakening its structure and causing the collapse of the health system. The result would be to make it impossible to protect any fundamental right.

The prevalence of art. 2 of the Basic Law for the Federal Republic of Germany is not based so much on the fact that the right to health and physical integrity is genotypically more

important than the other fundamental rights, as on the fact that its phenotype allows the survival of the state apparatus. In any case, the prevalence of art. 2 does not admit the violation of art. 4 of the Basic Law for the Federal Republic of Germany, which in fact has not been violated, but only suspended in its operating methods. The ministers of worship can continue to celebrate religious services, the faithful can attend them through modern digital media, and they can attend places of worship, as these modes do not contravene the general prohibition of assembly. Moreover, for decades religious confessions have also resorted, in ordinary times and conditions, to the transmission of their rites via television or via the web²⁷, therefore it is legitimate to believe that they themselves do not recognise the physical presence of the faithful as essential to the rite.

7. *Lack of legitimacy*

In Lower Saxony, an appeal was made against local provisions complaining that they prevented the celebration of Easter and Pesah fittingly. The XV Section of the Hannover Regional Court²⁸ rejected the appeal with the well-known argument of compression and non-violation of art. 4 of the Basic Law for the Federal Republic of Germany, also justified pursuant

²⁷ See P. Consorti, *Liturgia e diritto. Conseguenze giuridiche della riaffermazione del Magnum principium per cui la preghiera liturgica deve essere capita dal popolo*, in *RL*, 2019, pp. 37 ff.; M.G. Belgiorno De Stefano, *La parrocchia prima e dopo il Concilio Vaticano II*, in *AA.VV., Studi in onore di P.A. D'Avack*, I, Milan, 1976, pp. 206 ff.

²⁸ VG Hannover, judgement of 7 April 2020, no. 15/B/2112/20.

to. Art. 2 of the Basic Law for the Federal Republic of Germany. However, the ruling also introduced a new topic, relating to the active procedural legitimacy, signalling the absence of the title to act for the individual faithful, given that they can go individually to places of worship and can attend religious services broadcast via web or via television. They cannot participate personally, but this limit depends on the absence of celebrations offered by the religious denominations themselves, which have been forbidden from celebrating community religious functions, and who would be entitled to take legal action in this regard.

8. The right of assembly (art. 8 of the Basic Law for the Federal Republic of Germany)

Another interesting perspective is outlined by the Hessian Higher Administrative Court²⁹, which shifts the issue out of the perimeter of religious freedom. The appeal was filed against the *Vierte Verordnung zur Bekämpfung des Corona-Virus*, which, pursuant to § 1, prohibits community celebrations in churches, mosques, synagogues and in the buildings of worship of other religious denominations, but allows these buildings to remain open i.e. recognises the right of all religious communities to practice “alternative forms” of religious celebrations and rites, which do not require gatherings of people, suggesting “the transmission of religious services via the Internet”³⁰.

²⁹ VGH Hessen, judgement of 7 April 2020, no. 8/B/892/20-N.

³⁰ https://lexcorona.de/lib/exe/fetch.php?media=rechtsakteland:hessen:lesefassung_4.coronavo_0.pdf

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The Administrative Court recognises the exceptional limitation of the fundamental right of religious freedom, which however it considers proportional to the prevailing protection pursuant to art. 2 of the Basic Law for the Federal Republic of Germany but observes some peculiarities. First, it signals the lack of active legitimacy of the applicant, given that he is a Roman Catholic from the diocese of Limburg, whose Bishop had decreed the suspension of all community religious functions even before the Land law was issued³¹. Secondly, it considers the possible violation of art. 8 of the Basic Law for the Federal Republic of Germany, which generally protects the freedom of assembly, with respect to which religious celebrations are a type. Gatherings, it goes without saying, are banned to prevent contagion.

9. The arguments

The latter orientation is also partially adopted by the *Verwaltungsgerichtshof* of Bavaria³², where the law provides for the general prohibition of meetings and assemblies, explicitly declared also applicable to churches, mosques, synagogues and places of worship of other religious denominations, except for exceptions granted by the competent civil authorities. A Roman Catholic believer brought a dispute, claiming his religious freedom pursuant to art. 4 days and art. 107 BayVf, contesting both the general prohibition, which the applicant claimed was unjustified

³¹ <https://main-taunus.bistumlimburg.de/beitrag/alle-oeffentlichen-gottesdienste-abgesagt-4>

³² VGH München, ordinance of 9 April 2020, no. 20/NE/20704

because the community religious functions could have been organised with health checks and reservations by telephone or via app, and against the absence of an exception, admissible on the basis of the legislation itself. In his opinion, the ban on attending Sunday Mass was a violation of religious freedom, but that of attending Masses on Easter solemnities constituted a double violation³³.

The appeal was dismissed for lack of active legitimacy and *petitum*, as all 27 German dioceses have taken autonomous protection measures against the epidemic, including in almost all the suspension of the precept of Sunday Mass and, in general, of all community religious celebrations³⁴. In addition, the Archdiocese of München und Freising had already suspended all Community religious celebrations³⁵ on 13 March, and until 3 April, that is, before the disputed provision, and on 2 April with a general decree, pursuant to can. 29 CIC, immediately in force

³³ <https://www.verkuendung-bayern.de/baymbl/2020-158/>

³⁴ J.-P. Schoupe, item *Suspensión de derechos*, in *Diccionario General de Derecho Canónico*, VII, Pamplona, 2012; E. Baura, *Atto amministrativo e limitazione dei diritti*, in J.I. Arrieta (edited by), *Discrezionalità e discernimento nel governo della Chiesa*, Venezia, 2008, pp. 187 ff.; C.J. Errázuriz, *La dimensione giuridica della configurazione e della realizzazione della liturgia cattolica*, in Aa.Vv., *Libro de Amigos dedicado al Profesor Carlos Salinas*, Santiago de Chile, 2018, pp. 137 ff.; M. Del Pozzo, *Autorità ecclesiastica e diritti dei fedeli nella liturgia*, in Aa.Vv., *Diritto e norma nella liturgia*, Milan, 2016, pp. 111 ff.; J. Llobell, *Note minime sulla distinzione fra l'«atto amministrativo» e l'«atto «non amministrativo» dell'Amministrazione»*, in *IE*, 2015, pp. 625 ff.

