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**Minoranze religiose ed emergenze sanitarie:  
Approcci globali e lezioni apprese dalla pandemia di COVID-19 \*\*\*\***

*Religious Minorities and Health Emergencies:  
Global Approaches and Lessons Learnt from the COVID-19 Pandemic \*\*\*\**

*While the plague, with its effective impartiality,  
should have reinforced equality among our fellow citizens,  
through the usual effect of selfishness,  
it instead sharpened the feeling of injustice in people's hearts.  
(A. CAMUS, *The Plague*, Gallimard, 1947)*

**ABSTRACT:** The paper investigates the complex landscape of religious minorities in different geographical and legal contexts, and the impact of the emergency generated by the COVID-19 pandemic, from a legal perspective, focusing on legislative and jurisprudential materials. After an introduction to the fluid nature of the notion of religious minority, the analysis is structured around thematic dichotomies that highlight tensions between opposing interests, such as religious versus secular authority and public health versus religious autonomy. Specific focus areas include exemptions for religious practices, the role of religious accommodations in public institutions, and the implications of religious practices on public health measures like burials and funerals. It also addresses the conflict between secular and religious activities, such as bans on gatherings, and the privacy concerns surrounding sensitive information versus public health demands. Further, the study discusses the issues of scapegoating and of the rise of hate speech in relation to freedom of expression. Finally, it evaluates positive practices and potential abuses in the consultation and collaboration with religious minorities. The conclusions compare diverging judicial approaches to the COVID-19 precautionary rules and focuses on faith engagement as the most successful approach to manage

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health emergencies, advocating for the recognition of religious minorities as allies rather than adversaries in crisis contexts.

**ABSTRACT:** Il contributo esamina il complesso panorama delle minoranze religiose in diversi contesti geografici e giuridici, e l'impatto dell'emergenza generata dalla pandemia di COVID-19, da una prospettiva giuridica, concentrandosi su materiali legislativi e giurisprudenziali. Dopo un'introduzione sulla natura fluida della nozione di minoranza religiosa, l'analisi si struttura attorno a dicotomie tematiche che evidenziano tensioni tra interessi contrapposti, come l'autorità religiosa contro quella laica e la salute pubblica contro l'autonomia religiosa. Le aree di interesse specifico riguardano le esenzioni a favore delle pratiche religiose, il ruolo degli accomodamenti religiosi nelle istituzioni pubbliche e le implicazioni delle pratiche religiose come sepolture e funerali sulle misure di protezione della salute pubblica. Il contributo affronta inoltre il conflitto tra attività secolari e religiose, con riguardo ai divieti di assembramento, e alle preoccupazioni relative alla privacy delle informazioni sensibili rispetto alle esigenze di salute pubblica. Infine, questo lavoro affronta la questione della ricerca di capri espiatori e dello sviluppo di forme di hate speech in relazione alla libertà di espressione. Infine, valuta le pratiche positive e i potenziali abusi nella consultazione e nella collaborazione con le minoranze religiose. Le conclusioni mettono a confronto diversi approcci giudiziari alle norme precauzionali relative al COVID-19, e si concentrano sul coinvolgimento delle comunità di fede come approccio più efficace per gestire le emergenze sanitarie, sostenendo il riconoscimento delle minoranze religiose come alleate piuttosto che come avversarie nel contesto di una crisi.

**SUMMARY: Introduction - a) The "Myth" of the "Great Equalizer" - b) The fluid nature of the notion of religious minorities - c) The intersection of religion and minority status - d) The thin boundary between minority status and "minoritization" in domestic frameworks - e) Majority and minority dynamics - f) The impact of emergency rules on religious minorities in Europe - g) Religious "marginality" of faith minorities in certain extra-European contexts - h) Limitations i) - Methodology and Structure of the Paper - 1. Autonomy of Religious Communities vs General Interests of Public Health: General Legal Principles - 2. The Importance of Specific Religious Minorities' Practices: Burials and Funerals - 3. The Importance of Specific Religious Minorities' Practices: Burials and Funerals - 4. Secular vs Religious Activities: Discriminatory Bans on Gathering - 5. Privacy for Sensitive Data vs Public Health Demands - 6. Scapegoating and Hate Speech vs Freedom of Expression - 7. Positive Practices and Risk of Abuses: Consultation, Collaboration and Partnership - 8. Closing Remarks 8.1. The UN Guidelines to mitigate the impact of the emergency rules -**



## 8.2. The Role of the courts and their diverging approaches 8.3. Faith engagement as a game-changer.

### Introduction

#### a) The “Myth” of the “Great Equalizer”

During the COVID-19 pandemic, whenever important political figures had been diagnosed with the virus, the “myth” of the “great equalizer” gained momentum<sup>1</sup>. However, such a myth was shattered as soon as it became evident that, in reality, some classes of individuals were “less equal than others” (as a reminiscent of Orwell’s *Animal Farm*) in front of a devastating health crisis<sup>2</sup>. Indeed, lacking any scientific certainty, States

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<sup>1</sup> See **A. BOCCATO**, *COVID-19: Race, Class and the “Great Equalizer” Myth*, in Media Diversity Institute, 17 April 2020, <https://www.media-diversity.org/covid-19-race-class-and-the-great-equalizer-myth/>; **V. GALASSO**, *COVID: Not a Great Equalizer*, in CESifo Economic Studies, 2020, pp. 1-17; **S.A. MEIN**, *COVID-19 and Health Disparities: the Reality of “the Great Equalizer”*, *J. Gen. Intern. Med.*, 2020, vol. 35, pp. 2439-244

<sup>2</sup> See **A. MADERA**, **K. WONISCH** (eds.), *Special Issue: The Impact of the COVID-19 Pandemic on Religious Minorities*, in *International Journal for Religious Freedom*, vol. XVI, no. 1, 2023; **R. MEDDA-WINDISCHER**, *Introduction to Special Focus: COVID-19 and*



enforced restrictive measures lying on a broad spectrum (lockdowns, social distancing, and health directives), whose aim was to limit the spread of the infection. Such measures had a disparate impact on the most vulnerable groups, with special regard to religious minorities, who were affected by pre-existent underlying structural inequalities. Indeed, in multi-religious societies, faith minorities often face challenges to achieve accommodation of their religious and cultural diversity<sup>3</sup>. These groups still “face the contestation of their public visibility” due to a traditional public/private dual approach “which tends to confine minority identities to private spaces”<sup>4</sup>. Indeed, they are entrapped between a political rhetoric which emphasizes a narrative of pluralism<sup>5</sup> and growing “alarmed legal reactions”<sup>6</sup> towards “deep diversity”<sup>7</sup>.

## b) The fluid nature of the notion of religious minorities

Influential works have extensively analyzed the impact of the pandemic on religious freedom<sup>8</sup>. The COVID-19 emergency situation faced by

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*Minorities*, in *European Yearbook of Minority Issues*, vol. XIX, Brill, Nijhoff, 2022, pp. 77-80.

<sup>3</sup> See **R. MEDDA-WINDISCHER, K. WONISCH, A.C. BUDABIN**, *Introduction: Squaring the Circle: Critical Reflections on Religious minorities, Diversity, Governance and Pluralistic Societies*, in R. MEDDA-WINDISCHER, K. WONISCH, A. C. BUDABIN (eds.), *Religious Minorities in Pluralist Societies: Critical Perspectives on the Accommodation of Religious Diversities* Brill, Leiden, 2024, p. 1; **S. FERRARI**, *Conclusions*, ivi, pp. 223-236; **P. CONSORTI**, *L'impatto del nuovo Codice del Terzo settore sulla disciplina degli enti religiosi*, in *Stato, Chiese e pluralismo confessionale, Rivista telematica* (<https://riviste.unimi.it/index.php/statoechiese>), no. 4/2018, pp. 1-18.

<sup>4</sup> See **M.D.C. VAN DER TOL**, *Constitutional Intolerance. The Fashioning of the Other in Europe's Constitutional Repertoires*, Cambridge University Press, Cambridge, 2024, p. 13.

<sup>5</sup> See **M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI**, *Religious Minorities: Conceptual Perspectives*, in *Religious Minorities Online*, 2023, edited by E. BAFFELLI, A. VAN DER HAVEN, M. STAUSBERG, Berlin-Boston, De Gruyter, 2023, pp. 1-24, <https://www.degruyterbrill.com/database/RMO/entry/rmo.23389320/html>.

<sup>6</sup> 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.

<sup>7</sup> See **K. ALIDADI, M.-C. FOGLETS**, *Framing Multicultural Challenges in Freedom of Religion Terms: Limitation of Minimal Rights for Managing Religious Diversity in Europe*, in *Netherlands Quarterly of Human Rights*, 2012, no. 30, vol. 4, p. 389.

<sup>8</sup> See **J. MARTÍNEZ-TORRÓN, B. RODRIGO LARA** (eds.), *COVID-19 y libertad religiosa*, Iustel, Madrid, 2021; **P. FARAGUNA, J. MARTÍNEZ-TORRÓN, P. CONSORTI, M. HAU, V. D'ALÒ, G. SCALA, M. GIANNELLI, S. BALDASSARRE, S. GIANELLO, P.**



religious minorities was exacerbated by the fact that, in public discourse, the notion of minority, its specific boundaries, and the individual and group rights concerned, remains “unsettled”<sup>9</sup>. This is due to the lack of a single, universally-shared definition in international law discourse and the growing understanding of the need for a notion incorporating “dynamic, processual, relational, contextual, situational and intersectional” factors<sup>10</sup>. This conundrum was well expressed by Max van der Stoel, the first High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe<sup>11</sup>.

The notion of minorities has traditionally been an important issue in international law and a key driver in the implementation of the complex architecture aimed at protecting minority groups<sup>12</sup>. However, its definition is fluid and implies navigating the “irresolvable tension” between equality and diversity<sup>13</sup>. Academics emphasized how for about thirty years from its establishment, the UN “downplayed” the issue of religious minorities rights, seeming entrapped between “the inter-war experience regarding the failed minority system” and the focus on

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ZICCHITTU, G. PAVESI, M. CROCE, M. TOSCANO, *Religious Freedom Before, During and After Covid-19 between Europe and the Member States*, in *Stato, Chiese e Pluralismo Confessionale*, no. 16/2022; B. CONWAY, L. KÜHLE, F. ALICINO, G. BIRSAN (eds.), *Religion, Law and COVID-19 in Europe. A Comparative Analysis*, Helsinki University Press, 2024; P. CONSORTI (ed.), *Law, Religion and COVID-19 Emergency*, DiReSoM Papers 1, Pisa, 2020, <https://diresom.net/2020/05/07/diresom-papers-1-ebook-law-religion-and-covid-19-emergency/>; F. BALSAMO, D. TARANTINO (eds.), *Law, Religion and the Spread of COVID-19 Pandemic*, DiReSom Papers 2, Pisa, 2020 (<https://diresom.net/2020/11/07/law-religion-and-the-spread-of-covid-19-pandemic-ebook-diresom-papers-2/>).

<sup>9</sup> See S. ANGELETTI, *Religious Minorities’ Rights in International Law: Acknowledging Intersectionality, Enhancing Synergy*, in *Religions*, 2021, vol. 12, p. 691.

<sup>10</sup> See M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI, *Religious Minorities*, cit., pp. 1-24.

<sup>11</sup> See HIGH COMMISSIONER OF NATIONAL MINORITIES, *Keynote Address of Mr Max van der Stoel CSCE High Commissioner on National Minorities at the CSCE Human Dimension Seminar on “Case Studies on National Minority Issues: Positive Results”* Warsaw, 24 Mat 1993, where he stated “What is a minority? I do not pretend to improve on the work of many experts who over the years have not been able to agree on a definition, so I won’t offer you one of my own... Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one”.

<sup>12</sup> See N. GHANEA, *Are Religious Minorities Really Minorities?*, in *Oxford Journal of Law and Religion*, vol. I, n. 1, 2012, p. 57.

<sup>13</sup> See S. MAHMOOD, *Religious Difference in a Secular Age: A Minority Report*, Princeton (New Jersey), Princeton University Press, p. 32.



universal human rights as “the answer to all”<sup>14</sup>. In 1977, Francesco Capotorti (as the UN Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) provided the most frequently recognized definition of “minorities”. In accordance with article 27 of the ICCPR, Capotorti defined a minority as

“a group that is numerically inferior to the rest of population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious, or linguistic characteristic differing from those of the rest of population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion, or language”<sup>15</sup>.

Although this non-binding definition significantly contributed to clarify the concept of “minority” in international law, it focused on the elements of nationality, non-dominant position and “shared solidarity”<sup>16</sup>, ignoring significant changes in the landscape, due to migration flows.<sup>17</sup>

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<sup>14</sup> See **N. GHANEA**, *Are Religious Minorities*, cit., p. 60; **D. FERRARI**, *New and Old Religious Minorities in International Law*, in *Religions*, 2021, vol. 12, p. 698 ff.; See **M. DISTEFANO**, *Regole emergenziali e tutela internazionale delle minoranze religiose fra vulnerabilità strutturale e derivata*, in **E. D'AGOSTINO, M. DISTEFANO, A LICASTRO, M. TIGANO, A. MADERA**, *Le minoranze religiose durante la crisi sanitaria dovuta al COVID-19*, in *Stato Chiese e pluralismo confessionale*, cit., no. 5/2025, p. 15.

<sup>15</sup> See **F. CAPOTORTI**, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1, 1977. Such a definition was mirrored in Recommendation 1201 by the Parliamentary Assembly of the Council of Europe. See **PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE)**, *Recommendation 1201 on an Additional Protocol on the Rights of National Minorities to the European Convention of Human Rights*, 1993. It identified as a minority a group of persons who a) reside on the territory of that state and are citizens thereof ; b. maintain longstanding, firm and lasting ties with that state; c. display distinctive ethnic, cultural, religious or linguistic characteristics ; d. are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state ; e. are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.

<sup>16</sup> See **N. GHANEA**, *Are Religious Minorities*, cit., p. 61.

<sup>17</sup> See **R. MEDDA WINDISCHER, C. BOULTER, T.H. MALLOY** (eds.), *Extending Protection to Migrant Populations in Europe. Old and New Minorities*, London: Routledge and New York: Taylor & Francis Group, 2020. **F. BRETSCHER**, *Protecting the Religious Freedom of New Minorities in International Law*, Routledge, London, 2020, pp. 16-17; **R. MEDDA-WINDISCHER**, *Old and New Minorities: Reconciling Diversity and Cohesion*, Nomos Verlagsgesellschaft, Baden-Baden, 2008; **F. BRETSCHER**, *Religious Freedom of Members of Old and New Minorities: A Double Comparison*, in *Erasmus Law Review*, vol. X, 2017, p. 151; **R. MEDDA-WINDISCHER, K. WONISCH, A.C. BUDABIN**, *Introduction:*



A further 1985 definition from the UN moved a step beyond, by underlining the group's willingness to achieve equality with the majority in fact and in law<sup>18</sup>. However, both the definitions resent from an approach which "emphasizes numbers" and inner dynamics that shape minority discourses, underestimating the social perception of the distinctiveness and the legal treatment minority groups are subject to, often giving rise to "minoritization"<sup>19</sup>. Various other treaties and declarations expanded the notion of "minority" with a view to providing a broader protection, expanding beyond the preservation of their existence, and fostering their identity<sup>20</sup>. Indeed, international bodies have gradually determined that a minority status is connected with the group's characteristics, disentangling it from the need of a national identity<sup>21</sup>. Moreover, international boards struggled to downsize a State's margin of discretion in identifying minorities, with a view to granting to religious minorities the protection grounded in article 27 at its full extent<sup>22</sup>.

Most of all, they gave weight to the so-called self-identification principle, according to which the will of the person concerned is a key factor for his or her identification with a given minority (UN Commission on Human Rights 2004)<sup>23</sup>.

### c) The intersection of religion and minority status

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*Squaring the Circle*, cit., pp. 1-15; **K. TOPIDI**, *Religious Minority Identity in the Work of the Advisory Committee of the Framework Convention for the Protection of National Minorities: A Multifaceted Challenge in Evolution*, in *Religions*, vol. XII, no. 10, 2021, p. 858; **M.J.H. BHUIYAN**, **A. BLACK** (eds.), *Freedom of Religion and Religious Diversity: State Accommodation of Religious Minorities*, Abington, Oxon - New York, Routledge, 2024.

<sup>18</sup> See **J. DESCHENES**, *Proposal Concerning a Definition of the Term Minority*, 1985, UN Doc. E/CN.4/Sub.2/1985/31/Corr.1.

<sup>19</sup> See **M. STAUSBERG**, **A. VAN DER HAVEN**, **E. BAFFELLI**, *Religious Minorities*, cit., pp. 1-24.

<sup>20</sup> See **M. STAUSBERG**, **A. VAN DER HAVEN**, **E. BAFFELLI**, *Religious Minorities*, cit., pp. 1-24.

<sup>21</sup> See **UNITED NATIONS SPECIAL RAPPORTEUR**, *Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (A/74/160)*, in *UN General Assembly*, 2019.

<sup>22</sup> See **D. FERRARI**, *New and Old Religious Minorities*, cit., p. 698 ff.

<sup>23</sup> See **HUMAN RIGHTS COUNCIL**, *CCPR, General Comment No. 23, The Rights of Minorities (Art. 27)*, CCPR/C/21/Rev.1/Add.5, 8 April 1994, paras. 5.1-5.2; **N. GHANEA**, *Are Religious Minorities?*, cit., p. 76.



The intersection of religion and minority status gives rise to further concerns, due to the difficulty of providing a legal definition of religion in modern multicultural societies. Secular states are not equipped to deal with theological matters and should adopt a hands-off approach. However, the lack of a clear definition leaves a broad margin of discretion to judicial boards, who have often struggled to define the scope of religious protection and its limits, on a case-by-case basis<sup>24</sup>. They are entrapped between the need for reconciling new claims for exemptions from general rules of new religious actors and the safeguard of the effectiveness of public policies. Indeed, not only liberal democracies have to deal with the multifaceted patterns of religious diversity and their related challenges<sup>25</sup>, but also with requests for accommodation based on secular, philosophical ethical and moral convictions, increasing claiming to be put on an equal footing with religious beliefs<sup>26</sup>. So, they fluctuate between the risk of an over-expansion of religious protection, which could result in its dilution, and that of an “assertive secularism”<sup>27</sup>, implying a regressive confinement of religious identities and their manifestations in private spaces<sup>28</sup>.

In international law discourse, the UN Human Rights Committee's General Comment No. 22 (1993) and the Forum on Minority Issues' Recommendations provided a broad notion, which incorporates a broad range of belief communities, both traditional and non-traditional, regardless of state recognition<sup>29</sup>. The adoption of the term

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<sup>25</sup> See **R. MEDDA-WINDISCHER**, *Old and New Minorities: Reconciling Diversity and Cohesion*. Nomos Verlagsgesellschaft mbH & Co. KG, 2008; **F. BRETSCHER**, *Religious Freedom of Members of Old and New Minorities: A Double Comparison*, *Erasmus Law Review*, 2017, 10, p. 151; **A. MADERA**, *Il porto di simboli religiosi nel contesto giudiziario*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 4/2020, pp. 39-159; **E. PACE**, *Religious Minorities in Europe: Memory Mutates*, in *Religions*, 2021, vol. 12, 918ff.

<sup>26</sup> See **A. MADERA**, *Preliminary Remarks on Little Sisters of the Poor and Paul Home v. Pennsylvania and on its Impact on the Right to Conscientious Objection*, in *Anuario de Derecho Eclesiástico del Estado*, 2021, vol. 37, pp. 199-255.

<sup>27</sup> **A.T. KURU**, *Secularism and State Policies Toward Religion. The United States, France, and Turkey*, Cambridge, Cambridge University Press, 2009, p. 103 ff.

<sup>28</sup> See **A. MADERA**, *Vaccini anti-COVID-19 e nuove forme di obiezione di coscienza: nuove sfide per l'esercizio della libertà religiosa?*, in L. BUSCEMA (ed.), *La comunicazione della scienza. Tributo in onore di Piero Angela*, Messina, Messina University Press, 2025, pp. 1253-1266.

<sup>29</sup> See **UNITED NATIONS FORUM ON MINORITY ISSUES' RECOMMENDATIONS**, *Recommendations of the Forum on Minority Issues at its Sixth Session: Guaranteeing the Rights of Religious Minorities* (26 and 27 November 2013), A/HRC/25/66, 22 January 2014. p. 4.



