

## 7

# **Blurred Lines between Freedom of Religion and Protection of Public Health in the Covid-19 Era – Italy and Poland in a Comparative Perspective**

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### **ABSTRACT**

*The COVID-19 pandemic caused a dramatic split between the right to protect one's health, which in current situation is effective by practicing 'social distancing' or even a complete isolation, and the liberty to participate in social life, which is essential for our mental health. While medicine and science grapple with coronavirus, trying to find an effective cure for the novel disease, government leaders aim to curb its spread by adopting preventive measures which often collide with many constitutional rights. The chapter analyses the impact of safety measures and limitations introduced by civil authorities of Italy and Poland on religious liberty, especially the right to religious gatherings in situations of health emergency caused by the outbreak of coronavirus pandemic. In both countries the relations between Church and State are based upon the cooperation, not separation, between both spheres. Thus, religion isn't confined to the private life of citizens, but constitutes a vital part of social life with Catholic Church as the majority religion. Taking into account temporary restrictions adopted into legal frameworks of these countries from the beginning of COVID-19 pandemic, it's interesting to observe their impact on in-person collective worship. Although Italy's and Poland's legal systems have many*

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## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

*points in common, the experience of pandemic in these countries is quite different with Italy being the first most affected European country by coronavirus crisis. For that reason, the assessment of restrictions imposed on religious worship in these countries can offer an instructive lesson with regards to adequacy and proportionality of measures aimed in first place to fight with the virus, and subsequently to co-exist with it.*

### I INTRODUCTION

The rapid spread of global pandemic caused by COVID-19 virus compelled the entire humanity to change or even totally abandon its existing regulations regarding human behavior in order to protect every human life from the novel and highly contagious disease. Lost in cacophony of changing rules regarding almost every dimension of our life, humanity had to give a humble look back at the history of past epidemics which despite the medical, social and economic progress still can offer an instructive lesson of survival. Striking similarities with the past can be discerned especially in the area of religious liberty as we notice that in situations of crisis, fear, imminent danger and death, people want to turn to God in search of comfort and consolation. The current pandemic of COVID-19 has only revived old schemes of human behavior in which the need of affinity between man and God becomes particularly strong. The essence of religious freedom is the right to practice one's religion or beliefs not only individually, but also collectively, not only in private, but also in public.<sup>1</sup> Although religious freedom is a fundamental human right, it's not absolute and in some circumstances it can be legitimately restricted. Undoubtedly, the coronavirus epidemic belongs to these extraordinary situations in which the protection of public health competes with the right to worship. Although the current health emergency doesn't undermine the freedom of conscience, which as an

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<sup>1</sup> Franciszek Longchamps de Bériér, 'Law and Collective Identity. Religious Freedom in the Public Sphere' (2017) 10(1) *Krakowskie Studia z Historii Państwa i Prawa* 170. This paper is based on the legal situation as of September 2020. The authors inform that, as from November 2020, Poland is expecting to face more and far harsher governmental restrictions.

## FREEDOM OF RELIGION AND PROTECTION OF PUBLIC HEALTH

innate human right cannot be limited or forbidden as such, churches, religious organisations and individuals around the world are facing a significant limitation of their essential right as they cannot collectively attend faith services due to the COVID-19 preventive measures. Numerous questions arise regarding the extent, rationality and proportionality of limitations imposed both on believers and non-believers crossing the borders of countries affected by the virus which causes the COVID-19 disease. The right of individuals and churches to freely practice religion through collective participation and physical contact among the faithful clashes with the government's obligation to protect public health. The adoption of the most effective preventive measures – social distancing and reduction of individual mobility – significantly limits religious liberty. Scientific and medical data identify the coronavirus as highly contagious especially in large gatherings so limitations of them imposed by civil authorities also on religious entities remain a matter of grave concern and ferocious legal battles.

Courts around the world are being confronted with challenges brought by religious communities over the limitation or even a complete closure of their gatherings. These are regarded as discriminatory in comparison to measures imposed at the same time on secular gatherings. The most evocative example among this type of court cases comes from France's Council of State which, in a decision of 18 May 2020, forced the government to reopen churches for public religious gatherings arguing that:

[u]nder these conditions [when] less strict control measures are possible, in particular with regard to allowing the gatherings of less than 10 people in public places, [...] the general and absolute prohibition of [...] any gathering or assembly in places of worship [...] is disproportionate to the objective of preserving public health and thus constitutes, given the essential nature of this component of freedom of worship, a serious and manifestly unlawful infringement of the latter.<sup>2</sup>

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<sup>2</sup> *Order of the Council of State no 440366 of 18 May 2020*, point 34 <<https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000041897157> (last access: 28.08.2020)>.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

This article offers an analysis of extraordinary regulations implemented to curb transmission of COVID-19 by the governments of two European countries – namely Italy and Poland – with regards to restrictions on the religious freedom. In each of these countries religious liberty is a fundamental value under the Constitution.<sup>3</sup> Similarly, all churches and religious organisations have equal rights in them. In Italy as well in Poland the relations with the Roman Catholic Church, the prevailing religion among citizens,<sup>4</sup> are defined by concordats with the Holy See. Moreover, unlike French and American models of separation between church and state, both in Italy and Poland relations between church and state are based upon their cooperation.<sup>5</sup> Church–state relations are to be resolved through negotiations rather than litigations. In fact, in both countries there were no legal claims against government filed by any religious group. Nevertheless, the lack of legal battles doesn't mean that the extent of restrictions wasn't contested by them since it indisputably constitutes a matter of great concern for churches and their faithful. Thus, the comparison between the decision-making process regarding hosting public religious events during the COVID-19 pandemic in these two legal systems may give relevant conclusions. The most important factor, however, which makes a difference is the public health emergency. Whereas Italy became the first focal point of the coronavirus outbreak in Europe, Poland still belongs

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<sup>3</sup> See *The Italian Constitution* art 19 and *The Constitution of the Republic of Poland* art 53.

<sup>4</sup> According to the researches approximately 67 per cent of the Italian population identifies as Roman Catholic. See: US Department of State, 'Office of International Religious Freedom – 2019 Report on International Religious Freedom: Italy' <<https://www.state.gov/reports/2019-report-on-international-religious-freedom/italy/>>. The Polish Statistical Yearbook reports that 86 per cent of the population is Roman Catholic: Główny Urząd Statystyczny, *Statistical Yearbook of the Republic of Poland* (Warszawa, 2019) Tabl 5 (129) 197.

<sup>5</sup> Joseph H Weiler, 'Lautsi: A Reply' (2013) 11(1) *International Journal of Constitutional Law* 233; Grzegorz Blicharz (ed), *Freedom of Religion. A Comparative Law Perspective* (Wydawnictwo IWS, 2019) 8–9; Weronika Kudła, *Wrogość wobec religii. Ostrzeżenia ze strony Sądu Najwyższego USA* (Księgarnia Akademicka, 2018) 332.

to countries with moderate number of positive cases of coronavirus.<sup>6</sup> The assessment of restrictions implemented in each of these countries cannot be in any case comparable between them due to the different development of the epidemic. However, with regards to the religious liberty it's interesting to observe how civil and religious authorities coped with the challenges regarding the limits on religious gatherings bearing in mind similarities of church–state relations. We are leaving aside discussions on the validity or appropriateness of legislative procedure launched to implement restrictions on religious liberty which sparked some discussions in both countries.<sup>7</sup> Under the Polish Constitution higher standards are set regarding limiting the freedom to manifest religion than other rights and freedoms (arts 53-7 *Constitution of Republic of Poland*, hereinafter: 'Polish Constitution'), yet still public health is a legitimate reason to interfere with the freedom of religion. How to weigh both constitutional values, to what extent religious liberty can be limited, and how to preserve exercise of religious freedom in the face of public health danger, is what this paper aims to analyse.

