

CONSCIENCE AND LIBERTY

International Association for the Defense of Religious Liberty

**RELIGIOUS FREEDOM:
A PERMANENT COMMITMENT
TO HUMANITY**



INTERNATIONAL ASSOCIATION FOR THE DEFENCE OF RELIGIOUS LIBERTY

A Non-Governmental Organization granted with consultative status at the United Nations in Geneva, New York and Vienna, at the European Parliament in Strasbourg and Brussels, at the Council of Europe in Strasbourg, and at the Organization for Security and Cooperation in Europe.

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DECLARATION OF PRINCIPLES

We believe that religious liberty is a God-given right, and hold that it is best exercised where separation is maintained between church and state.

We believe that legislation and other governmental acts which unite church and state are opposed to the best interests of both institutions and are potentially prejudicial to human rights.

We believe that public authorities are divinely ordained to support and protect citizens in their enjoyment of natural rights, and to rule in civil affairs; in this realm public authorities warrant respectful obedience and willing support.

We believe in the natural and inalienable right of freedom of thought, conscience and religion; this right shall include freedom to have or to adopt a religion or belief of one's choice; to change religious belief according to conscience; to manifest one's religion or belief either individually or in community with others and in public or private, in worship, observance, practice and teaching – subject only to respect for the equivalent rights of others.

We believe that religious liberty also includes the freedom to establish and operate appropriate charitable, humanitarian or educational institutions, to solicit or receive voluntary financial contributions, to observe days of rest and celebrate holidays in accordance with the precepts of one's religion, and to maintain communication with those who share the same beliefs, individually or collectively, in organized communities at national and international levels.

We believe that religious liberty and the elimination of intolerance and discrimination based on religion or belief are essential in the promotion of understanding and peace among peoples.

We believe that citizens should use lawful and honorable means to prevent the reduction of religious liberty, so that all may enjoy the recognition of their freedom of conscience.

We believe that fundamental freedom is epitomized in the Golden Rule, which teaches that every human being should do to others as he would have others do to him.

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PREFACE

PASSING ON THE TORCH

After ten years of intense and dedicated service as AIDLR Secretary General, Dr. Liviu Olteanu retired. During his term of service, he worked tirelessly to strengthen and foster Dr. Jean Nussbaum's visionary understanding of creating a significant and consistent basis for supporting and promoting religious liberty. More than 75 years have elapsed, and the AIDLR founder presuppositions have proven to be accurate and a paramount need in today's world.

Among the initiatives and activities organized by Dr. Olteanu during the last decade, we will mention some more relevant ones.

In 2013 Dr. Liviu Olteanu created and proposed the «Dialogue Five Framework©,» a multidisciplinary and multi-institutional model platform consisting of a space for coordination and collaboration between diplomats, politicians, scholars, society/social media, and religious leaders/faith-based organizations at national, international and global levels. This collaborative institutional framework proposal provided an innovative pattern for the relationship between national and international actors in the search for peace, security, and understanding, focusing on human rights and religious freedom.

This model has been applied to the various high-level events held by AIDLR during Dr. Olteanu's mandates. We highlight here the three international conferences in Madrid and the two global summits on "Religion, Peace, and Security," the latter held at the Palais des Nations, in Geneva, in 2016 and 2019, in co-organization with H.E. Mr. Adama Dieng, Under-Secretary-General and Special Adviser of UN Secretary-General on Genocide Prevention at the time, and current President of the AIDLR Committee of Honor.

Dr. Olteanu also represented AIDLR at the United Nations, the European Union, the Council of Europe, and the OSCE, as well as in maintaining contact with civil and ecclesiastical authorities, valuing and promoting the principles of freedom of religion, worship, and conscience through the creation of platforms for influence and debate, organization of side-events and participation as a speaker in frequent forums.

The Conscience and Liberty journal was also under Dr. Olteanu's responsibility as editor, deserving a special reference for his efforts to study and reveal the history of the Association and its main actors and the publication of thematic and documentary editions based on the AIDLR's main events.

On behalf of the AIDLR, we would like to convey to Dr. Olteanu our gratefulness and high esteem for his contribution to the cause of religious liberty during the time that he served as Secretary General, and wish him a happy and still active retirement time defending the causes he has been embraced in his work and his personal life also.

After much scrutiny and always in consideration of the *raison d'être* of the AIDLR, Mr. Paulo Macedo was nominated to replace Dr. Liviu Olteanu. Mr. Macedo has served as Secretary General at the AIDLR Section in Portugal since 2012 and has been involved in religious liberty advocacy since 2006. His main fields of expertise relate to freedom of conscience, worship and religion, State-Church relations, and inter-religious and inter-cultural dialogue to promote peace and guarantee freedom and equality in accessing and experiencing human rights. We are confident that he will continue to develop the partnership work with institutions and experts in religious liberty.

According to its Constitution, the Purpose of AIDLR is "to defend, promote and spread the principles of the fundamental liberties of freedom of religion, conscience, belief and thought, freedom of worship and freedom of speech for all people, and to protect, in all legitimate ways not forbidden by law, the right of every person to believe or not to believe, to change convictions or religion, to worship according to personal choices

or to practice no religion at all, and to express religion, individually or collectively, publicly or privately, practicing or fulfilling religious rites, by cooperating with all actors to support the respect for peace, human rights, and diversity, to fight against religious intolerance, harassment and discrimination, violence and abuse of power, persecution, and extremism in all the forms that affect believers and non-believers.”

It is for that purpose that we, as an International Association, count on your support and put ourselves at your service in our shared objective to work for a freer, safer, more peaceful, and more just world.



Mário Brito
President, AIDLR

EDITORIAL

“The goal of the International Association for the Defense of Religious Liberty is to disseminate, all over the world, the principles of this fundamental liberty and to protect, in all legitimate ways, the right of every man to worship as he chooses or to practice no religion at all. Our Association doesn't represent any particular church or political party. It has assumed the task of gathering all spiritual forces to fight intolerance and fanaticism in all their forms. All men, whatever their origin, color of skin, nationality or religion, are invited to join this crusade against sectarianism if they have a love for liberty. The work lying ahead is immense, but will certainly not go beyond our strength and means if everybody gets down to work, with courage.”

Dr. Jean Nussbaum, Founder and First Secretary General of AIDLR. 1948

COMMITTED TO RELIGIOUS LIBERTY

Conscience and Liberty is the official publication of the International Association for the Defense of Religious Liberty – AIDLR. As such, it has the fundamental function of expressing the general perspective of this organization on the most relevant themes, the present state and trends for the future of religious liberty. To do so properly, honoring the history and objectives of this institution, this journal has never lost and cannot lose sight of its main points of orientation: the indefatigable defence of religious freedom, and, within this, the primacy of freedom of conscience as the most intimately valuable stronghold of every human being; the promotion of the separation between politics and religion, between the state and religious confessions, as a prevention of discrimination between

people and as a vehicle for equity among citizens and among communities; the belief that true and lasting peace and understanding between individuals and peoples will only come about through respect for the dignity, individuality and worth of each person, always with the freedom to have or not to have, to practice or not to practice, to adhere to, change or abandon faith.

It is in the permanent attempt to be faithful to these stated principles that we refer, to the above text written by Jean Nussbaum. AIDLR carries out its action through its status as an NGO accredited to the United Nations Organisation, the European Union and the Council of Europe; through its organisation of and participation in conferences, congresses, summits and bilateral meetings, in its dialogue with institutions, governments, universities, religious communities and civil society; through its direct intervention in defence of those who see their rights to religious freedom put at risk, and thus suffer persecution and discrimination, lose their lives, safety and property, are forced to leave their country and their community – all because of their faith. But, in all likelihood, no action by AIDLR will have more effect, in manner and time, than the publication of *Conscience and Liberty*, copies of which are distributed in the countries where the Association's sections are present, its subscribers consisting of libraries, universities and academics, sovereign bodies, students and other interested parties. All are united by the principle of religious freedom and the sole interest in defending, promoting and enhancing it.

It is with this sense of responsibility, dear subscriber and dear reader, that the 2022 issue of *Conscience and Liberty* reaches your hands. And it is our privilege to present it to you in this new format, which we hope you will enjoy.

The generic title of this issue is: "Religious Freedom: a permanent commitment to Humanity". Through it, we wish to recall that the rights of freedom of conscience, religion and worship, which make up religious freedom, are immanent and inalienable to the condition of dignity of every human being. To affirm this, we have sought a set of topics for

information and reflection which take us on a journey through current trends in religious freedom issues, in a logic which will be repeated in each future issue.

In the *Interview* rubric we welcome the President of the Portuguese Commission for Religious Freedom, Vera Jardim, who presents us with the Portuguese legal framework in relation to religion and religious freedom, which he considers “among the most liberal and open in Europe”. He also talks about the state of religious freedom in Europe and in the World, focusing on his main concerns for the future.

Alexis de La Ferrière is the author of the article that we have chosen for *In Depth*, with a remarkable distinction between the concept of separation between state and church and the challenge of religious separatism. Separation is a principle that is as old as an idea but is also urgently modern in the need to revisit and defend it. Today, on one hand, various forms of dispersion of communities within the general community are appearing on the basis of religion, and, on the other hand, a conditioning upon the community belonging of religious minorities by the State is being felt, which deserves a deep and serious reflection, provided by the author.

The central part of this issue is dedicated to various *Themes*, from the theoretical basis of the value of religious freedom for human dignity, to the Spanish model based on the principle of cooperation, to the new trend of French secularism and the situation of Christian churches in China. In this section we highlight the text by Ganoune Diop, who defends religious freedom as both a gift to humanity and an imperative for all human beings. The author concludes with a poignant and incisive appeal: “Persons from many and differing faith and philosophical traditions can rally to promote such pivotal and incontrovertible freedom, for peaceful coexistence, for the healing of human relations and for societal health through the dignity of difference.” We also highlight the profound presentation by Jaime Rossell on the contribution of the cooperation model for the open and effective management of the Spanish legal framework in relation to Religious Freedom, whose end he identifies in this way: “It

is about building a governance model in the management of the religious phenomenon in which social partners can truly take part in the decisions that affect them”.

Unsurprisingly, at a time when the greatest threats in relation to the disease are being globally overcome, the impact of the restrictive measures caused by the fight against COVID-19 also merits reflection. In the block with the title *Focus*, a selected set of authors recalls how the contingency measures in Germany and Portugal affected religious experience. Maria Luisa Lo Giaco, from Italy, presents a comprehensive legal perspective on the possibility of the right of conscientious objection to the COVID-19 vaccination on religious grounds. Finally, Ibrahim Salama and Michael Wiener, UN officers, write about the relevance of the *#faith4rights* toolkit in a collaborative approach, through the exchange of information and experience among peers, of religious actors in relation to actions against COVID-19.

At the end of this magazine, the reader will find a set of *Documents* produced by international institutions during the year 2021 on religious freedom. With the focus on the United Nations and the European Union, *Conscience and Liberty* has collected and organized for you some of the most relevant instruments of analysis and reflection on the state and trends regarding the religious phenomenon and religious freedom, drawing attention, in particular, to a short and assertive summary of the Report of the Special Rapporteur of Human Rights Council of the UN on FoRB, H.E. Dr. Ahmed Shaheed, produced by Tor Tjeransen. All links can be directly accessed on our website: www.aidr.org

These are the reasons we encourage you to give your time and attention to this year's issue of your magazine. Unfortunately, when we observe the political, economic, social, and therefore religious reality, we detect a number of real threats and dangerous trends for fundamental rights in general, and for the rights of religious freedom in particular. They are found in the difficulties experienced by populations in conflict situations, who see added to the struggle for survival, security and well-being, the

concern to live their faith, worshipping in private and in community. They are also present in the lives of all those who live under the pressure of dictatorial regimes, whether in the name of religion or against religion, and are forced to hide their faith, if not to migrate and seek places where they can raise their foreheads to freedom. They are still detected in the daily lives of many, even in countries considered advanced in relation to the rights of religious freedom, in the minor or major challenges of consciously objecting to actions that may affect religious sensitivity, in the minor or major impossibilities of observing a religious day of rest, performing a ceremony or simply wearing a garment or an ornament that symbolises and publicly demonstrates faith.

There is still – and, obviously, there will always be – much to debate, much to reflect on. But it is undeniable that there is a growing body of personalities, non-governmental organizations, transnational and international institutions, working with increasing visibility to make religious freedom a reality in the lives of more and more people. While this is so, in fidelity to the principles we have listed above, there is hope. *Conscience and Liberty* will continue to be our contribution for it to remain, to grow, to be realized.



Paulo Macedo
Secretary General, AIDLR. 2022

INTERVIEW

"CONFRONTATION BETWEEN FUNDAMENTAL RIGHTS IS A COMPLEX ISSUE"

H.E. Dr. José Eduardo Vera Jardim

President of the Religious Liberty Commission, Portugal

Former Minister of Justice and Member of Parliament responsible for the proposal and approval of the Portuguese Religious Liberty Law from 2001.

By Mr. Paulo Macedo, Secretary General of the AIDLR

Q: The Portuguese Religious Liberty Law has recently celebrated 20 years of existence. How do you evaluate the Law, its application and how does it compare to the various legal frameworks in Western Europe?

A: I would like to begin by thanking you for giving me the opportunity to give this testimony on the relevance of the Religious Liberty Law, which celebrated its twentieth anniversary in 2021. Being the political driver of the Law, I am, in a way, accused of magnifying something in which I had that intervention.

After the change of regime that took place on 25 April 1974, and especially from and in the Constitution of 1976, religious freedom as a fundamental right was consecrated in a very substantial way. It mentions freedom of conscience, religion and worship, and it also guarantees the right to non-discrimination based on religious choice, the principle of separation between the State and churches or religious communities, as well as the freedom to

teach the respective beliefs, namely through the media, and conscientious objection, to be regulated by Law. Some matters were subsequently regulated in separate legislation, such as religious education, access of religious communities to public media, spiritual assistance in closed environments.

But the Concordat of 1940 with the Holy See was still in force and a general law was lacking that, on the one hand, strengthened individual rights and, on the other hand, established a legal scheme of equal dignity for minority confessions, despite a general atmosphere of mutual respect between the various communities in the country.

That is what the Religious Liberty Law of 2001 attempted to do and, in my view, it achieved those goals.

I am not afraid to say that the Portuguese Law is among the most liberal and open in Europe, of all the systems I know (which naturally are not all of them) and creates one of the most complete and comprehensive legal frameworks, especially in comparison with the schemes of the law of religions in countries with the same sociological and cultural matrix, like Spain, Italy, Belgium, to name just a few.

Q: You have participated in the generation, construction and implementation of this Law in a variety of roles. I invite you to briefly share this process, which started in 1996.

A: The initiative of a Commission to present a Proposal for such a Law and to give a decisive impulse to the general principle of equality between all religious beliefs started in 1996. Several hearings were held, with a high level of participation, which ended in 1998 and gave rise to a Bill that was submitted to Parliament. Unfortunately, the scheduling of the discussion and vote on this Bill was not made on time.

When my duties as Minister of Justice ended, I returned to Parliament and presented the Draft Law there in 2000, with the support of my parliamentary group. The Law was approved by a large majority, paving the way for a scheme that has proven to be a decisive lever for a culture of dialogue

and mutual respect that translates into a climate of healthy coexistence between the various communities that are more deeply rooted in our country.

Q: Do you think that, within the various types of separation, we are moving from a model of strict separation, through a model of accommodation, to a model of cooperation between the State and Religions?

A: A separation scheme has long been in force in Portugal. But the Law also enshrined a principle of cooperation between Churches and religious communities and the State.

This combination has allowed a mutual understanding that has materialised in several situations, the most recent example being the reaction of the religious communities to the exceptional measures taken in connection with the pandemic, with the prolonged closure of places of worship or even their limited opening, with the active understanding and initiative of the religious communities themselves.

The current President of the Republic, in addition to paying attention to the reality of religion, took the initiative to take part in a ceremony with a wide range of communities, in a collective prayer twice, on the two days he took office after being elected.

The former President Jorge Sampaio, the President who promulgated the Religious Liberty Law and the first President of the 'Alliance of Civilisations' organisation, also paid special attention to the religious phenomenon in its multiple aspects.

Shortly after the approval of the Law, conversations started with the Holy See for the revision of the Concordat of 1940, which gave rise to the Concordat of 2004.

A simple comparison between the two texts, the Religious Liberty Law and the new Concordat, easily demonstrates the path made towards equality of schemes, naturally safeguarding the historical role and the social presence of the Catholic Church in the Portuguese social fabric, where more than seventy per cent of the citizens identify as Catholic.

Q: How do you evaluate the current religious context in Portugal?

