



Giuseppina Scala

(Academic Fellow at Bocconi University “Angelo Sraffa”,
Department of Legal Studies)

**The Legal Culture of ‘Trust’ in the Swedish State by Religious
Communities seen through the lens of the Pandemic**

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ABSTRACT: The Covid pandemic has an enormous impact on individual rights. This is true also for the freedom to manifest one’s religion and Sweden represents an exceptional case study because the strategies the Swedish Government has adopted to limit the spread of the virus are distinct from those adopted in other European countries. The article will first analyse Swedish constitutional provisions with reference to the protection of religious freedom. Second, the article will offer some examples concerning the distinguishing features of the measures adopted by the Swedish Government. Third, attention will be dedicated to the analysis of the conduct of the Church of Sweden and of other religious communities with regard to the governmental decisions to counter Covid-19. The main argument of this article is that the concept of ‘Trust’ can both justify the responses of the religious communities and be used in the broader perspective of the upcoming legislative reforms regarding religious communities.

1 - Introduction

After emerging on the world scenario, the unprecedented challenge of the Covid pandemic alarmed doctors, journalists, politicians, sociologists and of course legal scholars. In fact, from a legal perspective, the health crisis had and still has an enormous impact on individual rights. This is true also for the freedom to manifest one’s religion both in the private and public sphere and, in this regard, Sweden represents an interesting case study because the strategies it has adopted to limit the spread of the virus are distinct from those adopted in other European countries.



Starting from this premise, the article will first analyse Swedish constitutional provisions with reference to the protection of religious freedom. Second, the article will offer specific examples concerning the distinguishing features of the measures adopted by the Swedish Government compared to those deliberated elsewhere. Third, attention will be dedicated to the analysis of the conduct of the Church of Sweden and of other religious communities¹ with regard to the governmental decisions to counter Covid-19. More specifically, the article will address the Swedish compulsory vaccine pass². Finally, the concept of 'Trust'³ will be defined in order to justify the responses of the religious communities and it will be used to support an abrupt finalization of the upcoming legislative reforms regarding religious communities⁴.

2 - The Protection of Religious Freedom within the Swedish Constitutional Framework

The Kingdom of Sweden belongs to what the international legal scholarship calls the *Nordic Family of Constitutional Law*⁵. To put it differently, Swedish law is part of *Scandinavian Law*⁶ or the *Nordic Legal tradition*⁷.

* Paper selected by the organizing Committee.

¹ The expression "Other religious communities" is used in this paper as a consequence and interpretation of the law on "Other religious communities" which came into force in 2000 (Lag 1998: 1593).

² I.e. the legislation regarding indoor and public gatherings imposing a 100 person limit which entered into force on December 1st 2021 (the limit was then lowered to 50).

³ On the culture of 'trust' within the Nordic countries, see here paragraph 5.

⁴ See the State administrative inquiry SOU 2018: 18.

⁵ With regards to this classification, see **J. HUSA**, *Nordic Reflections on Constitutional Law. A comparative Nordic Perspective*, Peter Lang, Frankfurt am Main, 2002, p. 168; **M. SUKSI**, *Common Roots of Nordic Constitutional Law? Some observations on Legal historical Development and Relations between the Constitutional System of five Nordic Countries*, in H. KRUNKE, B. THORARENSEN (eds.), *The Nordic Constitutions. A Comparative and Contextual Study*, Bloomsbury Publishing PLC, Oxford, 2018, p. 20 ff.

⁶ **U. BERNITZ**, *What is Scandinavian Law? Concepts, Characteristics, Future*, in *Scandinavian Studies in Law*, vol. 50, 2007, p. 28 s. On the autonomous *Nordic Law* legal family, the Italian scholar Duranti affirms that it is possible to talk about a "Scandinavian legal culture" as well as a "Scandinavian (Nordic) law": see **F. DURANTI**, *Governo autonomo della magistratura: il modello nordico*, in *Dir. Pubbl. Comp. ed Eur. Online*, v. 45, n. 4



In particular, Sweden and Finland are known as the ‘twins’ of Eastern Scandinavia given their common legal tradition⁸ and geographical proximity⁹. These common roots concern - above all - the theory of sources

gennaio 2021, p. 5096. Similarly, Jako Husa affirms that the *Nordic Law* is an autonomous legal family since the Nordic countries are characterized by similarities affecting the historical and legal culture (J. HUSA, *A new Introduction to Comparative Law*, Hart Publishing, Oxford and Portland, Oregon, 2015, pp. 227-228). Also Wilhelmsson underlines that *Nordic law* represents a distinct legal family based on values developed by historical events and characterized by a common understanding of the legal method (see J. HUSA, *A new Introduction to Comparative Law*, cit., p. 228 when he refers to the speech of Prof. Thomas Wilhelmsson held on October 23rd 2008 in Helsinki University). In this regard, see also K. ZWEIGERT, H. KÖTZ, *An Introduction to comparative law. The Framework*, North Holland Publishing Company, Amsterdam, 1977, pp. 284 and ss. Instead, the Swedish doctrine underlines that within the Nordic legal orders there are differences that have to be considered when we are dealing with a comparative approach: «Scandinavian law is frequently considered to be a unity, and writers on comparative law often put all the legal systems covered by that designation, *i.e.* the legal systems of Denmark, Finland, Iceland, Norway, and Sweden, together as a branch within the “family” of Roman-Germanic law [...]. This classification is certainly not incorrect, but it is important to stress that it represents a fairly radical simplification. There exist considerable differences, which go beyond the level of details, not only between Scandinavian law and the other branches of Roman-Germanic law but also among the different Scandinavian systems themselves». See S. STRÖMHOLM (ed.), *An Introduction to Swedish Law*, 2nd ed., Norstedts, Stockholm, 1988, p. 32 ff.

