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Covid-19:
limitations
to
public
worship
in Italy,
Spain
and Poland

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NESSUN COMMENTO

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The current pandemic offers ideas for reflection on the tension between constitutionally relevant principles that also include religious freedom.

This circumstance deserves to be assessed – in addition to the principle of separation^[1] – both with regard to the limitations provided for other rights of freedom, and in relation to the balance of the different rights that come into play, in order to weigh up the degree of protection that must be granted to them in such an emergency.

In this contribution we will see how, in correlation with the evolution of the pandemic situation, the complexity of the management of emergency rules, both in the state and in the confessional sphere, is increasingly emerging. To this aim, we will see the different choices that have been made in three European concordat states: Italy, Spain and Poland.

As we know, religious freedom, in addition to the constitutional level, is protected by both art. 9 ECHR both from art. 18 of the International Covenant on Civil and Political Rights of 1966, which nevertheless allow restrictions by law, on the grounds of public health requirements, among other things. These are limitations required by the emergency, but they must be reasonably adopted in a framework of proportional balance between fundamental rights, which implies the need not to take restrictive decisions producing a detrimental effects not necessary for the protection of the interest pursued. In other words, while it is generally acceptable for States to take on restrictive rules of freedom in order to ensure the right to health for the lives of citizens, these restrictions must be reasonable and proportionate to the effect without prejudice of the rights that can continue to be exercised, as well as, at the same time, the effect of emergency management. In essence, it is necessary to check whether the limitations of religious freedom rights are indeed necessary in order to contain contagion and thus safeguard the health and life of citizens.

In Italy, drastic measures limiting the public exercise of worship, protected by the Constitution and subject of further specific concordat protection, have been adopted, without prior consultation with ecclesiastical authority^[2]. At first, the Italian Bishops' Conference adhered to the government rules, but issued an official note – in the form of a press release – in which it noted “with suffering” the “interpretation provided by the Government” aimed at preventing the “religious ceremonies”, including funeral ones, implicitly suggesting a disagreement with a decision that seemed too drastic. This dissent was not, however, manifested in official forms^[3], but widely expressed by Catholic public opinion, which did not fail to highlight the contradiction between the suspension of religious ceremonies and the continuity of other services considered essential, subordinate solely to observance of the rule of personal distancing. The first measures taken by the public authority – which, in truth, lack the necessary formal clarity and leave too much room for discretionary interpretation – seemed to be pursuing the purpose of preventing gatherings of people, by discouraging opportunities for “social encounters” that are not strictly necessary, and by subjecting the exercise of essential services to the adoption by the managers of organizational measures such as to “avoid gatherings of people taking into account the size and “guarantee to

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visitors the ability to respect the distance between them by at least one meter". In accordance with this rule, churches can be opened, if distances can be maintained within them, but the prohibition on the celebration of 'ceremonies' persists: an uncertain expression, but it has been interpreted in a very broad sense, leading to the prohibition of any form of meeting.

The rationale of the measure is clear; however, one can legitimately ask whether the decision to ban any form of worship does not exceed the limits of reasonableness and proportionality, especially when one considers that this choice is the consequence of a previous decision discriminating between "essential" and 'non-essential' services, which the government authority has assumed on the basis of political discretion, in a sense by invading the religious order and deciding that the demands of public manifestation of worship are not 'essential' and therefore go without other prohibited. It would probably have been more legitimate to subordinate the exercise of this right to the same precautions dictated for public access to other places that remained open. For example, cults could be celebrated by avoiding gatherings, and legitimately preventing the exercise of worship in places that are too crowded or that otherwise prevent the prescribed interpersonal distances.

Such a solution would have had the merit of taking into due consideration the Catholic perspective, which gives common participation in worship a sacramental meaning, so that the prohibition of public celebration of Holy Mass in fact results in deprivation of a right of the faithful. It goes without saying that the creative remedy of moving religious ceremonies online presents itself as a substitute, which can alleviate spiritual suffering, but does not solve the substantial problem^[4].