### II ITALY'S RESPONSE TO COVID-19 CRISIS WITH RESPECT TO RELIGIOUS LIBERTY

Italy was the first European country which experienced a quick and steep increase in new COVID-19 positive cases (particularly in three northern regions: Lombardy, Emilia-Romagna and Veneto), becoming the epicenter of coronavirus and experimental field with regards

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<sup>6</sup> As of 6 August 2020 the total number of positive cases of COVID-19 in Italy reaches 248,803 with 35,181 deaths, while Poland reports 48,789 with 1,756 deaths. See 'WHO Health Emergency Dashboard', *World Health Organisation* <<https://covid19.who.int>>.

<sup>7</sup> See, eg, Jerzy Kwaśniewski et al, 'Analysis of restrictions on freedom of religion and movement introduced in connection with counteracting the coronavirus epidemic in the light of the standards of the Polish Constitution and international law', *Ordo Iuris*, 16 April 2020 <[https://ordoiuris.pl/wolnosci-obywatelskie/analiza-wprowadzonych-w-zwiazku-z-przeciwdzialaniem-epidemii-koronawirusa#\\_ftn25](https://ordoiuris.pl/wolnosci-obywatelskie/analiza-wprowadzonych-w-zwiazku-z-przeciwdzialaniem-epidemii-koronawirusa#_ftn25)>; Fabio Adernò, 'L'emergenza "Coronavirus" in Italia: il Governo e la Chiesa', *Ius in Itinere*, 8 May 2020. <<https://www.iusinitinere.it/lemergenza-coronavirus-in-italia-il-governo-e-la-chiesa-27827>>.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

to modes and measures aimed to extinguish the epidemic. The Italian Government declared the “state of emergency” for six months starting from 31 January 2020<sup>8</sup> (one day later after the WHO Director-General declared the novel coronavirus a public health emergency of international concern).<sup>9</sup> The first COVID-19 patient of Italy was diagnosed on 20th February in Codogno hospital (Lombardy) and as a quick answer to the possible health crisis, Italian authorities adopted on 23 February 2020 a decree-law<sup>10</sup> to combat and contain the COVID-19 virus. Regulations which went in force targeted only municipalities and areas of at least one new COVID-19 positive case. Among the emergency measures imposed in so-called “red zones” of northern Italy were the limitation of mobility, closure of all educational and cultural services and suspension of manifestations and meetings of any kind, taking place in public or private places (also of cultural, recreational, sporting and religious nature).

The subsequent dramatic surge of new positive cases of COVID-19 and deterioration of the sanitary situation led to the extension of preventive measures through the entire territory of Italy. The Prime Ministerial Decree of 8 March 2020<sup>11</sup> described as *#ImStayingHome Decree* provided far-reaching limitations only for Lombardy and 14

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<sup>8</sup> ‘Dichiarazione dello stato di emergenza in conseguenza del rischio sanitario connesso all’insorgenza di patologie derivanti da agenti virali trasmissibili’, *GU Serie Generale*, n 26, 1 February 2020.

<sup>9</sup> ‘WHO Director-General’s statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)’, *World Health Organization* <[https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ih-er-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ih-er-emergency-committee-on-novel-coronavirus-(2019-ncov))>.

<sup>10</sup> ‘Decreto-Legge 23 febbraio 2020, n. 6: Misure urgenti in materia di contenimento e gestione dell’emergenza epidemiologica da COVID-19’, *GU Serie Generale*, n 45, 23 February 2020) converted with modification into ‘Legge 5 marzo 2020, n 13: Conversione in legge, con modificazioni, del decreto-legge 23 febbraio 2020, n 6, recante misure urgenti in materia di contenimento e gestione dell’emergenza epidemiologica da COVID-19’, *GU Serie Generale*, n 61, 9 March 2020.

<sup>11</sup> ‘Decreto del Presidente del Consiglio dei Ministri 8 marzo 2020: Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n 6, recante misure urgenti in materia di contenimento e gestione dell’emergenza epidemiologica da COVID-19’, *GU Serie Generale*, n 59, 8 March 2020.

## FREEDOM OF RELIGION AND PROTECTION OF PUBLIC HEALTH

surrounding provinces, but in a Decree<sup>12</sup> signed by the Prime Minister one day later, on 9 March 2020, all necessary measures were confirmed and extended to the whole territory of Italy, initially till 3 April 2020 and with the adoption of new decrees remained in force until 3 May 2020. The ban on travel and movement from home, except for work requirements, reasons of absolute urgency or health needs, which had to be proved by means of a self-certification, had been correlated with the suspension of civil and religious ceremonies, funerals included.<sup>13</sup> In the explanation notes provided by the Government it was precisely indicated that places of worship may remain open and can be visited:

[P]rovided that interpersonal distancing of at least one meter is observed at all times and keeping in mind that all gatherings of any kind are banned. You should visit the place of worship closest to home, or, if traveling to work or moving for any other reason of absolute necessity, the place of worship closest to your workplace or destination or along the way there and back, so that you are justified by your self-certification if you're stopped for checking by law enforcement officers.<sup>14</sup>

As to the ban on religious ceremonies it was specified that ‘the celebration of religious services before a gathering of faithful or of other religious rites, regardless of the religion, such as Friday prayer in mosques, Saturday service in synagogues, and Sunday services in

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<sup>12</sup> *Decreto del Presidente del Consiglio dei Ministri 9 marzo 2020: Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n 6, recante misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale* GU Serie Generale, n 62, 9 March 2020.

<sup>13</sup> The Prime Ministerial Decree of 8 March 2020 stated in art 2 that ‘v) the opening of places of worship is conditioned by the adoption of organisational measures in order to avoid gatherings of people, considering the dimension and characteristic of places and with the aim to guarantee participants the possibility to keep distance of at least one meter indicated in the Appendix 1 letter d). Civil and religious ceremonies are suspended, including those funeral’.