⁷ On the peculiarity of the Nordic legal tradition as a mixed Jurisdiction, see E. ÖRÜCÜ, *The enigma of comparative Law, Variations On A Theme For The Twenty-first Century*, Springer Netherlands, 2004; ID., *What is a Mixed Legal System: Exclusion or Expansion?*, in *Electronic Journal of Comparative Law*, vol. 12.1, 2008.

⁸ The common legal tradition of Finland and Sweden is mainly based on historical reasons. From the Middle Ages up to 1809 the nowadays territory of Finland was the eastern part of Sweden.

⁹ The expression “legal twins” is used by Thomas Wilhelmsson. Passanante uses “Scandinavia orientale”, see L. PASSANANTE, *I Paesi Nordici*, Sezione, IV, in AA. VV., *Sistemi Giuridici nel Mondo*, Giappichelli, Torino, 2010, p. 73 ff. (“nella Scandinavia Orientale, [...] la Svezia ha svolto un ruolo di egemonia politica, culturale e giuridica”). Husa writes about Eastern and Western Scandinavia as follows: “The greatest differences appear between the Eastern and Western members of Nordic law; by extending the family metaphor one might say that Sweden and Finland are the Eastern brothers of Denmark and Norway in the West. Sweden and Finland are (or at least have been) closer to each other than the country pair of Denmark and Norway. Denmark and Norway are NATO members whereas Finland and Sweden are militarily neutral countries, although, this neutrality must be seen in a different light than before due to membership of the EU”. See J. HUSA, *Nordic Constitutionalism and European Human Rights -Mixing Oil and Water?*, in *Scandinavian Studies in Law*, vol. 55, 2010, p. 110. Henrik Wenander underlines as: “Swedish law - together with Finnish law [...] - has certain features that differ from the West-Nordic legal systems of Denmark, Iceland and Norway”: see H. WENANDER,



of law, the legal thinking and culture characterized by pragmatism, realism and trust¹⁰.

From a constitutional point of view, the peculiarity of the Swedish legal system lies in its rigid Constitution which has been defined by some authors¹¹ as 'multi-textual' or 'fragmented' due to the fact that it is composed of four constitutional acts forming the so called *grundlagarna*: the Act of Succession of 1810, regulating the monarchy¹²; the Freedom of the Press Act (*Tryckfrihetsförordningen*) of 1949; the Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*) of 1991 and the Instrument of Government (*Regeringsformen*) of 1974.

Alongside these four fundamental acts, one should also mention the 1974 Law on Parliament (*Riksdagsordning*) which holds a particular position within the system of sources of law. The specificity of this 'sub-constitutional' law is based on the fact that it has a variable rigidity, *i.e.*, for some principles, the amendment procedure follows the one provided for in the Instrument of Government, whereas for other provisions they may be modified following the ordinary legislative procedure¹³.

Full judicial Review or Administrative Discretion? - A Swedish Perspective on Deference to the Administration in G. ZHOU (ed.), *Deference to the Administration in Judicial Review: Comparative Perspective*, Springer, Cham, 2019, p. 406.

¹⁰ On the concept of 'trust', see here paragraph 5.

¹¹ See G. MORBIDELLI, L. PEGORARO, A. REPOSO, M. VOLPI (eds.), *Diritto pubblico comparato*, 3^a ed., Torino, Giappichelli, 2009, p. 76; G. NERGELIUS, *The Constitution of Sweden and European Influences: The Changing Balance Between Democratic and Judicial Power*, in A. ALBI, S. BARDUTZKY (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, T.M.C. Asser Press, The Hague, 2019, p. 316. The rigidity of the Swedish Constitution is based on the fact that the amendments of the four fundamental acts requires the *Riksdag* to approve the changes twice with qualified majorities, with a general election having been held in between.

¹² J. NERGELIUS, *The Constitutions*, cit.