A: In recent decades, the religious landscape in Portugal has changed, as in many other European countries, mainly but not only, with the phenomenon of immigration. Although more related to the former African colonies, the migratory flow has led to the emergence of new forms of religion (Hinduism, Buddhism, Islam), not forgetting the presence of new religious movements, mainly originating in Brazil, with different features (Afro movement, neo-Pentecostalism, etc.) but with some presence in the country, many of which are registered in the register of religious entities or even have the status of settled communities, which gives them access to a different status and additional rights.

Q: Do you think there is a need for any adjustment or revision of the Law?

A: Despite the fact that more than twenty years have passed since the initial Bill, the Law has remained able to respond to these changes in the social fabric and religious geography.

In my opinion, it would only be necessary, in addition to reinforcing the resources of the Commission on Religious Liberty, which has difficulties in performing certain duties given its organisational weakness, to create legal mechanisms, which have long been suggested to the government for adequate supervision, namely of communities that are registered but have not survived the passage of time and have practically ceased to exist and should therefore be considered as non-active or even be the subject of a legal request for dissolution.

Q: Basically, and for readers who may not be familiar with such a body, what are the status, responsibilities and practical duties of the Commission on Religious Liberty?

A: The Commission on Religious Liberty has, as a consulting body for the Government and Parliament, a wide range of competencies, from issuing opinions on the registration or establishment of religious communities, drafting agreements between the State and religious communities, on the composition of the Commission with regard to the representation of the various confessions, as well as studying the evolution of the religious phenomenon in Portugal and preparing studies and opinions, under its own initiative or at the request of the Government or Parliament.

Its composition allows a broad representation of the religious communities existing in Portugal, either with their own representatives or with experts in religious matters.

The President is appointed by the Council of Ministers, while two members are appointed by the Catholic Church and the remaining eight members by the religions rooted in the country, either as their representatives or as experts in religious matters.

Besides performing these duties, the Commission on Religious Liberty has sought to maintain a constant relationship with the diverse religious



Mr. Paulo Macedo, Secretary General of the AIDLR on the left and Dr. José Eduardo Vera Jardim on the right.

universe, taking part, when invited, in the most diverse manifestations and events, mainly through the presence and participation of the President and Vice-President, but also of other members.

Although the Commission on Religious Liberty does not have the power to act directly in cases of violation of the principles of religious freedom, it has sought, together with the respective State bodies, to follow up on and solve problems of this nature, in most cases successfully.

Its relationship with the High Commission for Migrations has been fruitful, and the two entities managed to get the Portuguese Parliament to celebrate the National Day of Religious Liberty and Interreligious Dialogue with an event organised by the two bodies on 22 June each year, the date of publication of the Religious Liberty Law.

Q: You are a political reference concerning religious freedom in Portugal, as Minister, Member of Parliament and now President of the Commission. What do you think is the relevance of the political actor's vision in relation to the defence and promotion of human rights?

A: The entire political sector must use it as a compass for its action and stance on the uncompromising defence of human rights. I have always sought to follow this path in my life and public responsibilities, having actually chaired, for several years, the Portuguese parliamentary representation in the Parliamentary Assembly of the Council of Europe, an institution created after the Second World War, whose responsibility is precisely to protect fundamental rights and the rule of law, bringing together almost all European countries. I was Vice-President of that organisation and I have always tried, together with my colleagues in the Portuguese Parliament, to play an active role in the defence and improvement of fundamental rights.

Q: And besides that, what other influences are the strongest in the construction and implementation of favourable legal frameworks in this area?

A: I think that other influences should come, above all, from the civic demands of citizens and the actions of State bodies, with special emphasis on the Courts, primarily the Constitutional Court, but also the generality of these sovereign bodies and the Ombudsman in the analysis, monitoring and decisions on complaints from citizens and, in general, of all institutions that deal with and seek to improve the full exercise of citizenship, which always involves the defence of constitutionally guaranteed rights. Citizenship education, both in the school system and in the media, should pay special attention to awareness of fundamental rights and their application in practice.

Q: Considering the global context, what are your greatest concerns regarding dangers to freedom of conscience, worship and religion? And what about the European reality, where most of our readers live?

A: Undoubtedly, religious persecution in many regions of the globe, institutional persecution by the State or persecution of religions and communities by other religions is still a reality. Unfortunately, it is a phenomenon that has not diminished; on the contrary, it has worsened, raising serious problems for the full exercise of religious freedom, in its multiple aspects.

Even in Europe, we have been experiencing, as is well known, attacks motivated by clashes between religions.

Another worrying aspect is the conflict between the freedom of expression based on religious belief and the principle of defence of minorities or the adoption by the State of positions conflicting with religious principles, such as abortion and euthanasia.

Q: Let's talk about issues related to religious discourse. I have heard you insist on the need to protect freedom of expression and religious sharing. What signs do you feel might condition this?

A: The democratic State expresses and enshrines the will of majorities who decide freely in Parliaments or Courts and in accordance with the principles of the political will of each people.

Such a situation, inherent to the democratic organisation, should not prevent the expression of disagreement based on religious convictions or beliefs, provided that they remain respectful of the laws of the country and do not offend the dignity of other citizens.

This balance is not always easy and this has created and will continue to create problems of difficult coexistence. These situations have been worsening in recent times, even in Europe, and unfortunately, there is nothing to suggest that these problems will not continue to worsen.

Many of these situations have been brought before national courts and the European Court of Human Rights at the Council of Europe.

Q: And how is the fundamental protection of this freedom coordinated with the need to find ways to contain hate speech and encourage understanding in order to maintain a free social environment that is favourable to religious freedom?

A: The confrontation between fundamental rights is one of the most complex issues to resolve.

Only tolerance, respect for the other or others, restraint and understanding of the limits of rights in the face of conflicting rights can help to find balanced solutions.

Hate speech towards certain groups, based on many religious or secular convictions, is not admissible. But the expression of one's opinions or positions must be protected within that limit. The decision of those who judge will not always be easy.

Coexistence in a society marked by religious pluralism, as is the case of contemporary European societies, will continue to cause problems. It is also up to the various religious options to have a didactic discourse on such a sensitive subject. And it is also up to the States, and especially the

Courts, to judge with balance and fair consideration the various positions, respecting the right to free expression, safeguarding the dignity of all and respecting the principle of tolerance.

Q: What role does the dialogue between religious communities play in this context? In Portugal, for example, this dialogue has a neutral initiative and coordination, of the State...

A: Interreligious dialogue and mutual respect for each other's beliefs are fundamental in a democratic society. We have managed to maintain a dialogue between us based on this mutual respect, either on the initiative of the religions themselves or through the action of the State.

To create this environment, it is fundamental to know the other person, their way of being in the world, the root of their convictions. Religious leaders have a decisive role to play here. And we are certainly a good example in this matter despite the growing multiplicity of religious forms in Portugal. Municipalities, especially those where diversity is most present, have an important task in this regard.

I am confident that they will increasingly interiorizing the problem and the solutions.

Neither we, nor any contemporary society, are an exception when it comes to the increasing complexity of our societies, and the problems this creates. The coexistence of religious, ethnic and cultural world views creates new demands on political and religious leaders.

Despite these difficulties, I am optimistic that we can continue to maintain this peaceful coexistence. Without hostility and mutually respectful.

Q: When we refer to issues related to religious freedom there is a tension, even if unconscious, between universalism, those who think that rights and freedoms are immanent and must apply to all human beings, and cultural relativism, which analyses and appreciates them according to culture and custom. And, in addition to these positions, in recent times

there has been a fresh outbreak of certain ethnocentrism: rights and freedoms for us and ours, not for others. Where does this extraordinary value of religious freedom come from, what is it, to whom does it apply and how does it materialise?

A: We live in a world where the values of individualism prevail over the collective, which characterises the religious world.

Religion is experienced in the community; religious coexistence is eminently collective, regardless of the relationship of each individual with the divine entity or entities.

Ethnocentrism is a by-product of individualism, all declarations and pacts on human rights reflect the existence of individual rights, but also of those to be exercised collectively, particularly in the area of religious freedom. Declarations, pacts and conventions have a common characteristic – they are universally applicable, within the geography to which they apply.

The first great bill of rights of the modern era is called the Universal Declaration of Human Rights, signed in 1948. It is a set of universally applicable rights, irrespective of the culture, religion or political system of each people. Therefore, States cannot limit or abolish this universe, which is necessary for human development and for a healthy relationship between the various forms of life, beliefs and culture of each people or part of it.

Reality is sometimes far removed from this ideal. Perhaps further and further removed. In increasingly secularised parts of the world, attention to religious freedom, whether individual or collective, tends to take second place to other rights and values. The concern with the fulfilment of the human being is less and less associated with religion, and more and more with the assertion of the happiness of the human being in their life on earth, putting aside the vision of an invisible ‘other life’.

Q: What question did I miss in this interview that you would have liked me to have asked?

A: The question that perhaps is missing is whether everything is good, complete and perfect in terms of religious freedom in Portugal.

Q: May I ask you to answer it?

A: The answer would be that there is a long way to go. And that it is not easy because religious freedom is not seen in our societies with the priority that it should always be seen. The view of religion in European societies, and Portugal is no exception, is that religion is an individual act of adherence to a belief and practiced in a temple. Public space has been strongly constrained when it comes to demonstrating and experiencing the religious dimension.

There is a respect for ‘religious people’; but ‘religious people’ pray in a temple. And provided that this activity is allowed, everything is fine... And that is not the way to look at the religious phenomenon and its practices. But I hope this long journey will continue, overcoming this limiting vision.

Q: You, to the great honour of this Association, were awarded the Jean Nussbaum & Eleanor Roosevelt Award of Excellence in 2016. I invite you to leave a message for our readers.

A: In these very difficult times in which we live, I hope that everyone maintains hope in a better world, with more dignity, freedom and tolerance.

May this compass guide all those who, regardless of their beliefs, have peace and respect for the rights of others as guiding values for their earthly existence.

THE SEPARATION OF CHURCH AND STATE AND THE CHALLENGE OF RELIGIOUS SEPARATISM

The notion of religious separatism versus the notion of the principle of separation of church and state.

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In February 2020, French President Emmanuel Macron delivered a speech in which he identified the separation of church and state as being threatened by separatism, that is to say, this phenomenon that we have been observing for decades, which is a desire to leave the Republic, to no longer respect its rules, a movement of withdrawal which, because of beliefs and belonging, aims to leave the republican field.¹

In his condemnation of such separatism, President Macron summarised his position as follows: “In the Republic, we must never accept that the laws of religion might be superior to the laws of the Republic. It is as simple as that”². This speech set the French government’s agenda for the later passage of the law to strengthen respect for the principles of the Republic (originally entitled, law against separatism) in August 2021. Whilst there is much to say about that law, in this article my aim will be

relatively narrow: I would like to examine what is meant by the notion of separatism in the context of Church-State relations and, in particular, I would like to articulate a clearer distinction between the separation of Church and State and the idea of religious separatism. My hope is that my discussion of these two points will inform the debate about religious separatism, which is increasingly animating political tensions in France and in other countries around the world, in a manner that reinforces the crucial importance of the principle of separation of Church and State.

Separation vs Establishment

When thinking about the institutional separation between Church and State, we tend to oppose this principle with regimes of establishment or recognition (which range from theocracies or concordats). In keeping with this distinction, separation is often described with reference to Jefferson's image of a wall or Locke's description of a fixed and immovable boundary. On the one side of this wall, ecclesiastical authority is confined to matters pertaining to the particular religious beliefs and practices of its voluntarily self-identified members. On the other side of this wall, the State's sovereignty holds over civil matters pertaining to the conduct of all legal persons within its territory, regardless of their religious affiliation. Each institution recognises the other's autonomy within their respective boundaries of authority. In contrast, regimes of establishment or recognition are characterised by the absence of such a boundary and mutual autonomy: Church and State penetrate each other in such a way that the State cedes a portion of its sovereignty to the Church in matters of civil governance and/or the Church cedes a portion of its autonomy to the State in matters internal to the beliefs and practices of its members.

In practice, of course, such a strict and neatly-defined distinction between separation and establishment does not stand up to scrutiny. Regimes with established Churches (such as the UK) can exhibit many characteristics of autonomy which we associate with separation; and regimes with formal separation may derogate from this principle in various ways (for example,

in France, Churches maintain chaplaincies in public institutions³ and the State provides public funding for religious schools which are said to be “under contract”⁴ with the State). Writing on Locke’s Letter on Toleration, Michael Walzer argues that Locke is too radical in describing the Church as “a thing absolutely separate and distinct from the commonwealth” because such a view focuses too much on individual conscience rather than on an understanding of churches and religious practices.⁵ Part of the problem is that institutions which exist alongside each other in a common society (or commonwealth) will necessarily influence one another even though they are formally separate. In a previous issue of *Conscience and Liberty*, Cole Durham discusses this issue with special reference to autonomy: “With the concept of the sphere of autonomy, we have to admit that no satisfying answer can be given regarding what is Caesar’s and what is God’s through a list of the distinct roles of Church and State institutions. Church and State have overlapping interests and religion would find itself marginalised if it had only a field of action on topics disregarded by the State”⁶. Whilst the principle of separation on paper may appear as clear as a boundary line on a cadastral map, its practical implications are far more complex. Necessarily, separation cannot exist in practice where the Church is dominated by the State (or the State by the Church). However, as Walzer and Durham both observe, it is also the case that separation cannot exist such that there might be an impermeable wall between Church and State. Even when formally separate, coexisting in a common society, Church and State penetrate each other’s spheres in numerous manners and on a regular basis.

Thus, although there is an obvious intuitive appeal in understanding separation between Church and State in opposition to regimes of establishment or recognition, such an approach does not adequately reflect how the principle of separation is applied in practice. This is not to say that the distinction between separation and establishment is empty, but that this distinction is imperfect; further, focusing on this distinction can lead to impasses in understanding the substantive foundation of the principle of separation and in attempts to determine whether or not a particular

regime genuinely upholds that principle. One way to move beyond this problem, is to consider the separation of Church and State not in terms of how it differs from regimes of religious establishment but in terms of how it differs from movements of religious separatism.

Religious separatism

Religious separatism can take at least three distinct forms. First, it can describe a cessationist movement in which a religious group aspires to break away from the State and form their own political community centred on that group's religious beliefs, practices, and identity. Cessationist separatism is associated with some form of territorial claim, such as in the case of the partition of India in 1947 and the subsequent creation of Pakistan and Bangladesh. Second, there is what we might call renunciative separatism. This describes individuals and groups who also elect to separate themselves from their State through emigration to another territory where they consider the public authorities to be more closely aligned to their religious beliefs. We might think here of Anabaptist migrations to Slavic and American territories in the early modern period. More recently (and more controversially), renunciative separatism can also describe those Muslim Europeans who emigrated to join Daesh in Iraq and Syria between 2014 and 2019.



The third form is what we might call quietist separatism, which is characterised by a deliberate project on behalf of a religious group to form a community or network of rigorous religious commitment which runs counter to the social norms dominant within the society in which they live. In some instances, the adherents of quietist separatism will also engage in practices contrary to the civil laws of their State, but contrary to cessationists, they do not explicitly contest the sovereignty of the state per se, but rather they practise a radical form of autonomy on terms which they define autonomously from the State. This form of separatism closely resembles the account some scholars have of Christian fundamentalism in the United States as a “doctrine of separation”⁷ designed to “preserve ‘the fundamentals’ of Christian belief against theological liberalism and contemporary culture”⁸. However, quietist separatism is not specific to any faith tradition, it can take many guises, from Christian ascetic communities in the Catholic and Orthodox Churches to counter-cultural “New Age” communes to urban concentrations of rigorist groups such as Hassidic Jews or Salafi Muslims. In practice, of course, some of these are more committed to the quietist goal of internal separatism as group autonomy, whilst others entertain hopes of affecting political change in civil matters even as they live separately from mainstream society. Depending on the profile of these groups and the ambient political context, States will be more or less inclined to tolerate their unilateral demands of internal separatism. The French Third Republic expelled numerous Catholic congregations in 1880 and 1901 (despite its Concordat with the Holy See) because it considered these a threat to its sovereignty, whereas the Fifth Republic today (which is no longer bound by the Concordat) tolerates their presence and even supports them through indirect subsidies,⁹ in part because it no longer considers Catholicism to be a viable political force capable of undermining the Republican order.

Separatism vs. separation

Should we consider religious separatism to be an expression of the principle of separation between Church and State as this is understood in the

liberal tradition? On the whole, I would argue that all three forms of separatism outlined here are distinct from separation in both premises and in aims. The manner in which autonomy is framed, the scope it is given, and the role that is reserved for the State is substantially different in religious separatism than it is within the principle of separation. However, these distinctions are more obvious in some forms of separatism than in others. Moreover, the manner in which these forms of separatism each differ from the principle of separation is instructive as to what the substantive principle of separation really is and what it should guarantee for those who adhere to it.