<sup>14</sup> ‘FAQs on the Italian Government’s #ImStayingHome Decree’, *Ministero degli Affari Esteri e della Cooperazione Internazionale* <<https://www.esteri.it/mae/it/ministero/normativaonline/decreto-iorestoacasa-domande-frequenti/faqs-on-the-italian-government-s-imstayinghome-decree.html>>.

churches is banned'.<sup>15</sup> As a result, individuals and faith-based communities operating in Italy experienced an unprecedented after World War II restriction of their religious freedom. Given that the *Constitution of the Italian Republic* in art 7 states that: 'The State and the Catholic Church are independent and sovereign, each within its own sphere'<sup>16</sup> and in art 8 confirms that 'denominations other than Catholicism have the right to self-organisation according to their own statutes',<sup>17</sup> the extraordinary regulations concerning suspension of religious ceremonies have directly interfered with their internal autonomy, depriving every religious group of control over the organisation of public religious services. In theory, for Italian faithful it was allowed to enter the church, temple or mosque only for personal prayer. Although the nature of preventive measures was indisputably legitimate as they were adopted to protect public health, their extent might have seemed too wide and disproportionate. Restrictions imposed by the Decree which went in force on 9 March 2020 on the territory of Italy treated every religious denomination on equal, non-specific terms due to the prioritisation of compelling national's interest in protecting health and life. Undoubtedly, the coronavirus crisis brought to the collision of two fundamental freedoms – the right to practice one's religion and the right to protect one's life. The dramatic outbreak of coronavirus in Italy which called for immediate actions under time pressure, left no time for bilateral negotiations between civil authorities and religious leaders regarding possible exemptions from imposed restrictions. During the worst month of COVID-19 crisis in Italy, which brought the peak of new confirmed cases on 22 March 2020 (6557 daily new infections)<sup>18</sup> and the highest number of confirmed deaths on 28 March 2020 (971 deaths reported on that day),<sup>19</sup> religious communities operating in Italy strict-

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<sup>15</sup> Ibid.

<sup>16</sup> *The Constitution of the Italian Republic* art 7.

<sup>17</sup> Ibid art 8.

<sup>18</sup> Our World in Data, 'Italy: Coronavirus Pandemic' <<https://ourworldindata.org/coronavirus/country/italy?country=~ITA>>.

<sup>19</sup> Ibid.



ly adhered to the extraordinary laws without any objection<sup>20</sup> and declared complete co-responsibility and cooperation to curb the spread of the novel coronavirus.<sup>21</sup> The major difficulties experienced Catholics who constitute the largest religious group in Italy. The suspension of public Masses forced them to receive pastoral and spiritual assistance virtually through live broadcasts and social media platforms. Despite the fact that churches remained open and individuals could visit them for a prayer taking necessary precautions, they couldn't participate in the celebration of liturgy which is the central part of their faith. Practically, a worshipper who entered a church for individual prayer was obliged to leave it once the liturgy started, even when social distancing rules were obeyed. The reason for such severe preventive measures, which definitely undermined the importance of public religious rites, was the necessity to avoid any gatherings of people. These regulations considered religious events on the same level as cultural, entertainment and sporting manifestations, which cannot be accepted on a long-term basis by religious communities.

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<sup>20</sup> It should be pointed out that on 12 March 2020 Cardinal Angelo De Donatis issued a decree closing all churches of the Diocese of Rome, but under sharp criticism of Catholics headed by Pope Francis who described the decree as too drastic, it has been modified one day later leaving all parochial churches open for individual prayer. See *Decree Prot. n. 468/20 of Cardinal Vicar Angelo De Donatis of 12 March 2020* <<http://www.diocesidiroma.it/decreto-del-cardinale-vicario-angelo-de-donatis-del-12-marzo-2020/>> and modified version of the Decree from 13 March 2020 <[http://www.diocesidiroma.it/decreto-del-cardinale-vicario-angelo-de-donatis-del-13-marzo-2020/?fbclid=IwAR0u\\_O2WuLagW1HczoGMiR99jIDVcQDq9h2m9omT5c8vyYwZ4NaSjenWnNI](http://www.diocesidiroma.it/decreto-del-cardinale-vicario-angelo-de-donatis-del-13-marzo-2020/?fbclid=IwAR0u_O2WuLagW1HczoGMiR99jIDVcQDq9h2m9omT5c8vyYwZ4NaSjenWnNI)>.

<sup>21</sup> See, eg, 'Note from the the Episcopal Conference of Italy', 8 March 2020 (Decreto 'coronavirus': la posizione della CEI) <<https://www.chiesacattolica.it/decreto-coronavirus-la-posizione-della-cei/>>; 'Disposition of Coronavirus Emergency Measures in Muslim Communities', *Union of Italian's Muslim Communities*, 8 March 2020 (01/2020 – *Disposizioni Emergenza Coronavirus per le comunità islamiche*), at <https://ucoii.org/2020/03/05/01-2020-disposizioni-emergenza-coronavirus-per-le-comunita-islamiche/> (23.07.2020); 'The statement of Rabbi Alberto Somekh', Jewish Community of Milan, 12 March 2020 (*Talmud: 'Se in città c'è una pestilenza ritira i tuoi passi', cioè: chiuditi in casa'*). <<https://www.mosaico-cem.it/vita-ebraica/ebraismo/talmud-se-in-citta-ce-una-pestilenza-ritira-i-tuoi-passi-cioe-chiuditi-in-casa>>.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

The Note,<sup>22</sup> released on 27 March 2020 by the Italian Ministry of the Interior and delivered upon request to the Undersecretary of the Italian Conference of Bishops, contained several detailed clarifications regarding the liberty to worship in churches. First of all, it was highlighted that except for any autonomous decision of ecclesiastical authorities, the closure of churches wasn't foreseen. Moreover, with regards to travel restrictions, the access to the church was made available only on the occasion of movements determined by 'proven working needs' or 'situations of necessity', provided that the church is located along the route and in case of the control by Police Forces the required self-certification is being exhibited or a declaration regarding the existence of these specific reasons made. In light of the government's compelling interest in protecting public health, regulations suspending religious ceremonies and funerals didn't prohibit ministers celebrating liturgy without the presence of people. The ratio of this provision was to avoid gatherings which potentially could become new clusters of COVID-19 infections.

With regards to the Holy Week rites, the note explained that among participants allowed to enter the church for celebration of them were: celebrants, deacon, reader, organist, singer and operators for the transmission. Both ministers and lay participants of the liturgy were required to fulfill the self-certification form indicating the day and time of the celebrations, as well as the address of the church in which the celebration took place. Civil authorities justified these outings as for the purposes similar to "proven working needs" and as such free from penalties for breaching public health orders. Similar considerations applied to the rite of marriage which could take place, provided that the allowed number of five attendees (the celebrant, the married couple and the witnesses) respected safe distance between them.

These extremely stringent limitations of religious liberty remained

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<sup>22</sup> Ministry of the Interior, the Department for Civil Liberties and Immigration, '*Questions regarding the containment and management of the epidemiological emergency from Covid-19. Needs determined by the exercise of the right to freedom of worship*', Ministry of the Interior, the Department for Civil Liberties and Immigration, '<<https://www.interno.gov.it/sites/default/files/allegati/specifiche-chiese.pdf>>.

in force till 17 May 2020. For the first time in history of Italy, believers of three main monotheistic religions – Jews, Christians and Muslims were forced to celebrate their most significant celebrations of Pass-over, Easter and Ramadan in complete social isolation from community and with no exemptions made for their spiritual needs.

### *A The Violation of Funeral Religious Rites During Pandemic*

Another interfaith challenge for religious liberty during COVID-19 pandemic, which still raises some concerns, concerned the prohibition of funeral ceremonies which usually are carried out according to religious rites. As the death toll from COVID-19 rises around the world, the inability to mourn the death becomes another wrenching disruption and as for now it's still impossible to estimate its long-lasting and surely devastating psychological effects as we bear in mind that the gathered community plays an important role in funeral rituals. Coronavirus pandemic raging across the globe triggered modification of burial procedures which affected almost every religious confession.