“belief” facilitated the incorporation of newer faith groups, large and small communities, as well as non-believers, atheists, and agnostics, all of whom may face discrimination and require protection under minority rights standards<sup>30</sup>. Furthermore, international boards have increasingly adopted “alternative formulas” to identify religious minorities with a view to grasping “intersectional trajectories” and expanding the protection mechanisms minority groups could have access to<sup>31</sup>.

However, the religious minority issue is still the object of debate. Scholars are split on whether and to what degree there is an “added or differentiated value” in protecting faith groups through minority rights and which communities are “eligible” for this “additional” protection<sup>32</sup>. On one hand, legal experts stressed the need for further exploration of the complex relationship between freedom of religion and minority rights, with a view to maximizing the mechanisms of protection of faith minorities<sup>33</sup>. On the other hand, they underlined the need for expanding the notion of “new” religious minorities, covering migration issues, forms of organized non-religion, “old majorities” which lost their traditional influence on political choices<sup>34</sup> and “old minorities” facing “renewed hostility”<sup>35</sup>.

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<sup>30</sup> See **S. FERRARI**, *The Protection and Promotion of Religious Minorities in EU Countries: A Law and Religion Perspective*, in M. VENTURA (ed.) *The Legal Status of Old and New Religious Minorities in the European Union/Le statut juridique des minorités religieuses anciennes et nouvelles dans l'Union européenne*, Proceedings of the XXXth Annual Conference Siena, November 15-17, Granada, Editorial Comares, 2021, pp. 19-34; **D. FERRARI**, *New and Old Religious Minorities*, cit., p. 698; **ATLAS OF RELIGIOUS OR BELIEF MINORITY RIGHTS**, <https://atlasminorityrights.eu/>.

<sup>31</sup> See A. BUDABIN, J. METCALFE, S. PANDEY (eds.), *Minority Women, Rights, and Intersectionality: Agency, Power, and Participation*. Routledge, 2025; **D. FERRARI**, *New and Old Religious Minorities*, cit., p. 698 ff.; M. GAS-AIXENDRI, A. MADERA (eds.), *Gender, Law and Religion during the COVID-19 Health Crisis*, Wilmington, Vernon Press, 2025.

<sup>32</sup> See **E.R. VIEYTEZ**, *Religious Diversity, Minorities and Human Rights: Gaps and Overlaps in Legal Protection*, in *Religions*, 2024, vol. 15, p. 87 ff.

<sup>33</sup> See **N. GHANEA**, *Are Religious Minorities*, cit., p. 79.

<sup>34</sup> See **D. NEJAIME**, **R.B. SIEGEL**, *Conscience Wars: Complicity Based Conscience Claims In Religion and Politics*, in *Yale Law Journal*, vol. 124, no. 7, pp. 2516-2591, that emphasized how religious majorities who lost their influence on political decision-making, “speak as minorities” and claim for religious exemptions from general rules.

<sup>35</sup> **M. VENTURA**, *The Two-Way Legal Making of Religious Minorities. Introductory Remarks*, in M. VENTURA (ed.), *The Legal Status of Old and New Religious Minorities in the European Union/Le statut juridique des minorités religieuses anciennes et nouvelles dans*



#### d) The thin boundary between minority status and “minoritization” in domestic frameworks

The key issue is whether and to what extent states comply with international law discourse with regard to minorities’ protection. Indeed, nowadays the religious minority status is strongly connected with a narrative of “minoritization”, vulnerability and even risk of persecution<sup>36</sup>. The link between the minority status and the “minoritization” of a community is complex and mainly due to political, social and legal frameworks that emphasize faith groups marginalization, instead than removal of barriers to boost their full inclusion, and may be exacerbated by xenophobic discourse, where minorities are portrayed as a threat for civil society<sup>37</sup>.

Complex processes, where objective factors, “relational, contextual and situational” dynamics, and social and political structures intersect, result in portraying and even treating groups as “minorities”<sup>38</sup>. So, the status of disadvantage of a group is due to the interplay between “individual, social characteristics”, “systemic systems of oppression” and “structural forces”<sup>39</sup>. Scholars have extensively investigated how “processes and constructions”, that give rise to the minority status of a group, contribute to its disadvantaged status<sup>40</sup>. They focus on the quality of domestic legal responses to claims for equality/diversity, the complex dynamics shaping the relationship between majority groups and faith

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*l’Union européenne*, Proceedings of the XXXth Annual Conference Siena, November 15-17, Granada, Editorial Comares, 2021, p. 3.

<sup>36</sup> See UNHCR, Guidelines on International Protection No. 2: “Membership of a Particular Social Group” within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, 2002, HCR/GIP/02/02.

<sup>37</sup> See M. VAN DER TOL, *Constitutional Intolerance*, cit., pp. 1-16; R. MEDDA-WINDISCHER, K. WONISCH, A.C. BUDABIN, *Introduction: Squaring the Circle*, cit., p. 14.

<sup>38</sup> See M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI, *Religious Minorities*, cit., pp. 1-24.

<sup>39</sup> See H. SILLER, N. AYDIN, *Using an Intersectional Lens on Vulnerability and Resilience in Minority and/or Marginalized Groups During the COVID-19 Pandemic: A Narrative Review*, in *Frontiers in Psychology*, 2022, vol. 13, pp. 1-16.

<sup>40</sup> See M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI, *Religious Minorities*, cit., pp. 1-24.



minorities<sup>41</sup>, the existence of inner tensions and fragmentations within communities, the phenomenon of “minorities within minorities”<sup>42</sup>, the intersectional nature of religious affiliation with other (ethnic, racial, gender, linguistic) protected characteristics<sup>43</sup>, (which can give rise to a “double vulnerability”)<sup>44</sup> the social-economic status of a group and the level of its integration in social and economic spaces<sup>45</sup>, historical twists and turns, the politicization of religion<sup>46</sup>, the self-identification of the members with a specific faith community or their resistance to be deemed as part of that group (and its related status and inner rules)<sup>47</sup>. The final factor sheds light on the complex and even conflictual dynamics between individuals and groups which provoke tensions between

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<sup>41</sup> See **M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI**, *Religious Minorities*, cit..

<sup>42</sup> See **A. EISENBERG, J. SPINNER-HALEV**, *Minorities within Minorities. Equality, Rights and Diversity*, Cambridge University Press, 2009.

<sup>43</sup> See **M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI**, *Religious Minorities*, cit., pp. 1-24; **A. BUDABIN, J. METCALFE, S. PANDEY** (eds.), *Minority Women*, cit.

<sup>44</sup> See **A. SHACHAR**, *Multicultural Jurisdictions: Cultural Differences and Women’s Rights*, Cambridge, Cambridge University, 2001.

<sup>45</sup> See **H. BIELEFELDT**, *Human Rights Council Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt*, UN Doc. A/HRC/22/51, 2012, available online in *United Nations Digital Library* (undocs.org); **UNITED NATIONS NETWORK ON RACIAL DISCRIMINATION AND PROTECTION OF MINORITIES**, *Guidance Note on Intersectionality, Racial Discrimination & Protection of Minorities*, in *ohchr.org*, 2023 (<https://www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf>); **T.H. MALLOY**, *Women in Minorities: “Minorities Within Minorities” and Intersectionality*, in *Minority Issues in Europe: New Ideas and Approaches*, vol. II, edited by **T. H. MALLOY, C. BOULTER**, Frank & Timme, Berlin, 2019; **M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI**, *Religious Minorities*, cit., p. 6.; **K. CREPAZ**, *Minorities and Health During the COVID-19 Pandemic: Health Inequalities and Discrimination*, in *European Yearbook of Minority Issues*, vol. XIX, Brill | Nijhoff, 2022, pp. 81-106.

<sup>46</sup> See **L. KELLY**, *COVID-19 and the Rights of Members of Belief Minorities*, 2020, [https://library.alnap.org/system/files/content/resource/files/main/908\\_covid\\_and\\_religious\\_minorities.pdf](https://library.alnap.org/system/files/content/resource/files/main/908_covid_and_religious_minorities.pdf).

<sup>47</sup> On the principle of self-determination in the ECtHR’s discourse, see also ECtHR, see Grand Chamber, *Molla Sali v. Greece*, App. 20452/14, 19 December 2018. On the issue, see **C. NARDOCCI**, *Light on Article 14 between Discrimination by Association & Self-Identification Right. The Individual within the Group & the Group before the State in ECtHR’s Molla Sali v. Greece*, in *Federalismi.it*, no. 2/2019, pp. 1-24.

<sup>47</sup> See **A. MADERA**, *La definizione della nozione di religione ed il ruolo della giurisprudenza: una comparazione fra l’ordinamento statunitense e quello italiano*, in *Anuario de Derecho Eclesiástico del Estado*, 2018, vol. 34, pp. 529-572.



individual rights and group rights within a given legal scenario<sup>48</sup>.

Nevertheless, the status of minority is not fixed, but constantly changing, due to the variability of multiple factors in space and time: demographic and political shifts, the role of a group at a global level, its capacity for legal action, internal divisions, the interaction with other markers of identity, etc.<sup>49</sup>. Furthermore, the national status of a group as a minority may be counterbalanced by the relevance of a group in the “global arena”<sup>50</sup>, which can trigger “judicial mobilization”<sup>51</sup>. As an example, the complex nature of the minority status of Islam in Europe stems from the states’ reluctance to accommodate Muslim religious practices, public skepticism, integration issues and in some countries does not mirror the “logics of numbers”<sup>52</sup>.

#### e) Majority and minority dynamics

On the issue, an Italian outstanding scholar of constitutional law (and former judge of the Constitutional Court) emphasized the relationship of interdependence between majorities and minorities, as notions that mutually support<sup>53</sup>. Indeed, the status of disadvantage of a community is strictly connected with privilege of a “corollary group”, which builds the collective identity in a way that emphasizes exclusion and otherness of minorities<sup>54</sup>.

In such dynamics, processes of state recognition or non-recognition of a group as a religious minority have a significant political dimension, as they affect its legal treatment (i.e. the recognition of specific advantages) and have an impact on the perception of the group

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<sup>48</sup> A. MADERA, *Il principio di autonomia confessionale: baluardo di una effettiva libertà di autodeterminazione? Una analisi comparativa delle pronunzie della Corte Suprema USA e della Corte di Strasburgo*, in *Anuario de Derecho Eclesiástico del Estado*, 2014, vol. 30, pp. 561-599.

<sup>49</sup> See L. KELLY, *COVID-19*, cit.

<sup>50</sup> See L. KELLY, *COVID-19*, cit.

<sup>51</sup> See E. FOKAS, *Directions in Religious Pluralism in Europe: Mobilizations in the Shadow of European Court of Human Rights Religious Freedom Jurisprudence*, in *Oxford Journal of Law and Religion*, vol. 4, 2015, pp. 54-74.

<sup>52</sup> See N. GHANEA, *Are Religious Minorities*, cit., p. 58 ff.; M. STAUSBERG, A. VAN DER HAVEN, E. BAFFELLI, *Religious Minorities*, cit., pp. 1-24.

<sup>53</sup> See G. SILVESTRI, *Minoranze*, in M. RUOTOLO, M. CAREDDA (eds.), *La Costituzione aperta a tutti. Lessico del nostro vivere civile*, Giuffrè, Milano, 2025.

<sup>54</sup> See G. SILVESTRI, *Minoranze*, cit.; S.A. NIXON, *The Coin Model of Privilege and Critical Allyship: Implications for Health*, in *BMC Public Health*, 2019, vol. 19, 1637 ff.



from society as a whole<sup>55</sup>. Indeed, democratic states are charged with the task of being neutral regulators of religious neutrality. However, they still tend to set a boundary between “good” and “bad” minorities, depending on whether they “appear to be content with their assigned place in society” or are deemed as a “challenge to the normative order”<sup>56</sup>. In this view, state-imposed requirements, that link the status of recognized religious group to the size and long-time establishment of a community in a geographical context, marks the frontier between mainstream religions and disliked faith communities, weakens minorities “legitimacy” enhances their stigmatization and marginalization and prevents the transition from tolerance to full inclusion<sup>57</sup>. Indeed, even the use of language (i.e. terms as pseudo-religion, sect, cult, etc.) has an inner inclusive/exclusive meaning and significant implications, as it defines whose religious freedom enjoys constitutional and legal coverage and to what extent<sup>58</sup>.

During the last decades, various emergency issues have had significant implications on religious freedom, arising the risk of its securitization: the spread of the Covid-19 infection; terrorism; migration; and wars. These threats have given rise to state reactions, which deeply altered the ordinary mechanisms of management of religious diversity<sup>59</sup>. In democratic legal systems, the scope of the majority rule, as an “organizational principle” is governed by the guarantees and the limits imposed by the constitutional text, which prevents the rise of a threatening “majority tyranny” to the detriment of dissenting minority

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<sup>55</sup> See **S. MAHMOOD**, *Religious Difference*, cit., p. 20. See the case of Alevism in Turkey: **E. GEDIK**, **H. BIRKALAN-GEDIK**, **A. MADERA**, *Alevism in Turkey and in Transnational Space: Negotiated Identities between Religion, Culture and Law*, in *Stato, Chiese e pluralismo confessionale*, cit., no. 17/2020, pp. 51-113.

<sup>56</sup> See **M. STAUSBERG**, **A. VAN DER HAVEN**, **E. BAFFELLI**, *Religious Minorities*, cit., pp. 1-24.

<sup>57</sup> See **M. STAUSBERG**, **A. VAN DER HAVEN**, **E. BAFFELLI**, *Religious Minorities*, cit., pp. 1-24.

<sup>58</sup> See **J.G. GRISAFI**, *A Marginal Religion and COVID-19 in South Korea. Shincheonji, Public Discourse and the Shaping of Religion*, in *Nova Religio: The Journal of Alternative and Emergent Religions*, 2021, vol. 25/1, pp. 40-63.

<sup>59</sup> See **A. PIN**, *Look Down in Lock Down: Good Believers & Good Citizens in Europe amidst the Pandemic*, in *Canopy Forum*, April 5, 2021 (<https://canopyforum.org/2021/04/05/look-down-in-lock-down-goodbelievers-good-citizens-in-europe-amidst-the-pandemic/>).



voices<sup>60</sup>. However, during emergencies, states struggle to balance the protection of fundamental rights with the urgent need to protect public interests. The concept of emergency is strongly connected with the rhetoric of the “state of exception”, and of the “logics of survival”<sup>61</sup>. “Extreme circumstances, necessity, urgency, and the singularity of moment”<sup>62</sup> combined with the rationale of the temporary duration justify the acceptability of states’ derogations from certain obligations in terms human rights, with the “political temptation” of “authoritarian turns”<sup>63</sup> and “distortions” of the mechanisms of “democratic supervision”<sup>64</sup>. As such derogation mechanisms have raised international institutions’ concerns about an abuse of emergency regulation, substantial and procedural standards underlying the status of emergency have been identified, with a view to eroding a State’s margin of discretion<sup>65</sup>. Despite these efforts, the relationship between the limits to derogation and the protection of fundamental rights still shows some grey areas. It is trite to say that, in the case of the outbreak of a situation undermining the life or the national stability, a State can derogate from most human rights obligations, provided that specific requirements are met. However, scholars warned about a thin boundary between “exceptionalism” and “normality”<sup>66</sup>, which gives rise to an “aggrandizement” of executive powers<sup>67</sup>.

#### f) The impact of emergency rules on religious minorities in Europe

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<sup>60</sup> See **G. SILVESTRI**, *Minoranze*, cit.; **C. BURKE**, *COVID-19 and Korea*, in *International Journal for Religious Freedom*, 2023, vol. 16/1, pp. 91-104.

<sup>61</sup> See **B. KURYLO**, *Emergency: A Vernacular Contextual Approach*, in *International Studies Review*, 2022, vol. 24/3, p. 3 ff.

<sup>47</sup> See **B. KURYLO**, *Emergency*, cit., p. 4.

<sup>63</sup> See **M. HILL**, *Coronavirus and the Curtailment of Religious Freedom*, *Laws*, 2021, vol. 9, p. 27 ff.

<sup>64</sup> See **C. BURKE**, *COVID-19*, cit., pp. 91-104.

<sup>65</sup> See **S. DARCY**, *The Rights of Minorities in States of Emergency*, in *International Journal on Minority and Group Rights*, 2002, vol. 9, pp. 345-369.

<sup>66</sup> See **G. AGAMBEN**, *State of Exception*. Chicago, The University of Chicago Press, 2005.

<sup>67</sup> See **J. PETROV**, *The COVID-19 emergency in the age of executive aggrandizement: What role for legislative and judicial checks?* in *Theory and Practice of Legislation*, 2020, vol. 8, pp. 71-92.



During the COVID-19 pandemic, a “top-down, elite-centric” approach was adopted, that “privileged the discourses of politicians and governments” and resulted in a “shift away from democratic control into smaller circles of decision-making”, where citizens were perceived as “passive objects” who had to comply with governmental choices<sup>68</sup>. Moreover, during the devastating pandemic crisis, religious minorities were not only “exposed to a threat”, but also “framed as a threat”<sup>69</sup>.

The contribution will focus on the interplay between emergency and religious minorities. Scholars provided a review of COVID-19 precautionary measures restricting religious exercise across various countries, emphasizing their “divergence” in terms of stringency<sup>70</sup>. Such measures demonstrated the dramatic implications of an emergency with regard the exercise of religious freedom, giving rise to new challenges for minorities<sup>71</sup>. It goes without saying that the status of religious minority does not automatically imply a higher level of vulnerability to a health emergency such as COVID-19, intended as ability to “anticipate, cope with, resist and recover from” a situation of crisis<sup>72</sup>. However, the health crisis and its related measures shed light on how the interplay between “individual, structural and systemic factors” give rise to “exclusionary mechanisms” and barriers to participation in decision-making of religious minorities, emphasizing a pre-existent status of “asymmetry, stigmatization, marginalization” and “perpetuating the history of abuse and discrimination”<sup>73</sup>.

Indeed, a comparative analysis shows that, on a number of occasions, religious minorities were subjected to disparate treatment during the pandemic. In the European context, the robust protection

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<sup>68</sup> See **B. KURYLO**, *Emergency*, cit., pp. 5-7.

<sup>69</sup> See **Z. ŠTIMAC, I. ASLANOVA**, *The Role of Securitization in the Relationship between State and Religion - The Example of the Kyrgyz Republic*, in A. MIHR (ed.), *Between Peace and Conflict in the East and the West. Studies on Transformation and Development in the OSCE Region*, Springer, 2021, p. 111.

<sup>70</sup> See **A. DE LA FERRIERE**, *Coronavirus: How New Restrictions on Religious Liberty Vary Across Europe*, in *The Conversation*, 9 April 2024 (<https://theconversation.com/coronavirus-how-new-restrictions-on-religious-liberty-vary-across-europe-135879>).

<sup>71</sup> See **A. MADERA**, *The Implications of the COVID-19 Pandemic on Religious Exercise: Preliminary Remarks*, in *Laws*, vol. 10, n. 2, 2021, p. 44 ff.

<sup>72</sup> See **B. WISNER, P. BLAIKIE, T. CANNON, I. DAVIS**, *At Risk: Natural Hazards, People's Vulnerability and Disasters*, 2nd Edn., London, Routledge, 2004, p. 11.

<sup>73</sup> See **H. SILLER, N. AYDIN**, *Using an Intersectional Lens*, cit., pp. 1-16.



guaranteed to religious freedom by the international and supra-national architecture should have mitigated the burdens imposed on religious exercise<sup>74</sup>. The European Parliament underlined the need for a balancing exercise between the protection of fundamental rights and the duty social solidarity and “stressed that democracy, human rights and the rule of law cannot be allowed to become the collateral damage of the pandemic”<sup>75</sup>. Against the risk of an abuse of governmental powers, it stressed that all measures adopted should be “in line with the rule of law, strictly proportionate to the exigencies of the situation, clearly related to the ongoing health crisis, limited in time and subjected to regular scrutiny”<sup>76</sup>. Moreover, in the 2020 “*Rule of Law Report: The rule of law situation in the European Union*”, dated on September 30, 2020 the European Commission raised concern about the impact of the health emergency on the respect of the rule of law. It shed light on how Member States took advantage of emergency powers to address the health crisis, to the detriment of the democratic structure and fundamental rights. Moreover, it reiterated the need for consistency of the restrictions on fundamental rights with the standards of legitimacy, necessity, proportionality, their design for temporary duration, the urge for legislative control and judicial second-guessing. The pressing need for the preservation of the rule of law was reiterated by the Council of Europe in further resolutions<sup>77</sup>. The key issue is whether the European states’ individual responses to the pandemic can be framed in terms of legitimacy, necessity and proportionality when religious minorities are concerned. Indeed, States adopted various procedural mechanisms to enforce restrictions on fundamental freedoms based on the ECHR’s legal framework, fluctuating between procedural techniques provided by the

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<sup>74</sup> See **A. MADERA**, *Preliminary Remarks on the Impact of COVID-19 on the Exercise of Religious Freedom in Europe*, in J. CREEMERS and T. KOPALEISHVILI (eds.), *Religious Freedom and COVID-19. A European Perspective*, Routledge, Abington, 2025, pp. 43-71.