³⁵ <https://www.erzbistum-muenchen.de/news/bistum/Erzbistum-sagt-alle-oeffnuellen-Gottesdienste-ab-36411.news>

pursuant to can. 8 § 2 CIC³⁶49, had extended this suspension until 19 April, that is until after Easter.

10. The comparison with supermarkets

The problem raised by the prohibitions towards gatherings has also affected the Islamic communities: that of Lower Saxony challenged the legislation (*Niedersächsischen Verordnung zum Schutz vor Neuinfektionen mit dem Corona-Virus*) which provided for the now well-known prohibition of gatherings in churches, mosques, synagogues and in the buildings of worship of other religious denominations. The applicant association stated however that this prohibition constituted a violation of both the right to religious freedom pursuant to art. 4 of the Basic Law for the Federal Republic of Germany, expected in his case which prevented the community celebration of Ramadan, and of the fundamental right to equality, pursuant to art. 3 paragraph 1 of the Basic Law for the Federal Republic of Germany, as it instituted a categorical and absolute prohibition of assembly of all kinds for places of worship, while it allowed it - respecting the reciprocal distance of 1.5 meters - for constitutionally less protected assembly

³⁶ "Donnerstag, 2. April 2020: Allgemeines Dekret von Kardinal Reinhard Marx, Erzbischof von München und Freising", in <https://www.erzbistum-muenchen.de/im-blick/coronavirus>.

situations, such as for example, was happening for the queues in front of flower shops or car dealers, etc.³⁷

The Higher Regional Court of Lüneburg dismissed the appeal: *firstly* because the ban concerned only two Fridays of the month of fasting, therefore the right to religious freedom was only included and temporally limited and proportionate; *secondly*, because the prohibition involved only the expression of collective religious freedom, since the mosques were open and forms of general spiritual assistance could be exercised, pursuant to § 3 no. 13, those to persons at risk of death, pursuant to § 3 no. 12 a, outdoor religious services, respecting the minimum distance of one meter and fifty cm, pursuant to § 2 no. 2.

11. The BVerfG [Federal Constitutional Court]: religious freedom can undergo compressions only if proportionate to the purpose

As was probably foreseeable, the matter went as far as the *Bundesverfassungsgericht*, before which it was raised several times: first the judges of Karlsruhe were asked for an emergency measure to annul the sentence of 7 April of the *Verwaltungsgerichtshof* of Hesse (see above) relating to § 1 paragraph 5 of the *Vierte Verordnung zur Bekämpfung des Corona-Virus*: the applicant, as we have already seen, declaring that he is a practising Catholic, complained that the *Vierte Verordnung* made it impossible for him to attend Mass and particular religious rites specific to the Holy Week, and considered the limitations

³⁷ <https://www.niedersachsen.de/Coronavirus/vorschriften-der-landesregierung-185856.html>

imposed on the exercise of the fundamental right of religious freedom pursuant to art. 4 of the Basic Law for the Federal Republic of Germany to be disproportionate, and therefore unconstitutional.

The *BVerfG* [*Federal Constitutional Court*] rejected³⁸ the application for an emergency measure, recognising it admissible but refuting it on the merits, because, it stated, if it accepted it and then reopened it for the celebration of Community Masses (but, more generally, for community religious functions of any confession religious), it would cause an enormous increase in the risk of infection, with the already reported certain consequence of an overload of the national health system, including the extreme risk of its collapse. Moreover, the Court considered the limitation proportionate pursuant to art. 2, the *BVerfG* [*Federal Constitutional Court*], given that it is temporary and limited to a set deadline.

A second request for emergency measures was presented to the *BVerfG* [*Federal Constitutional Court*] by the already well-known SVA of pontifical law in Berlin, which asked Karlsruhe to ascertain that the hypothesis of unconstitutionality of the *Coronavirus-Eindämmungsverordnung* was not clearly unfounded, for violation of art. 4 of the Basic Law for the Federal Republic of Germany, and to issue a suspension, pending an in-depth judgement, pursuant to art. 32 paragraph 1 of the Basic Law for the Federal Republic of Germany.

The *Bundesverfassungsgericht* declared³⁹ an urgent appeal admissible but noted that granting of the ‘suspension’ could harm

³⁸ BVerfG, ordinance of the Second Chamber of the First Senate, 10 April 2020, no. 1/BVQ/28/20

³⁹ BVerfG, ordinance of the Second Chamber of the First Senate, 10 April 2020, no. 1/BVQ/31/20.

another constitutionally guaranteed right, namely that of health and physical integrity, pursuant to art. 2 paragraph 2 of the Basic Law for the Federal Republic of Germany, with risks that would reverberate on people (possible increase in the spread of contagion, of sick people, of the dead), and on the state apparatus, which could collapse. The *Bundesverfassungsgericht* recognised the compression of rights under art. 4 of the Basic Law for the Federal Republic of Germany, but considered it proportionate to the contingent necessity, given that the prohibition is temporary, subject to a pre-established deadline and any extension would require a further rigorous examination of the persistence of proportionality.

To date, the last case submitted to the Judges of Karlsruhe concerned the legislation of Lower Saxony, against which the applicant Islamic association had already unsuccessfully filed administrative appeals (see *above*). Before the Constitutional Court the association requested a suspension of the general prohibition without the possibility of exceptions, and presented a series of precautionary measures that would be adopted to prevent contagion⁴⁰. On the basis of these elements, the *BVerfG* [*Federal*

⁴⁰ That the association says it is willing to take to make Friday prayers in the mosque possible during the month of Ramadan: minimum distance of 1.5 meters between the faithful, ensured by marking out appropriate signs on the floor; maximum presence of 24 participants in a 300-person mosque; nominative invitations to individual participants with indication of the time, in order to avoid queuing outside; ritual washing before entering performed with antibacterial soap; mask requirement for faithful participants; dispenser with disinfectant at the entrance; disinfection of handles, doors, etc. after each 'shift' of 24 faithful; mosque with all doors wide open to ensure maximum ventilation; mandatory ban (already provided by ordinary Islamic rules, but applied with particular rigor) for

Constitutional Court] accepted the applicant's request, cancelling the part of the ordinance of Lower Saxony which excluded a priori possible exceptions to the ban on community religious celebrations: the Court considers this ban still admissible insofar as it refers to the simultaneous reopening of all mosques, cancelling only the part in which it excludes the possibility that the Public Authority may grant exceptions to individuals and specific religious buildings, after an in-depth assessment of the circumstances conducted with the responsible Health Authority; if the religious community requesting the exception could provide guarantees that the Authorities considered such as to exclude the risk of spreading of the virus, the principle of proportionality that justifies the compression of art. 4 of the Basic Law for the Federal Republic of Germany for the benefit of art. 2 of the Basic Law for the Federal Republic of Germany would be removed⁴¹.