Italy became the first European country which was inundated with coffins of victims who died for COVID-19. In a country with such strong Catholic values it was particularly difficult for all believers to adapt to the new restrictions around funerals. The Prime Ministerial order declaring the suspension of funeral ceremonies along with indications<sup>23</sup> issued by the Italian Ministry of Health for healthcare providers, mortuary staff and burial team subjected religious rites and traditions to the new conditions laid down by civil authorities. The complete isolation of people dying from coronavirus in sealed-off hospital wards taken together with the quarantine of people who stayed close to them made it impossible for family members and friends to visit them and participate in their final moments of life. Regulations prohibiting any physical contact with hospitalized patients caused an emotional trauma for them and the only way of communication was

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<sup>23</sup> See Ministero della Salute, Direzione Generale della Prevenzione Sanitaria Ufficio 4, *Oggetto: Indicazioni emergenziali connesse ad epidemia COVID-19 riguardanti il settore funebre, cimiteriale e di cremazione*. <<http://www.ancicampania.it/wp-content/uploads/2020/04/Circolare-servizi-funebri-e-gestione-salme-DEF-2-Copia.pdf>>.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

possible through a system of video-conference. Nevertheless, following health protocols instituted by hospital authorities, in some of them the chaplains were admitted to continue their mission in bringing the patients pastoral care and sacraments (Eucharist, confession or anointing of the sick), but in the majority of cases chaplains were also barred from entering the coronavirus units so they had to stop saying last rites over the dying persons.

In the region of Lombardy which witnessed the highest mortality rate in Italy,<sup>24</sup> especially in the most infected province of Bergamo, procedures regarding the burial or cremation were accelerated due to the increased flux of deaths from COVID-19.<sup>25</sup> With funeral ceremonies suspended, the burials consisted of a direct transport of the coffin or urns to the cemetery, possibly with a brief blessing offered by the priest and sometimes only in presence of the undertaker and a maximum of five relatives provided that they weren't sick or under quarantine. Thus, under the new funeral procedures the traditional role of religious communities to pay respect to the body, offer consolation to the family members and help to handle the grief have been all undermined as it's still impossible to perform some religious practices after the death. Family members are barred from preparing body of the deceased before burial. For that reason, some religious communities adapted their end-of-life rites to new circumstances. The Islamic Center of Rome which serves the community of Muslims living in Italy issued a series of recommendations regarding funeral rites,<sup>26</sup> calling

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<sup>24</sup> Statistics regarding number of deaths from COVID-19 in Italy show that Lombardy accounts for more than 50% of deaths of the entire country, counting as of 3 August 2020 the number of 16.818 deaths. See Statista, 'Coronavirus (COVID-19) deaths in Italy as of 3 August 2020, by region' <<https://www.statista.com/statistics/1099389/coronavirus-deaths-by-region-in-italy/>>.

<sup>25</sup> Chico Harlan, Stefano Pitrelli, 'In an Italian city, obituaries fill the newspaper, but survivors mourn alone', *Washington Post*, March 16, 2020/ <[https://www.washingtonpost.com/world/europe/coronavirus-obituaries-bergam-italy/2020/03/16/6c342f02-66c7-11ea-b199-3a9799c54512\\_story.html](https://www.washingtonpost.com/world/europe/coronavirus-obituaries-bergam-italy/2020/03/16/6c342f02-66c7-11ea-b199-3a9799c54512_story.html)>.

<sup>26</sup> 'Guidelines of the Italian Islamic Confederation regarding the funeral rites during COVID-19 emergency' <<http://www.conf-islamica.it/confederazione-islamica-italiana/linee-guida-della-cii-in-materia-di-riti-funebri-nella-situazione-di-emergenza-covid-19/>>.

the Muslims to strictly follow government's dispositions regarding the public health. Some traditional rites practiced by Muslims (eg bathing of the body by relatives — *Ghusl* and *Tayammun*) have been modified, others even suspended (eg the process of repatriation of the Muslim migrant's body to his homeland due to closed borders). In order to accommodate religious needs of the Muslims who still wish to repatriate bodies of their family members to the country of origin, Mayor of Milan issued an emergency decree<sup>27</sup> permitting for a temporary burial of Muslim bodies and their extraordinary exhumation when the coronavirus restrictions cease. Apart from the modification of religious rites, the Italian Muslim community was confronted with another difficulty pertaining to the short supply of burial spots for non-Catholics in cemeteries (in Italy there're only 76 Islamic cemeteries).<sup>28</sup> Under the Italian law<sup>29</sup> a person should be buried on the territory of the municipality in which he/she died or previously resided. Since in most of the cases public cemeteries in northern Italy didn't have enough burial space designed for Muslims, civil authorities struggled to find plots in more distant regions of Italy breaching not only the existing civil law, but also the Muslim law according to which Islamic burial should take place within 24 hours of death.<sup>30</sup>

The lack of funeral gatherings also resulted in some erroneous burials of victims of coronavirus in common graves when relatives of the deceased were hospitalized or quarantined thus unable to claim

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<sup>27</sup> 'The Municipality of Milan, Ordinance of the Mayor Giuseppe Sala 18/2020 of 26 March 2020' <[http://www.conf-islamica.it/confederazione-islamica-italiana/wp-content/uploads/2020/03/Ordinanza-Sindaco-Milano-n.-16\\_2020.pdf](http://www.conf-islamica.it/confederazione-islamica-italiana/wp-content/uploads/2020/03/Ordinanza-Sindaco-Milano-n.-16_2020.pdf)>.

<sup>28</sup> Union of Italian's Muslim Communities, Islamic Cemeteries in Italy <<https://ucoii.org/cimiteri-islamici-in-italia/>>.

<sup>29</sup> 'Approvazione del regolamento di polizia mortuaria', Decree of the President of the Republic, 10 September 2020, n 285: art 50 n 1 <[http://presidenza.governo.it/USRI/ufficio\\_studi/normativa/D.P.R.%2010%20settembre%201990,%20n.%20285.pdf](http://presidenza.governo.it/USRI/ufficio_studi/normativa/D.P.R.%2010%20settembre%201990,%20n.%20285.pdf)>.

<sup>30</sup> The shocking example of a Muslim woman living in the province of Pisonè who died during the pandemic and whose coffin was stored at home for a week since she couldn't be neither buried in islamic cemetery, nor expatriated to her homeland shows the inefficacy of existing Italian laws relating to burials: 'Non possono seppellire la giovane mamma: la bara resta in casa una settimana', *Brescia Today*, 25 March 2020 <<https://www.bresciatoday.it/attualita/coronavirus/sepoltura-mussulmani-.html>>.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

the body from hospital. The Italian law which normally gives family members 30 days to decide where the body should be buried, was dramatically reduced by Municipality of Milan to only 5 days.<sup>31</sup> For that reason unclaimed bodies of COVID-19 victims were buried by civil authorities in a special section of Milan cemetery “Campo 87”. Recently, authorities of Milan have received an increased number of claims from families who initially couldn’t even locate the graves of their family members who died in hospitals from COVID-19 and now demand to retrieve their bodies from lonely graves in order to give the deceased a proper funeral and bury them with other family members.<sup>32</sup> In light of current Italian provisions their requests have been refused as the remains of people who die of an infectious disease can be exhumed after two years from the date of death.<sup>33</sup>

Undoubtedly, Italy had implemented the most stringent lockdown measures to contain the coronavirus which remained in force for more than 60 days. Considering the decreasing number of both new confirmed COVID-19 cases and deaths, the Italian government started to lift some of the restrictions very cautiously since 4 May 2020.<sup>34</sup>

The ceremonies of funerals have been resumed from 4 May 2020 when Italy had already reported almost 29,000 deaths from COVID-19.<sup>35</sup> In accordance with the Prime Ministerial Decree<sup>36</sup> the allowed

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<sup>31</sup> ‘Ordinance of the Mayor Giuseppe Sala 12/2020’ *The Municipality of Milan*, 13 March 2020 <[https://www.comune.milano.it/documents/20126/78875953/Ordinanza+n.+12+del+13\\_03\\_2020+covid19.pdf/622047d1-be05-af7c-e947-0e19397a93ee?t=1584180195630](https://www.comune.milano.it/documents/20126/78875953/Ordinanza+n.+12+del+13_03_2020+covid19.pdf/622047d1-be05-af7c-e947-0e19397a93ee?t=1584180195630)>.