¹³ For an overview of the different forms of constitutional rigidity, see, for example: E. O'MAHONY, *The Pathology of Democracy with Particular Reference to Personal Liberty under Flexible and Rigid Constitutions*, in *Journal of Comparative Legislation and International Law*, 1929, Vol. 11, No. 1, 1929, pp. 96-112 (here, the author lists Sweden as a legal order characterized by a rigid Constitution, see p. 102); D. GRIMM, *Types of Constitutions*, in M. ROSENFELD, A. SAJÓ (eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, Oxford University Press, 2012, p. 110 ff; R. ALBERT, *Constitutional Amendments: Making, Breaking, and Changing Constitutions*, Oxford Scholarship Online, 2019 (in particular see Part Two: *Flexibility and rigidity*); D. LANDAU, R. DIXON, *Tiered Constitutional Design*, in *Geo. Wash. Law Review*, 86, 438, 2018, pp. 465-472; G. DE VERGOTTINI, *Diritto Costituzionale Comparato*, Cedam, Padova, 10^a ed., 2019, p. 277 ss.; M.P. VIVIANI SCHLEIN, *Rigidità costituzionale. Limiti e graduazioni*, Giappichelli, Torino, 1997; A. PACE,



The articles concerning fundamental rights and freedoms, including the right to religious freedom can be found in the second chapter of the aforementioned Instrument of Government entitled '*Fundamental rights and freedoms*'¹⁴. Article 1, para. 6, states that everyone shall be guaranteed the freedom of worship: that is, the freedom to practise one's religion alone or in the company of others. Constitutionally speaking this right is defined as absolute, which means that it cannot be curbed¹⁵.

In more recent years, when it comes to the protection of fundamental rights, the Swedish legal system has adapted to international and EU legislation by amending the Fundamental Acts¹⁶. For example, Sweden has been a member state of the European Union since 1995 while the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was incorporated into the legal system with the Law SFS 1994: 1219¹⁷, acquiring the status of ordinary law. The consequence of

La «naturale» rigidità delle costituzioni scritte, in *Giurisprudenza costituzionale*, 1993, p. 4085 ff.; **ID.**, *In difesa della «naturale» rigidità delle costituzioni scritte*, in *Giurisprudenza costituzionale*, 1995, p. 1209 ff.; **ID.**, *La causa della rigidità costituzionale. Una rilettura di Bryce, dello Statuto albertino e di qualche altra Costituzione*, 2^a ed., Cedam, Padova, 1996; **ID.**, *Potere costituente, rigidità costituzionale, autovincoli legislativi*, Padova, Cedam, 2^a, 2002; A.A. CERVATI, S.P. PANUNZIO, P. RIDOLA (eds.), *Studi sulla riforma costituzionale. Itinerari e temi per l'innovazione costituzionale in Italia*, Giappichelli, Torino, 2001.

¹⁴ On the protection of fundamental rights in Sweden, see **H. WENANDER**, *Sweden: European Court of Human Rights endorsement with some reservations*, in P. POPELIER, S. LAMBRECHT, K. LEMMENS (eds.), *Criticism of the European Court of Human Rights*, Intersentia, Cambridge, 2016, pp. 239-245; **I. CAMERON**, *Protection of Constitutional Rights in Sweden*, in *Public law*, 1997, p. 501 ff.; **T. BULL**, *Judges without a Court: Judicial Preview in Sweden* in T. CAMPBELL, K. D. EWING, A. TOMKINS (eds.), *The Legal Protection of Human Rights: Sceptical Essays*, Oxford University Press, Oxford, 2011, pp. 392 ff.; **F. DURANTI**, *Gli ordinamenti costituzionali nordici. Profili di diritto pubblico comparato*, Giappichelli, Torino, 2009, pp. 21-41.

¹⁵ On the freedom of religion as an absolute right in the Swedish legal context, see **A.S. LIND**, *I skärningspunkten mellan religionsfrihet och yttrandefrihet - rättsliga reflektioner*, in J. JAKOB, S. RAMSTRÖM (eds.) *Religionsfrihet Nio perspektiv på en mänsklig rättighet*, Myndigheten för stöd till trossamfund, 2021, p. 37.

¹⁶ In fact, since 1995, the Swedish legal system has undergone a progressive and constant revision of the Fundamental acts, to the point that one of the major Swedish constitutionalists has declared that invoking the principles of European Union law in judicial proceedings is no longer considered an odd practice (see **J. NERGELIUS**, *Constitutional Law in Sweden*, Wolters Kluwer, Alfen den Rijn, 2011, p. 122 and 123). More specifically, on the attitude to refer to the European Convention by judges from a diachronical perspective, see **H. WENANDER**, *Sweden: European Court*, cit., pp. 239-265.

¹⁷ Lag 1994:1219 om den europeiska Konventionen angående skydd för de mänskliga rättigheterna och de grundläggande friheterna (Act on the European Convention for the



this is that “Swedish citizens enjoy double religious protection from the State, - through the Constitution and through the Convention”¹⁸.

3 - Sweden as a *sui generis* Legal Order within Europe during the Pandemic and the Specificity of the Measures Adopted to counter Covid-19

When analyzing the peculiarities of the Swedish legal order that emerged during the pandemic, one should consider two different perspectives that are strictly linked. First, from a comparative point of view, Sweden had a unique approach within Europe; second, from a domestic point of view, Sweden adopted a particular strategy based on a *sui generis* legal framework.