12. Religious freedom between state of emergency and proportionality

All the judgements issued regarding the provisions that prohibit community religious celebrations have recognised the suffering of art. 4 of the Basic Law for the Federal Republic of Germany, also establishing at the same time that compression is possible on the basis of two constitutional parameters: the rules

sick people to participate; ritual with the only prayer of the imam, without spoken interventions of the faithful, to avoid – despite the mask – the risk of spreading the virus

⁴¹ BVerfG, ordinance of the Second Chamber of the First Senate, 29 April 2020, no. 1/BVQ/44/20.

on the state of emergency (*Notstand*) and the principle of proportionality (*Verhältnismäßigkeit*)⁴².

Not introduced *ab initio* due to the terrible results produced by art. 48 of the Weimar Constitution, from 1968 onwards a number of framework rules relating to specific emergencies, exogenous or endogenous, were added to the Basic Law for the Federal Republic of Germany, which have the specific purpose of protecting the existence and institutional survival of the democratic and liberal system of federal government and of the individual Länder.

The emergency rules are not grouped neatly, but, having been added later to the original system, are scattered throughout the Basic Law for the Federal Republic of Germany, and, as a counterbalance, the right of resistance (*Widerstandrecht*) was simultaneously inserted, pursuant to art. 20 paragraph 4 of the Basic Law for the Federal Republic of Germany⁴³.

We have, therefore, exogenous emergencies: an armed attack on the federal territory, underway or certainly imminent (state of defence, or *Verteidigungsfall*), pursuant to art. 115 of the Basic Law for the Federal Republic of Germany⁴⁴, or very likely following an

⁴² L. Hirschberg, *Der Grundsatz der Verhältnismäßigkeit*, Göttingen, 1981, pp. 50 ff.; A. Heusch, *Der Grundsatz der Verhältnismäßigkeit im Staatsorganisationsrecht*, Berlin, 2003, pp. 37 ff.

⁴³ H.D. Jarass, B. Pieroth (eds.), *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, München, 2019, art. 20; V. Epping, C. Hillgruber, P. Axer, H. Radtke (eds.), *Grundgesetz: Kommentar*, München, 2020, art. 20.

⁴⁴ H.D. Jarass, B. Pieroth (eds.), *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, *cit.*, Art. 115 a; V. Epping, C. Hillgruber, P. Axer, H. Radtke (eds.), *Grundgesetz: Kommentar*, *cit.*, art. 115 a; A. Woditschka, *Das Weisungsrecht der Bundesregierung im Verteidigungsfall nach Artikel 115f Abs. 1 Nr. 2 Grundgesetz*, Hamburg, 2017, pp. 41 ff.

unresolved foreign policy crisis (state of tension, or *Spannungsfall*), pursuant to articles 80a and 12a of the Basic Law for the Federal Republic of Germany. Here the state of emergency for national defence is approved by the Bundestag with a two-thirds majority, at the request of the Federal Government. It also needs the approval of the *Bundesrat* and is announced by the Federal President in the Official Journal⁴⁵.

The command of the Armed Forces (and conscientious objectors in civil service⁴⁶, pursuant to art.12a of the Basic Law for the Federal Republic of Germany⁴⁷), passes to the Chancellor. In wartime the *Bundestag* and *Bundesrat* do not stop their activity with new elections, but the powers of the *Bundesverfassungsgericht* are not suspended.

Then there are the cases of endogenous emergencies, which can be the threat to the existence or to the liberal and democratic fundamental order of the Bund or of a single Land, art. 91⁴⁸ of the Basic Law for the Federal Republic of Germany, and the threat to public security and public order, or a natural catastrophe

⁴⁵ See, for the general theoretical approach, F. Fede, *Il Capo dello Stato "arbitro" istituzionale*, in *GC*, 1997, pp. 1167 ff.

⁴⁶ P. Consorti, *Il servizio civile volontario come forma di difesa della Patria*, in *Reg.*, 2005, pp. 549 ff.; M.G. Belgiorno De Stefano, *L'obiezione di coscienza al militare, diritto inviolabile dell'uomo e del cristiano*, in *Aa.Vv.*, Writings in honour of P. Gismondi, Milan, 1991, I, pp. 33 ff.; M. Impagliazzo, *Guerra e religione nel Novecento*, in *Aa.Vv.*, *Le guerre in un mondo globale*, Rome, 22017, pp. 277 ff.

⁴⁷ H.D. Jarass, B. Pieroth (eds.), *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, cit., Art. 12 a; V. Epping, C. Hillgruber, P. Axer, H. Radtke (eds.), *Grundgesetz: Kommentar*, cit., art. 12 a.

⁴⁸ H.D. Jarass, B. Pieroth (eds.), *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, cit., Art. 91; V. Epping, C. Hillgruber, P. Axer, H. Radtke (eds.), *Grundgesetz: Kommentar*, cit., art. 91.

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or disaster of another nature, which threaten a single Land, plus Länder or the Federation as a whole (art. 35 paragraphs 2 and 3 of the Basic Law for the Federal Republic of Germany⁴⁹), and in these cases it is expressly provided that there may be limitations on personal freedoms.

The emergency legislation examined here can certainly be included in this second group of endogenous cases: an epidemic that affects all the Länder and that threatens to bring down the national health system, overloading it with patients, and endangering the survival of the Bund, infecting and therefore making medical and police personnel at least temporarily unavailable, i.e. the forces directly exposed on the front lines in dealing with and trying to contain the epidemic⁵⁰.

Here we associate art. 19⁵¹ of the Basic Law for the Federal Republic of Germany, according to which a fundamental right can be limited with an ordinary law, or even by another type of legislation that is always based on a law, provided that this limitation is general and not specifically directed towards a single case (paragraph 1), and in no case can a fundamental right be infringed in its ontologically essential components (paragraph 2).

Then, finally, the proportionality principle (*Verhältnismäßigkeitsprinzip*), the result of the combined provision

⁴⁹ H.D. Jarass, B. Pieroth (eds.), *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, cit., Art. 35; V. Epping, C. Hillgruber, P. Axer, H. Radtke (eds.), *Grundgesetz: Kommentar*, cit., art. 35.