<sup>32</sup> Angela Giuffrida, ‘A proper funeral: families try to claim Covid-19 victims from Milan cemetery’, *The Guardian*, 10 June 2020 <<https://www.theguardian.com/world/2020/jun/10/it-was-chaotic-the-families-trying-to-claim-covid-19-victims-from-milan-cemetery>>.

<sup>33</sup> ‘Approvazione del regolamento di polizia mortuaria’, *Decree of the President of the Republic*, 10 September 1990, n 285: art 84, n 1 lett b.

<sup>34</sup> ‘Ulteriori disposizioni attuative del decreto-legge recante misure urgenti in materia di contenimento e gestione dell’emergenza epidemiologica da COVID-19, applicabili sull’intero territorio nazionale’, *Decree of the President of the Council of Ministers*, 26 April 2020, n 6, (20A02352; GU Serie Generale n.108 del 27-04-2020).

<sup>35</sup> WHO Health Emergency Dashboard <<https://covid19.who.int/region/euro/country/it>>.

<sup>36</sup> *Ulteriori disposizioni attuative del decreto-legge 23 febbraio 2020, n. 6, recante*

number of participants couldn't exceed fifteen persons all wearing protective masks and respecting the safety distance of at least one meter.<sup>37</sup> Following the request of the Italian Conference of Bishops, the Ministry of the Interior released a note of explanation in which excluded the possibility to form a cortege, which is a common practice for funerals especially in small villages of southern Italy.<sup>38</sup> As to the liturgical form of funerals it was recommended to follow the sanitary regime previously implemented by church authorities on order to ensure the safety of all participants. However, the same preventive measures weren't applied to other religious ceremonies which still couldn't be celebrated.

### *B Italy's Response to the Co-existence with the COVID-19 Virus*

The recovery plan announced by the Italian Prime Minister on 26 April 2020 still precluded religious groups from participating in Friday prayer in mosques, Saturday service in synagogues or Sunday services in churches. While other freedoms were gradually regained, the religious freedom still remained restricted with no potential date to restart the celebration of liturgy. In a dissent<sup>39</sup> issued by the Italian Conference of Bishops the church authorities admitted that despite long-lasting negotiations between church and state with reference to the organisation of the liturgical life in full compliance with safety protocols, the Prime Minister arbitrarily excluded the possibility to restart Masses celebrated in presence of the faithful. It also reminded that civil authorities should distinguish between their duty to deliv-

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*misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale. Il Decree of the President of the Council of Ministers, 26 April 2020 (20A02352, GU Serie Generale n.108 del 27-04-2020).*

<sup>37</sup> Ibid art 1 p 1 lett i.

<sup>38</sup> 'Question regarding the celebration of the funeral ceremony', *Ministry of the Interior, the Department for Civil Liberties and Immigration*, 30 April 2020 <[https://www.interno.gov.it/sites/default/files/allegati/circolare\\_cerimonie\\_funebri\\_e\\_quesito.pdf](https://www.interno.gov.it/sites/default/files/allegati/circolare_cerimonie_funebri_e_quesito.pdf)> (last access 5 August 2020).

<sup>39</sup> Ufficio Stampa CEI, 'Fase 2: il dissenso della CEI', 26 April 2020 <<http://www.settimananews.it/chiesa/fase-2-dissenso-della-cei/>>.

er indications of a sanitary nature and Church's duty to organise the life of Christian community in full autonomy and in consistency with health protocols.

Eventually, representatives of the Italian government and respective confessions succeeded in signing safety protocols which allowed to resume religious ceremonies starting from 18 May 2020, provided that all necessary health measures and social distancing are enforced by religious authorities. The agreement<sup>40</sup> signed on 7 May 2020 between the government and the Italian Conference of Bishops reveals a series of dispositions which particularly describe: 1) the access to places of worship in occasion of the celebration of liturgy, 2) the regular disinfection of places and objects used for the celebration, 3) measures which must be undertaken during the celebration to ensure the safety of all participants with special attention to the distribution of Holy Communion, 4) the necessity to inform members of religious community about the new safety rules. Unlike the previous provisions regarding the celebration of funerals which could be attended by a maximum of 15 people, the current protocol introduces a more reasonable and universal safety criterion of one meter of distance between every faithful in every direction. The entry to the church is allowed only to people who wear protective face masks and in absence of any flu-like symptoms, high temperature or recent contact with coronavirus patients. The traditional exchange of "the sign of peace" by handshake continues to be omitted, while before the distribution of Holy Communion the priest or extraordinary minister must disinfect hands, then wear mask and gloves and avoid any close contact with the hands of the faithful.

Similar protocols lifting ban on religious services were signed with: 1) Jews,<sup>41</sup> 2) the Church of Jesus Christ of Latter-day Saints,<sup>42</sup> 3) Is-

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<sup>40</sup> 'Protocollo circa la ripresa delle celebrazioni con il popolo' <[http://www.governo.it/sites/new.governo.it/files/Protocollo\\_CEI\\_GOVERNO\\_20200507.PDF](http://www.governo.it/sites/new.governo.it/files/Protocollo_CEI_GOVERNO_20200507.PDF)>.

<sup>41</sup> 'Protocollo con le Comunità ebraiche italiane' <[https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_ucei.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_ucei.pdf)>.

<sup>42</sup> 'Protocollo con la Comunità della Chiesa di Gesù Cristo dei Santi degli ultimi giorni' <[https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_ucei.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_ucei.pdf)>.



## FREEDOM OF RELIGION AND PROTECTION OF PUBLIC HEALTH

lamic communities,<sup>43</sup> 4) Hindu, Buddhist, Bahai, Sikh confessions,<sup>44</sup> 5) Protestant, Evangelical, Anglican churches<sup>45</sup> and 6) Orthodox communities.<sup>46</sup> For all of these confessions civil authorities applied the same sanitary standards as for the members of the Catholic Church with only one exception regarding the maximum capacity of 200 persons per one celebration. This criterion wasn't mentioned in the government's agreement with the Italian Conference of Bishops. Equality does not mean uniformity. In the case of Catholic Church, being the predominant religious community in Italy,<sup>47</sup> the government allowed higher limits to accommodate the factual needs of believers.