Starting with the first perspective, one should underline that Sweden holds a distinct position concerning hard restrictions and limitations which differ from other countries in Europe and, most surprising, also from the other Nordic countries¹⁹. In fact, Sweden limited the spread of Covid-19 without the adoption of specific coercive policy and legislation such as the imposition of lockdowns, long quarantines, strict curfews and closures²⁰. Several examples of this unique attitude can be cited: public spaces, primary/lower secondary schools, nurseries, bars and restaurants were closed in all member states with the exception of Sweden²¹, there has been no “State of Emergency” or any other type of declaration of emergency similar to those proclaimed in nearly all other

Protection of Human Rights and Fundamental Freedoms).

¹⁸ M. JÄNTERÄ JAREBORG, *Religion and the secular state in Sweden*, in J. MARTÍNEZ-TORRÓN, W.C. DURHAM JR. (eds.), *Religion and the Secular State, Interim National Reports*, The international center for Law and Religious Studies, 2010, p. 676.

¹⁹ H. WENANDER, *Sweden: Non-binding Rules against the Pandemic -Formalism, Pragmatism and Some Legal Realism*, in *European Journal of Risk Regulation*, Vol 12:1, 2021, p. 128, where the Author affirms that generally the Nordic countries adopt similar approaches facing problems.

²⁰ More precisely, the Covid-19 Act, in force from January 8th 2021, contained provisions on curfews and closures, although not to the extent seen in other European countries.

²¹ *The impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU*, Policy Department for Citizens' Rights and Constitutional Affairs, PE 651.343-23 April 2020. In fact, it is worth saying that only high schools and universities were closed. In this regard, the Public Health Agency of Sweden affirmed that the closure of all schools in Sweden would not be a meaningful measure.



countries across the globe (the Swedish Constitution does not provide any provision with reference to a “State of emergency” in peace time²²); no obligation to wear masks has been introduced; from a medical point of view, «Sweden is perhaps the most prominent example of mitigation» as an approach which aims to arrest the transmission of the virus²³; Sweden adopted a vaccine pass to enter public spaces long after other European countries; no obligatory phone ‘apps’ to track contagion have been introduced²⁴; the Central Government decided much later than most other countries to make resources available to test people (and, more specifically, at the beginning of the crisis, regions did not use their resources for testing)²⁵.

With regard to the domestic perspective, one should underline that the measures adopted to counter the virus belong to two different categories: binding and non binding rules.

The legal framework concerning the binding rules is based both on the Constitution and on relevant legislation (e.g. the *Public Order Act* 1993; the *Communicable Diseases Act* 2004). The Swedish Constitution establishes that the Government, in given circumstances, may limit some constitutional freedoms and rights as provided for by section 24 of Chapter 2 of the *Regeringsform* which states:

²² As a consequence of the pandemic, the issue whether a constitutional ‘State of emergency’ should be introduced has been discussed within the Parliament. In particular, a governmental inquiry has been given the task to analyse the issue and suggest legislation. For more details, see: Dir. 2021:68. On the Swedish constitutional silence with regard to internal emergencies such as epidemics, see **A. JONSSON CORNELL, J. SALMINEN**, *Emergency Laws in Comparative Constitutional Law- The case of Sweden and Finland*, in *German Law Journal*, Vol. 19, n. 02, pp. 226-237.

²³ On the difference between the *suppressive* and *mitigation* approach from a medical perspective, see **S.C.L. KAMERLIN, P.M. KASSON**, *Managing Coronavirus Disease 2019 Spread with Voluntary Public Health Measures: Sweden as a Case Study for Pandemic Control*, in *Clinical Infectious Diseases*, published online, July 1st, 2020.

²⁴ The Public Health Agency was sceptical of the role of apps to fight covid-19. For more detail see: *Insatser vid nya utbrott av covid-19*, Regeringsuppdrag, Folkhälsomyndigheten, 2020, p. 14.

²⁵ In this regard, it is worth mentioning that the 2021 Swedish parliament's constitutional committee concluded that the Government had failed in COVID-19 testing procedures and one of the causes was the unclear division of responsibilities between the central Government and the regions. In particular, it should be underlined that in Sweden the regions are responsible for funding and providing healthcare services to people.



“Freedom of assembly and freedom to demonstrate may be limited in the interests of preserving public order and public safety at a meeting or demonstration, or with regard to the circulation of traffic. These freedoms may otherwise be limited only with regard to the security of the Realm or in order to combat an epidemic”²⁶.

Under chapter 2, section 15 of the Public Order Act the Government can prohibit public gatherings in the event of war (or risk of war) and in order to avoid epidemics or epizootic events²⁷. For example, under these provisions, on the very beginning of the health emergency, on March 11th 2020 the Swedish Government, delegated by the *Riksdag* (Parliament), adopted the Ordinance SFS 2020:114²⁸, which entered into force the following day. This provision prohibited gatherings and public events throughout the country with the participation of over five hundred people. In the following weeks the Government had to revise this threshold due to the increasing numbers of infections and lower the number to fifty and finally to 8 people starting from November 24th 2020²⁹. Moreover, university and high school students had to attend on-line lessons. Before taking these decisions the Government had to consult - as a constitutional obligation³⁰ - the competent authority which, in this case, was the Swedish Public Health Agency (*Folkhälsomyndigheten*). The latter is responsible at a nationwide level for the adoption of relevant measures in order to coordinate the control of communicable disease³¹ and it should take the initiatives necessary to maintain the effective control³².