⁵⁰ J. Von Kalckreuth, *Die Sicherstellung medizinischer Versorgung in Katastrophen: Forderungen an Staat u. Ärzteschaft für Katastrophen-, Krisen- u. Verteidigungsfall*, Baden-Baden, 1988, pp. 72 ff.

⁵¹ H.D. Jarass, B. Pieroth (eds.), *Grundgesetz für die Bundesrepublik Deutschland: Kommentar*, cit., Art. 19; V. Epping, C. Hillgruber, P. Axer, H. Radtke (eds.), *Grundgesetz: Kommentar*, cit., art. 19.

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of art. 1 paragraph 3 and art. 20 paragraph 3 of the Basic Law for the Federal Republic of Germany, is particularly important in evaluating regulations that interfere with the fundamental rights guaranteed by the Basic Law for the Federal Republic of Germany. The interferences of the legislator, in fact, are only admissible if:

- I) they have a legitimate purpose,
- II) they are suitable for its achievement,
- III) they are the only means available to achieve it, and
- IV) this achievement brings more advantages than disadvantages.

Many judgements of the administrative jurisdictions, as we have seen, balance the right to health, pursuant to art. 2 of the Basic Law for the Federal Republic of Germany, but this in itself would not be sufficient, because it would not constitute an emergency situation, and in fact the *BVerfG* [*Federal Constitutional Court*] added another element: the protection of the national health system, which, if it collapsed because it had been overwhelmed by the epidemic, could constitute one of the collapse factors of the entire system.

It therefore seems that it cannot be stated that religious freedom, and therefore art. 4 of the Basic Law for the Federal Republic of Germany, can, if not sacrificeable then at least be subordinated to other fundamental rights, thus making it *de facto* a fundamental but not very fundamental right, or of series b, but that all fundamental rights at the same level can be frozen and suspended in the face of a situation of emergency, envisaged by the Basic Law for the Federal Republic of Germany, provided that this suspension is proportionate, which also implies a limited duration in time. Therefore, in the very latest analysis, there would

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be version 2.0 of the *Videant consules ne quid res publica detrimenti capiat*.

RELIGIOUS LAW AND INTERRELIGIOUS DIALOGUE

THE “ON THE ROAD” RECONCILIATION. A WAY TO DEAL WITH THE PANDEMIC*

Daniela Tarantino

1. *The Sacrament of Reconciliation*

The current pandemic state limits severely gatherings and participation in liturgies and sacramentals. The Catholic Church has worked to find ways and times to answer to the Covid-19 emergency. In order to pursue the *salus animarum*¹ – according to the “signs of the times” - the forms of exercise of the *munera ecclesiae* has been adapted², first of all those related to the *munus sanctificandi*, since they demonstrate the efforts to be close to the people of God, who demands of an ongoing “sociality” m that is wounded by the pandemic³.

* Submitted: 4th July 2020. Published: 9th July 2020.

¹ On the concept of *salus animarum* see the contributions present in *Ius Ecclesiae*, 12/2000, pp. 291-529.

² For further information on the munus, officium and ministerium relationship and on the theological-juridical roots of these notions, see S. Violi, *Officium e munus tra ordinamento canonico e comunione ecclesiale*, in *Stato, Chiesa e pluralismo confessionale*, *Online Journal*, (www.statoe_chiesa.it), no. 31-2019, pp. 1-32.

³ See D. Tarantino, “Eppur si muove”. *La socialità del diritto canonico tra ieri e domani*, in P. Consorti (a cura di), *Costituzione, religione e cambiamenti nel diritto e nella società*, Pisa University Press, Pisa, 2019, p. 218.

In this context, the sacrament of Reconciliation is of central importance, as it highlights the inseparable link between the formal and the substantive aspects of law, particularly in a legal system that has flexibility tools capable of applying the *aequitas* as a means of updating it⁴. The present circumstances made the sacrament of reconciliation even more necessary, stimulating the Church to recover ancient and exceptional forms of administration and at the same time to develop new ones. According to the norm of can. 960 of the *Codex Iuris Canonici*, the ordinary way of celebration of this sacrament remains the individual confession, but it is recalled that a collective absolution can be given where the imminent danger of death or a serious need occur (can. 961, CIC). This possibility is granted at the discretion of the diocesan bishop, who must take into account the criteria eventually established by the Episcopal Conference⁵. The absolution will be valid only if the penitent promises to confess his or her every single serious sins at the first opportunity (can. 962, § 1 CIC)⁶. The «Protocol on the resumption of celebrations with the people» signed on May 7th 2020 between

⁴ On this point see B. J. Berkmann, *La codificazione del diritto compromette la sua flessibilità? Il diritto canonico comparato con altri diritti religiosi*, in *Stato, Chiesa e pluralismo confessionale*, Online Journal, (www.statochiese.it), no. 28-2017, pp. 14-15.

⁵ For further information on the topic, see lastly S. Testa Bappenheim, *Does the Covid-19 pandemic authorize the derogation from the canonical rule of absolution necessarily preceded by individual confession? (canon 961cic)*, in P. Consorti (ed.), *Law, Religion and Covid-19 emergency*, DiReSoM Papers, 1, Pisa, 2020, pp. 221-250.

⁶ Echoing forms of reconciliation of medieval memory, the priest, if necessary, can also impart the general sacramental absolution, forewarning the diocesan bishop or in any case, if this is not practicable, informing him as soon as possible (see *Ordo Paenitentiae*, no. 32).

The “On the road” reconciliation

the Episcopal Italian Conference and the Italian Government is established that from May 18th the sacrament of confession can be administered «in large and airy places», which allow «full respect for the distancing measures and the confidentiality required by the sacrament itself»: the penitent and the confessors must both wear a surgical mask⁷. This is an exception to the can. 964 § 1, which states: «the proper place to hear sacramental confessions is a church or oratory»⁸. The Episcopal Italian Conference has “promoted”, or at least not hindered, the search for “alternative” forms of carrying out to perform, to celebrate the confession, that can be useful also other future emergencies that may make the ordinary administration of the sacrament of penance difficult.

