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Freedom of the Profession versus the Health Emergency: The
Physical and Spiritual Protection of the Lutheran Citizen



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On the 11th of March, the Swedish Government adopted, in response to the health emergency from Covid-19, the ordinance SFS 2020: 114, which entered into force the following day^[1]. This provision prohibits, until further notice, gatherings and public events throughout Sweden with the participation of over five hundred people^[2].

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 *Regeringsformen*^[3] which states: “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”^[4].

The aforesaid ordinance are based on the provisions of Chapter 2, section 15 of the Public Order Act, where it is stated that the Government can prohibit public gatherings in the event of war (or risk of war) and in order to avoid epidemics or epizootic events^[5].

The Lutheran Church of Sweden is also taking extraordinary measures in order to adapt to the emergency regime the religious practices that faithful normally put in place in a situation of physical contiguity^[6].

First, a series of options have been made available at the [institutional website \(https://www.svenskakyrkan.se/\)](https://www.svenskakyrkan.se/) of the Church of Sweden for faithful who feel the need to contact their proper religious authority to request spiritual support: a phone call, e-mail correspondence, or through the use of social media such as *Facebook*, *Twitter* and a dedicated blog.

Secondly, the Church of Sweden has disseminated some “recommendations” 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: it is about of avoiding from the handshake during the rite of peace and from receiving the Holy Communion at the Chalice and the host directly in the mouth^[7].

The reasons behind these constraints on the exercise of freedom of worship are explained by Archbishop Antje Jackelén in a video release, appeared on March 12th at the web page of the Church of Sweden^[8]. In this circumstance, the Archbishop invites her faithful to follow all precautions and hygiene rules, as established by the Swedish State Public Health Agency, thus respecting the directives of the Government (*Folkhalsomyndigheten* (<https://www.folkhalsomyndigheten.se/>)).

In order to reinforce this exhortation, Luther's writings were also recalled. During the plague of 1520, Luther incited the population to follow doctors' suggestions and to give help to the most vulnerable individuals, using common sense thus avoiding the risk of infection.

In addition, the Lutheran Church of Sweden, in compliance with the aforementioned ordinance SFS 2020:114, has also decided to cancel religious practices that would have provided for a gathering of more than five hundred people^[9].

The cited Act on public order does not seem to pose any doubts about the obligation on the Church. In particular cases, such as the contingent ones, Chapter 2, section 1.3 establishes that a public assembly must also be understood as a gathering of people who collectively perform a religious practice^[10]. Being, therefore, a religious assembly similar to any other type of assembly, the Church of Sweden has complied with the State precepts.

What has been examined so far leads us to deal with two considerations.

The first is that the Archbishop's speech, which is universalistic and addressed to the Nation and not only to faithful, is certainly characterized by a theological content but it is also relevant as regards to the relationship between temporal and spiritual power as it invites faithful to unconditionally observe the rules imposed by the State.

In this sense, the conception that the Church of Sweden, despite the privileged role it plays in comparison with other religious organizations, adjusts its own ministry – in exceptional cases such as the ones we are facing now – in order to preeminently protect all faithful due to the prevalence of public health. The second consideration is that the Church, orienting itself in accordance with the will of the State – and in view of the protection of the public interest- does not relate to the latter as an entity carrying religious purposes but in a manner similar to any other organization operating within a legal system. The Church of Sweden does nothing but recognizes the need for measures established under a State law, especially in the contingent limitation of fundamental rights in view of a higher general interest, thus preventing the occurrence of a fracture difficult to heal once the emergency situation will be solved.

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[1] SFS stands for *Svensk författningssamling*, that is the Swedish Code of Statutes. The ordinance is available [here](https://svenskforfattningssamling.se/sites/default/files/sfs/2020-03/SFS2020-114.pdf) (<https://svenskforfattningssamling.se/sites/default/files/sfs/2020-03/SFS2020-114.pdf>).

[2] The penalty for violating the cited prohibition is the imprisonment for at most six months or a fine pursuant to Chapter 2, Section 29 of the Public Order Act (1993: 1617). The reasons why the government has chosen the threshold of 500 people are not known, because, unlike what happens for the laws, for the Förordnings, the preparatory works are not published. However, the Government has a constitutional obligation to consult the competent authorities before taking decisions (*Regeringsformen* [see here, note 4], Chapter 7. art. 2 “the necessary information and opinions must be provided by the competent public authorities”). In this case it was the Swedish Public Health Agency which stated that there is an increased risk of infection in events where public participation is widespread (<https://www.folkhalsomyndigheten.se/the-public-health%20-agency-of-sweden%20/%20communicable-disease-control%20/%20covid-19%20/>). It remains however unclear, to date, for the writer, what are the medical and political evidences on the choice of the threshold of 500 people. It is likely that this number will be lowered very soon.