<sup>75</sup> See **A. GONZÁLEZ-VARAS**, *Religious Freedom in Pandemic Times in Europe, A Perspective After One Year*, in *Canopy Forum*, “*Law and Religion Under Pressure: A One-Year Pandemic Retrospective*” series, 5 May 2020 (<https://canopyforum.org/2021/05/05/religious-freedom-in-pandemic-times-in-europe-a-perspective-after-one-year/>).

<sup>76</sup> See **EUROPEAN PARLIAMENT**, Resolution of 17 April 2020 on Eu coordinated actions to combat the COVID-19 pandemic and its consequences.

<sup>77</sup> See **G.A. DU PLESSIS, A. PORTARU**, *Restrictions to Religious Worship during COVID-19: A Bird’s-Eye View of Court Decisions from Selected European Countries and the European Court of Human Rights*, in *Journal of Church and State*, 2022, vol. 64/4, pp. 641-662.



ECHR's legal framework to impose restrictive measures on fundamental freedoms, with a view to facing the health crisis<sup>78</sup>.

Apparently, there were no cases of direct discrimination in Europe<sup>79</sup>. Such an outcome provides evidence of the resilience of the European legal framework, which does not justify a disparate legal treatment of religious groups where reasonable and objective justifications are lacking, and of constitutional texts, aimed at guaranteeing a basic level of religious neutrality<sup>80</sup>. However, scholars complained about a “trivialization” of religion, often considered as a “non-essential good”, that resulted in de-prioritization of religious activities compared to secular ones<sup>81</sup>. Most of all, there was increasing debate about a new contentious polarization among fundamental rights: the “essential” rights (whose exercise has to be guaranteed even during an emergency) and “non-essential” rights (whose exercise can be suspended or has to be guaranteed in alternative to the ordinary ways)<sup>82</sup>. It is trite to say that secular authorities are not equipped to assess what is “essential” for faith communities. Furthermore, the distinction between essential or non-essential activities often resulted in a strategy for States to impose pervasive surveillance on certain religious communities, or to adopt a deferential approach toward mainstream

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<sup>78</sup> See **K. DZEHTSIAROU**, *COVID-19 and the European Convention on Human Rights*, in *Strasbourg Observers*, March 17, 2020 (<https://strasbourgobservers.com/2020/03/27/covid-19-and-the-european-convention-on-human-rights/>); **VAN DROUGHENBROECK**, *Les dérogations à la CEDH: la question de l'article 15*, paper presented at the webinar on “La liberté de religion aux temps du Coronavirus”, June 24 2020 ([https://dres.misha.cnrs.fr/IMG/pdf/art15\\_van\\_drooghenbroeck-1.pdf](https://dres.misha.cnrs.fr/IMG/pdf/art15_van_drooghenbroeck-1.pdf)); **K. RCHEULISHVILI**, *Freedom of Religion under the Public Health Emergency: Lessons from COVID-19*, in A. NOGAL (ed.), *Liberal Democracy at the Crossroads: The COVID-19 Pandemic and the War in Ukraine*, Centre for Political Thought, Kraków, 2024, pp. 29-40.

<sup>79</sup> **A. LICASTRO**, *Considerazioni generali in tema di impatto della pandemia sulle minoranze religiose in relazione al contesto europeo*, in **E. D'AGOSTINO**, **M. DISTEFANO**, **A. LICASTRO**, **M. TIGANO**, **A. MADERA**, *Le minoranze religiose*, cit., p. 31 ff.

<sup>80</sup> See **A. MADERA**, *Annotazioni conclusive*, in **E. D'AGOSTINO**, **M. DISTEFANO**, **A. LICASTRO**, **M. TIGANO**, **A. MADERA**, *Le minoranze religiose*, cit., pp. 110-111.

<sup>81</sup> See **A. FORNEROD**, *Freedom of Worship during a Public Health State of Emergency in France*, in *Laws*, 2001, vol. 10(1), p. 11 ff.

<sup>82</sup> See **J. BLACKMAN**, *The “Essential” Free Exercise*, in *Harvard Journal of Law and Public Policy*, 2021, vol. 44, pp. 637-760; **A. LICASTRO**, *La libertà di culto e la lezione della pandemia*, in C. INGRATOCI, A. MADERA, F. PELLEGRINO (eds.), *I diritti fondamentali al tempo della pandemia da COVID-19*, ESI, Napoli, 2021, pp. 151-164.



religions, to the detriment of others<sup>83</sup>. These debates were exacerbated when religious minorities were involved, due to their association with resistance to cautionary measures and hesitancy to vaccination in public discourse<sup>84</sup>. However, with some exceptions, religious communities encouraged their faithful to comply with restrictive measures, and proactively self-imposed restrictive measures, anticipating State provisions and adjusting their rituals and practices to the unparalleled situation of the health emergency<sup>85</sup>. With specific regard to religious minorities, first, the disparate treatment was due to apparently neutral measures, that, in practice, had a disproportionate impact on minorities simply because they were shaped to mirror the needs of mainstream religions, to the detriment of specific faith minorities' practices and rituals (i.e., Jewish marriage celebrations<sup>86</sup> and Muslim burial practices<sup>87</sup>).

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<sup>83</sup> See **M. VENTURA**, *Concluding Remarks*, Conference on "Religious Freedom Before, During and After COVID-19 between Europe and the Member States", November 26, 2021 (<https://www.units.it/news/religious-freedom-during-and-after-covid-19-between-europe-and-member-states>).

<sup>84</sup> **L. G. SISTI, D. BUONSENSO, U. MOSCATO, G. COSTANZO, W. MALORNI**, *The Role of Religions in the COVID-19 Pandemic: A Narrative Review*, in *International Journal of Environmental Research and Public Health*, 2023, vol. 20, pp. 1-20.

<sup>85</sup> See **A. GONZÁLEZ-VARAS**, *Law, Religion, and Coronavirus Between the United States and Europe*, in *Fides et Libertas: Special Edition on COVID-19 and Religious Liberty*, edited by A. DE LA FERRIERE, N. MILLER, International Religious Liberty Association, 2021, p. 75.

<sup>86</sup> See **J. CREEMER**, *Freedom of religious assembly in Belgium: Legislation and Praxis Concerning Religious Freedom during the COVID-19 Pandemic*, in J. CREEMERS and T. KOPALEISHVILI (eds.), *Religious Freedom*, cit., pp. 115-138; *European Yearbook of Minority Issues*, 2022, Special Focus: Covid-19 and Minorities; *European Yearbook of Minority Issues*, Vol. 19, 2020, Leiden, The Netherlands, Brill-Nijhoff; **A. LICASTRO**, *Considerazioni generali in tema di impatto della pandemia sulle minoranze religiose in relazione al contesto europeo*, in **E. D'AGOSTINO, M. DISTEFANO, A. LICASTRO, M. TIGANO, A. MADERA**, *Le minoranze religiose*, cit., p. 31 ff.

<sup>87</sup> See **P. NASO**, *Islam e informazione durante le emergenze*, paper presented at the Advanced Training Course organized by UPO and LUM "Il pluralismo nelle emergenze del Covid-19 e dei radicalismi religiosi violenti", 9 aprile 2021; **UCOII**, *Vademecum. Ritualità funebre per la comunità islamica italiana*, 19 March, 2020 (<https://www.ucoii.org/wp-content/uploads/2020/03/VADEMECUM-RITUALITA-FUNE-BRE-PER-LA-COMUNITA-ISLAMICA-IN-ITALIA-1-1.pdf>); **A. MADERA**, *L'impatto del COVID-19 sulle minoranze religiose in Italia*, in C. INGRATOCI, A. MADERA, F. PELLEGRINO (eds.), *I diritti fondamentali*, cit., pp. 151-164; **MUSLIM COUNCIL OF BRITAIN**, *Together in Tribulation: British Muslims and the COVID-19 Pandemic*, November 2020, <https://mcb.org.uk/wp-content/uploads/2020/11/Together-in-Tribulation-British-Muslims-and-the-COVID-19-Pandemic.pdf>.



Indeed, during the health crisis, fear and uncertainty rendered States more reluctant to accommodate manifestations of religion that diverged from mainstream religions, giving rise to heightened perception of “otherness”<sup>88</sup>, and public authorities were more skeptic towards practices and rituals that were perceived as a source of infection and reluctant to search for solutions of compromise<sup>89</sup>. Second, most of all, both Muslim and Jewish communities were blamed for not respecting the restrictive measures, and giving rise to threatening clusters of contagion. This approach exacerbated hate speech of the minorities concerned. There was a resurgence of Antisemitism all over the world (including Europe), and the rise of new conspiracy theories that blamed Jew for spreading the contagion or even taking economic advantage of the health crisis<sup>90</sup>. Moreover, a 2020 report provided evidence that Islamophobia was on the rise in Europe during the pandemic too, and solicited separate recording of Anti-Muslim crimes to grasp the effective extent of the problem and the need to develop strategies to address it<sup>91</sup>. Third, religious minorities underwent a decrease of their financial revenues due to the decline/suspension of in-presence religious celebrations and States did not allocate resources to support them<sup>92</sup>. Furthermore, certain religious minorities could not benefit from digital technology and were prevented from receiving prompt information about the pandemic and the precautionary measures because of their religious tenets prohibiting the use of technological devices, at least during their religious festivities, or because of linguistic barriers<sup>93</sup>.

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<sup>88</sup> See J. CREEMERS and T. KOPALEISHVILI (eds.), *Religious Freedom*, cit., p. 133.

<sup>89</sup> See EUROPEAN YEARBOOK OF MINORITY ISSUES, *Special Focus: Covid-19 and Minorities*, cit.

<sup>90</sup> See K.W. SUNDBERG, L.M. MITCHELL, D. LEVINSON, *Health, Religiosity and Hatred: A Study of the Impacts of COVID-19 on World Jewry*, in *J. Relig. Health*, 2022, vol. 62(1), pp. 428-443.

<sup>91</sup> See F. HAFEZ, E. BAYRAKLI (eds.), *European Islamophobia Report 2020*, Vienna, Leopold Weiss Institute, 2021.

<sup>92</sup> See B. CONWAY, *The Influence of the COVID-19 Pandemic on Religion: The Case of Ireland*, in B. CONWAY, L. KÜHLE, F. ALICINO, G. BİRSAN (eds.), *Religion, Law and COVID-19 in Europe. A Comparative Analysis*, Helsinki University Press, Helsinki, 2024, pp. 95-114; A. STASULANE, *Impact of the COVID-19 Pandemic on Religion in Latvia*, *ivi*, pp. 265-286; R. MARTINEZ-QUADROS, *Impact of COVID-19 on Religions in Spain: Sociological Reflections on Religious Freedom and Practices*, *ivi*, pp. 181-198.

<sup>93</sup> See J. VANHAMEL, M. MEUDEEC, E. VAN LANDEGHEM, M. RONSE, C. GRYSEELS, T. REYNIERS, A. ROTSAERT, C. DDUNGU, L. MANIRANKUNDA, K. DEGRATIAS, K. PEETERS GRIETENS, C. NÖSTLINGER, *Understanding How*



Finally, religious minorities were subject to inter-sectional discrimination, due to their social and economic low status, and gender, racial and ethnic group, which had a significant impact in terms of limited access to health services, employment in essential jobs with limited possibility to work remotely, crowded housing that rendered impossible compliance with social distancing measures, and consequent heightened vulnerability to the virus<sup>94</sup>.

### g) Religious “marginality” of faith minorities in certain extra-European contexts

Moving beyond a Euro-centric perspective, the pandemic emergency gave rise to a “pandemic of persecution”<sup>95</sup>, highlighting the “religious marginality” of faith minorities, due to the intersection between the religious minority status with social economic exclusion and with a pre-existent political approach aimed at religious “othering”<sup>96</sup>. Indeed, in times of uncertainty and crisis, minorities, who are already perceived as “outsiders” become “convenient targets” to blame, due to the interplay of several reasons (mass alarm, political expediency, bias and stereotypes, media discourse, systemic disparities)<sup>97</sup>. Indeed, the spread of the COVID-19 infection exacerbated the majority and minority groups power dynamics, and served as an excuse to scapegoat certain minorities. In this view, the precautionary measures were used to justify repression, persecution, and discrimination against traditionally marginalized groups (blaming them for spreading the virus). So the pandemic uncovered a pre-existent dramatic marginalization of certain religious groups, due to the interplay between “individual, structural and systemic factors”, which prevented the groups concerned from

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*Communities Respond to COVID-19: Experiences from the Orthodox Jewish Communities of Antwerp City*, in *International Journal for Equity in Health*, 2021, vol. 20, p. 78 ff.

<sup>94</sup> See **K. CREPAZ**, *Minorities and Health*, cit., pp. 81-106; **A. LICASTRO**, *Considerazioni*, cit., p. 31 ff.

<sup>95</sup> See **K. MILKOV**, **N. GJORGON**, *Pandemic of Persecution. COVID-19 and the Persecution of Religious Minorities*, in *Annual of ISPJR*, 2022, pp. 99-114.

<sup>96</sup> See **J.G. GRISAFI**, *A Marginal Religion*, cit., pp. 40-63.

<sup>97</sup> See **K. CREPAZ**, *Minorities and Health*, cit., pp. 81-106; **S. TIERI**, **A. RANJAN**, *COVID-19, Communalism, and Islamophobia: India Facing the Disease*, in *Social Identities*, vol. 29(1), 2023, pp. 62-78; **R. GIRARD**, *Things Hidden Since the Foundation of the World*, Stanford University Press, Stanford, 1987, pp. 79-80.



“accessing and participating in power, social and political roles”<sup>98</sup>. Such a combination of factors resulted in a disparate impact of the health emergency on religious minorities<sup>99</sup>.

The cases of South Korea, Sri Lanka and India (further analytically explored in this contribution) provided significant evidence about the exacerbation of pre-existent dynamics of discrimination, and emphasized how structural inequalities are connected with how minority issues are portrayed in a given context. In India, where the COVID-19 pandemic was framed as a “Muslim disease”, the escalation of Islamophobia during the health crisis has to be framed “within a long process of demonization of the Muslim that is catalyzed by the beliefs and policies of Hindu nationalism”<sup>100</sup>. In the wake of pre-existent ethnic-political-religious tensions, in South Korea the language used and the action taken against the Shincheonji Church during the COVID-19 health crisis were shaped by a narrative aimed at scapegoating a faith community traditionally perceived as “problematic” and served to justify pervasive scrutiny in political discourse<sup>101</sup>. In Sri Lanka, the precautionary measures showed disregard of Muslim religious practices and were entangled with a rhetoric that framed Muslims as a “barbaric, unpatriotic and irresponsible community”, which was responsible for the spreading of the virus<sup>102</sup>. So, as Bottoni acutely pointed out, with regard to religious minority status during COVID-19, “from marginalization to vulnerability is a short step”<sup>103</sup>.

Nonetheless, several lawsuits and claims were filed by and on behalf of religious minorities across the globe. The International Religious Liberty Association (IRLA) emphasized that the restrictions placed on collective religious practices as well as those placed on access to places of worship were highly contested, generating sharp litigation<sup>104</sup>.

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<sup>98</sup> See H. SILLER, N. AYDIN, *Using an Intersectional Lens*, cit., pp. 1-16.

<sup>99</sup> See M. TADROS, M. KANWER, J. ABBAS MIRZA, *Religious Marginality, COVID-19, and Redress of Targeting and Inequalities*, in *IDS Bulletin Transforming Development Knowledge*, vol. LII, n. 1, Institute of Development Studies, 2021, p. 135.

<sup>100</sup> See S. TIERI, A. RANJAN, *COVID-19*, cit., pp. 62-78.

<sup>101</sup> See J.G. GRISAFI, *A Marginal Religion*, cit., pp. 40-63.

<sup>102</sup> See M.I.A. RAZAK, A.M. SALEEM, *The Crossroads for Sinhala-Muslim Relations in Sri Lanka*, in *Journal of Asian and African Studies*, 2022, vol. 57(3), pp. 529-542.

<sup>103</sup> See R. BOTTONI, *Implications of the COVID-19 Pandemic for Religious Minorities from the UN Perspective*, in *International Journal for Religious Freedom*, vol. XVI, n. 1, 2023, p. 6.

<sup>104</sup> See A. DE LA FERRIERE, N. MILLER (eds.), *Fides et Libertas*, cit..



## **h) Limitations**

Relevant judgments were lodged by or on behalf of religious minorities due to the COVID-19 measures, in many areas of the world, challenging discriminatory treatment, prejudice and scapegoating<sup>105</sup>. However, in many instances, religious minorities were prevented from accessing justice, due to systemic discrimination, and social, institutional or legal barriers, that resulted in disempowering minorities. In non-liberal regimes, such setbacks were even less surmountable, due to the precarious status of faith minorities. In such contexts, the legal system may be not sufficiently equipped to provide effective legal responses for minority groups, due to well-established patterns within social institutions that lead to disadvantage for certain segments of population, discriminatory laws, structural weaknesses of legal systems, lack of enforcement of existing legal mechanisms of protection. Consequently, religious minorities in illiberal regimes underwent various forms of persecution, marginalization, exclusion, and scapegoating, which further underlines their unequal access to justice and disparate treatment under the law<sup>106</sup>. Moreover, the full extent of discrimination faced by religious minorities during COVID-19 cannot be fully grasped, due to the restrictions on travel human rights researchers and advocates were subject to<sup>107</sup>.

So, there is increasing concern that international provisions in-force are not a sufficient guarantee to achieve effective equality. Indeed, the pandemic emphasized the gap between the States' negative duties to avoid to interfere with the rights of religious minorities and their positive obligations to take action to protect them and remove those barriers that prevent them from equally enjoying human rights and fundamental freedoms.

## **i) Methodology and Structure of the Paper**

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<sup>105</sup> See **A. GONZÁLEZ-VARAS**, *Law, Religion*, cit.

<sup>106</sup> See **R. MEDDA-WINDISCHER**, **M. ZEBA**, **A.C. BUDABIN**, *Religion, Radicalization and De-Radicalization Processes: A Comparative Perspective*, in *Religions*, vol. 15/11, 2024.

<sup>107</sup> See **UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (USCIRF)**, *Annual Report of the U.S. Commission on International Religious Freedom*, in *uscirf.gov* (<https://www.uscirf.gov>), 2021, p. 1.



This paper focuses on legal cases that demonstrate the various ways that legal rulings and petitions during the COVID-19 emergency impacted the practices and freedoms of religious minorities. This contribution thus adopts a legal perspective and provides an analysis of judicial rulings, legal norms, and regulatory frameworks that pertain to religious minorities in the context of COVID-19 emergency measures. It examines how these legal instruments have been applied, interpreted, and enforced, highlighting their implications for the rights and freedoms of religious minorities during the pandemic. In particular, the essay seeks to elucidate the intersection between public health directives and religious rights, offering a critical evaluation of how emergency measures have affected religious communities, potentially resulting in legal challenges and controversies regarding the balance between public safety and religious freedoms.