2. *The drive-confession and the confessional seal*

This is the case of the *drive-confession*, an idea conceived in a city in Maryland, in the United States, where Father Scott Holmer, a priest of the Catholic Church of St. Edward the Confessor, in the city of Bowie, began to confess the penitents faithful through the windows of their cars, parked in the church courtyard⁹. From the United States the idea spread to Europe, arriving first in Poland and then in France. In Warsaw the priest Mateusz Kielarski of the Temple of Divine Providence, as well as Father Adam Pawlowski,

⁷ See Ministero dell’Interno, *Protocollo circa la ripresa delle celebrazioni con il popolo*, in www.DiRe.SoM.net.

⁸ Can. 964, § 1.

⁹ See *Confessioni stile “drive in” per evitare il contagio da Coronavirus*, in www.commentimemorabili.it.

parish priest of Rogalin in the Poznan region¹⁰, and in France father David de Lestapis, parish priest of the parish Saint Jean-Paul II and his vicar father Vincent Poitau did the same, positioning themselves under a tent mounted for the occasion, under which they stopped with the engine off in front of the specially prepared cages, without therefore having to move from their car interior¹¹.

The «on the road» confession is certainly an unprecedented method of administering the sacrament, which however maintains the simultaneous physical presence of both the penitent and the confessor. More daring is the method suggested by Mons. Reinaldo Nann, Peruvian bishop of the Prelature of Caravelí, who authorized priests to celebrate confessions by telephone, emphasizing on reconciliation as “medicine of the soul”, and therefore underlining that the confessor is a *medicus animarum* as well as a *iudex peccatorum*¹². In Bergamo, one of the Italian cities most

¹⁰ These from the cockpit of their car can also listen to liturgical music played by employees and leaning out of the window they can confess and receive absolution from their sins (see *Coronavirus, in Polonia confessioni in auto in modalità drive-in*, in www.tg24.sky.it). On the subject see also Cf. *Confessioni stile “drive in” per evitare il contagio da Coronavirus*, in www.commentimemorabili.it.

¹¹ See T. Dhellemmes, *Scoprite la “Drive Confession” di Limoges*, in www.aleteia.org.

¹² *Il vescovo peruviano autorizza la confessione per telefono*, in www.religiondigital.com.

As is known, the analogy between the priest and the doctor finds its evangelical roots in the words of Christ quoted by Luke: «et respondens Iesus dixit ad illos: non egent qui sana sunt medico sed qui male habent. Do not come vocare iustos sed peccatores in paenitentiam» (Lk., 5, 31 s). In the wake of the evangelical teaching in the path that led to the codification of canon law, the definition of the confessor as *medicus*

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affected by Covid-19, the priest Luciano Locatelli administers the sacrament of reconciliation through *whatsapp*, in the belief that «Jesus at the time would have done the same thing ... I don't care», said the priest, «who wants the sacrament *to get right*, but I share it with those who believe in the power of forgiveness to build a humanity that is worthy of the name»¹³.

Although at first glance these new ways may appear daring if not even impracticable, proposals have also been made which envisage the use of digital tools for the administration of reconciliation. From a certain perspective, the use of technological tools appears impracticable given the absolute inviolability of the confessional seal (think of a video call or the presence of another person next to the penitent)¹⁴; but on the other hand, the violation

animarum has always been at the center of doctrinal reflections and conciliar deliberations (see D. Tarantino, *Dalla riconciliazione alla guarigione. Alcune riflessioni sulla confessione come cura animarum nella teologia morale e nel diritto canonico*, in *Stato, Chiesa e pluralismo confessionale, Online Journal*, (www.statochiese.it), no. 9-2017, pp. 1-18).

¹³ P. Zygulski, *Nella Chiesa che cambia/3*, in www.settimananews.it/sacramenti/nella-chiesa-che-cambia-3/.

¹⁴ Precisely with reference to the hypothesis, third-party registration and disclosure of what has been learned in confession, alongside what is provided for in can. 1388 § 2 («The interpreter and other persons mentioned in can. 983 § 2, who violate secrecy, are punished with just punishment, not excluding excommunication»), adds the criminal figure configured by the norms of the Congregation for the Doctrine of the Faith which establishes: «art. 4 § 2. Firmo praescripto § 1 no. 5, Congregationi pro Doctrina Fidei reservatur quoque delictum gravius quod consistit in captione quovis tecnico instrumento facta aut in evulgatione communicationis socialis mediis malitiose peracta rerum quae in sacramentali confessione, vera vel ficta, a confessario vel a paenitente dicuntur. Qui hoc delictum patriverit, pro gravitate criminis puniatur, non exclusa, si clericus est, dimissione vel depositione»

of the seal does not operate due to the mere presence, certainly morally regrettable, of audio or video material hidden by the penitent or by a third person during the confession in order to record it, but only in the case of spreading or disclosure of the matter object of the sacrament¹⁵.

Even the auricular confession made in places traditionally assigned to its administration does not always protect against the violation of the seal, whose absolute inviolability can be guaranteed by the awareness of both the confessor and the penitent of the

(Congregatio Pro Doctrina Fidei, *Normae de ggravioribus delictis*, 21 maii 2010, in *Acta Apostolicae Sedis*, CII/2010, p. 423). For further information on the topic see D. Cito, *Delicta graviora contro la Fede e i Sacramenti*, in *Questioni di diritto penale canonico*, Città del Vaticano, LEV, 2012, pp. 31-53; C. Papale, *Registrazione e divulgazione della confessione sacramentale*, in Id. (ed.), *I delitti contro il sacramento della penitenza riservati alla Congregazione per la Dottrina della Fede*, Città del Vaticano, 2016, pp. 85-102.

¹⁵ And so it actually happened on March 18, 1973 when seven "confessions" recorded on tape appeared on the *Espresso* under the title "Sin". Offered in advance to the public to stimulate their curiosity and induce him to buy the book that would have reported many others, these "confessions" had been chosen among the 112 that were published in Padua by the publisher Marsilio on 23 March (see G. De Rosa, *Il sesso in confessionale*, in *La Civiltà Cattolica*, 2/1973, pp. 55-60). Following this scandalous event, the Congregation for the Doctrine of the Faith intervened with a *Declaratio*, the content of which was confirmed by a decree of the same in 1988. In it the criminal offense was configured which in 2001 would become Captation with technical tools and dissemination through the means of communication of the contents of the confession for the purpose of malice, inserted some time later among the *delicta graviora* through a re-written of John Paul II (see G. Incitti, *Il Confessore e il Sacramento della Riconciliazione. Doveri e diritti dei penitenti*, in www.penitenzieria.va, pp. 20-22).