### III POLAND'S RESPONSE TO COVID-19

Facing the growing epidemic threat in European countries, the first legal step to combat the possible spread of COVID-19 epidemic in Poland was made on 2 March 2020 by adopting a special law<sup>48</sup> which permitted the authorities to supervise and manage the epidemic by providing them with new administrative measures. The first Polish laboratory-confirmed case of coronavirus was reported on 4 March 2020 and the first death due to COVID-19 was reported eight days

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<sup>43</sup> 'Protocollo con le Comunità Islamiche' <[https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_comunita\\_islamiche.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_comunita_islamiche.pdf)>.

<sup>44</sup> 'Protocollo con le Comunità Induista, Buddista' (*Unione Buddista e Soka Gakkai*), *Baha'i e Sikhi* <[https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_buddisti\\_induisti\\_msoka\\_sikh\\_bahai.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_buddisti_induisti_msoka_sikh_bahai.pdf)>.

<sup>45</sup> 'Protocollo con le Chiese Protestanti, Evangeliche, Anglicane' <[https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_comunita\\_religiose.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_comunita_religiose.pdf)>.

<sup>46</sup> 'Protocollo con le Comunità ortodosse' <[https://www.interno.gov.it/sites/default/files/2020.05.14\\_protocollo\\_comunita\\_ortodosse.pdf](https://www.interno.gov.it/sites/default/files/2020.05.14_protocollo_comunita_ortodosse.pdf)>.

<sup>47</sup> Beatrice Serra, 'Religious Symbols and Public Sphere: The Italian Experience' in Grzegorz Blicharz (ed), *Freedom of Religion. A Comparative Law Perspective* (Wydawnictwo IWS, 2019) 78.

<sup>48</sup> *The Act of 2 March on special arrangements for preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them* <<https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200000374/UD20200374Lj.pdf>>.

later. On 10 March 2020 WHO included Poland into the group of countries with active local transmissions of coronavirus.<sup>49</sup> In order to mitigate the spread of pandemic the Polish Minister of Health declared on 13 March 2020 the state of epidemiological threat on the territory of the Republic of Poland.<sup>50</sup> Among the temporary social distancing measures introduced by Polish legal order since 14 March 2020 was the limitation of religious worship in public places, including buildings and open spaces, which consisted in the necessity to ensure that during religious ceremonies in a given area or in a given facility there were no more than 50 people in total, both inside and outside the premises, including participants and religious ministers.<sup>51</sup> Practically, while all cultural and educational institutions closed their doors and started to operate remotely, religious services were still available, though with certain restrictions on the amount of people able to participate in public masses and other religious ceremonies. The same limit of up to 50 people engaged in religious gathering was maintained in the ordinance issued by the Minister of Health on 20 March 2020 which regarded the announcement of the state of the epidemic in the territory of the Republic of Poland.<sup>52</sup> At that time the number of active infections detected in Poland was relatively low compared to other European countries (eg on 14 March 2020 Poland reported only 64 active infections, while in Italy there were already 17660 confirmed cases).<sup>53</sup>

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<sup>49</sup> World Health Organization, ‘Coronavirus disease 2019 (COVID-19) Situation Report – 50’, 10 March 2020 <[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200310-sitrep-50-covid-19.pdf?sfvrsn=55e904fb\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200310-sitrep-50-covid-19.pdf?sfvrsn=55e904fb_2)>.

<sup>50</sup> ‘Ordinance of the Minister of Health of 13 March 2020 on the declaration of an epidemic threat in the territory of the Republic of Poland’, DzU 2020 poz 433.

<sup>51</sup> Ibid § 6.1.3.

<sup>52</sup> ‘Ordinance of the Minister of Health of 20 March 2020 regarding the announcement of the state of the epidemic in the territory of the Republic of Poland’, DzU 2020 poz 491, § 7.1.3.

<sup>53</sup> World Health Organization, ‘Coronavirus disease 2019 (COVID-19) Situation Report – 54’, Table 2. Countries, territories or areas outside China with reported laboratory-confirmed COVID-19 cases and deaths. Data as of 14 March 2020. <[https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200314-sitrep-54-covid-19.pdf?sfvrsn=dcd46351\\_8](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200314-sitrep-54-covid-19.pdf?sfvrsn=dcd46351_8)>.

## FREEDOM OF RELIGION AND PROTECTION OF PUBLIC HEALTH

Nevertheless, the existing regulations were changed only a couple of days later, on 24 March 2020, with the adoption of new and more drastic safety rules. In accordance with the new ordinance<sup>54</sup> starting from 25 March 2020 the possibility of movement was limited to four reasons relating strictly to: 1) performance of professional or official activities, 2) fulfillment of the necessary needs related to the current affairs of everyday life (medical and psychological help, shopping for necessities), 3) volunteering in the fight against COVID-19, 4) performing or participating in the performance of religious worship, including religious activities or rites.<sup>55</sup> It's evident that although the temporary laws provided religious exemptions for the liberty of movement, the ban on religious gatherings (masses and funerals included) which exceeded the number of five people (excluding religious ministers performing the religious worship) effectively restricted religious liberty in Poland. Preventive measures which initially remained in force between 25 March 2020 and 11 April 2020 were subsequently extended until 20 April 2020.<sup>56</sup> Eventually, in Poland, the most stringent restrictions of the liberty to practice one's religion collectively in public remained in force for the total number of 26 days. In practice, during that period of time religious groups, with the overwhelming majority of Roman Catholics were obliged to participate in collective rites through live streaming. The concept to limit religious events to only five participants was not only slightly disproportionate when compared to safety rules adopted at the same time for public transport (allowing half of the seats to be occupied),<sup>57</sup> but also lacked any scientific or medical justification, especially with regards to large churches where the safe distance could be easily maintained. The Polish legislator allowed people to move from home for religious reasons, but

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<sup>54</sup> 'The Ordinance of the Minister of Health of 24 March 2020 amending the ordinance on the announcement of the state of the epidemic in the territory of the Republic of Poland', DzU 2020 poz 522.

<sup>55</sup> Ibid § 1.2.

<sup>56</sup> 'The Ordinance of the Council of Ministers of 10 April 2020 regarding the establishment of certain restrictions, orders and bans in connection with an epidemic state', DzU 2020 poz 658, § 7.1.3) in correlation with § 8.1.3).

<sup>57</sup> Ibid § 17.

didn't take into consideration that religious gatherings can also be effectively organized with the implementation of the same sanitary regime, which was put in place with regards to other public places (eg safe distance between pews and their regular disinfection, use of protective masks and gloves by the faithful). On the other hand, it is important to bear in mind that while religious gatherings were limited to five people, all other types of gatherings were banned if attended by more than two people (except for members of the same household). This is in line with the favorable approach towards religious organisations granted by the Polish Constitution. The emphasis on the mutual independence of churches and religious organisations evoked in the Polish Constitution (art 25-3) indicates that the relationship between the state and a given entity should be shaped separately, individually, and that churches and religious organisations are independent of the state. However, independence of faith-based communities isn't equivalent to their absolute autonomy. After all, every religious entity is subject to the state regulations of the country in which it operates. Similarly, the existence of religious organisations and their rules affects society. Here, 'the principle of respect for their autonomy and the mutual independence of each church and religious organisation in its own sphere' as well as 'the principle of cooperation for the individual and the common good' (art 25-3) are decisive.