²⁶ *The Constitution of Sweden, The Fundamental Laws and the Riksdag Act*, Sveriges Riksdag, Stockholm, Sweden, 2016, p. 71. For the interpretation of the terms ‘public order’ and ‘public safety’, see, in general, Swedish doctrine, K. ÅSTRÖM, *The freedom of Religion in relation to Other Human Rights*, in H. BERNITZ, V. ENKVIST (eds.), *Freedom of Religion. An Ambiguous Right in the Contemporary European Legal Order*, Hart Publishing, London, p. 90.

²⁷ *Ordningsslag* (*Svensk författningssamling*, SFS 1993: 1617). Here, article 15, Chapter 2 affirms: “The Government may prohibit public meetings and public events in a specific area, for war or risk of war for Sweden or to prevent epidemics or epizootic events under the epizootic law (1999: 657)”.

²⁸ Förordning om förbud mot att hålla allmänna sammankomster och offentliga tillställningar (Ordinance on a Prohibition of Public Gatherings and Public Events).

²⁹ SFS 2020:1000.

³⁰ *Regeringsform*, Chapter 7. art. 2 “the necessary information and opinions must be provided by the competent public authorities”. Public agencies (*myndigheter*) are independent from the Government and this is based on the tradition of the Swedish State and it is seen as a unique peculiarity from a comparative public law perspective.

³¹ For details on the functioning of the Public Health Agency, refer to Förordning med



The non-binding rules consist of ‘General Recommendations’³³ and ‘guide line documents’ which are both part of the Swedish legal tradition. The category of ‘General Recommendations’ has been formalised as ‘rules’ through the preparatory works concerning the publication of legal provisions³⁴. Moreover, they indicate how an individual may act under a specific piece of legislation³⁵ and they shall be made available to all Swedish citizens. Both individuals and administrative agencies can be the recipients of General Recommendations³⁶. Guide line documents may consist of: memoranda, leaflets and web-pages³⁷. During the pandemic the agency that adopted General Recommendations and guide line documents was the aforementioned Swedish Public Health Agency. On the basis of these two kinds of instruments, the strategy of Sweden has been labelled as a policy according to which individuals were rendered self responsible or, said differently, an example of voluntary compliance and action³⁸. From a legal point of view, the use of non binding rules has been criticized by some Swedish authors who consider the mechanism confusing because it does not offer a formal procedure for “legal protection, publications of norms, or accountability”³⁹.

instruktion för Folkhälsomyndigheten (2013: 1020).

³² 2004:168.

³³ In Swedish: *allmänna råd*.

³⁴ Indeed, in the Government Bill (Prop. 1975/76:112) regarding the publication of legal provisions, the General Recommendations are defined as *regler* (rules). For more details on this topic see: **H. WENANDER**, *Sweden: Non-binding Rules*, cit., p. 134. It is worth mentioning here that legislative preparatory works (such as Government Bills) have a significant role in Sweden since they have the status of legal source.

³⁵ In fact, General Recommendations are defined in law SFS 1976:725 as recommendations on the application of a statute affirming how a person may act (*allmänna råd: sådana generella rekommendationer om tillämpningen av en författning som anger hur någon kan eller bör handla i ett visst hänseende*) and they could be placed in the statute under the expression ‘*allmänna råd*’. Swedish scholarship says that General Recommendations are placed in a peculiar position when it comes to the hierarchy of sources of law. For more details see **J. NERGELIUS**, *Svensk statsrätt*, Studentslitteratur, 2018.

³⁶ At the beginning of the pandemic (February 2020) the Public Health Agency issued its first version of recommendations under the name of “instructions”.

³⁷ **H. WENANDER**, *Sweden: Non-binding Rules*, cit. p. 136.

³⁸ **E. HERLIN-A**, *Corona and the Absence of a Real Constitutional Debate in Sweden*, in *verfassungsblog.de*, 10 April 2020.

³⁹ For more details on this criticism, see **H. WENANDER**, *Sweden: Non-binding Rules*, cit., p. 142.



4 - Religious Freedom in Sweden during the Covid-19 Pandemic. A Subordinated Protection Based on a Trust-Oriented Response

Sweden is characterized by the presence of a strong majority religion due to the peculiar role and unique position the former State-Church had - and still has - within society. In fact, the Lutheran Church of Sweden⁴⁰ plays a leading role both politically and economically, even though Sweden should be considered as a secular country⁴¹. Besides that, Sweden is also experiencing a high degree of pluralization of religious communities as a consequence of being a country of immigration⁴².