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sacredness of the act, which does not depend on the place where it happens neither by the way it takes place¹⁶.

3. *The priest as medicus animarum*

In this pandemic moment, when distance appears to be the only tool capable of curbing the spread of contagion, the virtual embrace given by the word of comfort of a priest, can represent for the faithful a relief from the afflictions that weigh on the soul, a refreshment from the anxieties that grip everyday life, a cure for wounds that mark the spirit. In particular, precisely with reference

¹⁶ The confessor who violated the obligation of the seal - which arises only from the sacramental confession, that is, from the accusation made by the faithful with the desire to obtain absolution, regardless of his obtaining - would sin both of injustice towards the penitent, who places his trust in him as a sacred minister, also illegitimately affecting his good reputation (see can 220 and G. Boni, *Sigillo sacramentale e segreto ministeriale. La tutela tra diritto canonico e diritto secolare*, in *Stato, Chiesa e pluralismo confessionale*, *Online Journal*, (www.statoechiese.it), no. 34-2019, p. 20); both sacrilege towards the sacrament itself (see E. Miragoli, *Il confessore, giudice e medico*, in *Quaderni di diritto ecclesiale*, 4/1995, p. 399 ss.). The penitent, on the other hand, does not commit sin and does not fall into ecclesiastical complaints if, of his own free will and without harming others, he declares publicly out of the confession of what he confessed. Obviously at the same time he should keep silence on the content of the words that the confessor, trusting in his discretion, told him during the confession (see Giovanni Paolo II, *Segreto della Santa Confessione*, in *L'Osservatore Romano*, edizione polacca, 5/1994, p. 21).

to the modalities of administration of the confession, the Church should manifest herself not only as an institution, but also «as freedom of the Spirit»¹⁷. Moreover, during the pandemic the use of modern technologies has supported the diffusion of sacramental grace on several occasions, and it seems appropriate that priests should also be able to carry out their function as *medicus animarum* using, where possible, these tools, without placing obstacles formal. This may be an additional opportunity for this crisis «to become an opportunity to look at what is truly essential for our lives»¹⁸.

¹⁷ Francesco, in A. Ivereigh, *Pope Francis says pandemic can be “a place of conversion”*, www.thetablet.co.uk, 8 aprile 2020. On the potential of the practical solutions offered by canon law see P. Consorti, *Relazione di sintesi: la necessità di tornare a un diritto canonico pratico*, in *Il Diritto Ecclesiastico*, 2016.

¹⁸ A. Torielli, *Introduzione*, in *Forti nella tribolazione. La comunione della Chiesa sostegno nel tempo della prova*, Dicastero per la Comunicazione della Santa Sede (edited by), Città del Vaticano 2020, p. 4, in www.liberiaeditricevaticana.va.

THE *SPIRIT OF ASSISI* AS A TOOL TO FACE THE CORONAVIRUS EMERGENCY: THE ROLE OF INTERRELIGIOUS DIALOGUE*

Luigi Mariano Guzzo

1. *Introduction*

One of the most iconic photos of interreligious dialogue in the time of Covid-19 was published by CNN on March 26, 2020 “Muslim and Jewish paramedics pause to pray together”. Jewish paramedic Avraham Mintz prays facing Jerusalem while Muslim paramedic Zohar Abu Jama prays facing Mecca, each as an individual but together in the same kind of action. In my opinion, this photo represents how religious differences can be overcome and transformed into a possible helpful tool to manage contemporary and global crisis, such this pandemic is. Coronavirus Emergency has indiscriminately crossed national borders, regardless of a people’s religion or culture: but it has also inspired moments of interfaith unity, connecting believers (and non-believers) in the same battle. In this respect, interreligious dialogue seems actually to be a tool to face the Coronavirus Emergency, so

* Submitted: 30th October. Published: 6st November 2020.

much that even Wikipedia has made a page about it, which is constantly being updated¹.

During the Covid-19 Emergency, interreligious dialogue is favored because the global reply of different religious organizations to the Coronavirus pandemic has been that of similar regulatory actions, starting with the closure of the places of worship or the denial of access for the worshippers, then followed by the health and safety measures adopted during the celebrations including the attendance limit, the suspension of the collective meetings and the cancellation of large events. The Catholic religious authorities suspended the Sunday Mass and the Protestants their worship, just like the Islamic ones suspended their Friday prayers. The Mormons closed their temples and the Jews their synagogues. The Lourdes baths were closed and so were the Buddhist temples. All types of religious leaders got the infection and, without their knowledge, infected others. The method of diffusion of the measures to be taken has been similar, through websites or Twitter or official pages on Facebook. And this occurs all around the world, no matter what the religion or cult. I am speaking, of course, on a broad level. We do keep in perspective that the self-executing “degree” of the religious rules can be different in each context².

¹https://en.wikipedia.org/wiki/Impact_of_the_COVID-19_pandemic_on_religion.

² Cf. L. M. Guzzo, *Law and Religion during (and after) Covid-19 Emergency: the Law is made for Man not Man for Law*, in P. Consorti (ed.), *Law, Religion and Covid-19 Emergency*, DiReSoM, Pisa, 2020, pp. 19-27.

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2. *The definition of Interreligious Dialogue and its geopolitical role*

The World Council of Churches distinguishes three different meanings connected to the generic expression *interreligious dialogue* commonly considered as the dialogue between religions. According to this institution, “ecumenical dialogue” concerns only Christian denominations, “interfaith dialogue” involves Abrahamic faiths - such as the Christian, Jewish and Muslim traditions – and “interreligious dialogue” means relations between different religions³. Peter Colwell distinguishes as well between “interfaith” as a “political concept of the public square”, and “interreligious” relations as an “understanding of how the church engages with the religious other, both in terms of actual dialogue and also Christian self-understanding in its encounter with religious plurality”⁴. These definitions can be justly considered from traditional religious perspectives⁵, but they do not work in the legal arena, which defines the “interreligious dialogue” in a wider sense, both globally

³ World Council of the Churches – Central Committee, *Ecumenical considerations for dialogue and relations with people of other religions*, Papers, 2004, in <https://www.oikoumene.org/resources/documents/ecumenical-considerations-for-dialogue-and-relations-with-people-of-other-religions>. See also G. Silvestre, *Percorsi per un dialogo ecumenico e interreligioso*, Editoriale Progetto 2000, Cosenza, 2012.