Emergency measures implemented by Polish government were then less restrictive for churchgoers than in many European countries as they didn't lead the churches to a complete lockdown and suspension of religious ceremonies. Moreover, the priests celebrating religious services were exempted from legal obligation to cover nose and mouth. The decision as to whether continue celebrating public religious rites for a group of maximum five attendants was left entirely and independently to ecclesiastical bodies. At the beginning of epidemic, when no limits regarding public religious gatherings had been put in force in Poland, the President of the Polish Conference of Bishops on 10th March called for the increase of Sunday Masses in order to make it possible for believers to safely attend the Sunday

liturgy without creating excessive crowds.<sup>58</sup> However, three days later and with the announcement of the state of epidemic threat on the territory of Poland, the President of the Polish Conference of Bishops released another statement which encouraged bishops of all dioceses to dispense believers from the obligation to attend Mass on Sunday. It was nevertheless unimaginable for both Polish authorities and believers to suspend religious services in churches. While in many European countries raged a significant clash between government's obligation to ensure health and safety and individual's fundamental right to freely practice the faith, in Poland it assumed the form of rather smooth and peaceful cooperation between religious groups and state's authorities from the early beginning till the end of lockdown restrictions. During the stage of lockdown the sacramental life of the Catholic Church, though with some unprecedented modifications, still continued as the restrictions imposed by state were not only accepted by church leaders, but in some cases they voluntarily suspended public liturgy within the autonomy of every diocese. Considering a rather stable dynamic of new COVID-19 cases and low death rate during the strict lockdown of Poland it should be stressed that measures undertaken by Polish government were effective. Although for some groups of believers such restrictions imposed on places of worship might seem too excessive, the low number of infections occurred daily in Poland through March and April is undoubtedly the merit of home isolation and social distancing, which were strongly recommended by all main faith groups of Poland. In addition to the Catholic Church which strongly advised believers to remain in spiritual connection with their parish communities, the Mufti of Muslim Religious Association<sup>59</sup> also cancelled all prayers in Polish mosques. The same strict adherence to state directives regarding the health crisis in Poland was expressed by the

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<sup>58</sup> 'Statement of the President of Polish Conference of Bishops regarding the threat of coronavirus', 10 March 2020 <<https://episkopat.pl/przewodniczacy-episkopatu-kosciol-stosuje-sie-do-zalecen-sluzb-sanitarnych-ws-koronawirusa-2/>>.

<sup>59</sup> 'Statement of the Mufti of the Supreme Muslim College by the Muslim Religious Association of Poland', 12 March 2020 <<http://mzr.pl/oswiadczenie-najwyzszego-kolegium-musulmanskiego-musulmanskiego-zwiazku-religijnego-w-rzeczypospolitej-polskiej/>>.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

Lutheran Church of Poland<sup>60</sup> whose representatives recommended its communities to consider the current epidemiological situation when taking decisions regarding the organisation of religious services in houses of worship. In order to maintain the social dialogue with parishioners the majority of churches took the opportunity to propagate their faith through digital platforms. Similar immersion into the digital world can be observed also in other countries affected by COVID-19 pandemic where religious gatherings have been temporarily restricted or prohibited. In Poland religious communities also witnessed an accelerated and massive digitalisation of religious services. The decision to celebrate Masses without the presence of the faithful was left entirely to ecclesiastical bodies. As a result, in some dioceses, particularly during Easter which is the most significant holiday for Roman Catholics, participation was made possible only through the media platforms, public radio and television.

### *A Gradual lifting of lockdown restrictions in Poland*

On 16 April 2020 the Polish government announced a plan to gradually loosen the coronavirus restrictions in four stages, starting from 20 April 2020. As to religious liberty, in the first phase<sup>61</sup> civil authorities decided to increase access to places of worship by replacing the limit of 5 churchgoers with the provision that 15 square meters be provided for one participant during public worship. From that day on the number of attendants allowed to attend collective religious rites was correlated with the dimensions of the church building (excluding celebrants). With regard to funerals taking place in cemeteries the number of mourners was restricted to 50 persons (excluding the minister conducting the service and workers doing the burial). In addition, starting from 16 April 2020 it became compulsory to cover

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<sup>60</sup> See 'Pastoral letter of the Bishop of the Lutheran Church of Poland of 13 March 2020' <[https://www.luteranie.pl/nawosci/nabozenstwa\\_w\\_czasie\\_zagrozenia\\_koronawirusem,6596.html](https://www.luteranie.pl/nawosci/nabozenstwa_w_czasie_zagrozenia_koronawirusem,6596.html)>.

<sup>61</sup> 'The Ordinance of the Council of Ministers of 19 April 2020 regarding the establishment of certain restrictions, orders and bans in connection with an epidemic state', DzU 2020 poz 697, § 9.1.3.

face and nose when entering the church or house or worship both for individual visit or for collective service. In regulations<sup>62</sup> concerning the second phase of lifting COVID-19 restrictions, the limit of 5 people was reinstated only with reference to church buildings smaller than 75 square meters, while in the bigger ones the same rules remained in force until 16 May 2020. In the third phase civil authorities decided to decrease dimensions of church building to only 10 square meters for every churchgoer while still limiting the number of funeral attendees in cemeteries to 50 people. At the same time capacity limit for restaurants was 1 person per 4 square meters. On the other hand, in food stores and in shopping malls still were allowed only 1 person per 15 square meters. The limit of 1 person per 10 square meters was applied only to churches (with size beyond 50 square meters) and casinos. As it was expressed by the Prime Minister, lifting the limits in churches was scheduled ‘for the hundredth anniversary of the birth of our great fellow countryman John Paul II, who changed the fate of the world, changed the fate of Poland’, and since main church celebrations were taking place on Sunday, 17 May 2020, the limits were relaxed on this day, whereas limits for all other secular activities were lifted the day after – on 18 May 2020.<sup>63</sup> It was a clear sign of cooperative arrangement between church and state. Eventually, limits regarding religious gatherings on the church premises and at funerals celebrated in cemeteries were entirely lifted on 30 May 2020<sup>64</sup> while the requirement to cover nose and mouth remains still in force.

Beginning from 8 August 2020 certain restrictions were partially reintroduced in specific districts of Poland (categorized as “yellow” and “red” zones) with increased number of new infections larger than

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<sup>62</sup> ‘The Ordinance of the Council of Ministers of 2 May 2020 regarding the establishment of certain restrictions, orders and bans in connection with an epidemic state’, DzU 2020 poz 792, § 8.1.3.

<sup>63</sup> ‘The Ordinance of the Council of Ministers of 16 May 2020 regarding the establishment of certain restrictions, orders and bans in connection with an epidemic state’, DzU 2020 poz 878.

<sup>64</sup> ‘The Ordinance of the Council of Ministers of 29 May 2020 regarding the establishment of certain restrictions, orders and bans in connection with an epidemic state’, DzU 2020 poz 792, § 15.8.

in other areas of Poland.<sup>65</sup> The list of districts with special requirements is subjected to permanent monitoring and updates. With regards to religious gatherings taking place in “red” zones there was announced a new participants’ capacity limit of 50 per cent in houses of worship or churches. Additionally, unlike at the beginning of pandemic, in “red” zones religious events are allowed to take place outside provided that attendees keep a distance of 1.5 meters between them or cover the mouth and nose (excluding persons leading the religious services), and a maximum of 150 people can participate, which is a general restriction for all public gatherings in these zones. The new way of introducing restrictions on religious gatherings has been shaped by previous experience and scientific recommendations. It follows limits introduced in other countries: based not on the criterion of “one person per square meter”, but on the percentage of the capacity of building. Moreover, the limit of 50 per cent capacity is applied almost universally across various secular and non-secular gatherings except for shopping facilities.