The paper is structured around seven thematic foci organized by dichotomies, opposing interests, and other relevant issues. The first section "*Autonomy of Religious Communities vs. General Interests of Public Health*" explores the tension between the self-governing rights of religious communities and the overarching public health mandates that emerged during the COVID-19 pandemic. It examines the extent to which religious autonomy can be upheld when it comes into conflict with the imperative to protect public health. The discussion addresses how these opposing interests have been managed and balanced, emphasizing the legal principles that have guided the response to the COVID-19 pandemic, with a focus on how these principles have sought to balance public health imperatives with the rights of religious communities. The second section "*Religious Accommodations within Public Institutions and Spiritual Assistance: The Case of Penitentiary Institutes and Education*" explores the specific requests for accommodations made for religious practices within public institutions, such as prisons and educational facilities, during the pandemic. It considers the role of spiritual assistance in these settings and how policies have been adapted to meet both public health guidelines and the spiritual needs of individuals and communities. The third section "*The Importance of Specific Religious Minorities' Practices: Burials and Funerals*" highlights how restrictions on gatherings and other public health measures during the pandemic have impacted these practices, often leading to tensions between religious observance and health regulations. The fourth section "*Secular vs.*



*Religious Activities: Discriminatory Bans on Gathering*" examines the potential discrimination that arises when bans on gatherings are enforced differently for secular and religious activities. In particular, it considers whether religious gatherings have been unfairly targeted or restricted compared to secular ones. The fifth section "*Privacy for Sensitive Data vs. Public Health Demands*" addresses the conflict between the need to protect individual privacy, especially concerning sensitive religious data, and the demands of public health surveillance during the pandemic. The implications for religious minority communities, whose members may be disproportionately affected by these policies, are discussed. The sixth section "*Scapegoating and Hate Speech vs. Freedom of Expression*" explores the challenges of balancing freedom of expression with the need to prevent scapegoating and hate speech, particularly in the context of religious communities. It examines instances where religious groups have been blamed for the spread of COVID-19 and how such scapegoating has led to increased hate speech and discrimination. The seventh, and last, section "*Positive Practices and Risk of Abuses: Consultation, Collaboration, and Partnership*" highlights positive examples of consultation, collaboration, and partnership between religious communities and public authorities during the pandemic. However, it also addresses the potential for abuses of power, particularly in contexts where religious groups may be vulnerable to unequal treatment. The concluding section provides recommendations for policymakers, religious leaders, and public health officials. It outlines strategies for fostering mutual respect and understanding between religious communities and secular authorities, promoting dialogue, and ensuring that public health measures do not unnecessarily infringe on religious freedoms. The recommendations also suggest ways to safeguard the rights of religious minorities while maintaining robust public health protections.

## **1 - Autonomy of Religious Communities vs General Interests of Public Health: General Legal Principles**

The COVID-19 pandemic posed unprecedented challenges to legal systems worldwide, requiring a careful balancing between safeguarding public health and upholding fundamental rights and freedoms. The autonomy of religious communities was often arrayed against the



government's interests on behalf of the general public's health. The principle of religious autonomy embodies the idea that church and state, especially regarding matters crucial to religious missions, operate in separate spheres with their own distinct purposes and governing structures. Clearly, church and state coexist within the same society and, thus, frequently interact. Some interactions are well-established and ongoing; for instance, religious organizations collaborate with the government to assist the poor, elderly, and neglected, and these collaborations were also maintained during the pandemic<sup>108</sup>.

The autonomy of religious communities is widely recognized in international law. This principle arises from the collective aspect of religious freedom and the state's lack of authority in religious matters. Consequently, religious communities possess a range of institutional rights, including the freedom to govern themselves according to their doctrines and make decisions regarding internal affairs<sup>109</sup>. The European Court of Human Rights (ECtHR) has frequently stressed that the independent existence of religious communities is crucial for maintaining pluralism in a democratic society<sup>110</sup>.

Within the framework of religious autonomy, religious worship, in particular, is inherently the responsibility of religious institutions, their members, and leaders. For this vital area of religious practices, church and state acknowledge and respect each other's independence even when interacting. During the COVID-19 pandemic, this meant that both religious leaders and government officials needed to collaborate on developing safety guidelines and restrictions for worship. Government officials had to engage with religious leaders, allowing them to provide input as decisions were made and rules were adjusted. Additionally, religious congregations needed the opportunity to propose plans that,

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<sup>108</sup> See **K.A.B. BRADY**, *Covid-19 and Restrictions on Religious Worship: From Nondiscrimination to Church Autonomy*, in A. DE LA FERRIERE, N. MILLER (eds.), *Fides et Libertas*, cit., pp. 34-35.

<sup>109</sup> See **G. PUPPINCK**, *Violations of religious freedom during the COVID crisis in Europe*, intervention presented during the study day "Pandemic and Cults", University of Paris II, 24 March 2022, p. 11.

<sup>110</sup> See **European Court of Human Rights (ECtHR)**, *Guide on Article 9 of the European Convention on Human Rights - Freedom of Thought, Conscience and Religion*, 2024 ([https://ks.echr.coe.int/documents/dlechr-ks/guide\\_art\\_9\\_eng](https://ks.echr.coe.int/documents/dlechr-ks/guide_art_9_eng)).



while differing from general regulations, could safely accommodate their unique religious practice<sup>111</sup>.

Few religious congregations wanted to sacrifice human life in order to engage in dangerous forms of in-person worship. For example, during COVID-19, Nevada's Calvary Chapel wanted to meet at 50 percent of building capacity, similar to the guidelines for entering casinos, but it also proposed its own rigorous and detailed safety plan covering everything from arrivals and departures, parking, sanitation, social distancing, food consumption, and restroom use. The U.S. Supreme Court however ruled against its request<sup>112</sup>. In this case, the principle of church autonomy allowed a government to intervene where religious worship endangered human life, but the principle also requires governments to do all they can to minimize this interference<sup>113</sup>. From the foregoing it emerges that the autonomy of religious communities does not automatically confer immunity on religious communities and exempt them from general civil laws, especially when the life and health of the population are at stake.

Another example on health and religious autonomy relates to vaccination, which is an area where religious exemptions are often justified by the principle of autonomy to safeguard personal convictions rooted in scripture or established religious norms. However, during the COVID-19 emergency, for many, no coherent justification was presented for religious exemptions to COVID-19 vaccines that was based on the principle of autonomy or "medical freedom" in the healthcare context<sup>114</sup>. In other words, justifications for exemptions were based on a misinterpretation of the principle of autonomy and, as Flescher notes: "proponents of characterizing these exemptions as legitimate, misconstrue autonomy and abuse the reputation of the religious traditions they invoke in defense of their endeavors to opt out"<sup>115</sup>.

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<sup>111</sup> See **K.A.B. BRADY**, *Covid-19*, cit., pp. 34-35.

<sup>112</sup> See **NBC NEWS**, *U.S. Supreme Court denies Nevada church's appeal of coronavirus restrictions*, in *NBC News*, 2020 (<https://www.nbcnews.com/news/us-news/u-s-supreme-court-denies-nevada-church-s-appeal-coronavirus-n1234913>).

<sup>113</sup> See **G. PUPPINCK**, *Violations of religious freedom*, cit.

<sup>114</sup> See **A. FLESCHER**, *How Well Do Religious Exemptions Apply to Mandates for COVID-19 Vaccines?*, in *Religions*, vol. XIV, n. 5, 2023, art. 5 (<https://doi.org/10.3390/rel14050569>).

<sup>115</sup> It has to be noted that many religious groups were in favor of vaccinations against COVID-19 (Flescher 2023). For example, the Islamic Society of America and the National Black Muslim COVID Coalition have determined that even in the event



Meanwhile, the tension between secular and religious autonomy becomes evident in the risk of abuses by illiberal regimes, a situation that became particularly acute during the COVID-19 pandemic<sup>116</sup>. In Cuba, for instance, the enforcement of strict measures to curb COVID-19 transmission posed significant challenges for access to places of worship, especially for unregistered churches. Local authorities, empowered to ensure compliance with safety measures, often used their authority to close churches or impose fines, leaving congregations without meeting places<sup>117</sup>. The government's measures, ostensibly for epidemiological surveillance, were arbitrarily applied to monitor worship activities and scrutinize sermons, affecting both unregistered and some registered churches<sup>118</sup>. Those who openly criticize the regime have faced arrest on false or arbitrary charges sanctions<sup>119</sup>. The pandemic has compounded these incidents, with authorities using pretexts such as "transmission of the epidemic" or alleged non-compliance with health precautions during religious services to justify their actions<sup>120</sup>. Similar situations where there was an expansion of state coercive measures were seen, among others, in China, Myanmar and Iran.

In order to balance the safeguarding of public health while maintaining religious rights and freedoms, several general legal principles emerged as critical in shaping the response to the pandemic, both nationally and internationally, and guided the implementation of emergency measures, the restriction of certain civil liberties, and the enforcement of public health regulations. In a key judgment for the

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vaccines might contain non-Halal ingredients, necessity overrides prohibition. Of utmost importance was preventing the spread of a highly contagious and deadly disease that could devastate both Muslim and broader human communities (Juffras 2021, cited in Flescher 2023). **A. FLESCHER**, *How Well Do Religious Exemptions Apply to Mandates for COVID-19 Vaccines*, cit.

<sup>116</sup>See **A. CARLÀ, M. DJOLAI**, *Securitization of Minorities Under COVID-19: Discourses, Practices, and Historical Antecedents*, in *European Yearbook of Minority Issues*, vol. XIX, Brill -Nijhoff, 2022.

<sup>117</sup>See **D.P. PETRI, T. FLORES**, *The impact of COVID-19 on religious regulation in Colombia, Cuba, Mexico, and Nicaragua*, in *International Journal of Religious Freedom*, vol. XVI, n. 1, 2023.

<sup>118</sup> See **T. CARDOSO**, *Pastores Cubanos Afirman que el Régimen Usa la Pandemia para Restringir la Libertad de Culto*, in *Radio Televisión Martí* ([bit.ly/3ARqEDG](https://bit.ly/3ARqEDG)), 13 maggio 2021.

<sup>119</sup> See **D.P. PETRI, T. FLORES**, *The impact of COVID-19*, cit.

<sup>120</sup> See **T. CARDOSO**, *Amenazan a Pastor Toledano de que Será Acusado de Propagación de Epidemias*, in *Radio Televisión Martí* ([bit.ly/3Vj8BOH](https://bit.ly/3Vj8BOH)), 10 aprile 2020.



European context, *Communauté Genevoise d'Action Syndicale v. Switzerland* (CGAS), the ECtHR aimed at reconciling public health concerns related to COVID-19 with fundamental freedoms and rights<sup>121</sup>. This case, which involved issues of freedom of assembly and the role of trade unions during the COVID-19 pandemic, led the ECtHR to establish the following principles that would be applicable in other contexts such as those in which religious minorities and more generally, freedom of religion and beliefs, are involved.

Firstly, the Court recognized the severe public health threat posed by COVID-19 and acknowledged that, at the onset of the pandemic, information regarding the virus's characteristics and potential danger was notably limited. Consequently, it was necessary for states to respond swiftly during this period<sup>122</sup>. Secondly, the Court acknowledged that Articles 2 and 8 of the European Convention on Human Rights impose a positive obligation on Contracting States to adopt appropriate measures to safeguard the life and health of individuals within their jurisdiction. This obligation inherently involves a degree of conflict and necessitates a continuous and sensitive balancing exercise between public health and individual rights<sup>123</sup>. A balancing exercise between the competing interests at stake is then required by the Court for the purposes of assessing the proportionality of drastic measures, especially if a blanket ban were to remain in place for a significant length of time<sup>124</sup>.

Finally, the Court noted that for a measure to be considered proportionate, in other words, appropriate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned<sup>125</sup>. As clarified in the concurring opinion of Judge Krenč joined by Judge

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<sup>121</sup> See **European Court of Human Rights (ECtHR)**, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland*, 2022 (<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-13596%22%5D%7D>).

<sup>122</sup> See **European Court of Human Rights (ECtHR)**, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland*, cit.

<sup>123</sup> See **European Court of Human Rights (ECtHR)**, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland*, cit., paras 4 and 6, Concurring Opinion of Judge Krenč joined by Judge Pavli.

<sup>124</sup> See **European Court of Human Rights (ECtHR)**, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland*, cit., paras 4 and 6, Concurring Opinion of Judge Krenč joined by Judge Pavli.

<sup>125</sup> See **European Court of Human Rights (ECtHR)**, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland*, cit., para 87.



Pavli, annexed to the judgment, the principle of proportionality, necessitates a dual test of appropriateness and necessity. This principle dictates that a measure restricting liberty is considered proportionate only if it effectively accomplishes its intended purpose and does not exceed what is required to achieve that aim<sup>126</sup>.

The principles articulated in the *Communauté Genevoise* judgment are pertinent, as said earlier, not only to the specific context of freedom of assembly and trade union activities, but also to broader issues concerning the balance between religious exemptions or claims and general public health concerns amidst the Covid-19 pandemic and will be reflected in the cases discussed below.

## 2 - Religious Accommodations within Public Institutions and Spiritual Assistance: The Case of Penitentiary Institutes and Education

A number of debates and cases related to the balancing of Covid-19 measures and rights of religious minorities emerged around provisions for and access to spiritual assistance in prisons, schools, healthcare facilities and the army. The ECtHR case of *Constantin Lucian Spinu v. Romania* (11 October 2022) involved a member of the Seventh-Day Adventist Church who was incarcerated in Romania. The applicant was denied permission to attend church services outside the prison on grounds related to COVID-19 public health measures. This case highlights the tension between the autonomy of religious communities and the general interests of public health, particularly within public institutions characterized by confinement such as prisons<sup>127</sup>.

Prior to the pandemic, the applicant had been allowed to attend Adventist church services outside the prison. However, on 8 July 2020, his request to attend weekly Sabbath services was denied, with prison authorities citing the COVID-19 restrictions that had been implemented to protect public health. The ECtHR recognized the complexities faced by prison authorities due to the unpredictable and evolving nature of

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<sup>126</sup> See **European Court of Human Rights (ECtHR)**, *Communauté Genevoise d'Action Syndicale (CGAS) v. Switzerland*, cit., para 9, Concurring Opinion of Judge Krenč joined by Judge Pavli.

<sup>127</sup> See **R. BOTTONI, I. VALENZI**, *The Rights of Religious or Belief Minorities and Their Members in Prison: The European Space*, in M.J.H. BHUIYAN, A. BLACK (eds.), *Freedom of Religion*, cit., pp. 127-146.



public health conditions, which created significant challenges in organizing and overseeing religious activities for inmates. As a result, the ECtHR granted prison authorities a broad margin of discretion, particularly given that the applicant's request involved leaving the prison and interacting with individuals not confined or employed within the facility.

During the pandemic, the prison where the applicant was detained had implemented video-conferencing for Adventist worship, thus pioneering online access to religious support. This approach aligned with widespread practices adopted during the health crisis and was consistent with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). These recommendations encouraged compensating for restrictions on outside contact by enhancing alternative communication methods. The ECtHR considered these virtual measures a significant factor in its decision-making process. Despite the applicant's refusal to participate in these online religious activities without providing justification, the ECtHR acknowledged that virtual measures, although not a full substitute for in-person worship, represented a reasonable attempt by national authorities to mitigate the impact of pandemic-related restrictions on religious freedoms.

In its deliberation, the ECtHR emphasized that the restriction in question affected only one specific aspect of the applicant's religious freedom: the ability to attend religious worship outside the prison. The decision took into account the principle of social solidarity, which is particularly relevant in the context of a prison environment. The ECtHR found that, considering the unprecedented circumstances of the pandemic and the reasonable efforts made by the prison authorities to provide alternative means of religious support, the applicant's right to manifest his religion had not been violated.

The *Spinu* case underscores broader concerns related to the provision of spiritual assistance to religious minorities in various public institutions, including prisons, healthcare facilities, and the military, during the COVID-19 pandemic. Restrictions on religious activities were often implemented to safeguard public health, but these measures necessitated careful balancing to ensure that fundamental rights, such as the freedom to manifest one's religion, were not unduly compromised. The reasonable efforts made by authorities to offer alternative forms of spiritual support, such as online religious services, played a crucial role



in maintaining this balance. In the *Spinu* case, the ECtHR's ruling reaffirmed that while public health measures may necessitate restrictions on certain religious practices, such restrictions must be proportionate, reasonable, and balanced against the rights of individuals to practice their faith.

Educational facilities were also a site where the impact of restrictive measures on religious minorities was heightened. A notable case involving the Seventh-day Adventist Church in Uganda illustrates some of the challenges of protecting religious freedoms<sup>128</sup>. In 2021, leaders of the Seventh-day Adventist Church expressed concerns to Prime Minister Nabbanja regarding a proposal from the Ministry of Education and Sports that required students to attend classes on Saturdays, which is the Adventist Sabbath. This proposal aimed to compensate for instructional time lost due to COVID-19-related school closures.

The Adventist Church argued that this requirement directly violated the freedom of worship, freedom of conscience, and the right to education for Adventist students, who observe Saturday as a day of rest and worship. According to reports in local media, the Prime Minister responded by advising the Adventist Church to disregard the Ministry's proposal, as it had not yet received approval from the cabinet it<sup>129</sup>.

This case stresses the ongoing need to monitor the impact of restrictive measures, even after the formal end of the public health emergency, to ensure that they do not disproportionately infringe upon the rights of religious communities. It also highlights the necessity for governments to engage in dialogue with religious groups to address potential conflicts between public health policies and religious freedoms and search for reasonable accommodations.

### **3 - The Importance of Specific Religious Minorities' Practices: Burials and Funerals**

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<sup>128</sup> See UNITED STATES DEPARTMENT OF STATE, *Uganda 2021 international religious freedom report*, in *state.gov*, 2021 (<https://www.state.gov/wp-content/uploads/2022/04/UGANDA-2021-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>).

<sup>129</sup> See UNITED STATES DEPARTMENT OF STATE, *Uganda 2021*, cit.



Another contentious context where religious minorities were disproportionately impacted by health restrictions were the practices surrounding burials and funerals. The increased death rate due to the outbreak of COVID-19 led to the widespread imposition of restrictions on travel and in-person attendance, thereby affecting rituals related to death such as rites, wakes, and funerals. Whereas it was possible to postpone certain ceremonies during the pandemic, practices surrounding deceased members of the community continued despite limitations and restrictions<sup>130</sup>. Yet, funerary practices are characterized by sociality and ritualism that "create ideal conditions for spreading infection"<sup>131</sup>. Past health emergencies, other than COVID-19, have resulted in the adoption of various measures for "safe burials" that reflect both the increases in mortality and the need mitigate risks of transmission; these measures often come into confrontation with customary practices of religious communities<sup>132</sup>. Moreover, research also suggests that the targeting of funerary practices during health emergencies may be used as a way to marginalize and mark vulnerable populations<sup>133</sup>. Religious practices around funerals and burials raised tensions for various communities with specific practices that were in direct confrontation with public health decrees. The tension raised by the disregard for certain cultural practices was connected to "the marginalization of social norms of grieving"<sup>134</sup>. The 2020 World Health Organization guidelines on funerary rights were not wholly ignorant of the importance of grieving practices and stated that there was no risk of infection from exposure to COVID-19 victims<sup>135</sup>. By analogy, this

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<sup>130</sup> See **M. CORNEJO-VALLE, B. MARTIN-ANDINO**, *Elastic Rituals: A Multi-Religious Analysis of Adaptations to the COVID-19 Crisis*, in *Religions*, vol. XIV, n. 6, 2023, art. 6, p. 5 (<https://doi.org/10.3390/rel14060773>).

<sup>131</sup> See **C. NYAMUTATA**, *Funerary rites and rights of the dead: Jurisprudence on COVID-19 deaths in Kenya, India, and Sri Lanka*, in *Journal of International Law and Religion*, Brill | Nijhoff, 2023 (<https://doi.org/10.1163/2211906X-12010003>).

<sup>132</sup> See **S. RIPOLL**, *Death and funerary practices in the context of epidemics: Upholding the rights of religious minorities*, in *Institute of Development Studies*, 2020, p. 7. (<https://doi.org/10.19088/CREID.2020.001>).

<sup>133</sup> See **S. RIPOLL**, *Death and funerary practices*, cit., p. 8.

<sup>134</sup> See **C. NYAMUTATA**, *Funerary rites*, cit., p. 42.

<sup>135</sup> See **WORLD HEALTH ORGANIZATION (WHO)**, *Infection prevention and control for the safe management of a dead body in the context of covid-19: Interim guidance*, in *who.int*, 2020 (<https://www.who.int/publications/i/item/infection-prevention-and-control-for-the-safe-management-of-a-dead-body-in-the-context-of-covid-19-interim-guidance>).



guidance was especially useful to challenge policy approaches that required cremation.