⁴ P. Colwell, *From Interfaith to Inter-Religious: Describing the new Post Inter Faith Context*, in *Churches Together*, p. 7, <https://ctbi.org.uk/wp-content/uploads/2015/01/From-Interfaith-to-Inter-Religious-Describing-the-new-Post-Inter-Faith-Context.pdf>.

⁵ Cf. S. Morandini, *Teologia dell'ecumenismo*, EDB, Bologna, 2018.

and interreligiously, canceling the technical nuances adopted by the specialists of religious studies⁶.

Moreover, we must consider that to allow the inclusion of atheists, agnostics, humanists and other ethical or philosophical beliefs in this context - as well as to be more accurate concerning the many world religions that are different from Western religions - some scholars prefer to use the terms “interbelief dialogue” or “interpath dialogue”⁷. Although interreligious dialogue is different from the dialogue between believers and non-believers, the latter is very important too⁸, and it is actually a “secular challenge”⁹.

By our side, even law scholars take on different meanings of interreligious dialogue, so perhaps we can disregard these technicalities to consider the heart of the question: interreligious dialogue has reached an evident geopolitical role as a peace-building function, and not only for the governance of religion¹⁰. As Pierluigi Consorti has written: interreligious dialogue “started as a religious matter, but nowadays it is also a political issue”¹¹; political role means also *geopolitical* role¹², able to affect in international law

⁶ See also, in an ecumenical perspective, N. Doe, *Christian Law. Contemporary Principles*, Cambridge University Press, Cambridge, 2015.

⁷ Cf. S. Peleg (ed.), *Intercultural and Interfaith Dialogues for Global Peacebuilding and Stability*, IGI Global, Hershey PA, 2019.

⁸ P. Consorti, P. Scoppola (ed.), *Fede religiosa e fede laica in dialogo*, Guerini e associati, Milano, 2007; R. Dworkin, *Religion without God*, Harvard University Press, Cambridge (MA) – London (EN), 2013.

⁹ Cf. P. Consorti, *Inter-religious dialogue: a secular challenge*, in *Stato, Chiese e pluralismo confessionale*, June 2007, p. 3.

¹⁰ M. Grier, A-K Nagel, *Interreligious relations and governance of religion in Europe: Introduction*, in *Social Compass*, n. 3/2018, pp. 301-311.

¹¹ P. Consorti, *Inter-religious dialogue...*, cit., p. 3.

¹² See P. Ferrara, *Religioni e relazioni internazionali*, Città Nuova, Rome, 2014.

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processes¹³. This geopolitical impact is well synthesized in Hans Küng’s incisive formula: “no peace among the nations without peace among the religions; no peace among the religions without dialogue among religions”¹⁴. Let us not forget that according to the art. 17.3 of the Treaty on the Functioning of the European Union, the Union “shall maintain an open, transparent and regular dialogue” with the churches and the religious associations, and with the philosophical and non-confessional organizations¹⁵. In the Europea, this rule encouraged both the dialogue among the various religious denominations (or non-confessional organisations) themselves and between them and the public authorities¹⁶.

According to Paolo Naso, the geopolitical role of interreligious dialogue has an icon in the Assisi meeting of October 27, 1986 strongly desired by Pope John Paul II. “The icon of Assisi, well beyond its core meaning, made the potential role of religions in the geopolitical scene clear, denouncing on the one hand the exploitation of radicalism, and on the other indicating a strategy of dialogue, and therefore of possible interreligious coexistence”¹⁷. In this geopolitical dimension, we could take as a basic definition of

¹³ Cf. P. Lillo, *Globalizzazione del diritto e fenomeno religioso*, Giappichelli, Torino, 2012, pp. 166 ff.

¹⁴ Cf. H. Küng, *Islam. Passato, presente e futuro*, BUR, Milano, 2005, p. 5.

¹⁵ See S. Montesano, *Brevi riflessioni sull’art. 17 TFUE e sul progetto di Direttiva del Consiglio recante disposizioni in materia di divieto di discriminazione*, in *Stato, Chiese e pluralismo confessionale*, n. 18/2005, 20 ff.; D. Durisotto, *Unione europea, chiese e organizzazioni filosofiche non confessionali (art. 17 TFUE)*, in *Stato, Chiese e pluralismo confessionale*, n. 23/2016.

¹⁶ A. Mantineo, *Verso nuove prospettive del pluralismo religioso nel Magistero della Chiesa cattolica?*, in *Stato, Chiese e pluralismo confessionale*, July 2011, p. 29.

¹⁷ P. Naso, *The civil dimension of interreligious dialogue*, in *libertàcivili*, n. 5/2017, p. 30.

interreligious dialogue the positive cooperation between people of different religious traditions, at both the individual and institutional level.

3. How useful has interreligious dialogue been as a tool in facing Coronavirus Emergency?

The use of interreligious dialogue as a tool to combat infection from Coronavirus means that religions have found themselves organizing shared moments of prayer. There was the meeting promoted by the international non-governmental organization "Religions for Peace", on March 13, 2020, in which thirteen religious leaders gathered virtually together to pray for hope and solidarity. Similarly, there has been the day of faith and interreligious prayer organized on May 14, 2020 by the High Committee for Human Brotherhood to ask the one god to free humanity from pandemic¹⁸, inspired by the Abu Dhabi document¹⁹ (and also by the Declaration of Solidarity from the New Alliance of Virtues²⁰).

¹⁸ M. Lo Giacco, *Fraternity. A Proposal From Religions to States to Overcome the Covid-19 Emergency*, in *DiReSoM Papers*, May 20th 2020 (<https://DiReSoM.net/2020/05/20/fraternity-a-proposal-from-religions-to-states-to-overcome-the-covid-19-emergency/>).

¹⁹ Francesco, Ahmad Al-Tayyeb, *Documento sulla Fratellanza umana per la pace mondiale e la convivenza comune*, Abu Dhabi, February 4th 2019, in http://www.vatican.va/content/francesco/it/travels/2019/outside/documents/pa-pa-francesco_20190204_documento-fratellanza-umana.html.