The two first forms of religious separatism aim to dissolve institutional political ties between a given religious group and their original State of residence. In this sense, they are properly considered philosophies distinct from the principle of separation of Church and State because the latter (despite its name) is above all concerned with establishing a contract regarding how to maintain and regulate a relationship between religious communities and the State within a common society: it is separation within the bounds of the State's sovereignty, not separation from the State's sovereignty. In the case of cessationist separatism, we are confronted with a phenomenon that is not only distinct, but at odds with the principle of separation of Church and State: cessationist separatists overstep the boundaries of ecclesiastic authority because their agenda cannot be reconciled with any contractual form of internal autonomy for their own religious community within a pluralistic society; their efforts are directed towards contesting the sovereignty of the State over civil matters and threatening the territorial integrity of the State. Renunciative separatism, on the other hand, is not necessarily in contradiction with the principle of separation, but it is something entirely different; it should not be considered an expression of the principle of separation. An individual or a group may elect to exercise their right to leave their own country¹⁰ for reasons related to their religion, but in doing so they sever the ties which bind them to their original political community. Although this may not necessarily be intended to undermine the sovereignty or integrity of their State (as in the case of cessationist

separatism), through migration they place themselves beyond the bounds of a contractual arrangement with the State. In other words, renunciative separatists do not seek a sphere of autonomy within the sovereign space of the State but instead they seek autonomy from and outside of the State's sovereignty by renouncing their original political allegiance and entering into a contract with another sovereign State.

In the case of the third (quietist) form of religious separatism, the difference with the principle of separation is more subtle. Indeed, many liberal advocates of separation who would condemn cessationist separatism and express reservations about renunciative separatism, would tend to see quietist separatism as simply the legitimate exercise of religious group autonomy. After all, if a community elects to live in relative isolation from society in order to practice a form of religious rigour, in what way does this disrupt public order or undermine the State's sovereignty? The relevant criterion of difference here is precisely whether that community's form of life in fact disrupts public order or undermines the State's sovereignty. Quietism in itself is perfectly compatible with the principle of separation, but when quietism is practised in such a way that its adherents are completely cut off from the civil bonds and obligations which tie them to their compatriots, then the State may have legitimate grounds for narrowing that group's scope of autonomy.

If we think of the principle of separation purely in terms of Locke's fixed and immovable boundary between two distinct spheres of autonomy, then we are liable to consider that Church and State are equal participants in the mapping and construction of this boundary. But this cannot be the case. As Walzer writes:

"The state [...] always has a special influence, for it is the agent of separation and the defender, as it were, of the social map. It is not so much a night watchman protecting individuals from coercion and physical assault as it is the builder and guardian of the walls, protecting churches,

universities, families, and so on from tyrannical interference. The members of these institutions also, of course, protect themselves as best they can, but their ultimate resort when they are threatened is an appeal to the state. This is so even when the threat comes from the state itself: Then they appeal from one group of officials or one branch of government to another, or they appeal against the government as a whole to the body of citizens.”¹¹

This state of affairs is not an arbitrary imbalance in the distribution of power between Church and State. It results from the very nature of the State required of a democratic society, where the State does not sit outside of society and exert its power over the people, but rather where the State is the manifestation of the general will expressed through laws which apply equally to all citizens.¹² From this point of view, religious people are themselves part of the state and their group autonomy does not relieve them of (or deny them!) that civic membership. To the contrary, the preservation of their autonomy is predicated upon their continued membership to the State, which recognises and guarantees their autonomy. In other words, it is only through the State that members of a religious group accede to genuine autonomy without dominating others because it is in the State they act as co-creators of the general will on an equal footing with their compatriots who do not share their religious beliefs.

This is where we see how quietist separatism differs from, and ultimately undermines, the principle of separation. If a group forms a community of rigorous religious commitment which not only runs counter to the social norms dominant within the society in which they live, but also undermines the laws of the State in which they live, then that group places itself outside of the general will which is the recognition and guarantee of their own autonomy. How can they appeal to the respect and protection of the State if they themselves do not respect and protect the laws agreed to through the institutions of civic government? As Johan D. van der Vyver writes, “Freedom of religion or belief does not indemnify its repositories against prosecution for criminal conduct or against administrative control in the general

interest. Fiscal fraud, extortion, and false advertising ought not to escape the power of the sword simply because such criminal conduct emanates from, or is legitimised by, their perpetrators under the guise of religion".¹³ Without going to say as to demand immunity for these kinds of crimes, some quietist separatists will nonetheless argue that they are content to provide for their own protection and subsistence independently of the State; and in fact, religious communities do organise and fund their own private networks of security and solidarity. But in this case, they are already on the path to cessationism. Nothing prevents a community (religious or otherwise) from organising supplemental services to those provided by the State; but these cannot take precedence over or replace those mandated by the general will. Separation of Church and State establishes a sphere of autonomy for religious groups, but such spheres of autonomy cannot be established autonomously from the State (i.e. established independent of the general will). Quietism becomes separationism when it unilaterally defines its sphere of autonomy. In such cases, the State is justified in trying to bring such groups back into the social contract.

The risk of separatism in restricting autonomy

That being said, it is also possible for the State to push religious groups out of the social contract; this is the case when the State does not genuinely express the general will but rather is instrumentalised by a faction in order to impose its will on society as a whole or on particular groups. Rousseau had foreseen this political failure in his theory of State and some recent scholars have identified this failure with the growth of the modern welfare State, which, on their account, results in the legal codification of particular social norms which place an undue burden on religious groups.¹⁴ Indeed, as dominant social norms shift increasingly away from religious norms in secularised societies and as popular demand grows for these shifts to be more fully expressed in the law, it may become more difficult for religious groups to pursue a form of autonomy that does not fall foul of separatism. Legal tests of proportionality or necessity, which rest upon

socially-contextualised discernment, may tend to restrict the scope of religious liberty in light of these social changes. To better appreciate this point, we can return to President Macron's speech cited in the introduction of this article. Illustrating his idea of religious separatism, Macron cites four scenarios which he considers to be beyond the scope of legitimate autonomy which religious groups should expect:

“In the Republic, it is not acceptable to refuse to shake hands with a woman because she is a woman. In the Republic, we cannot accept that someone refuses to be treated or educated by someone because she is a woman. In the Republic, it is not acceptable that someone should be denied schooling for reasons of religion or belief. In the Republic, we cannot demand certificates of virginity to get married.”¹⁵

In 2020, when President Macron delivered this speech, these acts did not fall under the rubric of religious separatism as I defined the notion here. A person engaging in one of these scenarios would certainly have been outside of the dominant social norm, but in so doing they would not have disrupted public order or undermined State sovereignty. However, the intention of the French President (and the effect of his 2021 law) was to narrow the scope of religious autonomy such that these scenarios would constitute acts of separatism.

Conclusion

My aim in this brief article was to clarify the notion of religious separatism and to distinguish this notion from the principle of separation of Church and State. In so doing, I also hope to have shown that a critical examination of religious separatism can supplement our existing understanding of the principle of separation. What distinguishes these two notions is 1) that the principle of separation must be practised within society and is not a pretext to secede from the commonwealth; 2) that the principle of separation requires that State establish the boundaries and terms of separation; 3) that autonomy under the principle of separation

does not relieve religious persons of their civic membership in the State. Lastly, I noted that public authorities run the risk of creating new forms of religious separatism when they restrict religious autonomy by codifying social norms into law. This last point is not intended to condemn all socially innovative legislation. I do not agree with those who would hold the principle of separation as a reason to dismantle the welfare state. That being said, their warnings should be taken into account if we want to protect the principle of separation between Church and State, and guard against the proliferation of religious separatist movements.



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The sources referred to within this article can be found on page 153.

THEMES

RELIGIOUS FREEDOM: A MULTIFACETED GIFT TO HUMANITY

To make religious freedom for all an imperative right.

Dr. Ganoune Diop

International Religious Liberty Association (IRLA)

There is more to religious freedom than meets the eye. While belief in religious freedom is as old as religion itself, it has only been in the last 250 years that nation states and the international community have more clearly expressed their commitments to preserving this fundamental human freedom. “The American experiment,” written into constitutional guarantees in 1789–1791, clearly articulated a key understanding of this freedom by formally separating church and state, and forbidding legislatures to make any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” Other constitutions soon reflected similar understandings, but the consensus about religious freedom took longer to develop in the international community.

One catalyzing organization in the development of that international consensus has been the International Religious Liberty Association (IRLA), which has a fascinating history and story. dating from its charter in 1893. The context that prompted the creation of this religious liberty association was proposed legislation in the United States Senate

that would have directly violated the constitutional guarantees of the First Amendment.

In 1888, Adventist leaders opposed two bills introduced in the US senate by Senator Henry W. Blair of New Hampshire. The first bill called for a promotion of Sunday, understood as the Lord's Day, a day of rest, whose observance the bill was supposed to impose as a national requirement. The second bill proposed a constitutional amendment requiring the nation's public school to teach the 'principles of the Christian religion.'

One of the leaders among Seventh-day Adventist pioneers, Alonzo, T, Jones, a future editor of the Adventist Review, even testified to the Congress to stop Sunday law and the proposed provision to make America into a Christian nation. It was, as he clearly described it, a religious liberty issue.

One year later in 1889, Seventh-day Adventists created an association in order to promote religious liberty. It was called "The National Religious Liberty Association." This movement was amplified in 1893 when the association expanded to become the International Religious Liberty Association.

Engaging political and religious actors at the beginning of Seventh-day Adventist church existence became a deliberate choice. Some would say that doing so was a necessity if the Seventh-day Adventist church was to be credible and relevant in the public space. Promoting religious liberty was meant to benefit all. Seventh-day Adventists understand religious liberty as a universal human right that cannot be restricted to a group at the exclusion of others.

Today, the discipline of engaging the international community, including both global and national institutions, to promote the foundational and pivotal position of religious freedom is still vital.

What makes this freedom so compelling?

A Growing International Consensus Because of Tragic Events

Significant global geopolitical events altered the history of our world in significant ways. Two world wars in the 20th century prompted the human family to reassess its moral compass. The enormous loss of human life

challenged the accumulated traditions of centuries: 16 million deaths during WWI, and 60 million deaths during WWII.

Critical questions that could no longer be ignored were squarely in the moral vision of the international community. What is the value of human life? Why so many senseless killings?

What is the measure of human dignity? How could lives be either privileged or abused because of valuing grounded on racial, ethnic, cultural, political, or even religious hierarchical constructs?

Are there principles—moral principles—which can serve as barometer or reference points in human relations, states engagements and international norms?

The Universal Declaration of Human Rights, adopted by the United Nations in 1948, was set to play such a role—a guiding compass regarding what really matters when in protecting human life, human rights, and human responsibilities. Key among these rights, one which in fact undergirds all rights, is freedom of religion or belief. Article 18 of the UDHR states:

“Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

International covenants and national constitutions make a helpful distinction when it comes to freedom of religion of belief. When it comes to religious freedom, a helpful distinction must be made because clear expectations are conducive to stability.

There are two aspects to religious freedom:

– The internal forum is connected to the absolute right to believe according to the dictates of one’s conscience. There should be no coercion whatsoever regarding this aspect of freedom. It is freedom from being forced to believe or not to believe. This aspect of religious freedom is absolute.

– The external forum is the external expression of one’s faith in the public space. This aspect of religious liberty may be subjected to restrictions. The International Covenant on Civil and Political Rights, Article 18 (3), specifies in the following:

“Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” [ICCPR Art. 18 (3)].

In the current context of the Covid-19 pandemic therefore, it is a matter of public health and safety to limit freedom of assembly for example. It just makes sense to stop the spread of the virus and thus save lives.

What follows is an attempt to explore the multifaceted dimensions of freedom of religion or belief, at personal, interpersonal, societal, national, and international levels.

International Recognition and Formulation of Religious Freedom

Freedom of religion or belief is explicitly recognized in international law through the UN Charter; the International Covenant on Civil and Political Rights; the Helsinki Accords; the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the African Commission on Human, and People’s rights; and in many other institutions’ working policies.

The two most famous declarations about religious freedom are found as Article 18 in the Universal Declaration of Human rights (UDHR), and as Article 18 in the International Covenant on Civil and Political Rights.

Fundamentally, religious liberty, religious freedom, or freedom of religion or belief, according to the international legal nomenclature, is an indispensable and incontrovertible tool for developing awareness in delineating the parameters of what it means to be human and humane. While

considering freedom of religion or belief from legal, political, social, and cultural perspectives, our fundamental non-tradable and nonnegotiable thesis is that religious freedom speaks not only to the humanity of every person but also to the sacredness of human beings. This presupposition is the foundational pillar of religious freedom from a faith-based perspective. That is the spiritual root of religious freedom.

The feature of human experience that determines the locus of this infinite value of every person is human conscience. Ingrained in our human consciousness and conscience is the need for freedom and self-determination for every human being capable of mature rationality.

Defining Our Terms

Religious Freedom is first a freedom. It is part of a cluster of interrelated, interdependent, and indivisible freedoms. It is also a compound freedom that is inseparable and central to all other fundamental freedoms.

“The logic is the fact that religious freedom is a compound liberty, that is, there are other liberties bound within it. Allowing the freedom of religion entails allowing the freedom of speech, the freedom of assembly, and the liberty of conscience. If a regime accepts religious freedom, a multiplier effect naturally develops and that pressures the regime toward further reforms. As such religious liberty limits government (it is a ‘liberty’ after all) by protecting society from the state. Social pluralism can develop because religious minorities are protected” (Hitchen, as quoted by Carter 2017).

Religious freedom can be defined as the right to profess, practice, and propagate one’s beliefs without coercion, intimidation, or manipulation. Freedom of religion or belief includes the right to wear symbols, and to display them in the public space. It is also the right to possess or to own property devoted to religious or philosophical matters.

Consequently, freedom of religion or belief is the right to build institutions as expressions of one’s deeply held convictions. Religious liberty includes the right to build sacred spaces designed to promote one’s con-

victions, worldview, and values. It is also the right to perform rites and rituals to signify one's beliefs.

It is also the right to celebrate and/or to set aside sacred times to express exclusive allegiance to God: for example, a day when all is submitted to God's sovereignty: one's time, reflections, and activities or rest as in Judaism or in Seventh-day Adventist faith tradition.

This freedom signifies the following realities:

1. A political principle. At a most basic level, freedom of thought, conscience, religion, or belief is a political principle which undergirds other political principles, such as consent of the governed, limited government, rule of law, democracy, and representative government;

2. A legal provision in international law, enshrined in the UDHR, European Union, African Union agencies, OAS, ASEAN, other international institutions, and national constitutions;

3. A compound freedom. It presupposes freedom of thought, conscience, belief, conviction, expression, assembly, and association.

4. A human right. The rights aspect is often emphasized, but there is more. The human aspect should not be neglected for anthropological, theological, philosophical, and existential reasons.

5. A sign of our humanity, not only because of our rationality but also because of our sense of moral and ethical responsibilities. Moreover, the pivotal position of religious freedom grounded on freedom of conscience allows it to provide a normative basis for what it means to be a human being. It has both individual and corporate dimensions such as peaceful coexistence and cooperation.

6. A symbol of our interconnectedness, because of what we have in common, not just consciousness but also human conscience.

7. A seal of sacredness. In monotheistic religions, human beings are sacred, temples of the divine, created in the image of God; or representatives of the divine; or connected to the divine, as stipulated in Asian religions.

8. A call to solidarity, tolerance, and respect, based on the sacredness of every human being.

9. A moral imperative. Freedom of conscience religion, or belief is a deterrent against authoritarianism or totalitarianism. It is against the trampling of human dignity, against the reduction of human beings to objects which one can dominate, domesticate or subjugate.

10. An expression of the immeasurable value of every human being. Freedom of religion or belief is a sign signifying the need to protect human beings from being instrumentalized, used, abused, and dehumanized. Human beings have infinite value.

Widening the Scope

Freedom of religion or belief is thus a sign of our humanity, and a symbol of the interconnectedness of the human family. It is intrinsically a call for human solidarity. This freedom, based on the inviolability of human conscience, is also an antidote against the trampling of human dignity and against the abuses of dominance, dominations, and dominions.

As such, it is purposed to foster tolerance in the dignity of difference without the need of uniformity in belief. Promoting religious freedom is to equip people with the foundation for the respect of every human being. Religious freedom should be fostering responsibility based on the imperative of human solidarity. It positions us to see others from a benevolent disposition, to embrace their infinite mysterious, unquantifiable, and immeasurable value.



What Faith Tells Us

From a faith-based perspective, freedom of religion or belief is primarily understood as a divine attribute. Only a being totally autonomous and dependent on nothing outside of itself can claim absolute freedom. Nonetheless, the idea of creation in the image of God, reflected in the language of the Book of Genesis, leaves room for reflecting divine communicable attributes such as freedom.