The restrictions on religious rituals related to death revealed the adverse impact of the COVID-19 emergency on religious minorities and were often intertwined with the bans on gatherings and the closing of houses of worship. Some authorities were startled by the intensity of the response by some religious minorities to these restrictions. For example, an ultra-Orthodox Jewish funeral in New Jersey that drew large crowds was forcibly broken up by police and at least 15 funeral-goers were arrested<sup>136</sup>. In Jewish worship, the passing of an individual "is marked by communal funerals and shiva, that provide comfort for mourners and respect for the deceased" and "Jewish law puts great emphasis on the respect toward religious leaders"<sup>137</sup>. This episode reflected an uncollaborative attitude, but also the deep importance that funerals play in the Jewish faith. There were additional reports of defiance to COVID-19 restrictions and a few legal disputes over the enactment of measures that restricted various burial practices occurred in Kenya, Sri Lanka and India.

The Sri Lankan case offers a useful case study because it showed a refusal to hear petitions against compulsory cremations that affected religious minority groups from Islamic, Christian and Catholic traditions. Sri Lanka is made up of a majority of Buddhists followed by Hindus, Muslims, and Christians<sup>138</sup>. The 1978 Constitution reflects the dominant status of Buddhism and its non-secular character would be reflected in its response to the pandemic<sup>139</sup>. In April 2020, the Sri Lanka Ministry of Health decided to make cremations compulsory for all

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<sup>136</sup> E. TUCKER, *New Jersey police break up large crowd at funeral, arrest 15*, in *The Daily Beast*, 2020 (<https://www.thedailybeast.com/new-jersey-police-break-up-large-crowd-at-funeral-arrest-15>).

<sup>137</sup> See T. BERGER LIPSKY, E. GABBAY, *Sociocultural and Religious Perspectives Toward the COVID-19 Pandemic in the Haredi Jewish Community*, in *Journal of Religion and Health*, vol. 62, n. 1, 2023, pp. 389-407.

<sup>138</sup> See OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), *Preliminary findings of country visit to Sri Lanka by the Special Rapporteur on Freedom of Religion or Belief*, in OHCHR, 2019 (<https://www.ohchr.org/en/news/2019/08/preliminary-findings-country-visit-sri-lanka-special-rapporteur-freedom-religion-or>).

<sup>139</sup> See L.B. MANAMPERI, *A Critical Human Rights Perspective on the Sri Lankan Government's Forced Cremation Policy of COVID-19 Deceased in the Context of Religious Majoritarianism*, in *International Journal for Religious Freedom*, vol. XVI, n. 1, 2023, pp. 95-107.



COVID-19 victims regardless of faith, a safety measure that confronted Islamic traditions around the burial of the dead. Some Christian and Catholic groups were also affected though it was Muslims who as well became the targets of vilification and hate speech<sup>140</sup>. This decision occurred against the backdrop of increasing tensions among these groups, notably anti-Muslim rhetoric, hate speech, and incitement to violence<sup>141</sup>. One of the four duties that Muslims must perform for the dead is the provision of a dignified burial, and cremation is prohibited<sup>142</sup>. Accordingly, the decision of the Sri Lanka Ministry of Health was considered in breach of the constitutionally protected rights of Sri Lankan Muslims to manifest their religion and belief, and to non-discrimination<sup>143</sup>.

In addition to depriving Muslims of their religious rights, the decision of the Sri Lanka authorities had the indirect effect of targeting Muslim practices for enabling the spread of the virus. A letter of concern from civil society groups underscored that "the possibility of compulsory cremation therefore is a matter of great distress to practicing Muslims"<sup>144</sup>. Mandatory cremation is in fact not necessary: as noted above, the World Health Organization had declared that there was no evidence of viral spread from dead bodies<sup>145</sup>. Four UN Special Rapporteurs submitted a letter to the Sri Lankan government expressing their concern for the violation of Muslim rights due to forced cremations; they reiterated their concern again in January 2021<sup>146</sup>. Moreover, in May 2020, twenty Muslim

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<sup>140</sup> See **CENTRE FOR POLICY ALTERNATIVES (CPA)**, *Disposal of Bodies of Deceased Persons Who Were Infected with and Suspected of Being Infected with COVID-19*, in *Centre for Policy Alternatives*, 2020 (<https://www.cpalanka.org/disposal-of-bodies-of-deceased-persons-who-were-infected-with-and-suspected-of-being-infected-with-covid-19/>).

<sup>141</sup> See **A.M.I. RAZAK, A. MOHAMED SALEEM**, *COVID-19: The crossroads for Sinhala-Muslim relations in Sri Lanka*, in *Journal of Asian and African Studies*, vol. LVII, n. 3, Sage, 2022, pp. 529-542 (<https://doi.org/10.1177/00219096211021873>).

<sup>142</sup> See **O. SULEIMAN**, *Like India, Sri Lanka is using coronavirus to stigmatise Muslims*, in *Al Jazeera*, 2020 (<https://www.aljazeera.com/opinions/2020/5/20/like-india-sri-lanka-is-using-coronavirus-to-stigmatise-muslims>).

<sup>143</sup> See **C. NYAMUTATA**, *Funerary rites*, cit., p. 66.

<sup>144</sup> See **CENTRE FOR POLICY ALTERNATIVES (CPA)**, *Disposal of Bodies*, cit.

<sup>145</sup> See **WORLD HEALTH ORGANIZATION (WHO)**, *Infection prevention*, cit.; **WORLD HEALTH ORGANIZATION (WHO)**, *Technical notes on wash in emergencies*, in *who.int*, 2013 (<https://www.who.int/teams/environment-climate-change-and-health/water-sanitation-and-health/environmental-health-in-emergencies/technical-notes-on-wash-in-emergencies>).

<sup>146</sup> See **OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)**, *Sri Lanka: Compulsory cremation of COVID-19 bodies cannot continue, say UN Experts*, in



groups requested the revocation of the decision and noted that there had been no consultation with their communities<sup>147</sup>.

The matter was brought before the Supreme Court where eleven fundamental rights petitions from Muslim, Christian and Catholic communities were filed. The objective was to annul the order that enforced the obligatory cremation policy<sup>148</sup>. The petitioners argued that the cremation-only policy "violates the right to freedom of religion and belief of some faiths and that the said regulation, in fact, violates the law under which the regulation has been made as the law itself permits either burial or cremation"<sup>149</sup>. The petitioners also noted that "under international law limitations of rights such as the freedom to practice one's religion has to be prescribed by law and the limitation must be necessary and proportionate"<sup>150</sup>.

In December 2020, all eleven petitions were dismissed by the Supreme Court without the merits of the case being heard. Therefore, it was not possible to understand and assess the legal and scientific basis behind the Ministry of Health's policy<sup>151</sup>. Meanwhile, Amnesty International and Human Rights Watch also issued reports and alerts on the situation<sup>152</sup>. A committee of medical experts from Sri Lanka recommended that the restrictive policy for the disposal of COVID-19

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OHCHR (<https://www.ohchr.org/en/press-releases/2021/01/sri-lanka-compulsory-cremation-covid-19-bodies-cannot-continue-say-un>).

<sup>147</sup> See **AMNESTY INTERNATIONAL**, *Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 in Sri Lanka: Submission to the Special Rapporteur on Freedom of Religion or Belief*, in *Amnesty International* ([amnesty.org](https://www.amnesty.org)), 2020, p. 3.

<sup>148</sup> See **PEOPLE'S RIGHTS GROUP**, *Sri Lanka's double pandemic: State Sanctioned Forced Cremations During the COVID-19 Pandemic* (10.13140/RG.2.2.25329.81763, 2021, p. 24.

<sup>149</sup> See **CENTRE FOR POLICY ALTERNATIVES (CPA)**, *Statement on Forced Cremations*, in *Centre for Policy Alternatives*, 3 Dicembre 2020 (<https://www.cpalanka.org/statement-on-forced-cremations/>).

<sup>150</sup> See **CENTRE FOR POLICY ALTERNATIVES (CPA)**, *Statement on Forced Cremations*, cit.

<sup>151</sup> See **A. MARSOOF**, *The disposal of COVID-19 dead bodies: Impact of Sri Lanka's response on fundamental rights*, in *Journal of Human Rights Practice*, vol. XIII, n. 3, Oxford University Press, 2021, pp. 669-689.

<sup>152</sup> See **AMNESTY INTERNATIONAL**, *Eliminating Intolerance*, cit.; **AMNESTY INTERNATIONAL**, *Sri Lanka: Old Ghosts in New Garb: Sri Lanka's Return to Fear*, in *Amnesty International*, 2021; **WORLD WATCH MONITOR**, *Church surveillance, covid-19 controls affect China's Christians - 1 of 5 global trends*, in [worldwatchmonitor.org](https://www.worldwatchmonitor.org), gennaio 2021 (<https://www.worldwatchmonitor.org/2021/01/church-surveillance-covid-19-controls-affect-chinas-christians-1-of-5-global-trends>).



victims be revised to include burials in addition to cremation. In 2021, the policy on forced cremation was revoked by the Prime Minister. Nyamutata argues that the concession was a result of the realization of collective rights for religious minority groups "outside judicial systems, through international pressure, resulting in the recognition of minority rights"<sup>153</sup>.

The case evinced the use of national measures that were more restrictive than necessary going beyond international guidelines without scientific basis with the effect of discrimination against religious minorities who also suffered from blockages in gaining access to legal processes. The case also revealed how restrictive practices may lead to social divisions and how the failure to provide legal justification for restrictive bans may increase tensions.

#### **4 - Secular vs Religious Activities: Discriminatory Bans on Gathering**

While restrictions differed across countries, a majority of governments adopted confinement measures that banned public gatherings. These measures had the effect of prohibiting public worship and often led to the closure of places of worship. Religious gatherings in houses of worship traditionally encompass an array of practices that include not only services and study but also rituals including funerals, weddings, baptisms, and other ceremonies<sup>154</sup>. As said earlier, during the COVID-19 emergency, many houses of worship cooperated with the authorities, turning to virtual services, use of radio, or holding multiple services with smaller numbers of adherents.

For the most part, measures on the bans on gatherings were applied without discriminatory intent. However, there were notable cases where indirect effects had a greater impact on religious minorities due to different worship practices, particularly those religious practices generally known as communion where personal contact and co-presence are necessary<sup>155</sup>. For certain religions, there is the obligation to worship in public and the prohibition against public worship results in a much

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<sup>153</sup> C. NYAMUTATA, *Funerary rites*, cit., p. 68.

<sup>154</sup> See M. CORNEJO-VALLE, B. MARTIN-ANDINO, *Elastic Rituals*, cit., p. 4.

<sup>155</sup> See M. CORNEJO-VALLE, B. MARTIN-ANDINO, *Elastic Rituals*, cit., p. 6.



more serious infringement on religious freedom<sup>156</sup>. During the COVID-19 emergency, various religious groups argued that the specificity of their religious denominations needed to be recognized when calling for the right to worship in public or requesting exceptions to the absolute ban on gathering. A number of these claims went to court where judges were compelled to recognize the salience of the collective dimension of worship, as seen in cases in Scotland and Chile related to Sunday Mass and Catholic communities<sup>157</sup>. The restrictions on gathering also heavily impacted minority religions, whose specific needs for practicing communion could not always be met through virtual means<sup>158</sup>.

In two exemplary cases from Germany and USA, the arguments on behalf of religious minorities coalesced around a similar set of arguments. First, there was the obligation for collective worship based on the specific doctrine of the religious minority. Second, applicants claimed that there had been discrimination against their freedom of religion, not as compared to other majority religions, but as compared to the ambit of secular activities that were considered essential. However, religious services were considered closer to mass gatherings such as concerts and sports matches rather than a trip to the grocery store<sup>159</sup>. This was due to the fact that even during the lockdown periods and most restrictive quarantines, certain businesses and facilities had been deemed essential and permitted to operate, albeit with strict restrictions in place rather than a total prohibition. Third, some religious minorities argued for exceptions to the ban on worship gatherings with explanations for why certain modes of worship were not likely to spread the virus; these includes no singing, chanting, or that the only speaker would be the religious leader. Finally, religious minorities presented their set of precautions to assure authorities that took into consideration the size, structure, and number of adherents to be permitted. These cases called for a balancing of the values at stake, applying notions of "proportionality" to weigh the violation of religious freedom against

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<sup>156</sup> See **G. PUPPINCK**, *Violations of religious freedom*, cit., p. 9.

<sup>157</sup> See **G. PUPPINCK**, *Violations of religious freedom*, cit., p. 9.

<sup>158</sup> See **A. MADERA**, *The Implications of the COVID-19 Pandemic on Religious Exercise: Preliminary Remarks*, in *Laws*, vol. X, n. 2, 2021, art. 2 p. 44. (<https://doi.org/10.3390/laws10020044>).

<sup>159</sup> See **R. HOUSER, A. CONSTANTIN**, *COVID-19, Religious Freedom and the Law: The United States' Case*, in *American Journal of Law & Medicine*, vol. XLIX, n. 1, 2023, p. 390 (<https://doi.org/10.1017/amj.2023.14>).



public health needs as well as the severity of risks based on the specific circumstances and nature of the worship gathering.

The first case was heard in Germany in the spring of 2020 and concerned a registered Islamic association that had around 1,300 members that brought a challenge before the Higher Administrative Court concerning an ordinance, which banned religious gatherings<sup>160</sup>. The applicant requested a preliminary injunction to be able to hold Friday prayers during the weeks of Ramadan and ensured that there would be compliance with hygiene measures. Specifically, the applicant planned to follow the protective precautions applying to retail outlets that included minimum distances and number of participants. In agreement with theological authorities, the applicant also received permission to conduct multiple services in one day, and noted that, for the doctrine that he represented, there was no singing and the only speaking was expressed by the imam. The Higher Administrative Court rejected the application, arguing that religious worship posed a higher infection risk than commercial activities.

The case was taken up in the Federal Constitutional Court, which rejected the Higher Administrative Court's argument that the ordinance that banned all services needed to be followed without exception. The Court reasoned that, based on the current state of knowledge and strategies for addressing situations where there is an epidemiological danger, the application of a general ban on religious service in mosques without providing for exceptions in individual cases and in cases where there is coordination with health authorities was "probably not compatible with Article 4 of the Basic Law"<sup>161</sup>.

Further, the Federal Constitutional Court recognized the specific circumstances of the applicant wherein the ban, "constitutes an extremely serious encroachment on the freedom of religion" in light of the fact that Friday prayers during Ramadan are "of central liturgical importance"<sup>162</sup>. The Court noted that this salience had been demonstrated by the applicant in reference to certain passages in the Koran on "full-fledged" religious participation, which required physical presence.

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<sup>160</sup> See **BUNDESVERFASSUNGSGERICHT**, *Provisional Opening of the Possibility to Allow Exceptions to the General Ban on Religious Services in Churches, Mosques, and Synagogues Upon Application in Individual Cases (de)* [Gerichtsentcheidung], in *Bundesverfassungsgericht* (bundesverfassungsgericht.de), 29 aprile 2020.

<sup>161</sup> See **BUNDESVERFASSUNGSGERICHT**, *Provisional Opening*, cit., para. 10.

<sup>162</sup> See **BUNDESVERFASSUNGSGERICHT**, *Provisional Opening*, cit., para. 10.



The Court, however, also acknowledged that the ban on gatherings for worship remained necessary in order to stop the spread of infections. The Court ruled that the comparison of houses of worship to retail outlets and shops was not valid as there was a higher risk potential for gatherings in house of worships. The Court pointed out that services are "targeted, long-term joint activities" where there was the possibility for transmission due especially to the activities of prayer and chanting. There were also suspicions raised that, in light of Ramadan, there would be larger crowds and thus social distancing could not be maintained. The Court therefore reasoned that gatherings in houses of worships were closer to those mass events such as concerts, sport games, and leisure activities, which continued to be prohibited or severely restricted. The Federal Constitutional Court permitted the temporary suspension for the applicant and further noted the need to examine on a case-by-case basis whether or not religious services can occur "under conditions and restrictions that are suitable for the situation, insofar as a relevant increase in the risk of infection can be reliably prevented"<sup>163</sup>.

Overall, the Court explicitly endorsed the use of proportionality principle, wherein the encroachment on the freedom of religion needed to be balanced with monitoring compliance, the local conditions, the structure and size of the religious community, and the current risk analysis for social contact. The proportionality considered by the Court put greater weight on the continued enforcement of the ban on religious gatherings, but, as Strazzari argued, the Court found that an absolute ban is "in breach of the proportionality principle and constitutes a breach on the freedom of religion"<sup>164</sup>. Hestermeyer noted how the Court sought to "avoid the blanket suspension of fundamental rights while granting a wide latitude to executive action to prevent the spread of the coronavirus"<sup>165</sup>. This mean contextualizing assessments in order to offer a "minimal level of protection of fundamental rights that are particularly sensitive"<sup>166</sup>.

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<sup>163</sup> See **BUNDESVERFASSUNGSGERICHT**, *Provisional Opening*, cit., para. 16.

<sup>164</sup> See **D. STRAZZARI**, *Germany, Federal Constitutional Court, 29 April 2020, 1 BvQ 44/20*, in *Fricore Judicial Training Project, 2020* (<https://www.fricore.eu/fc/content/germany-federal-constitutional-court-29-april-2020-1-bvq-4420>)

<sup>165</sup> See **H. HESTERMEYER**, *Coronavirus Lockdown Measures Before the German Constitutional Court*, in *ConstitutionNet* ([constitutionnet.org](http://constitutionnet.org)), 2020 (<https://constitutionnet.org/news/coronavirus-lockdown-measures-german-constitutional-court>).

<sup>166</sup> See **H. HESTERMEYER**, *Coronavirus Lockdown*, cit.



A second case from the USA concerns the Capitol Hill Baptist Church in the District of Columbia, which represents a religious minority within the larger confessional group of evangelical Protestant Christians; worldwide, Baptists constitute a group with over a million members and more than 5,000 congregations in the USA<sup>167</sup>. The Church had been meeting weekly in person since 1878 with the exception of a three week pause during another health emergency, the Spanish flu of 1918. The Church had observed the local COVID-19 restrictions by suspending its Sunday services but no virtual worship services were organized. According to the Church, "a weekly in-person worship gathering of the entire congregation is a religious conviction for which there is no substitute"<sup>168</sup>.

In October 2020, in the District of Columbia, restrictions had been loosened or lifted as part of a phased reopening plan and the ban on religious gatherings was loosened to allow for gatherings of up to 50 percent or 100 persons, both for inside and outside services. In response, the Capitol Hill Baptist Church brought a case against the Mayor Muriel Bowser and the District Court of Columbia in the US District Court for the District of Columbia, arguing that these actions were a violation of the Religious Freedom Restoration Act (RFRA) of 1993, among other laws, and that the Church be permitted to hold socially-distanced outside worship services for which the congregants would wear masks<sup>169</sup>.

The Judge noted that the Capitol Hill Baptist Church's "sincerity of belief" was demonstrated by the fact that the Church held only one worship service on Sunday, compared to other churches that held multiple worship services. The Judge dismissed the District of Columbia's suggestion that the Church adopt alternate worship options - multiple services, drive-in services, or using radio or online. Instead, the Judge noted that the District of Columbia was not in a position to decide what was important for a religion, and rather for the Church to decide<sup>170</sup>. The Presiding Judge Trevor N. McFadden observed that "The District's current restrictions substantially burden the Church's exercise of religion"<sup>171</sup>. The Court found a substantial burden under the RFRA

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<sup>167</sup> See **AMERICAN BAPTIST CHURCHES USA (ABCUSA)**, *10 Facts about American Baptists*, in ABCUSA ([abc-usa.org](http://abc-usa.org)), 2024.

<sup>168</sup> See *Capitol Hill Baptist Church v. Bowser*, 496 F. Supp. 3d 284 (D.D.C. 2020), p. 2.

<sup>169</sup> See *Capitol Hill Baptist Church v. Bowser*, cit., p. 2.

<sup>170</sup> See *Capitol Hill Baptist Church v. Bowser*, cit., pp. 11-12.