²⁰ Cfr. A. Fuccillo, *The "Charter of the New Alliance of Virtue" facing the Covid-19 Emergency*, in *DiReSoM Papers*, 11 maggio 2020

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On October the 20th in Rome was held the International Meeting of Prayer for Peace “No one is saved alone. Peace and fraternity”. The leaders of all religions – well masked to protect against the virus - gathered in "the spirit of Assisi", and spiritually united to believers worldwide and to all men and women of good will, prayed alongside one another to invoke upon the world the gift of peace. In the final Appeal the religious leaders turned to the political ones asking them: “let us work together to create a new architecture of peace. Let us join forces to promote life, health, education and peace. The time has come to divert the resources employed in producing ever more destructive and deadly weapons to choosing life and to caring for humanity and our common home. Let us waste no time! Let us start with achievable goals: may we immediately unite our efforts to contain the spread of the virus until there is a vaccine that is suitable and available to all. The pandemic is reminding us that we are blood brothers and sisters”²¹. This leader religions’ strong appeal to fraternity and social friendship, also as a tool to face Coronavirus Emergency, is in the core of Francis’ third Encyclical Letter “Fratelli tutti” (2020)²².

[\(https://DiReSoM.net/2020/05/11/the-charter-of-the-new-alliance-of-virtue-facing-the-covid-19-emergency/\)](https://DiReSoM.net/2020/05/11/the-charter-of-the-new-alliance-of-virtue-facing-the-covid-19-emergency/).

²¹ *Appeal for Peace* 2020, October 20, 2020, in <https://preghieraperlapace.santegidio.org/pageID/31256/langID/en/text/3628/APPEAL-FOR-PEACE-2020.html>

²² Francis, *Fratelli tutti on the Fraternity and Social Friendship*, Assisi, October 3rd 2020, in http://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html.

Furthermore, interreligious dialogue has also inspired occasions of solidarity in practical activities²³, such as in Pakistan where Muslim volunteers have sanitized not only mosques but also churches and synagogues, as well as distributing food and other necessities to Muslims, Jews and Christians alike.

Interreligious dialogue also acts an effective protection of religious freedom in a pluralistic society, such as in Italy or in France²⁴. The Catholic Church and the public authorities quickly agreed a bilateral solution for the return to religious celebrations in safety in the so called “phase 2”. Meanwhile, at the Ministry of the Interior, the head of Civil Liberties and Immigration Department, Michele di Bari, set up round table discussions with the representatives of the other religious denominations, including those that have not signed the *Intese* (agreements) provided for by article 8.3 of the Italian Constitution, leading to an unprecedented regulatory solution built on dialogue²⁵. Thanks to interreligious dialogue a new season has been inaugurated in the relationships between religions and the state²⁶. Especially, I would like to dwell

²³ V. Fronzoni, *From Social Distance to Muslim Solidarity Proximity at the Time of Covid-19*, in P. Consorti (ed.), *Law, Religion and Covid-19 Emergency*, DiReSoM, Pisa 2020, pp. 141 ff.

²⁴ Cf. M. C. Ivaldi, *La via francese alla limitazione delle libertà e il dialogo con le religioni al tempo del Coronavirus*, in *Stato, Chiese e pluralismo confessionale*, n. 1/2020.

²⁵ P. Consorti, L. M. Guzzo, *Stato e religioni: il dialogo è metodo*, in *Il Regno-blog*, May 8th 2020; P. Consorti, L. M. Guzzo, *Riprendono anche i riti non cattolici. Per la prima volta accordi con Islamici e confessioni senza intesa*, in *DiReSoM Papers* (www.DiReSoM.net), May 16th 2020.

²⁶ M. Lo Giacco, *I “Protocolli per la ripresa delle celebrazioni delle confessioni diverse dalla cattolica”*: una nuova stagione nella politica ecclesiastica italiana, in *Stato, Chiese e pluralismo confessionale*, n. 12/2020. See also L. Decimo, *La*

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on the role that interreligious dialogue has assumed as a method of safeguarding freedom of religion in state systems by referring to the health protocols signed in Italy between the Government and the representatives of the various confessions²⁷, to facilitate the exercise of religious services²⁸.

In other words, interreligious dialogue has been an instrument for the protection of freedom of religion in civil systems. Instead of being only a relationship between religious groups, it is also a method through which these same groups can treat with secular power, in their autonomy and independence. I would say that we are probably facing a turning point in the history of relations between the State and religious denominations.

“stagione” dei protocolli sanitari tra Stato e confessioni religiose, in *Oliv*, May 14th 2020.

²⁷ Cf. G. Macrì, *Brevi considerazioni in materia di governance delle pratiche di culto tra istanze egualitarie, soluzioni compiacenti e protocolli (quasi) “fotocopia”*, in *Stato, Chiese e pluralismo confessionale*, n. 11/2020, pp. 68-96. L. M. Guzzo, *Coronavirus, politica ecclesiastica e protocolli sanitari: dalla bilateralità pattizia alla multilateralità estesa*, in *Ordines*, n. 1/2020, pp. 313-329. Cf. also A. Tira, *Libertà di culto ed emergenza sanitaria: il protocollo del 7 maggio 2020 concordato tra Ministero dell’Interno e Conferenza Episcopale Italiana*, in *Giustizia insieme*, May 16th 2020; A. Tira, *Normativa emergenziale ed esercizio pubblico del culto. Dai protocolli con le confessioni diverse dalla cattolica alla legge 22 maggio 2020, n. 35*, in *Giustizia insieme*, June 8th 2020.

²⁸ S. Berlingò, G. Casuscelli, *Diritto ecclesiastico italiano. I fondamenti. Legge e religione nell’ordinamento e nella società d’oggi*, Giappichelli, Torino, 2020, pp. 90-100.

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انون والدين في المجتمعات متعددة الثقافات
多元化社会中的法与宗教

1 - *Law, Religion and Covid-19 Emergency*, edited by Pierluigi Consorti

2 - *Law, Religion and the Spread of Covid-19 Pandemic*, edited by Fabio Balsamo - Daniela Tarantino

As scholars engaged in the study of the legal regulation of the religious phenomenon, we decided to create a web space (www.diresom.net) to collect documents, comments and other useful materials related to the Covid-19 emergency, in order to assess the outcomes of the normative decisions made by state and religious authorities. By the end of April, we had already published more than 600 documents and comments related to this issue, and more than 45.000 unique visitors had surfed our website. In May we have also edited an open source book to share in a more orderly way the comments that we have already published online, thus giving the possibility to consult these guidelines to all those who want to study or analyze the legal reaction both state and religious, to this pandemic. The exponential spread of the Covid-19 Pandemic also in the second part of 2020 suggested us to edit now this second open source book.

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ISBN 979-12-200-6405-7



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