From faith's perspective, religious freedom is best understood as part of the image of God. It is deeply connected to the issue of free will. The justification of the importance of free will and freedom of choice is the fact that there can be no genuine covenant without the freedom to choose to enter a relationship. Love cannot be forced. God gives us a choice. We have not been created as robots, programmed machines who will automatically do things expected under certain circumstances.

Today, in our world, there is a growing awareness of the need for a space where a consensus can be reached regarding the importance of all human beings. There is a growing awareness of the preciousness of human life, the mystery of human life, the incontrovertible factoring in of the human dignity of every person. This awareness is—obviously—fiercely contested by supremacist ideologies, but it is still part of the world ethos.

Still, “an urgent need exists for more conceptual clarity concerning freedom of religion or belief, not only in order to defend this right against inimical attacks from outside, but also to strengthen the consensus about the significance of freedom of religion or belief within the human rights community itself.” (Heiner Bielefeldt (2013, 35).

This need for consensus is obviously true and relevant for the religious communities as well as part of civil society. The unique importance of human conscience, the inner-sacred space which characterizes every human being, binding our very existence and relations with others on ethical and moral principles and values clearly needs greater and more public affirmation. Without such affirmation and protection, people are

vulnerable to being instrumentalized and downgraded to objects that are used and abused.

Freedom of religion or belief functions as a sign and an ever-present reminder of the need to relate to every person with respect and courteous circumspection before the mystery of every person. That mysterious inner world is rich with beauty and hidden treasures, but also displays traumas and wounds that make life difficult for many.

Every human story is complex. No one should function as prosecutor, jury, and judge in an extra-legal “courtroom,” distributing sentences against others because they are different, or because they do not fit our system of references and preferences. Acceptance of other people’s right to exist in the dignity of difference requires a pause in each person, a relinquishing of the self-appointed indecency to judge others without knowing their stories. It requires hearing from them on their own terms.

Religious freedom, when believed and embraced as part of one’s lifestyle, is part of a benevolent disposition toward every person one meets. It becomes an integral part of a lifestyle characterized by a humble attitude before the mystery of the other. Every human being one meets is in a unique mysterious connection with the Creator. This relationship is sacred and intimate. It may be at various stages of realization, but it is nonetheless irreducible to any categorization. It should therefore never be desecrated by disruptive intrusions by anyone. This unique sacred space that is conscience, is irreplaceable and irreproducible. It should not be violated. Judging, criticizing, putting people into boxes, cataloguing them, and disrespecting the sanctity of their lives is unacceptable abuse, whether those acts occur in global, national, community, or personal theaters. All humans are sacredly endowed: children, youth, adults, elderly people, and members of all races, ethnicities, and faiths.

What If We Embrace Religious Freedom?

Religious freedom or freedom of religion or belief has been difficult to embrace because of the implications it requires for how we live and relate

to others. But if this freedom were embraced, there would be no genocides, no conquest, no subjugation of people, no domination and domestication of other people, no human trafficking, and no slavery, contemporary or ancient. There would be no territorial annexations depriving people groups and individuals of their space of living and resources.

States would not use anti-blasphemy laws and anti-conversions laws to reprimand, repress, persecute, imprison and murder dissenting voices. The dignity of difference would be celebrated if no one is harmed, hurt, humiliated, and ostracized because they believe differently.

On the other hand, the right to be different would not be used to force societies to legitimize personal choices not consonant with other people's beliefs. Freedom of belief should never be used to force a belief on others.

In the religious sphere, world religions would use the power of witness and peaceful persuasion to share their convictions. There would be no coercion, forced conversions or intimidation not to convert. Christians would uplift Christ instead of forced conversions and military dominance to subjugate indigenous populations. Mission, unlike some of its painful history, would only be a commission to witness to the Prince of Peace and His call for reconciliation with God and with one another.

Insight from the Bible

An incontrovertible dimension of religious freedom is revealed in the fifth chapter of book of Galatians. The Apostle Paul argues that the whole Christian faith is predicated upon the idea of freedom. He wrote: "It is for freedom that Christ set us free; therefore, keep standing firm and do not be subject again to a yoke of slavery." He repeats this premise in v. 13:

"For you were called to freedom, brethren; only do not turn your freedom into an opportunity for the flesh, but through love serve one another. For the whole Law is fulfilled in one word, in the statement, "You shall love your neighbor as yourself."

In this context, the Apostle Paul climaxes his argument with a delineation of “the fruit of the Spirit.” The ultimate goal of freedom, religious freedom, and other freedoms as well, is love. More specifically and comprehensively, the goal of freedom is the fruit of the Holy Spirit: love, joy, peace, patience, kindness, generosity, faithfulness, gentleness, and self-control” (Galatians 5:22–23).

If these things are believed; if this tree matures; if this fruit appears, we see clearly that we have individual, interpersonal, social, political, economic, and spiritual responsibilities which we must act to fulfill. Faith requires nothing less of us.

Persons from many and differing faith and philosophical traditions can rally to promote such pivotal and incontrovertible freedom, for peaceful coexistence, for the healing of human relations and for societal health through the dignity of difference.



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THE PRINCIPLE OF COOPERATION AS AN INSTRUMENT FOR MANAGING RELIGION IN SPAIN

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Introduction

When we refer to the right to religious freedom – the first of the freedoms, in the words of Jemolo–, there is no doubt that we are referring to a right that is inherent to human nature, a right that must be qualified as fundamental and that has always been recognised alongside the right to freedom of thought and conscience. However, these freedoms would never have a practical effect if they were not recognised by legal systems.

And the fact is that, although the thoughts, beliefs or religion of individuals are rights that belong to the intimate sphere of individuals, from the moment they are associated with external activities, the State must guarantee and protect them. In this context, Spain is one of the countries that has tried to grant individuals and religious denominations a legal framework within which they can develop and exercise their right to religious freedom by building a system of ecclesiastical law in which the right to religious freedom of all individuals is recognised, regardless of the belief they profess, and within which all denominations enjoy a similar status within the domestic legal system.

With the advent of democracy and the promulgation of the Constitution in 1978, there was a change in the way the State understood the religious phenomenon, which brought with it the recognition of a series of fundamental rights, including the right to religious freedom. A fundamental, public and subjective right, as the Constitutional Court pointed out in one of the first rulings it handed down, of individual and collective ownership, which is, in turn, divided into others. Religious freedom is not only about being able to pray or worship, but is also about the right to celebrate marriages or funeral rites in accordance with beliefs, to celebrate holidays, to have religious education in schools, to have religious assistance in hospitals, prisons and the armed forces, etc...

Article 16 of the Constitution guarantees freedom of ideology, religion and worship for individuals and groups, subject only to the maintenance of public order. It states that no one may be forced to declare their beliefs and, lastly, establishes as a model a non-denominational state in which the religious beliefs of society will be taken into account and where cooperative relations will be maintained with the Catholic Church and other religious denominations.

In addition, four principles are deduced from the Constitution which are to guide the relations between the State and the Churches: the principle of religious freedom, which must be understood as an attitude adopted by the State with regard to the religious phenomenon; the principle of neutrality and non-denominationalism, which underlines the State's impartiality towards different religious options and implies that professing a religion is not a freedom or right that the State can exercise; the principle of equality and non-discrimination on religious grounds, both for individuals and groups; and, lastly, the principle of cooperation, which is what gives meaning to our system of State-Church relations.

The principle of cooperation is instrumental and is underpinned by the fact that public authorities must not only guarantee an area of free immunity and repression of conducts that violate or interfere with the

exercise of fundamental rights, but must also undertake the task of promoting these rights.

Thus, religious beliefs become an object of specific and privileged attention for the State, although cooperation with denominations should be ensured in a way that protects the freedom and equality of both religious groups and non-believers. The State, in order to be faithful to this principle, cannot consider religion as a simple matter of conscience that belongs to the intimate and private sphere of the individual, but rather value it positively, by facilitating and promoting the conditions that make it possible to exercise this right. For this reason, it must aim to reach an understanding with religious denominations in order to regulate those expressions of the religious phenomenon with legal significance in state law.

In order to comply with this mandate, since the promulgation of the Constitution, a model for managing religious diversity has been established in Spain, which has been defined as a 'positive secularism model' by our Constitutional Court in several rulings. A model which, moving away from denominational and secular orientations, enshrined freedom as the keystone of the system.

The signing, in January 1979, of four agreements with the Catholic Church establishing a new legal framework for relations with the State made it necessary to design a model for relations with the rest of the religious denominations established in this country that was in line with the aforementioned constitutional principles.

For this reason, the Organic Law on Religious Freedom (LOLR) was enacted in 1980, being a key tool to make this model possible. In my opinion, the legislator's intention was to regulate the religious phenomenon in those aspects that had not been contemplated at the time by the constituent, but also to define how to apply the constitutional principle of cooperation, either by offering the possibility of legislating unilaterally or by means of agreements, as was already the case with the Catholic Church. To make this possible, its articles set out and regulate the different manifestations of the right to religious freedom that it

recognises for individuals and communities, and which revolve around the individual and collective content of this right and the promotional function of the State; the limits to its exercise and its jurisdictional protection; the legal status that religious entities will enjoy; the possibility of signing cooperation agreements; and the creation of an Advisory Commission on Religious Freedom.

Throughout its more than forty years of existence, the law has been criticised for being too short, with only eight articles. But, against this criticism, I have to argue that this is precisely where its value lies. Its brevity has endowed it with a flexibility that has allowed it to gradually adapt to a multi-religious social reality, which at that time was practically non-existent in our country, creating a series of tools for the State to effectively cooperate with religious denominations, as provided for in Article 16 (3) of our Constitution: the creation of a Registry of Religious Entities, which recognises their civil legal personality (reformed by RD 594/2015, of 3 July), the Advisory Commission on Religious Freedom (reformed by RD 932/2013, of 29 November) and the possibility of concluding cooperation agreements between religious denominations and the State.

With the benefit of hindsight given to us by the time elapsed since its enactment, we should point out that the LOLR was pioneering among several countries around us; it became a model for managing relations between the State and religious denominations in the countries that joined the EU after the fall of the Berlin Wall; and it anticipated some of the approaches that have been proposed by the European Union for managing religion.

The cooperation of the State with religious denominations as an instrument for managing religion

As we have pointed out, the State, in accordance with the constitutional mandate of Article 16 3. and in compliance with the principle of equality and non-discrimination, took as an example the model of relations established with the Catholic Church in 1979. These agreements were extremely important, not only because of what they meant for the relations between the State

and the Catholic Church, but also because the existence of these agreements determined the extension of this peaceful model to other religious confessions that had been registered and had become noticeably ingrained.

The Spanish Episcopal Conference also played an extremely important role in the development and implementation of the 1979 Agreements between the State and the Catholic Church, since the text of the 1979 Agreements required further legislative development and it was foreseen that their interpretation would be carried out by both signatories. In this context, and since 1981, various joint State-Church Commissions have been operating, with different compositions and functions, but always with the aim of promoting the harmonisation of criteria for interpreting the 1979 Agreements and to solve all the questions that arose during this period.

In the case of other religious denominations, the State decided to establish cooperative relations through two different and, in some cases, complementary channels. On the one hand, through the unilateral legislation technique, but also – and this was the great novelty of our ecclesiastical law system –, through the signing of agreements. This possibility, as mentioned above, was provided for in Article 7.1 of the LOLR and established, as requirements, that the religious denomination be registered in the Registry of Religious Entities and that, considering its scope and number of believers, had become ‘noticeably ingrained’.



In 1992, agreements were signed between the Spanish State and the Federation of Evangelical Religious Entities of Spain, the Federation of Jewish Communities of Spain, and the Islamic Commission of Spain, creating a specific framework of rights for denominations in which the rights already enjoyed by the Catholic Church as a consequence of the 1979 agreements were inevitably regarded as a reference.

In this context, the text of the three agreements offers the possibility of obtaining tax benefits; providing religious assistance in the Armed Forces, Hospitals and Prisons; the possibility of religious education being taught in schools; the feeding and sacrifice of animals according to certain religious rites; the civil effectiveness of marriages celebrated in a religious manner; burial according to certain religious rites or the establishment of religious holidays in the work calendar. But, as in the case of the Catholic Church, all of this is subject to subsequent legislative development, which in some cases already existed and in others has been developed or is still pending.

Despite the difficulties in developing the text of the agreements at first, the progress made since the signing of the agreements has been more than outstanding. Currently, from the point of view of State legislation, marriage celebrated in a religious manner is recognised as having civil effectiveness; religious ministers have been integrated into the general Social Security system and granted a status similar to that of employees; religious assistance in the Armed Forces and prisons is recognised, although there is no financial commitment from the State to pay for it; the right of access to public media is recognised; the same fiscal and tax benefits and exemptions that the Catholic Church enjoys are recognised, although a direct financing system is yet to be established; and in the labour sphere, efforts are being made to ensure that collective bargaining agreements recognise religious holidays, weekly rest and take into account the specific nature of the celebration of holidays such as Ramadan, in application of the provisions of European Directive 2000/78 on non-discrimination on religious grounds by seeking to reconcile the interests of Muslim workers and the rights of employers by applying the principle of reasonable accommodation.

Moreover, the need to legislatively develop certain matters, together with the specificity of our political organisation system, has required the agreements system to operate on various levels. Therefore, Autonomous Communities, in the matters in which they are competent, can legislate but also have the possibility of signing agreements with these religious groups. In fact, in recent years, several agreements have been signed by some communities with religious denominations that had already signed agreements at a national level on the conservation of historical and artistic heritage, religious education in schools and religious assistance. Even local councils and other State-dependent agencies have established agreements on matters within their competence.

And, although it may seem that our system establishes a model in which only denominations with agreements are able to obtain benefits, the legislator wanted denominations that are only recognised as having become ‘noticeably ingrained’ to also enjoy certain benefits. In this context, the enactment, in 2015, of the Voluntary Jurisdiction Law reformed the Civil Code, allowing religious marriages celebrated according to the rite of these denominations to be registered in the Civil Registry and to have civil effectiveness.

But there is still one last tool, created by the Ministry of Justice in 2004 and which is now under the Ministry of the Presidency, Relations with Parliament and Democratic Memory – the Pluralism and Coexistence Foundation. This public Foundation reinforces the idea of the participation of minorities in the processes of political and social participation and, therefore, in the management of the religious phenomenon.

In this context, the Foundation aims to promote religious freedom through cooperation with minority denominations, especially those that are noticeably ingrained, and to be a space for research, debate and implementation of public policies on religious freedom. All of this is geared towards the normalisation of religious diversity and the creation of an appropriate framework for coexistence. From this perspective, the goals of the Foundation’s work are as follows:

a) In relation to religious minorities: Favouring the visibility and participation of minority denominations in social construction processes; fostering dialogue between minority denominations and institutions so that the people who belong to them can fully exercise their religious freedom; and promoting activities that favour knowledge, dialogue and rapprochement between denominations and between denominations and society.

b) In relation to society: Encouraging the creation of an informed public opinion, respectful of religious freedom, pluralism and the processes for improving coexistence.

c) In relation to public administrations: Fostering the social and institutional recognition of religious entities belonging to minority denominations; and promoting attention to religious diversity in the different public management areas.

Conclusions

It is quite clear that much remains to be done, but it is also true that, in a very short time, the Spanish society has equipped itself with a legal framework in which individuals and groups can freely exercise their right to religious freedom. The design of this system, based on the constitutional principle of cooperation, was not original, but it was a revolution in a country that was coming from a state denomination model. Through this 'positive secularism' model, the State has not only sought to manage religion in order to comply with the provisions of Article 16 of the Constitution, but has also given a leading role to religious groups as interlocutors of the civil society to which they belong. Not only to manage and respond to the demands of believers, but also to create a safe space of coexistence within the multi-religious community that our society has become.

The recognition of legal personality for religious denominations registered in the Registry of Religious Entities not only grants them rights but also enables their participation in political and social processes so that their contribution can be useful for, among other things, combating the marginalisation and exclusion of such groups vis-à-vis the dominant

religion or preventing attacks against them, through the adoption of legislative measures.

The Advisory Commission on Religious Freedom has become a space in which interreligious dialogue is institutionalised and promoted, at least among the denominations that have become ‘noticeably ingrained’ in our country, allowing the Administration, in dialogue with them, to manage religious diversity in our country more effectively. This idea had already been advocated at the 2013 Forum on Minority Issues, which noted that “States should consider creating or facilitating the establishment of national and regional institutions aimed at fostering dialogue between religions, as well as projects that promote a culture of understanding and a spirit of acceptance”. The establishment of formal and informal institutions, at national and local levels, and platforms for dialogue where representatives of religious groups could meet regularly to discuss issues of common interest’ should be encouraged and promoted at the community level.