<sup>171</sup> See *Capitol Hill Baptist Church v. Bowser*, cit., p. 2.



based on the finding that "The District has not, as it contends, banned merely one "method of worship," but instead has foreclosed the Church's *only* method to exercise its belief in meeting together as a congregation, as its faith requires"<sup>172</sup>. The Court further found that the District of Columbia had not demonstrated that there was a compelling interest in sustaining the restrictions on religious services such as the one the Church wished to conduct. The Court also noted that less restrictive but equally effective precautionary measures were available<sup>173</sup>. The case further recognized the discriminatory treatment for different types of public gatherings. The Court granted the preliminary injunction to permit church members to hold worship services outdoors while permitting the case to move forward to determine whether there had been a violation of the RFRA<sup>174</sup>.

An additional USA case can be briefly summarized as it reflects similar arguments seen above around both the specificity of collective worship by religious minorities and discriminatory treatment of sacred and secular practices. The U.S. Supreme Court in November heard a case in 2020 that had been brought by the Roman Catholic Diocese of Brooklyn and two Orthodox Jewish synagogues against the Governor of New York who had issued an executive order designating zones that limited attendance at worship services depending on the number of cases. However, in all zones, some secular businesses were identified as "essential" and permitted to operate. The applicants stressed that the Executive Order was not neutral and that the categorizations led to the religious entities being treated more harshly<sup>175</sup>. The Court agreed, observing that the restrictions posed irreparable harm and that this was related to the specificities of the religious convictions and noting that

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<sup>172</sup>See *Capitol Hill Baptist Church v. Bowser*, cit., p. 13.

<sup>173</sup> See **J.M. DEBOER, B.J. HAMMOND**, *Conflicts Between Public Health Measures and Religious Freedom in a Period of Pandemic*, in *Fides et Libertas: Special Edition on COVID-19 and Religious Liberty*, edited by A. DE LA FERRIERE, N. MILLER, International Religious Liberty Association, 2021, pp. 150-151.

<sup>174</sup> See **R. HOUSER, A. CONSTANTIN**, *COVID-19*, cit., p. 30.

<sup>175</sup> See **COLUMBIA GLOBAL FREEDOM OF EXPRESSION**, *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor of New York*, 2020, (<https://globalfreedomofexpression.columbia.edu/cases/roman-catholic-diocese-of-brooklyn-new-york-v-andrew-m-cuomo-governor-of-new-york/>).



"there are important religious traditions in the Orthodox Jewish faith that require personal attendance"<sup>176</sup>.

These cases reflect how the ban on collective worship, while universally accepted, often had an indirect effect on religious minorities, based on doctrinal convictions around communion as part of specific traditions or were considered as forms of religious discrimination. Legal authorities were presented with creative adaptive strategies solutions to mitigate the specific risks posed by worship services that demonstrated collaborative attitudes on the part of different religious communities. In redrawing the lines for religious freedom, these cases permitted exceptions for the right of religious freedom even in light of restrictive public health regulations.

## 5 - Privacy for Sensitive Data vs Public Health Demands

The COVID-19 emergency was also notable for expanding the rights of governments in terms of surveillance and data collection. In some countries, this led to excess scrutiny of religious minorities and charges of violations of the right to privacy. Not only states but also telecommunication and social media companies have been implicated in collecting data. Health emergencies place emphasis on the timely collection of data but ethical standards need to be maintained. The courts had to rule on the balance between protecting the privacy of citizens and the public health demands during an emergency.

In South Korea in 2020, the violation of privacy was at the heart of a confrontation between interactions with Shincheonji Church of Jesus, Temple of the Tabernacle of the Testimony and state authorities. The epicenter of the outbreak in South Korea was reportedly linked to a few ceremonies held by the Shincheonji congregation in Daegu, the country's fourth-largest city. Members of the Shincheonji Church believed that illness was a weakness that hindered their faith practice and, consequently, many members concealed their symptoms or denied being ill. The Church leader, Lee Man-hee, organized two ceremonies, during which a purification rite was imposed to rid the body of the virus, without facial protection. These gatherings were conducted in secret,

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<sup>176</sup> See *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, in *Oyez*, 2020, p. 5 (<https://www.oyez.org/cases/2020/20A87>).



with even family members kept unaware. After an outbreak that was connected to a member of the Church, the government requested that the Church share information about its members and locations in South Korea and globally; the government also conducted a raid on the Church headquarters. Allegations of underreporting and incorrect information led to the arrest and indictment of the leader of the Shincheonji Church of Jesus Lee Man-hee for obstruction and non-compliance with the Infectious Disease Control and Prevention Act (ID-CPA). On the night of July 31, Lee, then 89 years old, was arrested on charges of homicide by 'willful negligence'<sup>177</sup>. Lee was also accused of underreporting the number of Church locations and providing incomplete information to authorities, actions which allegedly contributed to the virus's spread among Church members and accelerated the nationwide spread of COVID-19.

Lee's trial took place before the Suwon District Court, which issued its verdict on January 13, 2021. The main question before the District Court concerned the extent to which the ID-CPA could be applied in terms of requesting information, therefore pinpointing the balance between public health requirements and privacy rights. The Court held that while authorities could request confidential information during a pandemic, such powers must adhere to reasonable limits and proportionality, avoiding arbitrary use or purposes beyond their original intent. Demands for lists of Shincheonji members, including those abroad, and details of Church properties were deemed to exceed these limits. The Court found that the Korean Central Disease Control Headquarters (CDCH) did not clearly specify which properties should be listed. Despite some omissions, the Court recognized that Shincheonji cooperated effectively by providing a list of 1,100 facilities on February 22, followed by a more complete list of 2,041 facilities on March 9<sup>178</sup>. Public health officials testified that there was no evidence that Shincheonji had obstructed anti- COVID-19 measures; rather, the Church was found to have cooperated promptly<sup>179</sup>. The judges ruled that under

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<sup>177</sup> See **G. FATTORI**, *Religious Freedom at the time of Coronavirus*, in *Law, Religion and COVID-19 Emergency*, edited by P. CONSORTI, DiReSoM, Pisa, 2020. pp. 1-2; **H.N. WIDHIYANTI, A.A.A.N. SARASWATI**, *Limitation of religious freedom in response to COVID-19: From public health regulations to discriminatory policies*, in *Diponegoro Law Review*, 6(1), 2021, pp. 78-95 (<https://doi.org/10.14710/dilrev.6.1.2021.78-95>, p. 86).

<sup>178</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., p. 98.

<sup>179</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., p. 98.



the pandemic emergency, authorities were permitted to request confidential information but that such powers were to be based on the principle of proportionality and not deployed in an arbitrary or excessive manner<sup>180</sup>. The Courts found that the Church leader could not be punished under the charges related to obstruction and non-compliance.

In addition to the IDCPA charges, Lee faced additional allegations of embezzlement of Church funds, a common accusation against leaders of new religious movements, especially when a religious movement is in its first generation, with the leader still alive, commingling of the assets of the movement and those of the leader is common<sup>181</sup>. The Court found Lee guilty of embezzlement and sentenced him to three years' imprisonment, suspended for four years<sup>182</sup>. The District Court, Court of Appeal, and Korean Supreme Court all upheld Lee's acquittal on IDCPA-related charges, concluding that the collection of information concerned data processing rather than pandemic management procedures. Consequently, Lee could not be penalized for allegedly hindering the government's response to the COVID-19 outbreak in 2020<sup>183</sup>.

There were other reports of violations of privacy connected to religious minorities during the COVID-19 emergency. In a case of racial profiling, Amnesty International reported that a concept proposal presented to the Sri Lankan government and various bodies "identified the Muslim population as a variable in their methodology, to determine the risk of spread of COVID-19 in each district"<sup>184</sup>. The assignment of the greatest risk to the district's 'Muslim population' was criticized on social media and the report was deleted. Another situation involved the absence of data when the UK's health trials were criticized for not being inclusive of ethnic minority groups<sup>185</sup>. Further, there was the development of surveillance technology that was used without consent to track the spread of the virus. The Pakistani government has used various programs to collect personal data from cell phones as well as

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<sup>180</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., p. 19.

<sup>181</sup> See **C. BURKE**, *COVID-19 and Korea*, cit.

<sup>182</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., p. 98.

<sup>183</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., p. 98.

<sup>184</sup> See **AMNESTY INTERNATIONAL**, *Sri Lanka*, cit., p. 67.

<sup>185</sup> See **M. MURALI, L. GUMBER, H. JETHWA**, *Ethnic minority representation in UK COVID-19 trials: Systematic review and meta-analysis*, in *BMC Medicine*, vol. XXI, Springer, 2023, p. 111 (<https://doi.org/10.1186/s12916-023-02809-7>).



send out health alerts<sup>186</sup>. This has led to concerns on behalf of minority communities. In its extreme, these measures can be seen as an extension of digital authoritarianism, where states such as China seek to identify and track threats in ways that also serve national security interests<sup>187</sup>.

Moreover, there were reports of the expansion of existing surveillance technology in order to address public health concerns<sup>188</sup>. This affected Christian minorities with surveillance in homes, the tracking of on and off-line interactions, and face scans. There were also cameras placed in all state-approved religious venues<sup>189</sup>. Meanwhile, churches that held worship services online found themselves vulnerable to monitoring. Overall, these cases and examples point to the need to examine emergency measures carefully for the effects that the collection and use of health data can have on religious minorities, and the sensitivity of such requests, especially for those who may already be under surveillance.

## 6 - Scapegoating and Hate Speech vs Freedom of Expression

If it has to be acknowledged that certain religious practices may have contributed to the spread of COVID-19, it is equally true that many religious minorities were frequently subjected to defamation, discrimination, and even hatred, being unfairly labeled as 'spreaders' of COVID-19, often without any evidence or scientific basis. In this context, one of the most challenging issues was finding a balance between freedom of expression and the respect for individual and group rights and freedoms. Four cases that occurred during the COVID-19 pandemic serve to illustrate this issue.

A notable case involves the Tablighi Jamaat, a Sunni Muslim reformist movement. On March 3, 2020, Tablighi Jamaat organized a congregation in Delhi, drawing hundreds of foreign nationals from 41 countries. Following this event, the movement became a focal point of controversy, especially among right-wing groups in India, who accused

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<sup>186</sup> H. BALOCH, *Religious Minorities, Privacy and Data Protection in the Fight Against Covid-19*, in *International Development Studies News & Opinion*, 2020.

<sup>187</sup> See L. KHALIL, *Digital Authoritarianism, China and COVID*, in *Lowy Institute*, 2020.

<sup>188</sup> See AMNESTY INTERNATIONAL, *Eliminating Intolerance*, cit.

<sup>189</sup> See WORLD WATCH MONITOR, *Church surveillance*, cit.



it of deliberately spreading the coronavirus<sup>190</sup>. Media outlets and social media channels exacerbated these accusations, using derogatory terms such as 'Talibani criminals', 'Muslim virus', 'bio-terrorists', 'Corona Jihadists' and 'human bombs' to describe Tablighi Jamaat members. The accusations against Tablighi Jamaat and the broader Muslim community gained traction, partly due to public statements by political figures, such as Mukhtar Abbas Naqvi, the BJP Minister for Minority Affairs, who described the event as a 'Talibani crime' on social media and television. The narrative of Muslims as deliberate spreaders of COVID-19 became viral, amplified by the use of hashtags like #CoronaJihad, and was fueled by misinformation and fake news. According to Institute of Development Research and Corresponding Capabilities (IDRAC), this Islamophobic rhetoric incited widespread discrimination and physical attacks against Muslims across India<sup>191</sup>.

In response to the 2020 gathering, Indian authorities filed various charges against Tablighi Jamaat leaders and members, which included violations of visa regulations, unlawful missionary activities, and even culpable homicide. The Delhi-based leader of Tablighi Jamaat, Maulana Muhammad Saad Khandalvi, faced serious allegations, yet, as of the most recent updates, the Delhi Police have neither filed a charge sheet nor issued a closure report against him<sup>192</sup>. Meanwhile, other charges against Tablighi Jamaat members were dismissed by multiple Indian courts, including the Delhi Court, the Allahabad High Court, and the Bombay High Court, among others. The courts ruled that continuing these prosecutions would constitute an abuse of judicial process, describing them as a form of persecution and scapegoating during the pandemic<sup>193</sup>. The courts also found no evidence linking Tablighi Jamaat members to the spread of COVID-19.

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<sup>190</sup> See **N. AHMAD, N. BINTI HAJI ZULKIFFLE**, *Discriminatory Policies and Laws Target Indian Muslim Minorities in the Recent Times: A Socio-Legal Study*, in *The Asian Institute of Research Law and Humanities Quarterly Reviews*, vol. I, n. 2, 2022, pp. 1-17.

<sup>191</sup> See **A. NAZEER**, *India's Muslim minority experiences increased targeting and violence during COVID-19*, in *CREID Blog*, 2020 (<https://creid.ac/blog/2020/06/04/indias-muslim-minority-experiences-increased-targeting-and-violence-during-covid-19/>).

<sup>192</sup> See **N. AHMAD, N. BINTI HAJI ZULKIFFLE**, *Discriminatory Policies*, cit., pp. 1-17.

<sup>193</sup> See **K. TRIPATHI, M. IRFAN**, *Criminalised By Govt, Cleared By Courts: The Tablighi Story*, in *Article 14 Blog*, 2020 (<https://www.article-14.com/post/criminalised-by-govt-cleared-by-courts-the-tablighi-story>).



The Tablighi Jamaat incident illustrates the broader issue of balancing freedom of expression with the protection of religious communities from hate speech and discrimination, especially during public health crises. In particular, while there were surely cases of COVID-19 spread linked to religious gatherings, targeting specific religious minorities without scientific evidence is extremely dangerous as this can trigger alienation, polarization, and grievance. The case also raises critical questions about how societies can maintain respect for individual and collective rights, including religious freedom, while addressing public health concerns. It highlights the importance of monitoring the impact of restrictive measures during public health emergency to prevent unwarranted persecution and to safeguard the rights of vulnerable communities.

A case similar to the Tablighi Jamaat incident in India unfolded in Pakistan and involved Shia Hazara<sup>194</sup> pilgrims returning from Iran. Shia Hazaras, who primarily reside in Mariabad and Hazara Town in Quetta, are one of the most persecuted religious-ethnic minorities in Pakistan, distinguishable by their unique Mongolian features. On February 28, 2020, Pakistani authorities had to reopen the Balochistan-Iran border to allow stranded Shia Hazara pilgrims to return to Pakistan as the virus was spreading in two holy sites for Shias in Iran<sup>195</sup>. Reports indicate that only Shia pilgrims (both Hazara and non-Hazara) were initially quarantined, whereas around 1,704 non-Shia and non-Hazara returnees, such as traders and tourists, were permitted entry after only a minor temperature check. Hazara Shia pilgrims, however, were subjected to quarantine beyond the recommended 14 days, often in poor conditions with inadequate access to information or medical care. This differential

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<sup>194</sup> Shia believers, about 10-15 per cent of the population of Pakistan, are regarded as apostates by some extremist Sunni groups. Many face regular hostility from extremists and public calls for members to be killed. The most vulnerable are the sizeable Hazara population in Quetta (Pakistan) due to their ethnicity as well as their beliefs. Hazaras are an ethnic group predominantly based in Afghanistan, but with perhaps up to half a million living in Quetta, the provincial capital of Balochistan. As both an ethnic and religious minority, Hazaras face intersectional discrimination [S. SULTAN, *Dire conditions for Hazara Shia pilgrims during COVID-19 quarantine in Pakistan*, in *Poverty and Prejudice: Religious Inequality and the Struggle for Sustainable Development*, Bristol University Press, 2023; MINORITY RIGHTS GROUP, *Shi'a and Hazaras in Pakistan*, in *Minority Rights Group* (<https://minorityrights.org/communities/shia-and-hazaras/>) 2018].

<sup>195</sup> See A. AAMIR, *Who is Responsible for the Disaster in Taftan?*, in *The Friday Times* ([thefridaytimes.com](http://thefridaytimes.com)), 20 marzo 2020.



treatment suggests authorities may have assumed that the virus was confined to the Shia holy sites in Iran, thereby only targeting Shias as potential carriers. Despite these conditions, the pilgrims were eventually allowed to return to their respective provinces. In Balochistan, nonetheless, Hazaras, although constituting a small proportion of returnees from Iran<sup>196</sup>, faced disproportionate targeting and stigmatization as virus transmitters<sup>197</sup>. Protests inside and outside quarantine centers, finally, led to some improvements in conditions by early April 2020<sup>198</sup>.

This case exemplifies how religious minorities, despite facing discrimination and abuse during the COVID-19 pandemic, often lack the means to pursue legal complaints due to disenfranchisement and socio-economic challenges. This is particularly true for communities residing in impoverished regions of the country, such as the Hazaras in Pakistan.

The last two cases refer to two similar incidents occurred, respectively, in Germany and Austria, that illustrate the tension between hate speech targeting a religious minority and freedom of expression during the COVID-19 pandemic.

The first case involved a 76-year-old Thai-German microbiologist and outspoken critic of pandemic restrictions, Sucharit Bhakdi<sup>199</sup>. He faced allegations of spreading false information about the coronavirus and, more controversially, for comments that downplayed the severity of the Nazi genocide.

The Public Prosecutor General's Office in Plön, Schleswig-Holstein, charged Bhakdi with two counts of incitement to hatred. The charges stemmed from remarks he made in April 2021 that allegedly incited hatred against Jews in Germany. Bhakdi's criticism was particularly focused on Israel's vaccination policies, which he linked to what he referred to as a "final solution," a phrase invoking the Nazi regime's genocidal policies. During a speech at an election campaign

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<sup>196</sup> See **S.H. CHANGEZI**, *Social Boycott?*, in *Dawn*, 2020 (<https://www.dawn.com/news/1544636>).

<sup>197</sup> See **S.H. CHANGEZI**, *Social Boycott?*, cit.

<sup>198</sup> See **S. SULTAN**, *Dire conditions*, cit.

<sup>199</sup> See **THE TIMES OF ISRAEL**, *Germany clears anti-vaxxer who called Israel worse than Nazis*, in *The Times of Israel*, 2023 (<https://www.timesofisrael.com/germany-clears-anti-vaxxer-who-called-israel-worse-than-nazis/amp/>); **S. BHAKDI**, *Prozess wegen Volksverhetzung gegen Sucharit Bhakdi unterbrochen*, in *Zeit Online (zeit.de)*, 31 maggio 2023.



event in Kiel in September 2021, Bhakdi's reference to a "second Holocaust" further prompted accusations of trivializing the historical suffering of Jews under Nazi rule. The court in Schleswig-Holstein, however, ultimately ruled that it could not be determined beyond reasonable doubt that Bhakdi's statements constituted antisemitic hate speech rather than a critical stance against the Israeli government's policies.

This decision highlights the ongoing legal and ethical challenges in balancing the protection of free speech with the need to guard against hate speech. This case is also emblematic of the broader societal struggles during the pandemic, where the discourse surrounding public health measures and vaccinations often intersected with issues of historical memory and sensitive historical references. In general, it underscores the complexities faced by legal systems in adjudicating cases where freedom of speech is pitted against the need to prevent the spread of hate and misinformation.

A similar case concerned a Viennese dentist who faced legal action for publishing a 76-minute video that distorted historical facts about National Socialism and Adolf Hitler<sup>200</sup>. According to the prosecution, the video falsely portrayed images from concentration camps as staged, claimed that Jews had a comfortable existence in labor camps, and suggested that Zionists orchestrated both world wars and the COVID-19 pandemic. These allegations highlighted an attempt to trivialize the atrocities of the Nazi era and propagate anti-Semitic conspiracy theories.

The Vienna court found that the dentist had trivialized the Nazi era on 18 separate occasions throughout his video. Although he was acquitted of incitement to hatred, the court sentenced him to 12 months of conditional imprisonment, recognizing the dangerous nature of his false claims and historical distortions.

These cases underscore concerns raised by António Guterres, the United Nations Secretary-General, about how the pandemic has provided new platforms for neo-Nazis and white supremacists to spread their propaganda, often through social media, to incite fear and hatred. Guterres emphasized the need for coordinated global action to counter

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<sup>200</sup> See **M. REIBENWEIN**, *Wiener Zahnarzt meint: Weltkriege und Corona kamen von Zionisten*, in *Kurier*, 2021 (<https://kurier.at/chronik/wien/wiener-zahnarzt-meint-weltkriege-und-corona-kamen-von-zionisten/401730537>).



the rise of neo-Nazism and white supremacy, combat propaganda, and halt the dissemination of misinformation<sup>201</sup>.