From the very beginning the Lutheran Church of Sweden has taken extraordinary measures in order to adapt to the pandemic. First, from Spring 2020 several options have been made available for faithful who felt the need for spiritual support. The options were: a phone call or e-mail correspondence with a spiritual authority and the use of social media such as Facebook, Twitter and a dedicated blog. In this respect one should remember that Sweden is one of the most digitalized country in Europe and therefore there was no difficulty in providing new and modern forms of 'digital worship'⁴³. Second, the Church of Sweden gave out a series of guidelines concerning the rite of the Holy Mass in order to protect the health of the minister of the sacrament and to ensure protection to the faithful from any infection. One concerned avoiding shaking hands during the rite of peace and another receiving the Holy Communion at the

⁴⁰ In Swedish: *Svenska Kyrkan*.

⁴¹ On the very peculiar link between the *Svenska Kirkan* and the Swedish State, see, **G. SCALA**, *Le monarchie di Norvegia e Svezia e il rinnovamento incompiuto del costituzionalismo nordico*, in *Dir. Pubbl. Comp. ed Eur.*, 2018, pp. 989-997; **G. SCALA**, *Recenti mutamenti nelle relazioni tra Stato e confessioni religiose nel nord Europa. Due "case studies": Svezia e Norvegia*, in *Quaderni di Diritto e Politica Ecclesiastica*, n. 2, 2009. On the decrease membership in the Church of Sweden, see **T. BABAJAN, P. JONSSON**, *Leaving a Folk Church: Patterns of Disaffiliation from the Church of Sweden*, in *Nordic Journal of Religion and Society*, 1/2021, vol. 34

⁴² For a comparative perspective on the responses from different religious groups, see **P. CONSORTI**, *Religions and virus*, in *Law, Religion and Covid-19*, Diresom paper, 2020.

⁴³ **H. WENANDER**, lesson held for the University of Padova, November 19th 2021. From a comparative perspective also the *Norske Kyrka* (The Church of Norway) was well prepared on providing a digital experience for new forms of worship. For an overview of new forms of digital worship within the Church of Norway, see the PP presented by the director of the Communication Department of Norke Kyrka, Ingeborg Dybvig, at the workshop "*Rituals and community in an age of social distancing*", organised by Elisabeth Tveito Johnsen, University of Oslo, November 17th-19th 2021.



Chalice and the host directly in the mouth. Third, the Archbishop of the Church officially invited her faithful to follow all precautions, hygiene rules and instructions delivered by the State. In fact, the Archbishop gave a theological legitimization to the Ordinances adopted by the Government and to the General Recommendations of the Agency of Public Health making some references to Luther's teachings. In particular, she mentioned the fact that during the plague of 1520, Luther incited the population to use common sense and follow doctors' suggestions and give help to the more vulnerable thus avoiding the risk of infection. This approach has made the Church of Sweden just like any other public organization operating within the Swedish legal system thus subordinating the protection of religious freedom to the will of the State, *i.e.* the protection of one's health⁴⁴.

The same result is reached when it comes to the response of the other religious communities which all understood the public and the legitimate interest of the limitations. In fact, they all accepted and respected the governmental Ordinances and the General Recommendations of the Public Health Agency⁴⁵. However, some criticism did arise regarding the limitation of the number of people allowed in gatherings by communities not having spacious places of worship, but in truth no particular conflict with the State has emerged.

For a more detailed insight, one must examine the work of the aforementioned State Agency of Faith Support to religious communities called *Myndigheten för stöd till trossamfund*. The latter is a Government Agency under the Swedish Ministry of Culture and its main goal is the promotion of the dialogue between the Government and faith communities. Indeed, a few weeks after the beginning of the pandemic in 2020 the Agency started to directly collaborate with different religious communities helping them to respect all the measures adopted by the State. One peculiar result of this special collaboration is the twofold

⁴⁴ This paragraph is partly published in **G. SCALA**, *Freedom of the Profession versus the Health Emergency: The Physical and Spiritual Protection of the Lutheran Citizen*, in P. CONSORTI (ed.), *Law, Religion*, cit., pp. 97-104.

⁴⁵ From a comparative perspective, it is interesting to note that Danish Muslims adopted different approaches also due to the fact that they are organized in different ways. Danish Muslims are not organized in a joint association, so the individual mosque associations and umbrella organizations all did individual responses - of which some were overt theological and some were not. For more details: see, **L. KÜHLE**, *Danish Muslims during Covid-19, Religion and pandemics in a postsecular society*, in *Tidsskrift for islamforskning*, 14 (2), 2021, pp. 13-39.



campaign organized in order to spread all necessary information to protect the worshippers from Covid-19 and to reduce the risk of transmission. The first campaign had as a main goal the divulgation of the recommendation on distancing; the second campaign had the aim of explaining to the faithful the essential importance of the vaccination. The operational setting of these two campaigns are videos uploaded onto the institutional website of the Swedish Agency of Faith Support to religious communities prepared by the representatives of the different religious communities.