Through these types of initiatives, “the potential of religious and political leaders to contribute to building tolerant and inclusive societies and to initiate and support these efforts and activities should be harnessed”, but we should also keep in mind the role that young people and women can play. As I have pointed out on other occasions, “this type of minority participation becomes an essential condition to ensure a collective identity, the sense of belonging to a community, social cohesion and, ultimately, safety”. Thanks to the legal framework that has been created, individuals can grow as believers in both the private and public spheres, while the public authorities, exercising their promotional function, allow the exercise of the right to religious freedom to become real and effective within the limits of public order. Consequently, the individual’s religious affiliation is pushed to the background and the term “citizenship” takes centre stage. It is this term, citizenship, i.e. the sense of belonging to a political community, which will recognise the individual’s fundamental rights and enable him/her to freely exercise them.

But to make this possible, it is necessary to engage the different social partners involved in a way that gives legitimacy to the process. It is not

about giving centre stage in this process to every believer or religious group that believes it has the right to be in that position, but rather about coordinating mechanisms and representation systems that allow the vast majority of them to be represented or, at least, to be heard. It is about building a governance model in the management of the religious phenomenon in which social partners can truly take part in the decisions that affect them. To this end, we find the dialogue and cooperation between the State and religious denominations to be crucial.



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The sources referred to within this article can be found on page 154.

FREEDOM OF CONSCIENCE AND RELIGIOUS FREEDOM IN FRENCH PUBLIC LAW

Pedro Torres

Executive Secretary, AIDLR France

Jean-Marc Sauvé, vice-president of the Council of State, expressed it well when he spoke about the French Constitution in the collective study carried out, on the occasion of the 15th anniversary of the Supreme Administrative Court of Lithuania, expressed it well when he spoke about the French Constitution.

The very first article of the Magna Letter of the Fifth French Republic, promulgated on October 4th, 1958, begins with the following statement: “France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs.”¹

In the frontispiece of the current French Constitution, Article 1 affirms, after its unity, the secular character of the French Republic, using the term “*laïque*” (lay or secular) in French. These provisions affirm both a principle of religious freedom, the equality for citizens and a principle of neutrality and impartiality for public persons with respect to all religions.

This neutrality should be the basis, but in practice, there are different tendencies towards the passive neutrality or traditional laicity, and the militant laicity, also named “*néo-laïcité*”, which promotes the neutrality of the government by imposing some principles that in some cases could conflict with religious beliefs, such as the prohibition of wearing religious symbols in public spaces.

An example of non-pondered consequences

There is an example of non-pondered consequences which could show between lines that having one hidden idea behind a secular legislation regulating religious practices from a secular point of view, restricting the religious liberties, could harm others while thinking just in one group.

The context starts with the prohibition of wearing an ostentatious outfit or clothes that shows one's appurtenance to a religion in any public space was approved in French law, more exactly in the law n° 2004-228 of March 15, 2004, framing, in application of the principle of secularism, the wearing of signs or dress manifesting a religious affiliation in public schools, colleges and high schools. The first article reads: "An article L. 141-5-1 is inserted in the Education Code after article L. 141-5 and reads as follows: 'Art. L. 141-5-1. —In public schools, colleges and high schools, the wearing of signs or clothing by which pupils ostensibly manifest their religious affiliation is prohibited.'"

This law was lately expanded with the interdiction of the *nīqab* with the law n° 2010-1192 of October 11, 2010, which the article 1 reads: "No one may, in the public space, wear clothing intended to conceal his face." This was extended for girls at school, as well as female assistants at extra-school activities.

It is true that this law also specifies that the religious public places or spaces are the exception of the law: "The prohibition on concealing one's face in the public space cannot, without excessively infringing Article 10 of the Declaration of 1789, restrict the exercise of religious freedom in places of worship open to the public".² But since the use of the wording "excessively infringing" is included, the subjectivity is present, and an interpretation of different cases could be required. It could be concluded that in this wording it is admitted, in a degree, that Article 10 of the Declaration of 1789 is infringed in different degrees, depending on the situation, and that depending on the "degree" it could be "acceptable." The question is, when it is "too much" and when it is not, and, justifiable. No "degree" should be acceptable.

The collateral damage and consequence arrived later. It became more visible after this news article was published in *Le Figaro*: “Catholic nun turned away from nursing home for wearing veil and habit.”³ It became more difficult after this kind of news to think that the real principle behind all these legal actions is exclusively the neutrality of the State, rather than the fear of the increasing presence of a foreign religion, albeit minority one so far.

If a principle is well established, understanding the difference between proselytism and religious practices that respond to the freedom of living and practicing one’s faith (according to article 18 of the Universal Declaration of Human Rights—UDHR), for instance, covering oneself (either by a *kippa*, or a *hijab* or a veil of a Catholic nun) responds to the personal need and a personal demonstration of respect to God rather than an effort of proselytism.

Thus, the misunderstanding of what underlies the religious behavior suggest that a law could easily affect other religious groups not considered (or targeted) at the moment of redacting that law, if the legislators had in mind (intentionally or not) a single religious group.

A discussion behind the scenes

But behind these solemn proclamations of the French Constitution, Article, 1, are also the traces of a sometimes-fierce discussion between the supporters of a state religion and the defenders of a Republic free of any religious tint, those who have been called the concordatory (*concordataires*)⁴ and the separatists⁵.

The notion of secularism can appear ambiguous, each one always having the tendency, in this field, to identify his own subjective vision to laicity in the absolute⁶ as a firm opposition to the Catholic Church in the beginning of the twentieth century, and today can also be diluted or extended in the opposition against religious extremism linked to terrorism.

The basis or foundations for this separation between State and Religion it is found much earlier, in the law of December 9th, 1905, also named,

the “Law of liberty”⁷. That law was the legal definition and means of regulation to preserve any religious activity outside of government and the neutrality of the State.

That law is also on the 10th article of the “Declaration of the Rights of Man and of the Citizen of 1789” (*Déclaration des droits de l’homme et du citoyen de 1789*), which says: “No one shall be disturbed for his opinions, even religious, provided that their manifestation does not disturb the public order established by the Law.”

The French Constitution dating from 1958 relays on a law of 1905 based on another text from 1789 for the articulation of a definition of laicity, but not always in full harmony with the article 18 of the Universal Declaration of Human Rights (UDHR).

Later, in the Universal Declaration of Human Rights of December 10, 1948, Article 18 goes even further: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

The neutrality of the State implies that everyone can practice the religion of their choice. If there is a space that inhibits the religion and any practice which is not related to proselytism, then a person finds themselves restricted to fully live Article 18 of the UDHR, and as it could be concluded in the wording “excessively infringing” as seen before.

The French laicism was born in order to protect the religious freedom and to preserve the neutrality of the State, but the secularism and fears have pushed forward the lines to the point that laicism could be perceived as a restriction of any religious expression of any kind, beyond that of State authorization, trying to forbid individuals to express themselves in public areas, which is a part of the fundamental rights (Article 18 UDHR). It is not clear where the line of neutrality began to face, yielding to religious restrictions and inequalities in certain areas forced by the laws.

Another Example: The Sabbath Observers

I find that, this objective neutrality that should give place to the Equality (*Égalité*) advocated by the Republic of France, does not always allow everyone to exercise not only his liberties in its fullness, but also his rights when they come into conflict with his convictions and religious principles, as, in the case of the Adventists and Jews, and the observation of the Sabbath on Saturday. It is not the same the principle of equity, that of equality.

One of the main “practices” or “religious observations” for Adventists and Jews is the observance of the Sabbath on Saturday. The Sabbath-observer has the choice to follow his or her conscience, but sometimes this means not enjoying certain rights, or even experiencing administrative consequences regarding or compared to other citizens.

In other countries, when the government or public institutions are facing certain situations related to this issue, the government seeks a solution that conciliates the equal opportunity principle, respect for conscience and religion and the practice of “observance” or worship, as well as the neutrality of the State.

This neutrality is not necessarily the imposition of a single option, as is often the case in France, but can also include some flexibility, adopting solutions to each case such as guaranteeing the right of access to a student to an exam, but in a way that does not imply an advantage over other candidates. Several formulas can be found, such as the case of Spain, where the Supreme Court upheld a Seventh-day Adventist woman’s right not to undergo an exam on Saturday⁸. But it is necessary to have a willingness to understand the liberal conception of the principle of laicism to apply this principle in France, and to ask the public administrations to provide adapted solutions to each case, preserving the equity and the equality respecting the Religious Liberty of each individual.

The reality of the religious paradigm today does not correspond to that of the early twentieth century, comprising a broader and more varied landscape.

Rigidity and intransigence in defending certain public spaces, including educational spaces, against a form of proselytism, disguised or not, can be mistaken for a limitation of the rights of the individual to exercise his or her freedom of worship, including the observation of the day of religious worship.

When any tolerance or effort to find a conciliatory solution is rejected, on the grounds of “equality” while the case is a legitimate religious objection of what should be the exercise of a right such as Religious Liberty, this refusal to tolerate a legitimate difference becomes an intransigence that leaves equality far behind, and as soon as equality is blurred, it is difficult to find the freedom advocated, and it is difficult to be considered by another one to be part of a fraternity (*Liberté, Égalité et Fraternité*).

I am convinced that in many cases, with the excuse of treating all citizens equally in the name of laicity, administrative convenience takes precedence in order to avoid extraordinary efforts to adapt circumstances or solutions to all types of citizens while respecting religious plurality with its multiple manifestations.

It is more a question of administrative and therefore political willingness than modifying a principle such as laicity, which, in itself, was well conceived from the very beginning.



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CHINA: HOPES DASHED

The People's Republic of China can boast of having achieved an extraordinary turnaround in the country.

Dr. John Graz

Director of International Centre for Public Affairs and Religious Liberty (CILRAP)

My first trip to China was from May 29 to June 8, 1998. It took me from Shanghai to Wuxi, then to Nanjing and, finally, to Beijing. In each of these cities, we visited members of the Seventh-day Adventist Church, along with religious and civil authorities. I had learned not to say “the Adventist Church in China” because, officially, it did not exist. Adventists are part of the Chinese Christian Council (CCC), which was founded in 1980 and includes all the recognized Protestant churches. It became a member of the Ecumenical Council of Churches in 1991.¹ The CCC is responsible for training pastors in 13 seminaries, providing theological instruction, publishing Bibles and Christian literature, and conducting exchanges between churches in China and abroad.

The organization I knew was the Three-Self Patriotic Movement² (TSPM), a liaison body between official Protestantism and the government.³ The principles of the Three-Self Patriotic Movement are: self-management, self-financing, and self-propagation. These principles refer to the so-called “Nevius method” of missionary John Livingstone Nevius (1829–1893), taken up by Henry Venn and Rufus Anderson at the time of the Missionary Society of Churches from 1841 to 1873. The missionary objective was to make the churches in China no longer dependent on external Christian organizations.

This principle was drafted for China at the Shanghai conference in 1892. In 1954, the new People's Republic of China adopted it with the intention of

controlling the churches, giving them a patriotic, anti-imperialist, anti-capitalist dimension⁴, and isolating them from their foreign sister churches.

However, if we refer to Article 36 of the Constitution, religious freedom is officially accepted: “Citizens of the People’s Republic of China enjoy religious freedom. No State body, no social group, no individual can force a citizen to marry or not to practice a religion, nor adopt a discriminatory attitude towards a believing or non-believing citizen”. The following sentence is significant: “The State protects normal religious practices”. Thus, any practice that the secular state considers abnormal would be condemned.

These include any attack on public order, health, state education, and, above all, religious groups and affairs which are not subject to any foreign domination.⁵ In theory, therefore, religion has the right to exist in China, as elsewhere in most countries with a communist regime. There are five recognized religions: Buddhism, Catholicism, Taoism, Islam and Protestantism, all subject to control by the state and the government’s Ministry of Religious Affairs.

In this context, Adventists, who observe the Sabbath as a day of rest, enjoy special treatment:⁶ they could meet on Saturdays in Protestant churches. With all branches of Protestantism unified, it was no longer necessary to increase the number of church buildings.

My first visit to China was my initial contact with that reality. At that fruitful moment, and in the years that followed, the condition of religious freedom seemed to be improving. The reports we received, the testimonies and the regular contacts we had with the authorities all pointed in that direction. The visit of two presidents of the General Conference in 2009 and 2011 only confirmed this impression.

Adventist General Conference President Jean Paulsen said during a public greeting: “... so much has changed in China in the last two decades, and although freedom – greater freedom – is difficult to measure, I am very thankful that so much has changed in this nation.”

Two years later, the visit of GC President Ted N. Wilson, accompanied by the highest leaders of the Adventist Church, confirmed the strengthening

of our official relationship. Wilson had the opportunity to meet several thousand members, three thousands of whom were in Shanghai. Significant progress seemed to have been made.⁷ The number of members was estimated at 400,000, the vast majority of whom were women.⁸ Several newly built churches, with capacities of thousands, dared to display the Adventist Church logo.

Since 2013, however, with Xi Jinping's rise to power, things have changed.

Return to persecution

It took me some time to comprehend this. I had had good feelings during my last trip to Beijing from December 11 to 13, 2012. I had been invited, along with several American and European academics, to a symposium on humanitarian aid to religious organizations.

I had the privilege of chairing a plenary session and a meeting in front of many students. The event was exceptional. One official enthusiastically welcomed the arrival of a new Chinese spring in the field of cooperation with religious aid organizations. Everything suggested that believers could provide humanitarian aid to the poorest Chinese citizens, as was the case in many countries.⁹ Obviously, there were rules to be followed. But this opening only confirmed the impressions of my previous travels and the presence of relative freedom.

A few days later, I learned that a CCP (Chinese Communist Party) statement warned against the intrusion of religions into academia. This reaction marked a return to closed-minded politics based on atheistic Marxist ideology.

The reasons for this shift

The People's Republic of China can boast of having achieved an extraordinary turnaround in the country. I have memories of an extremely poor China with a high rate of corruption amongst the ruling classes; an image of small children starving on the roadside comes to mind. In just over fifty years, the country has emerged from poverty and become the

world's second superpower. We must always keep this in mind if we want to understand China today.

Napoleon, who had raised up France after the revolution, understood this well: "When China wakes up, the world will tremble. China was a sleeping giant." The giant has awakened, and we have to deal with him.¹⁰ But why persecute the creeds? Why not bind them to the nation by guaranteeing them the same freedoms they have in the United States, in Brazil, in Europe, in Africa...? Why relapse into the mistakes of the Soviet Union?

With the rise of President Xi Jinping in 2013, a new period of regression of freedoms began, leading to the libertarian closure of places of worship, the removal of crosses displayed on churches, and the interrogation and arrest of religious leaders.¹¹ The president called the members of the CCP to order.

In 2018, the CCP set out a five-year plan for the sinicization of religions. The aim is to promote a Chinese Christianity in the colors of Marxism. The plan includes the retranslation of some Bible passages and annotations to be more in line with the socialist ideal. Those who oppose it are condemned.

For example, in Zhejiang province, between 2015 and 2016, the authorities removed crosses from about 1,700 churches and replaced them with Chinese flags. Portraits of Jesus were banned in homes in Jiangxi and Henan provinces, and biblical quotes removed from the doors of homes inhabited by Christians. In 2019, witnesses reported that the 10 Commandments had been removed from almost all official churches and replaced with quotations from the president. The government controls the content of sermons, university students are not allowed to attend churches, and Bibles can no longer be sold on the Internet.¹³

The evangelical church of Jindengtai, located in Linfen in Shanxi Province, at the southwest of Beijing, numbered 50,000 worshippers.¹⁴ It was demolished on January 9, 2021, because there was no building permit.

On September 22, 2018, the Chinese government and the Vatican signed a provisional agreement on the ordination of bishops: a topic of high tension. This agreement was supposed to end the division of Catholi-

cism between the government-run Chinese Catholic Patriotic Association and the underground church loyal to Rome. The agreement (but the text was not disclosed) would create the United Chinese Catholic Church. The government would continue to appoint the bishops and the Pope would have the right of veto.¹⁵ This memorandum was renewed in October 2020.

The persecution of the Uyghurs, an ethnic Muslim minority concentrated in the Uyghur autonomous region of northwestern Xinjiang¹⁶, is also worth mentioning. Out of a population of about 11 million, 1.8 million are reportedly detained in rehabilitation centers. Beijing blames Uyghur activists for a series of attacks in Xinjiang, Beijing, and different parts of China, as early as 2013.¹⁷

The persecution of Falun Gong members is also mentioned

In February 2021, China's state administration issued a set of regulations on religious matters, called "Measures for the Administration of Religious Personnel." They contain 52 articles applicable to clergy, according to which official religions must be loyal to the CCP.¹⁸ Leaders must refrain from illegal religious activity and extremism. They must also put socialist principles into practice to maintain security, social stability, and national unity.

The measures came into force on May 1, 2021 and put back on the table the agreement reached with the Vatican in September 2018 and renewed in 2020 concerning the appointment of bishops. These appointments will be made under the guidance of the CCP.