In this context, the existence of robust legislation addressing defamation and discrimination against religious minorities, along with the presence of an independent judiciary, is essential in combating these incidents. These legal frameworks not only uphold the rights and dignity of marginalized communities but also ensure that those who propagate hate speech and disinformation are held accountable, thereby protecting the fabric of democratic societies.

## 7 - Positive Practices and Risk of Abuses: Consultation, Collaboration and Partnership

During the COVID-19 pandemic, religious and civil authorities maintained regular consultations in several countries, including Austria, Bosnia-Herzegovina, Croatia, Italy, and the United Kingdom. In the UK, for instance, a government-established working group brought together leaders from major churches and denominations to provide advice on restrictions related to religious practices and to coordinate efforts by religious organizations to support society during emergencies. This collaborative approach proved effective, with high-level interactions often extending beyond immediate concerns.

In many instances, these consultations and cooperative efforts were spontaneous<sup>202</sup>. In other countries, as in Italy, collaboration between civil and religious leaders led to the signing of a protocol that outlined safety measures for resuming public liturgical celebrations. Similarly, in Mexico, authorities engaged in dialogue with religious leaders to jointly establish protocols and guidelines for operations within places of

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<sup>201</sup> See UNITED NATIONS, *Rise in antisemitism during pandemic shows we can never let down our guard: UN chief*, in *UN News*, gennaio 2021 (<https://news.un.org/en/story/2021/01/1082872>).

<sup>202</sup> See G. PUPPINCK, *Violations of religious freedom*, cit., p. 11; H. BALOCH, *Religious Minorities*, cit.; P. TAYLOR, M. MCCARTHY (eds.), *Building a better world: The crisis and opportunity of COVID-19*, in *IDS Bulletin Transforming Development Knowledge*, vol. LII, n. 1, Institute of Development Studies, 2021, pp. 136-137 (<https://hdl.handle.net/20.500.12413/16513>); M. GRAU-CREUS, J. GARCIA-MUNIESCA, A. ERRASTI, *Self-Rule and COVID-19 Times: On How the Pandemic Unveiled Rigidities and Elasticities of the Self-Governmental Institutional Framework*, in *European Yearbook of Minority Issues*, vol. XIX, Brill - Nijhoff, 2022, pp. 134-155.



worship during the pandemic<sup>203</sup>. In other cases, as in Colombia, religious groups and their affiliated social organizations actively participated in coordinating efforts with civil authorities in the distribution of medicine, hygiene products, and cleaning supplies for vulnerable persons<sup>204</sup>.

There were, however, also cases where religious minorities were left out of consultations and collaborations with state authorities. For instance, in Uganda, this exclusion was described by some minority groups as double discrimination: consultation meetings to distribute supplies and coordinate health messaging were conducted through the Inter-Religious Council of Uganda, which included only some confessional organizations and left out many minority religious groups.

Finally, it has to be acknowledged that during COVID-19 pandemic, despite the collaboration and acceptance of rules by most religious communities, there were also cases of defiance and criticisms, and of uncollaborative attitudes among religious groups, their leaders and/or their members. A paradigmatic example in this regard is the Haredi Jewish population in Israel, an ultra-Orthodox community that comprises one eighth of Israel's population, yet at times had a COVID-19 incidence rate that was twice the national average, proportionally<sup>205</sup>. Although most Rabbis encouraged vaccinations for the wellbeing of the community<sup>206</sup>, Haredi Jews showed a reluctance to comply with

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<sup>203</sup> See **D.P. PETRI, T. FLORES**, *The impact of COVID-19*, cit., p. 39.

<sup>204</sup> See **D.P. PETRI, T. FLORES**, *The impact of COVID-19*, cit., p. 34.

<sup>205</sup> See **S.P. DALY**, *Haredi Judaism & COVID-19: A View on Religion and Health from Israel*, tesi, The University of Texas at Austin, 2022 (<https://repositories.lib.utexas.edu/server/api/core/bitstreams/8cec70b5-e569-43d7-94ed-f2ab0502be6b/content>); **G. HITMAN**, *Culture Comes First: Minorities' Behavior During the COVID-19 Pandemic: Arabs and Ultra-Orthodox Jews in Israel*, in *Cogent Arts & Humanities*, vol. XI, n. 1, 2024, art. 2303199, pp. 6-7 (<https://doi.org/10.1080/23311983.2024.2303199>). According to Taragin Zeller et al (2023), based on a sample representative survey (N = 800) of Haredi Jews in Israel, Haredi Jews mostly followed COVID-19 health regulations. Among the respondents who were non-compliant, there were large divergences that mostly reflected religious affiliation. While members of Lithuanian and Sephardi communities reported following guidelines, Hasidim, a more charismatic sub-group, were 12% and 14% more likely to flout public health guidelines than their Lithuanian and Sephardi counterparts, respectively (**L. TARAGIN-ZELLER, T. BERENBLUM, E. BRASIL, Y. ROZENBLUM, A. BARAM-TSABARI**, *Religious diversity and public health: Lessons from COVID-19*, in *PLOS One*, vol. XVIII, n. 8, Public Library of Science, 2023, p. 1 (<https://doi.org/10.1371/journal.pone.0290107>).

<sup>206</sup> See **D. BALILTY, P. KINGSLEY**, *How Many Funerals Will Come Out of This One?*, in *The New York Times*, 17 febbraio 2021.



coronavirus-related directives issued by the official establishment, which encompassed government orders, health ministry guidelines, and police enforcement measures<sup>207</sup>. They did not adhere to bans on synagogue prayers, believing that only religious authorities (the rabbis) had the authority to cancel public prayer. This disregard for government instructions indicates both a lack of trust in the government and a clear preference for religious leadership over state authority<sup>208</sup>. Frequent changes in policies and guidelines related to the COVID-19 further complicated matters. Additionally, the Haredi perceived the police's enforcement actions against their community as part of a retaliatory campaign<sup>209</sup>. This reluctance to abide to civil authorities' guidelines has been linked to a variety of theological, cultural, and political reasons. Some have criticized inner-communal media for insufficiently highlighting the dangers, while others have pointed out that social distancing disrupts the fundamental aspects of Jewish life, which rely on communal religious practices. Similar to other religious groups that have faced challenges with social distancing, Haredi Jews found it particularly difficult to close places of worship, which are central to the practices of Haredi Judaism.

This case underlines that importance for state and public health authorities to engage in continuous collaboration with religious leaders, rather than limiting such efforts to periods of crisis. Establishing and sustaining trust between religious communities and state institutions is a long-term process that must persist beyond the confines of a health emergency. By promoting regular cooperation and open dialogue, authorities can strengthen the resilience and health security of the broader society. An inclusive approach ensures that diverse religious perspectives are considered, promoting equity and preventing the marginalization of minority groups. This inclusive framework not only enhances the effectiveness of policy implementation but also strengthens social cohesion, trust, and resilience within, and across, communities, especially during times of crisis.

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<sup>207</sup> See **R. WAITZBERG, N. DAVIDOVITCH, G. LEIBNER, et al.**, *Israel's response to the COVID-19 pandemic: Tailoring measures for vulnerable cultural minority populations*, in *International Journal for Equity in Health*, 19, 2020, p. 71 (<https://doi.org/10.1186/s12939-020-01191-7>).

<sup>208</sup> See **S.P. DALY**, *Haredi Judaism*, cit., p. 18.

<sup>209</sup> See **G. HITMAN**, *Culture Comes First*, cit.



## 8 - Closing remarks

### 8.1 - The UN Guidelines to mitigate the impact of the emergency rules

There is little doubt that the unparalleled health crisis generated by the spread of the COVID-19 infection assessed the resilience of democratic regimes, even in terms of management of religious diversity. Various circumstances (lack of scientific certainty and of evidence-based medical standards, and an ever-changing pandemic scenario) provoked fragmented legal responses<sup>210</sup>. In many legal contexts public policies struggled to reconcile “reasonableness”, “precaution”<sup>211</sup>, “contingency” and “proportionality”<sup>212</sup>. Moreover, this paper provided evidence that, during the COVID-19 crisis, the “political temptation” arose to take advantage of “legislative flexibility” in order to scapegoat disliked minorities<sup>213</sup>. In certain legal contexts, the pandemic emergency shed light on underlying structural inequalities between mainstream religions and minorities, and gave rise to discrimination, repression, even persecution of faith minorities, emphasizing an apparent unresolvable conflict between science and faith and exacerbating hate speech<sup>214</sup>. For these reasons, scholars from different fields of expertise and geographical contexts have emphasized that times of crisis do not justify undermining the “mechanisms of democratic supervision”<sup>215</sup>.

From this point of view, an emergency response approach based on precautionary measures (i.e. lockdowns, quarantines) shows

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<sup>210</sup> See **A. MADERA**, *The State’s Attitude towards Religious Community in a Health Crisis: Pursuing New Interpretative Approaches?*, in *Christianity - World -Politics*, 2022, pp. 304-318.

<sup>211</sup> **A. LAZZARO**, *Ragionevolezza vs. precauzione nei conflitti tra interessi nel periodo pandemico: diritto alla salute e diritto all’istruzione*, in C. INGRATOCCI, A. MADERA, F. PELLEGRINO (eds.), *I diritti fondamentali*, cit., pp. 107-124.

<sup>212</sup> See **M. VENTURA**, *Concluding Remarks*, cit.

<sup>213</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., pp. 91-104.

<sup>214</sup> See **T. SAMORE, D.M.T. FESSLER, A.M. SPARKS, C. HOLBROOK, L. AARØE, ET AL.**, *Accordance and Conflict between Religious and Scientific Precautions Against COVID-19 in 27 Societies*, in *Religion, Brain & Behavior*, no. 9/2024, pp. 1-22.

<sup>215</sup> See **C. BURKE**, *COVID-19 and Korea*, cit., pp. 91-104.



significant limits, and the need for a more comprehensive understanding<sup>216</sup> which includes a “human rights perspective”<sup>217</sup>.

The UN Special Rapporteur on Freedom of Religion or Belief stressed the importance of careful scrutiny of state restrictive measures to guarantee they meet the standards of necessity, proportionality and non-discrimination<sup>218</sup>. This implies: 1) that restrictions on religious exercise have to comply with the standards of reasonableness and necessity and that other less restrictive measures to achieve the public aim pursued are not available; 2) that judicial analysis requires a careful assessment of the unique facts and circumstances of the specific situation concerned c) that policies and measures have to comply with objective and reasonable standards in order to avoid direct or indirect discriminatory implications on specific segments of population, with a view to building a system which grant “fair outcomes for all”<sup>219</sup>. Precautionary measures are connected with their temporary duration, as they are due to the “urgency the situation demanded”<sup>220</sup>. In this “interval” of time immediate state action “promises to make a difference”<sup>221</sup>, but the temporary status of emergency is expected to “have an end”<sup>222</sup>.

During this unprecedented pandemic, the protection of public health was the main priority, with a view to safeguarding civil society as a whole. However, a long-term solution should aim at reconciling competing rights instead than crystallizing a “hierarchy of rights”<sup>223</sup>. On the other hand, the lesson from the pandemic is that “there is no blanket exemption from legal oversight for religious exercise, no sweeping

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<sup>216</sup> See **J. BUCHER, R.J. HUMAN, D.M. SIMPSON**, *Developing A Framework for State and Local Community Recovery Planning*, in *Journal of the American Planning Association*, 2014, vol. 80, pp. 308-309.

<sup>217</sup> See **R. BOTTONI**, *Implications*, cit., pp. 3-18.

<sup>218</sup> See **R. GOODMAN**, *A conversation with UN Special Rapporteur Ahmed Shaheed: COVID-19 and Freedom of Belief*, 18 June 2020 (<http://bit.ly/3ScbOyP>).

<sup>219</sup> See **R. GOODMAN**, *A conversation*, cit.

<sup>220</sup> See **B. ANDERSON, K. GROVE, L. RICKARDS, M. KEARNES**, *Slow Emergencies: Temporality and the Racialized Biopolitics of Emergency Governance*, in *Progress in Human Geography*, 2020, vol. 44/4, pp. 621-639.

<sup>221</sup> See **B. ANDERSON, K. GROVE, L. RICKARDS, M. KEARNES**, *Slow Emergencies*, pp. 621-639.

<sup>222</sup> See **B. KURYLO**, *Emergency*, cit., p. 3.

<sup>223</sup> See **J. HAYNES**, *Trump and the Politics of International Religious Freedom*, in *Religions*, 2021, vol. 11, pp. 10-15.



immunity from state authority”<sup>224</sup>. In this view, the UN Special Rapporteur highlighted that “the role of the State is not to be a protector of religiously motivated practices as such, but to be an impartial guarantor of every individual’s fundamental right”<sup>225</sup>. Although an inherent tension among human rights is not avoidable, they are indivisible, inter-related and interdependent: states are charged with the positive duty of striking a fair balance between competing rights and preventing the “tyranny” of a predominant right<sup>226</sup>, to the detriment of other conflicting interests<sup>227</sup>.

## 8.2. The role of courts and their diverging approaches

Several scholars have underlined how courts play a key role in times of crisis, as they are charged with the task of “scrutinizing” governmental decisions and mitigating the impact of their precautionary measures<sup>228</sup>. In various legal scenarios, courts struggled to comply with the standards of reasonableness, necessity and proportionality in their reasoning. However, the pandemic acted as stress test for the judicial balancing-exercise. There is little doubt that the judicial approach was influenced by the phase of the pandemic, the continuous evolution of epidemiological data and scientific evidence, the temporary nature of restrictive measures. So, courts fluctuated between a deferential approach towards governmental policies, appreciating the states’ need to provide prompt legal responses, the complex nature of a health emergency, the dramatic risk to public health, and preferential access to scientific expertise or the prioritization of their “role of guardians of

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<sup>224</sup> See **B. SCHARFFS**, *Religious Freedom in the Age of Coronavirus: Legal and Non-Legal Strategies for Finding Community and Hope*, Final Remarks at the 2020 Religious Freedom Annual Review “Religion and Religious Freedom in the COVID-19 Era: Finding Community and Hope. An Online Discussion”, held June 17, 18, and 19, 2020, in *TalkAbout*, 19 June 2020, [https://talk\\_about.iclrs.org/2020/06/19/religious-freedom-in-the-age-of-coronavirus-legal-and-non-legal-strategies-for-finding-community-and-hope/](https://talk_about.iclrs.org/2020/06/19/religious-freedom-in-the-age-of-coronavirus-legal-and-non-legal-strategies-for-finding-community-and-hope/).

<sup>225</sup> See **R. GOODMAN**, *A conversation*, cit.

<sup>226</sup> See Italian Constitutional Court, no. 85/2013.

<sup>227</sup> See **R. GOODMAN**, *A conversation*, cit.; **P. NEVES-SILVA, G.I. MARTINS, L. HELLER**, *Human rights’ Interdependence and Indivisibility: a Glance over the Human Rights to Water and Sanitation*, in *International Health and Human Rights*, 2019, vol. 19, p. 14.

<sup>228</sup> See **P. POPELIER, B. KLEIZEN, C. DE CLERCK, M. GLAVINA, W. VAN DOOREN**, *The Role of Courts in Times of Crisis: A Matter of Trust, Legitimacy and Expertise*, ECtHR, 2021.



fundamental rights”, adopting stricter standards of scrutiny<sup>229</sup>. In The European context, the key issue is how much “proportionality review” did the European Court of Human Rights “carry”<sup>230</sup> with a view to playing its “counter-majoritarian” role<sup>231</sup>.

In the *Communauté Genevoise d’Action Syndicale v. Switzerland* judgment, the Court carefully assessed the extraordinary nature of the situation provoked by COVID-19 pandemic, the legitimacy of the public aim to restrict fundamental freedoms to limit the spread of a threatening infection and the significant restriction imposed on freedom of assembly. Its reasoning found the disproportionate impact of the means used compared to the aims pursued, due to the significant duration and the blanketed nature of the ban imposed. Most of all, the imposition of blanketed bans upon religious activities was perceived as the point of no return, provoking the disproportionality of the measure adopted<sup>232</sup>. The reasoning formulated in the *Communauté Genevoise* judgment should have been extended to the clash between claims for an exemptionist regime of religious activities and general public health concerns, due to the spread of the Covid-19 devastating pandemic. However, in the case of challenges specifically concerning religious freedom the ECtHR adopted a more deferential approach towards domestic jurisdictions. In the *Constantin Lucian Spinu v. Romania* judgment, the court upheld the domestic decision, according to which only activities deemed as “absolutely necessary” could be carried out of prison. Its reasoning mainly revolved around two key aspects: the circumstance that the restriction concerned only one specific aspect of the applicant's religious freedom, and the reasonable effort made by prison authorities to provide alternative forms of spiritual support.

Various scholars shed light on the limits of the court’s reasoning, that affected the judicial outcome. First, scholars emphasized the lack of

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<sup>229</sup> See L. VYHNÁNEK, A. BLECHOVÁ, M. BÁTRLA, J. MÍŠEK, T. NOVOTNÁ, A. REICHMAN, J. HARAŠTA, *The Dynamics of Proportionality: Constitutional Courts and the Review of COVID-19 Regulations*, in *German Law Journal*, 2024, vol. 25/3, pp. 386-406.

<sup>230</sup> See VYHNÁNEK, A. BLECHOVÁ, M. BÁTRLA, J. MÍŠEK, T. NOVOTNÁ, A. REICHMAN, J. HARAŠTA, *The Dynamics of Proportionality*, cit., pp. 386-406.

<sup>231</sup> S. MANCINI, *The Crucifix Rage: Supranational Constitutionalism Bumps Against the Counter-Majoritarian Difficulty*, in *European Constitutional Law Review*, 2010, vol. 6, pp. 6-27.

<sup>232</sup> See also Federal Constitutional Court of Germany (Bundesverfassungsgericht), 1 BvQ 28/20, 10 April 2020.



an appropriate contextualization of the case with regard to the context concerned (a correctional institution), which should have required a strict scrutiny of further restrictions which were not strictly connected with the penalty<sup>233</sup>. Furthermore, the decision did not give appropriate relevance to the tension between the autonomy of religious communities and the general interests of public health, particularly within public institutions characterized by confinement such as prisons<sup>234</sup>. For some religious groups the collective dimension of religious freedom plays a key role and public authorities cannot reasonably accommodate religious needs providing alternative possibilities to practice one's religion, as there are no effective alternatives which can fully replace physical participation<sup>235</sup>.

Other scholars emphasized that the Court did not give sufficient weight to the circumstance that, in the case concerned, the duration of the restrictive measure contested was not clearly determined when it was enforced. On the contrary, the duration of restrictive measures should have been clear, and authorities were charged with the task of a continuous monitoring of the health situation, to assess the necessity of the restriction<sup>236</sup>. So, the context of the health crisis strongly affected the ECtHR's reasoning, justifying a broad margin of appreciation accorded to the defendant state, eroding the proportionality analysis. Indeed, the court adopted a self-restraint approach, finding that domestic courts were better placed to assess restrictive measures, on the basis of the specific local situations<sup>237</sup>.

Not only does the case concerned provide evidence about how an emergency affects the "dynamics of proportionality"<sup>238</sup> but also how

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<sup>233</sup> See **S. PITTO**, *La libertà religiosa dei detenuti durante l'emergenza da Covid19 alla prova della Corte di Strasburgo. Alcuni casi a confronto tra le due sponde dell'Atlantico*, in *DPCE Online*, no. 1/2023, pp. 1517-1528.

<sup>234</sup> See **R. BOTTONI, I. VALENZI**, *The Right of Religious or Belief Minorities and their Members in Prison*, in MD.J.H. BHUIYAN, A. BLACK (eds.), *Freedom of Religion*, cit., pp. 127-146.

<sup>235</sup> See **G. PUPPINCK, N. BAUER**, *Observations écrites soumises à la Cour européenne des droits de l'homme dans l'affaire Constantin-Lucian Spînu c. Roumanie* (Affaire n° 29443/20), European Centre for Law and Justice, January 2022, <https://eclj.org/religious-freedom/echr/constantin-lucian-spinu-v-romania-n-29443/20?lng=en>.

<sup>236</sup> See **G. PUPPINCK, N. BAUER**, *Observations*, cit.

<sup>237</sup> See **S. PITTO**, *La libertà religiosa*, cit., pp. 1517-1528.