In Poland, the closure or suspension of various activities has deliberately excluded places of worship and suggested an increase in the possibilities of attending religious ceremonies, counting on the fact that an increase in supply led to a decrease in the number of people who would gather in the same place of worship^[5]. The Polish Bishops' Conference, for example, has limited participation in religious offices to no more than fifty people^[6], and appealed to the diocesan bishops to grant dispensations from participation in Sunday Masses to the most vulnerable: elderly people, the sick and children, as well as adults who care for them, recommending their participation in the celebrations through the media^[7].

In Spain, measures like those in Italy have been taken, "to avoid clusters of people, in relation to the size and characteristics of the places, in such a way as to ensure that the frequenters can respect the distance at least one meter", conditions that also subordinate the opening of places of worship. Therefore, "civil and religious ceremonies, including funeral ceremonies", can be celebrated, in accordance with these conditions^[8].

Over time, the overall state rules have undergone several adjustments that will need to be evaluated more carefully. For example, in Italy the idea prevailed that the rationale of preventive measures was not exactly to maintain interpersonal distance, but to restrict freedom of movement to the essentials: therefore, all movements that do not respond to actual and documented needs are prohibited. The repeated slogan "Stay at home" does not leave much room for interpretation. The Ministry of the Interior has specified, with a note, that churches can be opened, but one cannot go out to go to church, while one can enter an open church if it is on an authorized route^[9].

In Poland, instead, in the context of further restrictions on movement^[10], some exceptions have been provided for, including the possibility of continuing to wait for religious worship demonstrations within the limit, however, reduced by five people per celebration.

In Spain funeral ceremonies have since been suspended until the end of the state of emergency, due to the "peculiar characteristics" that connote such rites, which make it difficult to ensure "the application of containment and space measures with the at least one meter to limit the spread of the virus"^[11].

However, the Spanish Bishops' Conference has left it up to individual Bishops to decide to dispense the faithful from observance of the Sunday precept, drafting some general guidelines, which are resolved in the recommendation to participate in liturgical celebrations through media and IT tools, as well as in the invitation to the elderly, the sick and their cohabitants to avoid frequenting places of worship^[12]. The Tarraconian Bishops' Conference decided to suspend public worship and hold funerals using the simplified formula "until the pandemic is over"^[13], while the celebrations of the Easter Triduum took place in the Diocese of Granada, although there were some unpleasant "incidents" with the police authorities. What happened in the Cathedral of Granada, where the police raided the liturgy on Good Friday, presided over by Archbishop Francisco Javier Martínez, due to the presence of about twenty faithfuls, was striking^[14]. This episode was stigmatized by representatives of the Partido Popular, who denounced a violation of religious freedom^[15].

The Polish Church, instead, considered "the closure of churches unimaginable, because they serve to heal the diseases of the soul"^[16].

Finally, it seems interesting to point out that the Italian Church has made some restrictive choices in the Holy Week celebrations without waiting for the government decision to maintain the restrictions even in that period. The celebrations have all been without participation of the people, but in the presence of a representation and staff necessary to ensure their solemnity. In the aforementioned ministerial note, the government has taken note of this choice and authorized the exit from the homes of people who have to go to places of worship, equating it to a "work requirement". It seems, therefore, that a few days later relations between Italy and the Catholic Church have reversed: it is the second that gives indications to the first^[17]. Perhaps also because the Italian Church has decided to be more clearly inspired by the principle of mutual collaboration aimed at the "promotion of the person" and the "good of the Country", which governs concordat relations^[18].

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[1] In Italy, this is constitutionally provided for in Article 7 of the Constitution: cf. V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in <https://www.olir.it/focus/vincenzo-pacillo-la-sospensione-dei-diritti-nel-tempo-della-pandemia/> (<https://www.olir.it/focus/vincenzo-pacillo-la-sospensione-dei-diritti-nel-tempo-della-pandemia/>), 2020.

[2] See d.l. 23 febbraio 2020, n. 6, d.P.C.M. dell'8, 9, 11, 22 marzo, d.l. 25 marzo 2020, n. 19, d.P.C.M. 1° aprile 2020 e 10 aprile 2020, in <https://www.gazzettaufficiale.it/> (<https://www.gazzettaufficiale.it/>).

[3] Cf. "Nota dell'Ufficio Nazionale per le Comunicazioni Sociali" of 8 March 2020, no. 11, <http://massacarrara.chiesacattolica.it/wp-content/uploads/sites/2/2020/03/Comunicato-8-marzo-2020.pdf> (<http://massacarrara.chiesacattolica.it/wp-content/uploads/sites/2/2020/03/Comunicato-8-marzo-2020.pdf>).