Article 3 calls on religious leaders to support the leadership of the CCP, not to criticize it, not to endanger national security and not to be dominated by foreign forces (Article 12).

This policy of sinicising religion aims to make religious leaders supporters of the Marxist and atheist CCP.¹⁹

The reasons for the persecution

In my opinion, there are three reasons for the resurgence of persecution: ideology, the numerical growth of believers, and terrorism.

1. Ideology

The Chinese state is not secular. It is atheistic, committed to the promotion and defense of atheism. Any other belief is seen as a threat to its existence.

The CCP, like most communist parties in power, is inclined to tolerate only a religion limited to private life, without any public visibility. This is for fear of losing control of the masses. The fall of the Soviet Union, and the role of the Vatican and the Catholic Church, has been a great lesson for the CCP—a warning, a reference point—and it is surprising because, in the economic field, the Chinese leaders are comfortable with hard and pure Marxism, which the USSR never knew how to do, and which is the basis of their success.

2. The growth in the number of believers

Despite persecutions that peaked during the Cultural Revolution and have since reappeared, the number of believers has continued to increase. Official government figures for 2018 recognize 144,000 registered places of worship, including 33,500 Buddhist temples, 9,000 Taoist temples, 35,000 mosques, 6,000 Catholic Churches, and 60,000 Protestant Churches²⁰.

According to the Open Doors Association, there were 97.2 million Christians in 2019 compared to 4 million before 1949. At that time, Catholics were the most numerous: 3 million members compared to 1 million Protestants (700,000)²¹. According to various sources, the number of evangelicals is now close to 100 million.²²

Any sign of an increase in believers sounds like a failure for the CCP and its Marxist ideology and strategy. Systematically involving believers who refuse to be part of official bodies, enemies of the nation and agents of foreign powers is a well-known scenario in all totalitarian regimes. The Christians I have met in China are proud to be Chinese and are not at the beck and call of foreign missions. Sometimes, it is true, overwhelmed by their zeal and by the portion of freedom that the regional authorities had once given them, they built large churches without waiting for the required permits. However, one must bear in mind that bureaucracy drags out applications for a long time, demands endless lists of documents and

less glorious bribes. But the dynamism of Christians is not against the state. What they are asking for is greater freedom to live their faith, not to overthrow the government or establish a Christian regime. If the authorities of this great country could understand this, they would benefit greatly.

3. Terrorism

This is the accusation levelled at the Muslim minority and, in particular, at the 10 to 12 million Uyghurs. It is easy for a regime obsessed with unity and security to equate an entire population with a minority of terrorists. The matter is complicated when it comes to an ethnic group, living in a specific territory, speaking a different language, and wanting greater autonomy or even independence. It is also true that suspicions of political Islam are not based on imagination. There has been a wave of attacks attributed to Islamists and separatists. It is understandable that the Chinese authorities, seeing what is happening in the world, choose firmness in the face of terrorism, but to equate believers with terrorism is another matter.

The fall of the Soviet Union is an example for China. But what should give the authorities pause for thought is that the terrible persecution of believers in the USSR, which led to the destruction of churches and millions of deaths, did not succeed in destroying the faith. Persecution inflicts terrible blows, but it cannot eliminate from the heart of every human being this need to believe, to hope for a better future, to believe in an afterlife of peace, justice and freedom. The great Chinese power on the road to world domination should remember this.



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FOCUS

CORONA – A THREAT TO RELIGIOUS FREEDOM?

How the pandemic affected religious practice in Germany

Judge Dr. Harald Mueller

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There is a question mark behind the headline to today's event¹. "Corona – a threat to religious freedom?" I would like to approach the topic questioningly and not give a hasty answer.

What has happened in terms of state intervention, and indeed in Germany, that is directly set against the practice of religion, or at least touches on it? It is not a general question of "Do I have to get vaccinated?" – or: "Should the coronavirus measures finally be repealed?" I would first like to address measures that carry a religious component from the outset.

Restriction of church services and contacts in a church context

The restriction of church services and contacts in the church context drastically interfered with church life in the early phase of the coronavirus pandemic in the spring of 2020. Most of the coronavirus ordinances of the federal states strictly prohibited the holding of church services². However, North Rhine-Westphalia took a different path at the time. There, the Corona Protection Ordinance stated: "Assemblies for the practice of religion do not take place; churches, Islamic associations and Jewish associations have issued corresponding declarations"³. This was intended

to take into account the special importance of religious freedom by the churches themselves deciding, in consultation with the state government, not to hold any religious services.

It has been mentioned in the media that the requirements for services are coordinated with “the churches”. This obviously refers to the large national churches, namely the EKD (Evangelical) churches and the Roman Catholic Church. The fact that the federal states had taken the concerns of free churches into account when drafting their coronavirus protection ordinances was probably only an exception. Yet the free churches have been strongly affected from the beginning. In contrast to the large churches, they usually have small buildings and, at the same time, a relatively large number of believers who regularly attend services in them.

After a certain period of shock, the restrictions on religious services have been challenged in the courts on various occasions. In terms of timing, the upcoming Easter holidays played a role in the spring of 2020, making the cancellation of religious celebrations particularly painful. Freedom of religion, and thus the freedom to live out one’s faith and to gather for religious services, is protected in Germany by Article 4 1. and 2. of the Basic Law.⁴ The text does not provide for its restriction by law – unlike some other fundamental rights.⁵ However, this does not mean that the fundamental right of freedom of religion applies without restriction. It finds its limits in conflicting fundamental rights of third parties as well as in legal interests with constitutional rank.⁶ For example, the prohibition of an Easter service in 2020 was upheld by the administrative court. The reasoning was that the protection of overridingly important fundamental rights of third parties, namely their health, which was the purpose of the regulation—which was limited in time—justified the restriction of freedom of belief after a summary examination and was not disproportionate.⁷ On the other hand, in a case of the closure of mosques during the fasting month of Ramadan, the Federal Constitutional Court did not consider a general ban on religious services without the possibility of being able to allow exceptions in individual cases, subject to conditions to be constitutional.⁸ While, initially,

the general clause from Section 28 of the Federal Protection against Infection Act had to suffice as authorization for administrative decisions by the Länder (federal) authorities (“... the competent authority shall take the necessary protective measures...”), it has been recognized in politics that this vague basis did not really meet the constitutional requirements regarding the weighty encroachments on freedom at issue. Section 28 of the Federal Protection against Infection Act, which was created in November 2020 and applies when the Bundestag (Parliament) determines an epidemic situation of national significance, therefore contains a catalogue of measures in which restrictions are enumerated. Incidentally, this regulation only permits the prohibition of religious and ideological gatherings in cases where an effective containment of the spread of the coronavirus disease-2019 would be otherwise significantly endangered, even when all other protective measures taken so far are considered. The special proportionality test, ordered in this respect regarding religious and ideological events, takes into account the high value of religious freedom. When the Federal-Länder Conference in August 2021 was about allowing the 3-G regulation (in German: geimpft, genesen, getestet), i.e., public access to indoor areas only for vaccinated, recovered or tested persons, it was originally thought to prescribe this also for religious services.

However, this was not done in the decision of 10.8.2021.⁹ Religious events were not mentioned there and were consequently also left out of the 3-G obligations. The updates of the state ordinances followed this decision. In some ordinances, optional 2-G models (i.e., only vaccinated or recovered persons having access) were also made possible for churches, with the consequence that lower hygiene requirements then apply.¹⁰ However, due to the catastrophic development of the infection figures since November 2021, a new situation has arisen, especially since the declaration of the epidemic emergency was not extended by the politicians. This created the problem that the previous legal basis for urgently needed measures ceased to exist and had to be replaced by new rules incorporated into the Federal Infection Protection Act. With the federal-state decision of 18.11.2021¹¹, the nationwide

extension of the 2-G rule for events was agreed. In the meantime, the Länder ordinances have been adapted. However, religious services are not prohibited anywhere – unlike at the beginning of the pandemic. Rhineland-Palatinate, Thuringia, and Saxony, however, now make the 3-G rule mandatory for religious services.¹² The question of whether it is appropriate to make the 3-G rule mandatory for religious services is not easy to answer.¹³ It must be taken into account that, for many believers, participation in a religious service is a process of basic spiritual care that cannot simply be omitted at will. This is not understood by some, especially those who rarely or never attend religious services. From the perspective of religious freedom, it is therefore important that the threshold for attending religious services is kept as low as possible, which argues against a state-mandated 3-G rule. On the other hand, under the impression of the skyrocketing infection figures, demands for increased protection even during religious events cannot be ignored. In some cases, the possibility of self-testing under supervision is offered before the service begins, so that the hurdle of having to visit a testing center is removed.

However, it would be problematic for the state to impose a binding 2-G rule for religious services, because this would exclude those who are not vaccinated for various reasons. For the time being, they would no longer be able to take part in a service, regardless of how effective the hygiene concept is. Such a measure would probably represent a disproportionate encroachment on religious freedom and should therefore be rejected. The situation is different if religious events are offered in addition to the main service and use is made of the 2-G rule for this on a voluntary basis, by decision of the local church congregation. This may make sense with regard to those members of the congregation who have not been coming to the events open to all for a long time, for fear of infection.

Encroachment on personal religious freedom through compulsory measures

Now we still need to consider whether the imposition of government measures that have no religious objective and apply to all may infringe on

the religious freedom of some. Distance rules as well as mandatory masks and tests are unlikely to come into consideration here as something that restricts freedom of belief and conscience because of the low intensity of interference. But what is the situation in the case of compulsory vaccination? While, in Germany, compulsory vaccination has been rejected by all parties for a relatively long time, this is now changing after the number of infections has risen dramatically and the vaccination rate is insufficient. There are more and more calls for compulsory vaccination – initially for certain institutions with vulnerable persons, but beyond that, also for general compulsory vaccination.

This would undoubtedly constitute a strong encroachment on physical integrity, which is protected by Article 2 of the Basic Law. Special considerations of proportionality would have to justify such a measure. The question is whether one could also invoke the freedom of religion guaranteed in Article 4 of the Basic Law to escape compulsory vaccination. So far, this case has not arisen in Germany because there is no legal COVID-19 vaccination requirement. In principle, however, it must be said that Article 4 of the Basic Law would only be thematically affected if the encroachment in question were directed against a conviction protected by Article 4 of the Basic Law. This includes personal beliefs that can plausibly be assigned to a religion. For example, in the “headscarf” decisions before the Federal Constitutional Court¹⁴, the scope of protection of Article 4 GG was affirmed for the headscarf wearers concerned, even if there are also views in Islam that do not regard the headscarf as binding. It was sufficient that the plaintiffs themselves affirmed the headscarf obligation and that this position could be supported by views within Islam. However, special views of individuals that cannot be associated with any existing religious group are not protected by Article 4 of the Basic Law. One cannot therefore include one’s own personal rejection of state measures under the guise of religion within the scope of protection of the Basic Law. In the question of the COVID vaccination, one must differentiate. Many opponents of vaccination are likely to be guided in their stance by fears

of side effects. Such a motivation can hardly be attributed to religious practice. A generally distrustful attitude towards state action is also not a position of conscience protected by Article 4 of the Basic Law. The situation is different when the argument is theological. Those who interpret the biblical revelation in such a way that the reception of a vaccination is associated with phenomena from the realm of evil are now not completely alone. Does the protection of Article 4 of the Basic Law already apply here? In the Catholic camp, concerns have been expressed insofar as the cell lines of aborted embryos are used for the development of vaccines, even if they are not present in the vaccine itself.¹⁵ However, this position does not correspond to the Catholic majority opinion and also not to the line of the Pope. Nevertheless, one will probably have to assign such a position to the sphere of protection of Article 4 GG. However, the fact that the scope of protection is affected does not mean that the fundamental right has already been violated. As already mentioned, there are limits to freedom of religion inherent in fundamental rights, which, in this case, are to be seen in the health of others and the functioning of the public health system. These legal interests would be weighed by courts against the encroachment on personal religious freedom in the case of compulsory vaccination. It is not yet foreseeable how such legal disputes would be decided in Germany and which position would be given precedence.



What will play a role is the extent to which compulsory vaccination would interfere with the religious practice of the individual in relation to the danger that would arise for others if compulsory vaccination were not enforced. Here, the framework conditions must also be taken into account, especially the vaccination rate already achieved and the associated significance of compulsory vaccination for the further course of the pandemic.

In the case of initiatives that oppose global vaccination measures on religious grounds and see them as a strong threat to believers,¹⁶ their origin must be considered in order to understand them. If they come from the USA, they are shaped by the constitutional circumstances there. In the USA, state intervention in religious matters is prohibited by the constitution. The compulsory vaccination, which has already been partially introduced there, meets with strong scepticism, especially from white Protestants who often think in strictly individualistic terms and resist state guidelines for their personal decisions. In the USA, the instruments of religious exemption and reasonable accommodation have long existed in labour law. Workers who have problems with religious discrimination at the workplace (e.g., because of dress codes or days of rest) must show that their attitude is based on a serious belief. The employer is then obliged to offer an alternative solution as long as this does not cause undue hardship for him.¹⁷ Such a mechanism has meanwhile also been established in the question of mandatory vaccinations.¹⁸ In connection with the state vaccination campaign, forms are offered on the internet where one can enter whether one would like to apply for a religious exemption.¹⁹ However, this must then be justified in more detail. Some religious communities have already prepared standard theological declarations on this,²⁰ which their members use.

It is thus something completely normal to make use of it, even if it will by no means always be successful. Such a procedure does not exist in Germany and is not to be expected in the case of compulsory vaccination. In this country, exemptions based on religion can often only be achieved in arduous disputes for those affected, as I am well aware from my voluntary

advisory work within the framework of the Deutsche Vereinigung für Religionsfreiheit²¹ (German Association for Religious Freedom).

Internal church divisions as a danger to religious freedom

Of the major churches, Pope Francis has clearly spoken out in favour of vaccination as an act of love “for yourself, for your family and friends, and for all peoples”.²² Vaccination is compulsory for Vatican employees. The Pope has not expressed reservations about certain vaccines. In September 2021, then EKD (Evangelical) Council President Bedford-Strohm called on adults to be vaccinated, in particular because of possible severe COVID-19 in children who were not yet vaccinated at the time. Bedford-Strohm opposed compulsory vaccination. Instead of excluding the unwilling and undecided, they should be treated with respect. It must be prevented that they feel pushed into a corner and develop a fundamental distrust of the state. Neither should they be driven into the arms of right-wing radicals and conspiracy theorists²³. The General Conference of the Seventh-day Adventist Church, in the USA, has shown itself to be open to vaccination in a statement of 18.12.2020²⁴ and has expressed the hope that this could put a stop to the pandemic. At the same time, it made clear that it respects the individual decision of its members. It is not a dogmatic question. It maintained this position on 25.10.2021.²⁵ Despite these statements from the leadership level of the churches, a certain number of members will not be reached when it comes to the question “to vaccinate or not to vaccinate?”. Under the impression of the worsening infection situation, the camp of vaccination opponents has meanwhile become smaller. In Germany, as in the rest of Europe, this is also due to the stricter regulations imposed by the state, which make it very difficult, and in some cases impossible, for non-vaccinated people to participate in society. However, certain people will continue to decide against vaccination and, in the case of compulsory vaccination, will stand up against it. How do we deal with this division within the churches, which also affects society as a whole?

Coercion and exclusion would be the wrong way here. The challenge is to endure this state of affairs without causing a rift in the communities. Verbal disarmament is necessary as well as the renunciation of “conversion attempts”. Experience shows that mutual understanding is made more difficult by the fact that facts and scientific contexts are perceived and interpreted differently. Therefore, discussions often lack a common starting point, so that it is not possible to reach a result that is supported by agreement. It is not always possible to avoid disagreement, as administrative decisions must also be made, for example, on access regulations and hygiene concepts.

It remains to be said that despite the existing differences, the willingness to talk should be kept open. There is no place here for dogmatism and mood-mongering. We must work to ensure that the dangers arising from the inability to deal with people in a humane way do not become more powerful than the restrictions on church life resulting from the measures ordered by the state.



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RELIGIOUS FREEDOM AND COVID-19 IN PORTUGAL

The impact caused by COVID-19 restrictions on the exercise of religious freedom in Portugal during the first lockdown period

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Introduction

The state of health emergency caused by the COVID-19 pandemic, issued by most European countries, has led to a rapid, abrupt contraction of the realms of public life into the limited space of the household, determining a new way of life for individuals. Lockdown has generated an unprecedented situation, mainly concerning civil liberties and fundamental rights. Religious freedom in a community-wise dimension has been particularly restricted during that period in order to limit the propagation of the virus.