Interestingly enough, whereas in “yellow” zones there are no limitations imposed on the number of participants in religious gatherings, most secular activities are burdened with such limits, eg fitness clubs may accept one person per 7 square meters, cinemas are allowed to fill only 25 per cent of their capacity and restaurants, just like in “red” zones, welcome only one person per 4 square meters. On the other hand, both in “yellow” and in “red” zones there’re no limits on the number of customers remaining at the same time in stores, marketplaces and post offices. The lack of restrictions on the operation of shopping malls and shopping centers obviously is tailored to restore the economy and protect against social and financial crisis, but on the other hand rises some concerns over the consistency of adopted provisions. As far as we consider the economic recovery from COVID-19 essential for the state’s welfare, we shouldn’t underestimate the im-

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<sup>65</sup> ‘The Ordinance of the Council of Ministers of 7 August 2020 regarding the establishment of certain restrictions, orders and bans in connection with an epidemic state’, DzU 2020 poz 1356 § 25.8.



## FREEDOM OF RELIGION AND PROTECTION OF PUBLIC HEALTH

portance of unlimited access for public religious services which contributes to the personal well-being. Anyway, we should remember that balancing values and navigating through a current uncertain situation of pandemic is not a piece of cake for any government. That is why the state is allowed to make specific and even controversial tradeoffs for the public health or national economy reasons. However, there is always a bottom line that cannot be crossed – it's the discrimination against religion. In Poland we have seen bright, but not flawless, pictures of state's cooperation with churches and barely one would border upon discriminatory treatment of religious gatherings by the government. No church or religious organisation complained on legal grounds against restrictions imposed by the government. As arts 53–5 of the Polish Constitution reads: 'The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others'. Limitations of religious freedom are allowed if 'necessary in a democratic state' and do not 'violate the essence of this freedom' (arts 31–3). That is why such limitations have to be proportionate. The Polish government have been gradually loosening limits on religious gatherings and never violated the essence of freedom to publicly express religion, allowing collective religious worship albeit in smaller groups. In fact, in Poland the cooperation between state and church meant also that religious communities understood the seriousness of COVID-19 related problems and challenges which the government has faced and they adhered to the guidelines and policies of the state by providing their own sanitary and safety rules.

In order to distinguish the difference between civil and religious gatherings and the importance of the last ones for the citizen's life it's important to point out that Polish authorities decided to lift restrictions pending on religious ceremonies already in the first place, while mass gatherings up to 150 persons were prohibited till the beginning of the fourth stage. During the lockdown phase in Poland limitations regarding public worship neither targeted religious groups, nor privi-

leged them by letting them to gather for religious services. Although church attendees are still obliged to wear protective masks, the minister who celebrates the Mass is exempted from that requirement. Unlike in Italy, there are also no specific provisions regarding the access to the church and distribution of Holy Communion – the church’s ‘own sphere’ par excellence (art 25–3). Religious groups are invited to respect health directives but are allowed to organise religious service within its full autonomy.

### IV FINAL REMARKS

As the coronavirus continues its tragic journey around the globe, Europe settles into the era of the evaluation of damages inflicted by the general lockdown. Among the damage, which for a long time will be difficult to access, remain the psychosocial effects in connection with the restriction of constitutional rights. As soon as the first scientific data evidenced the character of the novel virus and released the first sanitary guidelines to curb the spread of the virus, it was clear that its most fundamental and still the most effective rule apart from the sanitisation – the social distancing – would complicate and change every aspect of human life. While many social aspects of our life were effectively transitioned into virtual platforms, it is still impossible to digitalise religion. For that reason, the restrictions imposed on collective forms of worship are among the most debated ones. While the modern world tends to overuse the word “unprecedented” with reference to social distancing restrictions caused by COVID-19 pandemic, it must be emphasized that similar measures had already been undertaken in the past centuries. Attentive Italians living in the north of the country, who were the first European nation affected by the current pandemic in the worst possible way, quickly discerned many similarities between current coronavirus disease and the great pestilence of the 1630 which haunted Lombardy and had been vividly described by Alessandro Manzoni in an Italian classic novel *The Betrothed* (“*Promessi Sposi*”). His historical description of human behavior in situation of health emergency leaves the reader no illu-

## FREEDOM OF RELIGION AND PROTECTION OF PUBLIC HEALTH

sions as to the fact that humanity hasn't changed a lot from that time sharing the same habits, fears and expectations regarding the uncertain days.

Passersby visiting one of the oldest districts of Milan – Porta Venezia – probably will stumble upon a small Renaissance church of San Carlo al Lazzaretto which also served as a backdrop for Manzoni's Milanese tale. The building, now deeply tucked between modern residential blocks, has already lost its special meaning for the old world. Only a few might recall that four centuries ago this church constituted the central part of a large, rectangular leper hospital. Its special construction of eight open arches, commissioned by the Saint Archbishop of Milan – Charles Borromeo, permitted all patients to follow, from a safe distance of their own private beds, the religious rites from every angle of the hospital. The now symbolic presence of this church in Milan on one hand may rise some concerns about the present role of religion amid the pandemic crisis which in some countries has been marginalized. If in the sixteenth century it was unthinkable to deprive the infected people of participation in religious practices, one might abruptly conclude that the same access should be granted to people nowadays. On the other hand, the same church reminds us that even in the past the access to religious worship was also conditioned by safety rules as the lack of them always contributed to the spread of new infections. The ill couldn't come closer to the altar, but were advised to watch the celebration from safe distance. That's all we're required to do also nowadays.

The public health crisis that has been sparked around the globe clearly shows that both in Poland and in Italy, local religious groups transitioned quickly to offer the believers virtual meetings, while still providing physical assistance for people in need. Moral and legal dilemmas regarding the onerous limitations on the right to freely profess one's religion collectively in public will still be strong, but it's quite evident that if faith-based institutions had defied orders not to gather in churches we would have seen more COVID-19 infections with coronavirus clusters tied to churches.

## FUNDAMENTAL RIGHTS IN THE AGE OF COVID-19

Before we cast the final vote over the legitimacy, rationality and proportionality of anti-epidemic restrictions imposed on religious groups, we should consider the value of public health and safety over the interest of religious groups. As the current pandemic reveals, most of them tried to adapt their rituals and practices to the new circumstances. However, the willingness to change or suspend religious rites in situations of public health emergency should not be interpreted as a pretext to abandon religious practices by the faithful in the name of public interests. As much as we appreciate the effort of religious groups to sacrifice their spiritual needs in order to curb the spread of COVID-19 pandemic, this situation cannot be used to intentionally target religion. Examples of Poland and Italy show how cooperation between church and state based on mutual understanding and respect may help either to keep collective exercise of religion going on or to reopen religious gatherings as soon as possible without unnecessary delay and without unfair treatment comparing with secular gatherings. History and comparative experience teach that any freedom may face limitations, but we may take the best out of any challenges and give the best of us to work for the common good which means also to find ways of protecting freedom of religion.