Besides these responses, a debate which involved freedom of religion as protected by the Constitution regarded the vaccine pass legislation. On 17th November 2021 the aforementioned Swedish Public Health Agency announced that a vaccine pass had come into force from 1st December 2021 - as underlined by Lena Hallengren⁴⁶ - for theatres, concerts and other events with the aim of limiting the entry to 100 fully inoculated people and then lowered to 50 people from 24th December 2021⁴⁷. After this announcement, there was a general, cooperative and trust-oriented reaction by religious congregations all over the country, however some critical voices arose. For example, criticism came from Isak Reichel - the director of the Swedish Agency of Faith Support to religious communities - after the Government officially asked for opinions. In fact, he stated that the requirement to show a vaccination certificate to attend a religious service might go against Sweden's laws on freedom of worship⁴⁸. In particular, Reichel affirmed as follows: "One aspect of freedom of religion is that you should be able to take part in a religious gathering without needing to show any legitimation"⁴⁹. As announced, the vaccine pass came into force 1st December 2021 but religious communities had two options: either ask the faithful to show the vaccine pass or respect the limitation on the number of participants in gatherings without the need to show any personal document. This twofold possibility was considered by Reichel an acceptable interpretation of the vaccine legislation which protects the right to worship. Other criticism came from the Swedish Evangelical Alliance that affirmed that the 'passport' in Churches restricted religious freedom. In particular, the deputy general secretary of

⁴⁶ Lena Hallengren has been served as Minister for Health and Social Affairs in the cabinet of Prime Minister Stefan Löfven.

⁴⁷ SFS 2021:1309.

⁴⁸ Here, see paragraph 2.

⁴⁹ The Local, November 17th 2021.



the Alliance, Jacob Rudenstrand, underlined that nobody should have to be checked by the State when approaching God⁵⁰. Finally, even the Lutheran Archbishop protested against the vaccine passes for Churches because that would mean the assimilation of religious practice to sports events and concerts.

5 - The Legal Culture of 'Trust' in the State as the Grounds for the 'Respectful Collaboration' of Religious Communities

The responses to the governmental ordinances, general recommendations and the vaccine pass by the Lutheran Church and by the other religious communities could be considered as 'respectful collaboration' with the State⁵¹. With regard to the Lutheran Swedish Church, this collaboration could be easily understood as the consequence of the historical relationship it has with the State⁵². However, the same explanation can not be used when it comes to the other religious communities which do not have historical links with the State. This is why 'respectful collaboration' could have another grounding. In fact, this specific attitude might rest on the concept of 'Trust' in 'the good state'⁵³ which has a Nordic foundation and, in many respects, is seen as a resource for the whole of society and makes democracy work⁵⁴. The socio-political phenomenon of 'Trust' - also defined as the Nordic gold⁵⁵ - is based on the tradition of voluntary associations, the paradigm of fair societies with no

⁵⁰ Evangelical Focus Europe, December 22nd 2021.

⁵¹ This collaboration could also be defined as a behaviour of respect and reverence. This expression has been used during the workshop "*Rituals and community in an age of social distancing*", cit. It can also be defined as a *bona fide* approach, as underlined by Prof. Matej Avbelj, Eurelit conference, Trieste, 26th November, 2021.

⁵² In this regard, Prof. Andrea Pin argued that this relationship could be understood in name of the paradigm of the so-called "*subsidiarity*", Eurelit conference, 26th November, 2021.

⁵³ On the idea of the 'good state' in a Nordic perspective, see **P. LETTO-VANANO, D. TAMM**, *Nordic Legal Mind*, in P. LETTO-VANANO, D. TAMM, B.O.G. MORTENSEN (eds.), *Nordic Law in European Context*, Springer, 2019, p. 8.

⁵⁴ On the paradigm of compliance from an economic perspective, see **G. TIEGHI**, *Fiscalità, compliance e Stato costituzionale*, in *Federalismo fiscale*, n. 1-2/2013, pp. 73-128.

⁵⁵ **U. ANDREASSON**, *Trust - The Nordic gold*, Nordic Council of Ministers, Copenhagen, 2017. For the purpose of this article, the term 'Trust' has to be conceived in its broad sense (thus including: social trust, political trust, horizontal trust and vertical trust).



corruption and the Welfare State. As a consequence of this tradition, Swedes positively perceive the functioning of political institutions as well as the behaviour of public officials, actors and the legislator⁵⁶. This is part of the Swedish legal mentality and culture, and more specifically,

“legal scholarship has concluded that historical developments have fostered a collectivist culture, where public authorities can rely on citizens adhering not only to the letter but also to the spirit of given rules in good faith”⁵⁷.

This is the reason and the foundation of the fact that, in general, religious groups in Sweden did not heavily criticize the Government⁵⁸. In fact, the Swedish “government and the Public Health Agency considered that most people could be relied upon to follow the recommendations”⁵⁹ and it is true that there has been a high level of civic compliance with this approach also by religious communities⁶⁰. This is also corroborated by research conducted by two Swedish scholars published in 2013 supporting the idea that there is a special link between religion, conceived as a social organization working positively within the society, promoting the concept of ‘Trust’⁶¹.

To conclude one must then ask whether the pandemic can be considered as an event aiming at accelerating the process of

⁵⁶ However, it should be noted that on some occasions during the pandemic, sharp criticism arose from high-profile scientists making ‘trust’ in the State under evaluation and the governmental policy became questioned. On the concept of trust *vis à vis* to the legislator, see **H. WENANDER**, *Europeanisation of the Proportionality Principle in Denmark, Finland and Sweden*, in *Review of European Administrative Law*, Vol. 13, Nr. 2, 2020, p. 135; 137; 143.