[4] Cf. Decree of the Apostolic Penitentiary concerning the granting of special indulgences to faithful in the current pandemic situation of 19.3.2020, in <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2020/03/20/0170/00378.html> (<https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2020/03/20/0170/00378.html>).

[5] <https://it.euronews.com/2020/03/12/chiudete-tutto-ma-non-toccate-la-messa> (<https://it.euronews.com/2020/03/12/chiudete-tutto-ma-non-toccate-la-messa>).

- [6] <https://www.agensir.it/quotidiano/2020/3/14/coronavirus-covid-19-polonia-stato-di-emergenza-epidemiologica-i-vescovi-celebrazioni-via-radio-tv-e-internet/>
(<https://www.agensir.it/quotidiano/2020/3/14/coronavirus-covid-19-polonia-stato-di-emergenza-epidemiologica-i-vescovi-celebrazioni-via-radio-tv-e-internet/>).
- [7] <https://www.agensir.it/quotidiano/2020/3/12/coronavirus-covid-19-polonia-primo-decesso-dispense-dalla-partecipazione-alle-liturgie-domenicali/> (<https://www.agensir.it/quotidiano/2020/3/12/coronavirus-covid-19-polonia-primo-decesso-dispense-dalla-partecipazione-alle-liturgie-domenicali/>).
- [8] See art. 11 R.D. 14 de marzo 2020, n. 463, in <https://boe.es/boe/dias/2020/03/14/pdfs/BOE-A-2020-3692.pdf>
(<https://boe.es/boe/dias/2020/03/14/pdfs/BOE-A-2020-3692.pdf>).
- [9] <https://www.interno.gov.it/sites/default/files/allegati/specifiche-chiese.pdf>
(<https://www.interno.gov.it/sites/default/files/allegati/specifiche-chiese.pdf>).
- [10] <https://www.gov.pl/web/koronavirus/aktualne-zasady-i-organizacja>
(<https://www.gov.pl/web/koronavirus/aktualne-zasady-i-organizacja>).
- [11] See Orden SDN/298/2020, de 29 de marzo, in <https://www.boe.es/boe/dias/2020/03/30/pdfs/BOE-A-2020-4173.pdf> (<https://www.boe.es/boe/dias/2020/03/30/pdfs/BOE-A-2020-4173.pdf>).
- [12] Cf. *Orientaciones ante la situación actual, de 13 de marzo, Comisión Ejecutiva de la Conferencia Episcopal Española*, in <https://conferenciaepiscopal.es/orientaciones-ante-la-situacion-actual/>
(<https://conferenciaepiscopal.es/orientaciones-ante-la-situacion-actual/>).
- [13] <https://www.vaticannews.va/it/chiesa/news/2020-03/planellas-fedeli-chiesa-coronavirus-settimana-santa.html> (<https://www.vaticannews.va/it/chiesa/news/2020-03/planellas-fedeli-chiesa-coronavirus-settimana-santa.html>).
- [14] <https://infovaticana.com/2020/04/11/la-policia-interrumpe-la-celebracion-del-viernes-santo-en-la-catedral-de-granada/> (<https://infovaticana.com/2020/04/11/la-policia-interrumpe-la-celebracion-del-viernes-santo-en-la-catedral-de-granada/>).
- [15] <https://www.larazon.es/andalucia/20200413/32xnwknynqnx7neoy4nccwebfq.html>
(<https://www.larazon.es/andalucia/20200413/32xnwknynqnx7neoy4nccwebfq.html>).
- [16] See note 5.
- [17] <https://diresom.net/2020/03/28/italy-a-letter-to-episcopal-conference-by-the-ministry-of-interior>
(<https://diresom.net/2020/03/28/italy-a-letter-to-episcopal-conference-by-the-ministry-of-interior>).
- [18] Cf. P. Consorti, *La Messa non è finita*, 2020, in https://people.unipi.it/pierluigi_consorti/la-messa-non-e-finita/
(https://people.unipi.it/pierluigi_consorti/la-messa-non-e-finita/).

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