[3] The *Regeringsformen* (The Government Instrument of 1974) is one of the four texts of the Swedish Constitution which is in fact described by Italian doctrine as multi-textual or fragmented. In this regard, see G. MORBIDELLI – L. PEGORARO – A. REPOSO – M. VOLPI, (editors), *Diritto Pubblico Comparato*, 3rd ed., Turin, Giappichelli, 2009, p. 76. The other constitutional texts are: the Act of Succession of 1809 (*Successionsordningen*), the Law on Freedom of the Press of 1949 (*Tryckfrihetsförordningen*) and the Law on Freedom of Expression of 1991 (*Yttrandefrihetsgrundlagen*).

[4] The Constitution of Sweden, The Fundamental Laws and the Riksdag Act, Sweriges Riksdag, Stockholm, Sweden, 2016, p. 71, available [here](https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf) (<https://www.riksdagen.se/globalassets/07.-dokument--lagar/the-constitution-of-sweden-160628.pdf>). 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*, cit., p. 90.

[5] *Ordningsslag* (1993: 1617), available [here](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/ordningsslag-19931617_sfs-1993-1617) (https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/ordningsslag-19931617_sfs-1993-1617). 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)”. The preparatory works for the Act, however, largely concern the need to guarantee respect for the freedoms and rights provided for in the Constitution. On this point, see K. ÅSTRÖM, *The freedom of Religion in relation to Other Human Rights*, in H. BERNITZ, V. ENKVIST (editors), *Freedom of Religion: An Ambiguous Right in the Contemporary European Legal Order*, Bloomsbury Publishing, 2020, p. 91.

[6] On the role of the Lutheran Church in Sweden and, in general, on the role of Churches in the Nordic Countries, see L. CHRISTOFFERSEN, K. A. MODÉER, and S. ANDERSEN (editors), *Law & Religion in the 21st Century – Nordic Perspectives*, DJØF Publishing, 2010.

[7] The [website](https://www.svenskakyrkan.se/nyheter/coronaviruset-och-svenska-kyrkans-verksamhet-) (<https://www.svenskakyrkan.se/nyheter/coronaviruset-och-svenska-kyrkans-verksamhet->) at the section: “Fortsatt gemenskap kring nattvarden” (“The Lord’s supper continues”, the translation is ours). For a brief examination of similar recommendations within religious denominations, see, P. CONSORTI, *Religions and virus* (<https://diresom.net/2020/03/09/religioni-e-virus/>), 9th March 2020. As an example, the author underlines, quoting S. Winer, that “The chief rabbi of Israel has asked to suspend the practice of kissing the Mezuzah”.

On the relationship between the Catholic faithful and the sacraments at the time of the Coronavirus, see, V. PACILLO, *The suspension of the right to religious freedom in the time of the pandemic* (https://www.olir.it/%20focus%20/%20vincenzo-pacillo-the-suspension-of-rights-in-time-of-the-pandemic%20/?%20utm_source%20=%20mailpoet%20&%20utm_medium%20=%20email%20&%20utm_campaign%20=%20newsletter-olir-dossier-coronavirus), March 16, 2020. Here, in fact, the author clearly highlights that: “The redefinition of the whole structure of Catholic celebrations in Italy has not only – in fact – redefined the structure of public worship, but also the relationship of the faithful with the Holy Eucharist”.

[8] For a brief biography of the Archbishop of the Swedish Lutheran Church, see, C. R. BRAKENHIELM, *The Study of Science and Religion*, Wipf and Stock Publishers, Eugene, Oregon, 2018, p. 157, note 9.

[9] “Planerade arrangemang med fler än 500 deltagare kommer att ställas in, med hänvisning till regeringens beslut” (“Scheduled events with more than 500 participants will be canceled, with reference to the government decision”, the translation is ours), see [here](https://www.svenskakyrkan.se/nyheter/coronaviruset-och-svenska-kyrkans-verksamhet-) (<https://www.svenskakyrkan.se/nyheter/coronaviruset-och-svenska-kyrkans-verksamhet->). The Fittja Ulu Camii Mosque in Stockholm also suspended Friday prayers. It is interesting to note that the decision does not regard the closing of buildings’ Churches but only gatherings. In a comparative perspective, as regard to the latter, in Italy there has been criticalities on the interpretation of governmental decision. See, for example, S. MONTESANO, *L’esercizio della libertà di culto ai tempi del Coronavirus* (<https://www.olir.it/focus/stefano-montesano-lesercizio-della-liberta-di-culto-ai-tempi-del-coronavirus/>), visited on March 20th, 2020.

[10] “2 kap. Allmänna sammankomster och offentliga tillställningar. Definitioner [...] 3. sammankomster som hålls för religionsutövning” (“Ch. 2. General meetings and public events. Definitions [...] 3. meetings held for the exercise of religion”, the translation is ours). In a comparative perspective, on the relationship between the Italian governmental measure “I stay at home” and freedom of religion in Italy, see: M.L. LO GIACCO, *In Italy the Freedom of Worship is in Quarantine, too* (<https://diresom.net/2020/03/12/the-freedom-of-worship-is-in-quarantine-too/>), visited on March 22nd, 2020.

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