<sup>238</sup> See **L. VYHNÁNEK, A. BLECHOVÁ, M. BÁTŘLA, J. MÍŠEK, T. NOVOTNÁ, A. REICHMAN, J. HARAŠTA**, *The Dynamics of Proportionality*, cit., pp. 386-406.



states should take into account the specific needs of religious communities, their various tenets and practices, and “adjust the restrictive measures to the different various communities”<sup>239</sup> to reach an equitable judicial outcome<sup>240</sup>. The United States Supreme Court adjudicated challenges concerning religious freedom of minority groups during the pandemic and reached a divergent outcome, reflecting a different balance of competing interests. In November 2020, in *Roman Catholic Diocese of Brooklyn v. Cuomo* the Supreme Court granted an emergency injunction with a view to blocking the enforcement of capacity limits on religious gatherings. The *per curiam* opinion addressed also *Agudah Israel et al. v. Cuomo*, which presented the same issue. Moreover, *Agudah Israel* claimed that “the Governor specifically targeted the Orthodox Jewish community and gerry-mandered the boundaries of red and orange zones to ensure that heavily Orthodox areas were included”. The case has to be framed within the rise of Antisemitism in the US context during the pandemic and the Jewish perception of being blamed for the spread of the infection, unduly monitored and subject to disparate restrictions<sup>241</sup>. The majority opinion found that the precautionary measures were not neutral, as they provided a disparate treatment for religious activities compared to secular businesses. For this reason, precautionary rules had to undergo a strict scrutiny, requiring them being strictly formulated to pursue the compelling state interest concerned. The opinion emphasized that the measures, if enforced, would have caused “irreparable harm” to the faith communities concerned. It underlined that

“if only 10 people are admitted to each service, the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat will be barred. And while those who are shut out may in some instances be able to watch services on television, such remote viewing is not the same as personal attendance. Catholics who watch a Mass at home cannot receive communion, and there are important religious traditions in the Orthodox Jewish faith that require personal attendance”.

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<sup>239</sup> See G. PUPPINCK, N. BAUER, *Observations*, cit.

<sup>240</sup> See M. GALIMBERTI, T. PAGOTTO, *Man Shall Not Live by Bread Alone? Freedom of Worship, COVID-19 and the Courts*, in *Ecclesiastical Law Journal*, 2024, 26, pp. 41-55.

<sup>241</sup> See G.C. UPTON, *Locke in Lakewood: Locating the Proper Meaning of the Free Exercise of Religion in the Time of COVID-19*, in *Journal of Church and State*, 2022, vol. 64/4, pp. 581-599.



According to the opinion, although the Government had already changed its provision and reclassified the areas in question, the claim could not be deemed as moot. Indeed, the Government had regularly changed the classification without prior notice.

So, “if that occurs again, the reclassification will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained”. Following the Court’s reasoning, there was no reason they had to undergo the “risk of suffering further irreparable harm”. Finally, the Court held the State did not provide evidence that “granting the applications will harm the public”. Indeed, “the State has not claimed that attendance at the applicants’ services has resulted in the spread of the disease. And the State has not shown that public health would be imperiled if less restrictive measures were imposed”. Commentators emphasized that the case gave rise to a shift of paradigm in the US Supreme Court standard of review<sup>242</sup>. Moreover, the Court shed light on the “spiritual and social harm” suffered by Catholics and Orthodox Jews, due to a weakening of the constitutional protection grounded in the First Amendment and the unjustified state interference in church matters<sup>243</sup>. It goes without saying that the divergent approaches of the two courts are connected with distinctive different roles, frameworks, standards of review. The US Supreme Court, as the highest US federal judicial board, had to assess the compliance of the pandemic regulation with the First Amendment. Within a constitutional framework that traditionally privileges a freedom-centered approach, it focused on individual rights, and granted heightened protection to religious freedom, adopting a strict scrutiny to scrutinize regulation that disparately burdened religious exercise. The ECtHR, as a supranational national court, must balance compliance with a common set of values with the Member States’ national, constitutional, cultural and religious identities. It adopted a more deferential approach toward the domestic decision, according a broad margin of appreciation to the State concerned. In this view, national authorities have to be granted a wide discretion during emergencies, as the need to prevent “irreversible future harm” has to be given priority<sup>244</sup>. Such an approach implies that

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<sup>242</sup> See **J. REINBOLD**, *How COVID-19 Changed the World (of Free Exercise)*, in *Journal of Church and State*, 2022, vol. 64/4/4, pp. 562-580.

<sup>243</sup> See **E.A. DAVID**, *Church, State and Virtue in Roman Catholic Diocese of Brooklyn v. Cuomo*, in *Religions*, 2020, vol. 14, p. 239 ff.

<sup>244</sup> See **L. VYHNÁNEK**, **A. BLECHOVÁ**, **M. BÁTRLA**, **J. MÍŠEK**, **T. NOVOTNÁ**,



religious freedom has to be balanced with relevant state interests and can be subject to restrictions, if certain conditions are met. However, such an approach risks to undermine a sphere of autonomy of religious communities, as a secular court is not equipped to grasp what rituals and practices “belong to the core of their religious identity”<sup>245</sup>.

### 8.3 - Faith engagement as a game-changer

So, the lesson of the pandemic is that a more sophisticated approach to emergencies should be adopted, which takes into serious account the perspectives of all social actors, even the more marginalized groups<sup>246</sup>. Indeed, the engagement of faith actors gave an important contribution in terms of mitigation of the impact of restrictive measures on faith communities. Moreover, the involvement of faith actors in decision-making was the most effective strategy to guarantee that “all rights were respected to the maximum degree possible”<sup>247</sup>. However, the paradigm of the emergency often resulted in “silencing voices” which could have provided “alternative understandings” of the ongoing existential threat<sup>248</sup>. Thus, when states unilaterally imposed restrictive measures they often neglected the specific meaning of religious rituals and practices, intruded in religious matters<sup>249</sup>, suggested alternative ways to practice religion which did not meet the spiritual needs of faith communities or even adopted policies which were narrowly tailored on the basis of the rituals and practices of mainstream religions<sup>250</sup>. Experts from the field of sociology investigated the engagement of faith-communities at a macro-level, a meso-level and a micro-level, with a

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A. REICHMAN, J. HARAŠTA, *The Dynamics of Proportionality*, cit., p. 393.

<sup>245</sup> See W. BRZOWSKI, M. HAU, O. RYBCZYŃSKA, *Restrictions on Religious Worship*, in C. EGGER, R. MAGNI-BERTON, E. DE SAINT-PHALLE (eds.), *COVID-19 Containment Policies in Europe*, Cham, Palgrave Macmillan, 2024, p. 164.

<sup>246</sup> See M. VENTURA, *Concluding Remarks*, cit.

<sup>247</sup> See R. GOODMAN, *A conversation*, cit.

<sup>248</sup> See B. KURYLO *Emergency*, cit., p. 3.

<sup>249</sup> See W.C. DURHAM, *The Coronavirus, the Compelling State Interest in Autonomy, and Religious Autonomy*, in *Canopy Forum*, 2 October 2020 “Law, Religion, and Coronavirus in the United States: A Six Month Assessment” (<https://canopyforum.org/2020/10/02/the-coronavirus-the-compelling-state-interest-in-health-AND-religious-autonomy>).

<sup>250</sup> See J. CREEMERS and T. KOPALEISHVILI (eds.), *Religious Freedom*, cit., pp. 115-138.



view to identifying “best practices” and “worst practices”<sup>251</sup>. It goes without saying that certain faith communities promoted worst practices, such as resistance against the cautionary measures, spread of conspiracy theories, reluctance to mandatory vaccination. Yet, scholars demonstrated that best practices implied “involvement, dialogue, networking”<sup>252</sup>. Governmental cooperation with faith actors was vital to implement effective policies, First of all, in times of crisis individuals find in their religious beliefs the source of hope and resilience, and “turn to their spiritual leaders”, who are considered as “reliable sources of guidance”<sup>253</sup>. So, the involvement of religious authorities can promote quick and effective dissemination of correct information, shatter misinformation, promote renewed trust toward governmental choices, dismantle religious-cultural barriers, foster religious narrative consistent with the overriding interest to protect public health<sup>254</sup>, facilitate rapid “internalization” of precautionary measures<sup>255</sup>. They can “translate” public health guidelines into a religiously consistent language and ground public policies in religious narrative<sup>256</sup>.

Moreover, the engagement of faith communities in the formulation of pandemic responses can boost a mobilization of internal (financial and human) resources and community structures and premises, in the pursuit of providing services and identifying innovative strategies to “improve the pandemic control”<sup>257</sup>. In this view, religious

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<sup>251</sup> See **A. YENDELL, O. HIDALGO, C. HILLENBRAND**, *The Role of Religious Actors in the COVID- 19 Pandemic: A Theory-Based Empirical Analysis with Policy Recommendations for Action*, Edition Kultur und Außenpolitik, Stuttgart, 2021.

<sup>252</sup> See **L.G. SISTI et al.**, *The Role of Religions*, cit., pp. 1-20.

<sup>253</sup> **L. NIU, M. MIRAJ, L. CHUNTIAN, R. UR REHMAN, S. SHEREEN**, *Global Coronavirus Vaccination Campaign: The Role of Religious Workers in Vaccine Distribution, Public Mobilization and the Eradication of Nationalism*, in *Work*, 2023, vol. 77/1, p. 9.

<sup>254</sup> **H. TIWANA, J. SMITH**, *Bridging Faith and Public Health to Overcome Vaccine Hesitancy*, in *Policy Options Politiques*, 2024, 4 December (<https://policyoptions.irpp.org/magazines/december-2024/vaccine-hesitancy-religion/>).

<sup>255</sup> **J. VANHAMEL, M. MEUDEC, E. VAN LANDEGHEM, M. RONSE, C. GRYSEELS, T. REYNIERS, A. ROTSAERT, C. DDUNGU, L. MANIRANKUNDA, K., DEGRATIAS, K. PEETERS GRIETENS, C. NÖSTLINGER**, *Understanding*, cit., p. 78 ff.

<sup>256</sup> **M.V. WILLIAMS, K.R. FLÓREZ, C.A. BRANCH, J. HAWES-DAWSON, M.A. MATA, C.W. ODEN, K.P. DEROSE**, *Lessons Learned About Developing Faith and Public Health Partnerships to Address Health Disparities*, in *Community Health Equity Res Policy*, 2023, vol. 4472, pp. 229-238.

<sup>257</sup> See **S. AYUB, G.O. ANUGWOM, T. BASIRU, V. SACHDEVA, N.**



leaders served as “key stakeholders in community engagement activities”<sup>258</sup>.

On the other hand, if dialogue shapes decision-making, it may guarantee that minority perspectives, beliefs and practices are not undervalued, and may reduce stereotyping, stigmatization, and processes of othering<sup>259</sup>. Religious insights are essential for public actors to grasp deeply-held values, inner dynamics and religious rules, that can may not be fully understandable for governmental agencies, with a view to addressing the health crisis through solutions of compromise, mediating differences, navigating the challenges of a multi-religious society<sup>260</sup>. So, faith leaders could serve as “trusted messengers” between governments and their faith communities<sup>261</sup>. Finally, they significantly contributed to shape the global pandemic responses and influenced global strategies, with a view to addressing disparities in access to health services across the world<sup>262</sup>.

During the COVID-19 health crisis, the engagement of religious communities encompassed a wide range of patterns, from consultation

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**MUHAMMAD, A. BACHU, M. TRUDEAU, G. GULATI, A. SULLIVAN, S. AHMED, L. JAIN**, *Bridging Science and Spirituality: the Intersection of Religion and Public Health in the COVID-19 Pandemic*, in *Front Psychiatry*, 2023, vol. 14, pp. 1-14.

<sup>258</sup> See **M.S.D. WIJESINGHE, V.S. ARIYARATNE, B.M.I. GUNAWARDANA, R.M.N.U. RAJAPAKSHA, W.M.P.C. WEERASINGHE, P. GOMEZ, S. CHANDRARATNA, T. SUVEENDRAN, R.P.P. KARUNAPEMA**, *Role of Religious Leaders in COVID-19 Prevention: A Community-Level Prevention Model in Sri Lanka*, in *J. Relig. Health*, 2021, pp. 687-702.

<sup>259</sup> See **ID.**, pp. 687-702.

<sup>260</sup> See **ID.**, pp. 687-702.

<sup>261</sup> See **A.D. CHERNIAK, S. PIRUTINSKY, D. H. ROSMARIN**, *Religious Beliefs, Trust In Public Figures, And Adherence to COVID-19 Health Guidelines among American Orthodox and Non-Orthodox Jews*, in *Journal of Religious Health*, 2023, vol. 62/1, pp. 355-372.

<sup>262</sup> See **J. LEVIN**, *The Faith Community and the SARS-CoV-2 Outbreak: Part of the Problem or Part of the Solution?*, in *Journal of Religion and Health*, 2020, vol. 59, pp. 2215-2228; **J. ESSA-HADAD, N.A. ELHADI SHABBAN, D. ROTH, A. GESSER EDELSBURG**, *The Impact of Muslim and Christian Religious Leaders responding to COVID-19 in Israel*, in *Frontiers in Public Health*, December 13, 2022, pp. 1-14; **U. SYED, O. KAPERA, A. CHANDRASEKHAR, B.T. BAYLOR, A. HASSAN, M. MAGALHÃES, F. MEIDANY, I. SCHENKER, S.E. MESSIAH, A. BHATTI**, *The Role of Faith-Based Organizations in Improving Vaccination Confidence & Addressing Vaccination Disparities to Help Improve Vaccine Uptake: A Systematic Review*, in *Vaccines*, 2023, vol. 11, pp. 449-480.



to cooperation, which implied the establishment of “partnerships with shared decision-making”<sup>263</sup>.

Cooperation had a multifaceted nature, regardless of the establishment of forms of institutional cooperation, with a view to developing common strategies and providing more effective responses to the pandemic challenges<sup>264</sup>. The Italian government negotiated specific protocols with religious groups, to facilitate a safe resumption of religious activities<sup>265</sup>. Such a cooperative approach was extended to several faith communities, showing the intent to manage the health crisis by including multiple perspectives, even those groups traditionally excluded from bilateral institutional dialogue<sup>266</sup>. In Belgium, courts imposed consultation of faith communities to make adjustments to the restrictive measures in order to take into account their impact on minority groups<sup>267</sup>. In the US context, scholars provided evidence about the development of informal networks between health institutions and faith communities to disseminate information, guarantee proper allocation of resources, and define guidelines for a safe resumption of religious activities<sup>268</sup>.

So, the pandemic triggered a paradigm shift, which “challenged” pre-existent church-state dynamics<sup>269</sup> and boosted a “concerted” effort of all components of civil society, empowering traditionally marginalized

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<sup>263</sup> See **B. GILMORE, R. NDEJJO, A. TCHECHIA, V. DE CLARO, E. MAGO, A. DIALLO, C. LOPES, S. BHATTACHARYYA**, *Community Engagement for COVID-19 Prevention and Control: a Rapid Evidence Synthesis*, in *BMJ Global Health*, 2020, 5, p. 7; **A. MADERA**, *The State's Attitude*, cit., pp. 304-318.

<sup>264</sup> See **M. VENTURA**, *Concluding Remarks*, cit.

<sup>265</sup> See **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*, cit., no. 12/2020, pp. 107-114.

<sup>266</sup> See **F. ALICINO**, *Freedom of Religion and State Secularism under the COVID-19 Crisis: The Case of Italy*, in *Religion and Human Rights*, 2022, vol. 17, pp. 82-102; **M. TOSCANO**, *Emergenza sanitaria e libertà di religione*, Giappichelli, Torino, 2024, p. 56 ff.

<sup>267</sup> See **L.L. CHRISTIANS, A. OVERBEEKE**, *El derecho belga sobre los grupos religiosos frente el desafío de la crisis sanitaria del COVID-19. Normativa de crisis entre viejos reflejos y nuevas realidades*, in J. MARTÍNEZ-TORRÓN, B. RODRIGO LARA (eds.), *COVID-19*, cit., pp. 97-118.

<sup>268</sup> See **K. MONSON, M. OLUYINKA, D.R. NEGRO, N. HUGHES, D. MAYDAN, S. IQBA, S.H. GOLDEN, P. TEAGUE, W.D. HALE, P. GALIATSATOS**, *Congregational COVID-19 Conversations: Utilization of Medical-Religious Partnerships During the SARS-CoV-2 Pandemic*, in *Journal of Religion and Health*, 2021, vol. 60, pp. 2353-2361.

<sup>269</sup> See **M. VENTURA**, *Concluding Remarks*, cit.



groups<sup>270</sup>. It shed light on the need of an inclusive approach of social actors, that can provide key insights into the multifaceted aspects of the health crisis<sup>271</sup>. The engagement of religious actors in the management of the pandemic was a global phenomenon which shaped pandemic responses and significantly contributed to their promptness and effectiveness<sup>272</sup>.

However, a constructive conversation for mediation of conflicts and search for solutions of compromise implies the development of mechanisms where all the actors concerned meaningfully participate in decision-making<sup>273</sup>.

So, this approach requires appropriate respect and consideration of faith concerns for preservation of their cultural-religious heritage<sup>274</sup>. Most of all, cooperation should move beyond mainstream religions and the management of an emergency, to shape the dynamics between public actors and religious groups with a view to pursuing shared goals. In this view, religious communities would not react when government measures affect them, as they would be pro-actively involved in their formulation. Engaging faith minorities in policy-making process would prevent conflict and promote a “two-way dialogue”<sup>275</sup>. This model should stem from a reconceptualization of the role, functions and responsibilities of religious actors within the overall fabric of society, by opening new spaces for faith engagement in “public discourse and

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<sup>270</sup> See **B. KURYLO**, *Emergency*, cit., p. 18.

<sup>271</sup> See **M. VENTURA**, *Concluding Remarks*, cit.; **B. ADINI**, **S. KIMHI**, *Perspective: Lessons Learned from the COVID-19 Pandemic Concerning the Resilience of the Population*, in *Israel Journal of Health Policy Research*, 2023, vol. 12, p. 19 ff.

<sup>272</sup> See **A. YENDELL**, **O. HIDALGO**, **C. HILLENBRAND**, *The Role*, cit., p. 100 ff.

<sup>273</sup> See **A. LO GIUDICE**, *La tentazione tirannica dei valori assoluti*, in C. INGRATOCI, A. MADERA, F. PELLEGRINO (eds.), *I diritti fondamentali*, cit., p. 148; **J. MARTÍNES-TORRÓN**, *COVID-19 y libertad religiosa: ¿problemas nuevos o soluciones antiguas?*, in J. MARTÍNES-TORRÓN, B. RODRIGO LARA, *COVID-19*, cit., pp. 23-36; **A. MADERA**, *The Implications*, cit., p. 50.

<sup>274</sup> See **J. VANHAMEL**, **M. MEUDEC**, **E. VAN LANDEGHEM**, **M. RONSE**, **C. GRYSEELS**, **T. REYNIERS**, **A. ROTSAERT**, **C. DDUNGU**, **L. MANIRANKUNDA**, **K. DEGRATIAS**, **K. PEETERS GRIETENS**, **C. NÖSTLINGER**, *Understanding*, cit., p. 78 ff.

<sup>275</sup> See **B. GILMORE**, **R. NDEJJO**, **A. TCHECHIA**, **V. DE CLARO**, **E. MAGO**, **A. DIALLO**, **C. LOPES**, **S. BHATTACHARYYA**, *Community Engagement*, cit. p. 7; **D. HERBERT**, *Religion and Civil Society. Rethinking Public Religion in the Contemporary World*, Routledge, London and New York, p. 100.



collective decision-making”<sup>276</sup>. Indeed, social resilience must be built through inclusion and empowerment of vulnerable communities, boosting collective ability “to work together around the same table”, with a renewed “sense of belonging” to an inclusive community<sup>277</sup>.



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<sup>276</sup> See **R. ACOSTA**, *Capacity Infrastructure in Brazil: Legacies of Participation in Christian Base Communities*, in H. MOKSNES, M. MELINI (eds.), *Faith in Civil Society. Religious Actors as Drivers of Change*, Uppsala, Uppsala Center For Sustainable Development, 2013, pp. 134-143; **D. HERBERT**, *Religion*, cit., p. VIII.

<sup>277</sup> See **H. SILLER**, **N. AYDIN**, *Using an Intersectional Lens*, cit., pp. 1-16.