⁵⁷ **H. WENANDER**, *Sweden: Non-binding Rules*, cit., p. 128. On this specific peculiarity of the development of a legal culture with reference to Scandinavia, see **P. GLENN**, *Legal Traditions of the World: Sustainable Diversity in Law*, Oxford University Press, 5th edition, 2014, p. 141-142.

⁵⁸ For a comparative perspective with Italy, an analysis of religious freedom as restricted during the pandemic, see **V. PACILLO**, *La libertà di culto di fronte all'emergenza Covid-19. Profili di diritto canonico e di diritto ecclesiastico italiano*, in *Il diritto ecclesiastico*, 1-2(2019), pp. 11-33.

⁵⁹ **I. CAMERON**, **A. JONSSON-CORNELL**, *Sweden and Covid-19: A constitutional Perspective*, VerfBlog, May 17, 2020.

⁶⁰ Since March 2020 the research company Kantar/Sifo has done a monitoring of the general public's trust, attitudes and behaviour on a regular basis.

⁶¹ **S. WALLMANN-LUNDASEN**, **L. TRÅGÅRDH**, *Social Trust and Religion in Sweden: Theological Belief Versus Social Organization*, in **J. DE HART**, **P. DEKKER-L. HALMAN**, *Religion and Civil Society in Europe*, The Netherlands, Springer, 2013.



implementation of upcoming legislation regarding religious communities. Indeed, as pointed out by Javier Martínez-Torrón, the pandemic could encourage and reconsider the relationship between State and religious associations and this could also be the case for Sweden⁶². It is common knowledge that before the pandemic, the Swedish Government commissioned an inquiry in order to amend some of the regulations regarding the relationship between the State and religious communities. Indeed, the Government is well aware that the legal framework should be revised in order to achieve a more substantive equality of treatment within a fragmented and pluralistic religious landscape⁶³. The results of the inquiry were published in the SOU 2018:18 report where it is evident that much has to be done in order to make Sweden an inclusive country religiously speaking. At present, there are still deep inequalities and unresolved questions with regard, for example, to the allocation of public funds to religious communities other than the Church of Sweden⁶⁴. There is an evident common feeling that State support is extremely crucial for religious communities and their activities⁶⁵. However, some criticism has arisen with regard to the rampant phobia *vis à vis* groups that do not guarantee Swedish values, such as democracy⁶⁶. More specifically, the inquiry affirms that the current democracy criterion is vague and unclearly worded. For this reason, one of the goals of the inquiry is a new

⁶² From a general point of view Javier Martínez-Torrón underlined that could encourage and reconsider the relationship between State and religious associations and thus this could be also the case in Sweden. See, **J. MARTÍNEZ-TORRÓN**, *Covid-19 and Religious Freedom: Some Comparative Perspective*, in *Laws*, vol. 10, issue 2, 2021, p. 2.

⁶³ In this regard and with specific reference to the role of law in ensuring equality from diachronical perspective, see **M. BUSSANI**, *Democracy and the Western legal tradition*, in M. BUSSANI, U. MATTEI (eds.) *The Cambridge Companion to Comparative Law*, p. 338, when he states: "Legal culture's specialism and secularism, acting together as a filter to the will of God and king, have represented the fertile ground able to receive, grow and spread over all our societies, when history has made possible, the seeds of liberty and of equality - as prerogatives that belong to the individual and not to any other power, and that are protected not by the sovereign or the Church, but by the law".

⁶⁴ Public support to religious communities in Sweden was first established in 1971 and reviewed in 2000 but the financial issue is still on the agenda of the Government.

⁶⁵ As a matter of fact in the SOU 2018:18, it is clearly stated that people turn to religious communities in particular life events such as crisis. It goes without saying that the pandemic can be included in these sort of crisis events.

⁶⁶ SOU 2018:18, p. 39. In particular, the inquiry affirms that "there is no consistent and exhaustive description of what is meant by fundamental values on which society is based". See SOU 2018:18, p. 46.



definition of a democratic criterion that is compatible with freedom of religion. This is an impelling task for two reasons. First, because in Sweden there are “examples of religious communities that have maintained values and structures that restrict individuals in terms of enjoying their freedom and rights”⁶⁷. Second, it is the Instrument of Government that imposes on the State the guarantee of fundamental values of society⁶⁸.

This is why it is now time for the Government to finalize the upcoming legislation, using the same ‘Trust’ towards religious communities that has used by the latter towards the State during the pandemic. In fact, the Swedish State can not avoid to cope with a challenging religious panorama remaining in a stall. While protecting religious rights, it should also trust religious communities’ privacy and independence⁶⁹.

⁶⁷ SOU 2018:18, p. 39 and 40.

⁶⁸ Instrument of Government, Chapter 1, Art. 2.

⁶⁹ SOU 2018: 18, p. 47.