In ordinary times, religion, law and State coexist in a web of complex relations. Crisis, however, tend to enhance tensions and conflicts. A phenomenon such as COVID-19 – the first global pandemic to affect the post-Christian Western secular era – has generated an unparalleled scenario regarding the restriction on religious freedom across Europe. The way legal systems have responded to the emergency caused by the pandemic, from the utter interruption of public worship practices up to more flexible ways of accommodating religion, has captured the attention of social scientists, particularly in Europe (Moniz, 2021a, p. 9–10).

The purpose of this paper is to examine the impact caused by COVID-19 restrictions on the exercise of religious freedom in Portugal during the first lockdown period (from March to May 2020) – the “period where the limitation (prohibition) of the freedom of worship was most intense” (Raimundo, Adragão, Leão & Ramalho, 2020, p. 19). There are five reasons behind such choice: i) social and religious: in a European context, Portugal is a clear case of religious immobility and of a predominance of irreligion as the main alternative to Catholicism, despite ii) going through several effects of secularization phenomena throughout its modern era (Moniz, 2021b); iii) typology of State-religion relations: Portugal is close to the twin tolerations and principled distance concepts; iv) regarding restrictions to fight the pandemic, measures regarding religious events have been considered “strict” when compared to those of other European countries (The Conversation, 2020); and v) the fact that there is still no research about this phenomenon in the country, namely in the fields of sociology and political science.

In light of the theoretical frameworks of the secular era (Taylor, 2007) and of secular cultures (Wohlrab-Sahr & Burchardt, 2012) as well, one may find herein how the pandemic crisis has enhanced legal, political, social and cultural challenges, giving way to greater tension between competing rights. These have exacerbated the tension between neutral public policies on religion and claims for religious accommodation. Given the restriction of activities within public spheres, namely religious celebrations, Portugal stands as a useful laboratory from an epistemological standpoint in order to figure out how religious freedom and, by extension, religious values are managed by the State in this secular era.

1. Regarding religious freedom in Portugal during the democratic period

The death of António de Oliveira Salazar in 1970 and the rise to power of Marcello Caetano gave way to a new framework for the law on religious freedom in Portugal. In fact, when Law No. 4/71 was promulgated, it was the first time a law acknowledged non-Catholic denominations (Miranda,

1993, p. 78–79). On Base II, the law claims that the State does not profess any religion and that its relations to religious denominations are subject to a separation regime. It also adds that religious denominations have the right to equal treatment, whilst acknowledging the differences between distinct levels of representation among the population.

With the fall of the *Estado Novo* (Portuguese dictatorship regime) in 1974, the early days of democracy in the country and the Constitution of the Portuguese Republic (CRP in Portuguese), dated 1976, have come to establish religious freedom without differentiating religious denominations and without any specific limitations. It thus brought a more advanced stage compared to previous regimes, granting neutrality towards religion and a preferential relationship with the Catholic Church. In this system, the separation regime is essentially a guarantee of freedom and equality (Miranda, 1986, p. 123).

The democratic transition and the CRP were gateways to a new Portugal. However, from a formal standpoint, the relations with the Catholic Church remained identical. The legal diplomas promulgated in the 1940s were only mildly amended by an additional protocol in 1975 and remained into force until the 21st century. The Religious Freedom Act (LLR in Portuguese) of 2001 was the driving force behind the Concordat between the State and the Catholic Church established in 2004. In effect, the State-religions system implemented by the Constitution assumed neutrality, equal treatment and a separation between the State and religious denominations (Article 41).

Therefore, the freedom of religion emerged alongside the freedom of conscience, despite the differences between them. The freedom to exercise one's religion, individually or in a group, in public or in private, in school, in cults or in rites, was then established – in accordance with Article 18 of the Universal Declaration of Human Rights. No. 2 of Article 41, regarding the civil rights and obligations or duties, regardless of religious convictions and practices, came into force; and so did No. 3, concerning the protection of confidentiality of one's individual religious choice; and No. 6, about the conscientious objection due to beliefs or convictions. No. 1 of Article

4 of the LLR reaffirms the neutral nature of the State towards religion, but it also refers to the cooperation with Portuguese churches and local communities (Article 5), to the enforcement of a principle of tolerance, thereby safeguarding the freedoms in each belief (Article 7), as well as to the protection of individual and public rights towards religions freedom (Article 8 and subsequent).

Despite the historical vicissitudes of the current State-religion separation model, Portugal has today a general legal framework of religious freedom. However, and just like other constitutions, CRP includes an exception clause meant to alter the constitutional legal order during a period of crisis. Still, in No. 6 of Article 19, CRP effectively states, regarding the suspension of exercising rights, that a state of siege or emergency may not, in any case, affect the freedom of conscience or religion. At sub-constitutional level, LLR reinforces this principle, as evoked in No. 5 of Article 6. As several constitutionalists may attest, religious freedom is at the very core of personal rights and may not be sacrificed, even during a state of siege (Medeiros & Miranda, 2010, p. 893; Raimundo, Adragão, Leão & Ramalho 2020, p. 6). Jurisprudence also strengthens this idea, as it claims that religious freedom is also not susceptible to suspension even in a state of siege or emergency, as there is a substantive limit to its constitutional amendment.

However, as Raimundo, Adragão, Leão and Ramalho (2020, p. 7) clarify, this interpretation may lead to “doubts”, since CRP (No. 1 of Article 41) permits the distinction between religious freedom – the freedom to believe or not to believe – and the freedom to publicly manifest such belief, namely by taking part in worship practices. As the following section will explain, during the state of emergency the right to worship was not deemed an unamendable right, a condition granted only to the freedom of belief.

2. Secular culture in Portugal and the pandemic

Similarly to most European countries, Portugal gave its authorities the possibility of restricting religious celebrations or other worship events

that implied large groups of people. Decree No. 2-A/2020, of March 20th, enforced the state of emergency, which had been issued by Decree No. 14-A/2020, of March 18th. In Article 17, regarding religious and worship events, it was established that “celebrations of a religious nature and other worship events that implied large groups of people” was thereby “prohibited”. Besides, it was stipulated that the celebration of funerals ought to be “ruled by” measures that could “guarantee the non-existence of large groups of people and the control of safe distancing (...)” These would “be determined by the local authority responsible for the management of the cemetery”.

Decree No. 17-A/2020, of April 2nd, by which the state of emergency was renewed, given the situation of public calamity, prolonged these restrictions. Clause f) of Article 4 in Annex II, decrees the partial suspension of the right to freedom of worship, affecting its “public manifestation”, as “the authorities responsible may impose necessary restrictions to reduce the risk of infection and execute measures to prevent and to fight the epidemic”. These include “the limitation or prohibition of religious celebrations” that, once again, implied a large group of people. A proviso was included in No. 1 of Article 7 that this would not affect the freedom of conscience or religion.

Regarding Portugal, the Religious Freedom Report (ACN Internacional, 2021, p. 3) claims that one of the consequences of the fight against COVID-19 has been the restriction of religious celebrations in public locations. However, and as previously mentioned, the restriction level of public religious practices was deemed high when compared to other European countries (The Conversation, 2020). The strict restrictions led to the suspension of religious celebrations, with worship locations opening solely for individual worship practices.

As proposed by Wohlrab-Sahr and Burchardt’s theory (2012), secularity was indeed enforced on behalf of public health issues. That is to say, the answers to the original problem (pandemic) were secular (restrictions to worship), respecting secular principles, such as: rationality, science,

individuality and physical distancing. The same is mentioned in No. 2 of Article 18 of CRP, according to which the restriction of rights, liberties and guarantees may only be enforced by law, when appropriate, necessary and strictly proportional, so as to safeguard constitutionally protected rights or interests.

Wohlrab-Sahr and Burchardt's proposition (2012) has also been verifiable in the way worship practices were only allowed in the final stage of lockdown imposed by the Portuguese government. Religious practices were expected to return in May 30th and 31st, 2020, and the rules for public celebrations were to be defined between the General Directorate of Health (DGS in Portuguese) and each religious denomination. Precisely on the same dates, football competitions would also return (official football matches from the Portuguese League and the Portuguese Cup). Before, the following had priority in reopening: i) public transportation, local stores (as, for instance, hair or nail salons), certain public services (for example, local tax offices or registry offices) or the practice of outdoor sports (May 4th); and also ii) restaurants, cafés and pastry shops, museums and national monuments or social facilities for people with disabilities (May 18th).

This hierarchy, of governmental responsibility, within the (un)lockdown system, "isn't neutral", according to Ferrière (2020, p. 9). This means that the hierarchy created for defining whether activities are essential or unessential within a lockdown regime are normative and ruled by scientific criteria, which prioritise different dimensions of biopolitics: medical, economical, security. Therefore, lockdown operates under a logic of devaluation of symbolic values, namely those associated to subjectivity and belief, in benefit of others associated to rationality or objectivity.

The growth and predominance of secular cultures which claim a greater importance of a political, rational and secular authority are clear in this context. Following Berger (1990 [1967]), the development of these secular hegemonies, among other aspects, helps relativize any body of religious beliefs, undermining the indisputable nature of its plausibility structures. Bruce goes further as he emphasises that the affirmation and the hege-

mony of secular principles and practices seek to “replace religious ones” (Bruce, 2014, p. 192). Public spaces are then gradually stripped of religion, particularly when it comes to “controlling daily interactions” (Bruce, 2011, p. 37) which leads to an intensification of the crisis within its plausibility structures. Regarding this point, Raimundo, Adragão, Leão and Ramalho (2020, p. 31) said:

“[It is] debatable whether the due importance of religious freedom was actually considered when the restrictions [to contain the pandemic] were planned – namely during the reopening of several non-essential economic activities, which involve agglomerations in even higher numbers than those caused by religious celebrations.”

These are more controversial elements as they regard aspects such as the legitimacy given to a health or administration authority to help suspend the right to religious freedom and to the free circulation of people. By way of an administrative permission, CRP “seals off” (No. 1 of Article 45) the possibility of limiting the freedom of assembly – including the freedom of worship, given their identical normative character. Gouveia (2020) goes further by stating that the right to religious worship “cannot be suspended as one cannot distinguish public or individual religious freedom”, since religious freedom encompasses both individual and collective rights.

However, not even the scope of a possible unconstitutionality or the disproportionality of measures related to public religious celebrations - i.e., the enhancement of secularity for the sake of public health via the aforementioned measures – made the main churches and religious communities in Portugal oppose the rules imposed. On the contrary, and similarly to the theory proposed by Luckmann (1967) and Dobbelaere (1981), there was an organizational or internal process of secularization, in which churches and religious communities sought to adapt to modern conditions and to demands of rationalization, individual beliefs and distancing (Moniz, 2021a, p. 14–15).

In the previously analyzed proposal of Wohlrab-Sahr and Burchardt (2012), the power to act in secular cultures – in this case on behalf of public

health matters – is centered on secular public authorities. In the secular era, this phenomenon promotes a competition between religion and secularity, with principles of a modern secular moral order being clearly favoured. The Portuguese experience, however, revealed a co-responsibility between secular and religious structures towards the development of secular answers to a specific referential problem (pandemic). Even before the growth or the imposition of political power, churches and religious communities themselves favoured that secular modern moral order by fostering a self-secularity, which presumes the subordination of religious values and practices to those of the political sphere.

This partly dwells on what the Religious Freedom in the World Report (ACN International, 2021, p. 4) describes about Portugal; it claims that the country embraced certain phenomena typical of modern Western societies, such as the growing “marginalization of religion in the public sphere and the legalization of practices” opposite to the values of several religions. In Taylor’s conception, this sort of practice reflects an immanent (secular) framework, in which, for instance, science and technology are assumed as the cosmic and ontological foundations that rule modern societies.

In sum, this secular culture, also promoted by churches and by religious communities, tends to foster a religiosity with weaker institutional bonds



and with insubstantial practice. This may negatively influence religion, mainly regarding its disaggregation and isolation – something particularly evident in the churches' co-participation in the public space, which is dispersedly and strongly controlled by the political sphere.

Concluding remarks

As a final remark, one may say the normalization of this predominance of secular values has enabled a hierarchy of essential and non-essential activities which, more than challenging the plausibility structures of religion, has emptied the space for religion in the public sphere and helped promote a secular culture. It is likely that this took place due to the five reasons noted above, and which are summarized below:

- the gradual predominance of a secular era, leading to a gradual distancing of religion from the public sphere;
- the establishment of a system of relations between States and religions, which implements processes of regulation/control of the religious dimension, grounded on principles of secular neutrality and within a logic that tends to depreciate certain symbolic (religious) values;
- the growth and the hegemony of secular cultures which claim priority in political, rational and secular politics; in this case, via the imposition of secularity on behalf of public health;
- the acceptance of churches and religious communities to subordinate religious principles and experiences to a political authority, and thus fostering a sense of self-secularity, which promotes a secular moral order;
- the transfer of the religious domain into the private and digital spheres, thereby reducing traditional community bonds and tending to foster a religiosity with weaker institutional bonds and with insubstantial practice.

Nevertheless, these five assumptions and the theories underlying them do not mean that religion has perished. Likewise, they do not mean that that might happen in a universal, one-sided and deterministic way. Notwithstanding the advances of a secular era marked by the emergence and the predominance of an immanent paradigm of interpretation of the

world, as well as by the development and hegemony of secular cultures, religion is still important. As evidenced, and despite the restrictions in place, the fact that religious celebrations, funerals or the freedom of circulation for ministers of religion were still enabled has shown that the secular culture was also forced to adapt to the religious realm.

Both in theory and in practice, however, the response to referential problems specific to modern societies is solely grounded on secular guiding ideas. For example, to the referential problem posed by COVID-19, secular responses were given, i.e., the restriction of public religious manifestations and of worship practices. Priority was given to individual beliefs instead of worship celebrations, physical distancing was favoured over the ecclesia and rationality and scientific knowledge came before faith or tradition. But because, even within secular cultures, the political realm still enables religion to influence proposals of a social or political nature, the premise is that the inspiring sources of religion should still appear, even if subdued.

At last, I would argue that, despite the conclusions of this paper, further studies will be needed to either sustain or deny this argument. More research is indispensable, probably with greater width and scope, considering different geographical areas, comparative methods and more extensive time frames. At this point, however, I may only hope that this study serves as a small contribution.



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RELIGIONS AND CONSCIENTIOUS OBJECTION TO VACCINES DURING THE COVID-19 PANDEMIC

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In the liquid society described by Bauman, the individual conscience is called upon from many sides and in many ways, with regard to actions or behaviours that are neutral for the majority but may appear intolerable for a more or less visible minority.

1. The 'new' conscientious objections in multicultural societies. The refusal of compulsory vaccinations

Multicultural societies are seeing an increase in requests for exemption, for reasons of conscience – sometimes, but not always, religiously oriented – with respect to obligations imposed by law on the general public or on certain categories of people. This growth is interesting, both for the variety of cases in which conscientious objection is put forward as a reason for failure to fulfil a legal obligation, and for their numerical increase. According to some, indulging in this tendency may lead to an excessive extension of the range of situations attributable to the classic case of conscientious objection, classifying even simple opinions as such, thus depriving “the most important objections of the solemnity they should maintain”.¹ However, the distinction between “more important”

and “less important” objections presupposes a uniformity of values and beliefs that is now impossible, precisely because of – or perhaps thanks to – the pluralism that characterizes the societies of the third millennium, or at least most of them. In the liquid society described by Bauman, the individual conscience is called upon from many sides and in many ways, with regard to actions or behaviours that are neutral for the majority but may appear intolerable for a more or less visible minority.

The compulsory nature of conduct that can involve conscience on aspects that are subjectively considered “non-negotiable” can generate conflicts that legal systems can manage. This can be done precisely by using the institution of conscientious objection, which has therefore been considered “an indispensable technique for pluralist society”, in that it is “instrumental to the realization of the ‘right to diversity’”.² This is why recourse to conscientious objection appears increasingly frequent in plural and multicultural societies, especially in matters involving bioethics or sexual ethics.³

For example, countries that make certain vaccinations compulsory by law are faced with widespread calls for the recognition of forms of conscientious objection in connection with exemption from this obligation. This is a particularly sensitive issue, especially when it involves minors and their health. In these cases, the choice of conscience is made by adults – such as parents or those exercising parental authority – but falls on boys and girls, not only because they are the ones who should be vaccinated, but also because it mainly involves that world of relationships: school-mates, friends, brothers, and sisters, all of whom could be harmed by the infectious diseases that unvaccinated peers risk spreading.

It has been argued in the past that the objection to vaccines does not really involve freedom of conscience or freedom of religion, since it is mainly based on medical or scientific grounds;⁴ in fact, religious reasons have also been put forward to justify a conscientious objection to compulsory vaccination. For example, as early as 1798, when Jenner published the results of using cowpox to immunize a child, thus informing the world of

the invention of the smallpox vaccine, the “Society of Anti-vaccination” was founded in the United States. These people argued that vaccines were to be rejected because they believed that they interfered in God’s work.⁵ In any case, this objection is based on personal convictions that *latu sensu* involve the conscience, since science and official medicine unanimously consider vaccines indispensable for the protection of individual and collective health and exclude their harmfulness, except within the limits of the collateral effects that any medical treatment can have.

On closer inspection, there has always been a paradoxical phenomenon with regard to vaccines: in scientific works they are described as “one of the most effective public health interventions with a high cost-effectiveness in reducing mortality and morbidity due to certain infectious diseases”,⁶ they are therefore “considered to be one of the greatest successes of modern biomedical science”, and “thanks to their use, millions of premature deaths have been (and continue to be) avoided and just as many disabling *sequelae* are prevented every year”.⁷ The tenor of these statements also changes radically in the literature outside the scientific world and official medicine. To give a few examples, one website explains that Rudolf Steiner, the founder of “anthroposophical medicine”, is said to have revealed that governments want to vaccinate children in order to inoculate them with a vaccine “against spiritual evolution” and thus leave the field open to materialist forces.⁸ The needle “which enters the body causes the soul to withdraw outside the body”.⁹ On another site linked to the Steiner world, it is stated that “exanthematic illnesses are good for children; they promote the development of the immune system, the capacity for self-regulation and self-healing”.

A homeopathy website accuses vaccines of being the expression of a conspiracy hatched by governments and pharmaceutical companies against children: ‘unclear reasons’ would lead pharmaceutical companies ‘to encourage and recommend the indiscriminate use of vaccinations on the whole population’. The COMILVA association (Coordination of the Italian Movement for Freedom of Vaccination) aims to raise awareness of the

damage caused by vaccines, denouncing an alleged form of subservience of health policy to the interests of the big pharmaceutical brands. The website also contains practical information on how to exercise the right of co-scientific objection to compulsory vaccination.¹⁰ Others justify their opposition to vaccines by referring to the presence of mercury, which they consider to be a possible cause of autism or multiple sclerosis. The anti-vaccine movement has even structured itself as a political party and stood in the regional elections.¹¹

2. Religions and vaccines

The rejection of vaccinations is therefore based more on “fideistic”, sometimes even “religious” reasons than on scientific grounds.¹² Those who rely on a “fundamentalist” type of homeopathy, as we have seen, justify their aversion to vaccines by referring to the soul, which would be removed from the body by the insertion of the needle into the skin. Steinerian medicine, which is the result of the theories of the anthroposophical society, listed by CESNUR (Centre for the Study of New Religions) as one of the “theosophical and post-theosophical groups”,¹³ views vaccines with suspicion because they would limit the spiritual growth of the individual.

Some religious groups consider the rejection of vaccinations to be part of their beliefs. The best known of these is the Church of Christ, Scientist, or Christian Science, founded in the United States in 1892 by Mary Baker Eddy.¹⁴ The church considers a book, “Science and Health with Key to the Scriptures” —written by the founder—to be a sacred book, in addition to the Bible, and its followers believe that diseases can and should be cured by relying solely on prayer. In the event of illness, the believers do not turn to the doctor but to the practitioner, who is defined as “a freelancer who has attended a training course in spiritual healing given by a licensed Christian Science teacher. The practitioner devotes himself full-time to helping and healing the needs of patients through prayer, using his own experience.¹⁵ On the official Christian Science website, in relation to the laws on compulsory vaccinations, it is stated that, for the faithful, the

practice of spiritual healing is a “choice of conscience” and that, while understanding the reasons that have prompted many states to provide compulsory vaccination, it is appreciable that some laws recognize the right to exemption from the obligation for religious reasons. It is a religious accommodation that, according to the same document, is necessary to protect religious freedom in a multicultural society.¹⁶

On an Italian Christian Science website, one reads that the choice of Christian Scientist parents to cure their children with prayer stems from the fact that they themselves have experienced the effectiveness of this method, but that, in relation to compulsory vaccines, they “respect national laws and compulsory procedures for vaccines in exanthema diseases and in all similar cases”.¹⁷ Thus, the aforementioned church invites the faithful to exercise their right to conscientious objection to vaccines, if the law recognizes this, and to comply with the vaccination requirement in cases where exemption is not recognized.

Another Italian website of a ‘cultural association’, called ‘La Biolca’, claims to be based on Steinerian theories of nutrition and health, and aims to raise awareness among Catholics, Jews, Muslims, and Jehovah’s Witnesses of the knowledge contained in vaccines, which each of them, if they were good believers, would have to refuse to take. Vaccines, according to this thesis, contain cells from aborted *fetuses* and animal by-products such as cow’s blood and pig’s meat. But, notes the anonymous author of the exanthema, ‘of course the religious hierarchies belittle the text’.¹⁸

In fact, the doctrine of the world’s major religions does not contain any prohibition on vaccinations, whether they are compulsory or not. One study has divided the arguments into three categories: vaccines would violate the ban on killing, transgress certain religious dietary precepts, and interfere with the natural order of things willed by God.¹⁹

To the first set of arguments against vaccines belong the doubts raised by some groups linked to Jainism, an Eastern religion that forbids killing any living thing, including bacteria or, in our case, viruses.²⁰ Vaccination should therefore be considered illegitimate, as it involves a violent action

against viruses, which are living beings; however, the Jain religion itself admits legitimate defense: in the case of vaccines, the intention to prevent a serious disease legitimizes violent action. Good intention therefore legitimizes vaccinations.

More complex are the issues related to the presence of food substances that some religions consider illicit. These include, in particular, excipients of pork which are used in the preparation of certain vaccines. As is well known, the Jewish and Islamic religions consider the pig to be an impure animal, and therefore forbid eating its meat and meat products.²¹ Jewish scholars consider the intention to save one's own life and the lives of others as the fulfilment of a divine command. They point out that the ban on non-*kosher* food does not apply to vaccines, which are usually injected through the skin, and that, in any case, all life-saving medicines are lawful even if they are not *kosher*.²²

Islamic scholars take a similar view, applying the principle of transformation to the issue, according to which a product that is originally impure can become *halal*. In 2003, a fatwa of the European Council of Fatwa and Research²³ established the lawfulness of the polio vaccine, which is also produced with an element of porcine origin (trypsin), since, after the transformation process, there is no longer any link between the pig and the derivative used for medical pre-treatment. The same principle – known as the *histihala* principle – applies, for example, to alcohol contained in certain medicines and to insulin from pigs. The law of necessity is also considered applicable: a believer does not commit a sin by eating a forbidden food if he has no viable alternative; what is necessary and has no alternative makes what is forbidden lawful.²⁴

Islamic law therefore allows the administration of vaccines, even if they should contain substances of *haram* origin, and it does so on the basis of three principles: the right to protect life, the duty to prevent danger, and the protection of the public interest. The prevention of disease through vaccines is in accordance with divine law and, in some circumstances, necessary—for example, during the annual pilgrimage to Mecca (the *hajj*),

during which vaccination is useful to prevent the spread of epidemics among the great mass of pilgrims who flock to the holy places.²⁵ However, there have been episodes of refusal of vaccination in some Islamic communities, which have even taken violent forms.²⁶

A final question concerning the preparation of vaccines and the compatibility of the substances they contain with religious principles—in this case, Catholic principles—is linked to the presence of cultured cells originally taken from voluntarily aborted fetuses. The problem mainly concerns the rubella vaccine: using a product made from an act that Catholic doctrine considers to be a serious sin could constitute a form of collaboration with evil. The question was addressed in a document of the Pontifical Academy Pro Vita of 5 June 2005, entitled “Moral reflections on vaccines prepared from cells from aborted human fetuses”,²⁷ which examines it in the light of the principles of classical moral doctrine in relation to cooperation in evil. The conclusion is that there is no doubt that the use of such vaccines constitutes ‘passive mediated material cooperation’ with abortion and, therefore, Catholic doctors and parents must resort to vaccines prepared in other ways, if they exist, or ask pharmaceutical companies to modify the preparation of vaccines, if this is possible. However, parents have a duty to vaccinate their children, since vaccines, even those that pose ‘moral problems’, serve to protect the health of children and the community in which they live. The just demand for preparations that do not undermine religious principles must not be at the expense of children’s health and solidarity needs: “in any case, there remains the moral duty to continue to fight and to use every lawful means to make life difficult for the pharmaceutical industries that act without ethical scruples. But the burden of this important battle certainly cannot and must not fall on innocent children and the health of the population – particularly pregnant women. In Italy, this position was taken up—on the occasion of the controversy following the law-making vaccinations compulsory again—by a document signed not only by the Pontifical Academy for Life itself, but also by the National Office for Health Pastoral Care of the Italian Bishops’ Conference

and the Italian Catholic Doctors' Association. In conclusion, it reaffirmed 'the moral responsibility to vaccinate in order not to expose children and the general population to serious health risks'.²⁸

In the Christian sphere, in addition to the already mentioned scientist church, the Amish—a group that originated as a radical Anabaptist current—are absolutely opposed to vaccinations, rejecting all aspects of modernity, including the use of drugs, and thus vaccines.²⁹ Some Dutch Reformed congregations believe that the faithful should rely exclusively on God, and that vaccination is a lack of faith in divine providence: if God himself judges it necessary, he will immunize his faithful. Other small Christian denominations, such as the Faith Tabernacle,³⁰ the Church of the First Born, the Faith Assembly and End Time Ministries, also take the same position, prohibiting their members from using any kind of medication. In the past, Jehovah's Witnesses had also spoken out against vaccinations, but by 1952 their attitude had changed, and vaccinations are now accepted.³¹

3. The situation in other countries, the special case of the USA

Religious groups that prohibit vaccinations for their members are to be found, above all, in American society. In the United States, compulsory vaccination is required by state law, which stipulates that, in order to enroll in school, a student must present a certificate attesting to having had all the vaccinations considered compulsory.³² In some cases, conscientious objection to vaccines requires that adherence to religious beliefs be authentic and demonstrable, while in others, it is sufficient to sign a generic declaration referring to religious reasons. Some, on the other hand, admit the possibility of objecting on philosophical grounds; indeed, in those states where this is possible, requests for exemption on non-religious grounds outnumber those on religious grounds and are on the increase.³³ Moreover, when the law only admits exemptions on religious grounds, it happens that parents pretend to adhere to an anti-vaccination religion, and there are even "religions" created precisely to provide a "religious

cover” for those who want to remove their children from the vaccination requirement.³⁴ Although the Supreme Court has never directly intervened in the matter of religiously based vaccination exemptions, it has repeatedly declared the legitimacy of the vaccination requirement, as it serves the protection of public health and safety.³⁵ An old judgement of 1944 – *Prince v. Massachusetts* –³⁶ presents an interesting limiting reference to religious conscientious objection to vaccines: “The right to freely practice one’s religion does not include the freedom to expose the community or the child to epidemics, disease or death”.³⁷

The lowering of the threshold for herd immunity has led to epidemics of diseases in the USA, in recent years, that were considered to have practically disappeared. In 2015, a measles epidemic spread from the Disneyland Park, triggering a debate for the first time on whether the policy of exemptions from vaccination requirements should be revised. This debate resumed in 2019, when a measles outbreak struck Rockland County, in New York State, prompting public authorities to declare a state of emergency on March 26, 2019. The press, in reporting the news, pointed out that the outbreak had developed within the Orthodox Jewish community, brought on by a number of worshippers who had contracted measles during their stay in Israel. Despite the fact that a majority of Jews are not opposed to vaccination, some ultra-Orthodox rabbis support the no-vaccination movement and thus contribute to making the Jewish community particularly susceptible to the spread of infectious diseases.³⁸

The same news source added that the outbreak of the epidemic had developed within the Orthodox Jewish community. The same newspaper source added that outbreaks had also occurred within other Jewish groups in New York State, in Brooklyn and Queens, and that the governor of Washington State had therefore also had to declare a state of emergency in January 2019.³⁹ The incidence of epidemics within Jewish communities had already led the Orthodox Union and the Rabbinical Council of America to issue a statement in November 2018,⁴⁰ recommending that parents vaccinate their children and follow doctors’ instructions and the vaccination calendar.

This document also recalled some principles of Jewish law. First of all, the value of the protection of human life: those who are faced with a situation in which their life is at risk are allowed not to observe the Sabbath rules and other important obligations established by law until the end of the emergency. It is also recalled that prayers for health and healing from disease are an ancient Jewish tradition, but that they must go hand in hand with recourse to medical science, including vaccinations. The document adds that the duties under Jewish law include caring for the health of others, taking all necessary measures to prevent harm or disease, and that Jewish law leaves it to physicians to identify and prescribe the most appropriate medicines for prevention and cure.

“Therefore, the majority of *poskim* (decision-makers, according to *halakha*) support the vaccination of children to protect them from epidemics and to eliminate infectious diseases from the community through herd immunity, thus protecting those who may be most vulnerable.”

Religious communities, especially those leading a social life with little outside contact, can be a favourable environment for the transmission of contagious diseases.

A case in point is that of May 2019, when a ship owned by the Church of Scientology—on which there were about three hundred members of the religious denomination, engaged in a spiritual retreat cruise—was stopped off the island of Saint Lucia, in the Caribbean, because a case of measles had occurred on board. All crew members and passengers were forced to remain in quarantine as a precautionary measure; Scientology does not take an official position on vaccines, and, indeed, claims to leave freedom of choice to its members, yet many of its followers are openly opposed to them.⁴¹

The spread of diseases that had almost been eradicated is leading the US legislature to rethink the policy of exemptions on religious or philosophical grounds. In addition to violating the principle of equality by distinguishing between children whose parents have religious convictions

against vaccines (exempt) and children whose parents do not have such convictions (compulsory), exemptions pose a serious problem for the protection of the rights of children who are not vaccinated at the behest of their parents. They expose them to the risk of contracting serious diseases, violating their right to an open future, i.e., to make their own personal choices freely—in matters of health, education, profession, marriage—when they are able to do so.⁴² Moreover, those who refuse to vaccinate their children also put the health of those around them at risk: exemption for religious or ideological reasons is detrimental to the community.⁴³

It has also been said that such behaviour constitutes a form of medical malpractice, which would justify direct intervention by public institutions to replace non-compliant parents,⁴⁴ and that it would be desirable to increase the cost of health insurance for families who choose not to vaccinate their children.⁴⁵

The New York State legislature intervened by enacting a law that eliminates exemptions on religious grounds.⁴⁶ This is Act No. 2371 of January 22, 2019, under which all students up to the age of 18 must undergo mandatory vaccinations in order to attend school.⁴⁷ In the course of 2019, laws were also passed in Washington State and Maine, eliminating exemptions on religious grounds.⁴⁸ The governor of California had previously passed the same in Act No. 277 of June 30, 2015.⁴⁹

The compatibility of a law providing only medical exemptions with the protection of religious freedom was the subject of *Brown v. Stone*,⁵⁰ a decision by the Supreme Court of Mississippi, one of the few states that has abolished religious exemptions in compulsory vaccination laws since 1992.⁵¹ The Court ruled that compulsory vaccination without the possibility of exemption on religious grounds could not be considered contrary to the religious freedom protected by the Religious Freedom Restoration Act.⁵² The reasoning was that the public interest in the protection of health and the protection of children from the risk of contracting dangerous diseases is of such importance that it passes the strict scrutiny test provided for by the law on religious freedom.⁵³

Other countries have also moved from permissive to repressive legislation on vaccinations. In Australia, until a few years ago, the aim was to incentivize vaccinations by convincing parents through the use of economic benefits; today, unvaccinated children are banned from accessing and attending nurseries and schools. The so-called “No-Jab No-Pay” Policy of 1998 stipulated that, in order to obtain certain social benefits for families with children, parents had to have their children undergo the recommended vaccinations. Exceptions were permitted on grounds of health, but also on grounds of conscience; adherents of anti-vaccine religions in Australia, especially followers of the scientist church, appealed on these grounds.⁵⁴ The increase in the number of children registered as conscientious objectors and the worrying decline in herd immunity convinced the Commonwealth government to amend its legislation in 2017, introducing the so-called “No Jab No Play” Policy: it provides that unvaccinated children are not allowed to attend nurseries and preschools. Enforcement of the law is left to individual states, but only New South Wales retains the possibility for parents to raise conscientious objections.⁵⁵

In Europe, there are differing positions, ranging from States that do not impose any obligation, to others (especially those in the eastern part of the continent) that impose a rather strict one. The first group includes the United Kingdom, Spain, and Germany, which legislatively promote the spontaneous adherence of the population to vaccination programs through information campaigns. In the United Kingdom, compulsory vaccination was provided for the first time with the Vaccination Act of 1898, which recognized the right to conscientious objection; in 1946, the National Health Service Act chose the voluntary approach, promoting the spontaneous adhesion of citizens to vaccination campaigns. However, at present, the worrying decline in herd immunity in Great Britain has prompted a debate on whether compulsory vaccination should be introduced again.⁵⁶

In Spain, the decision on vaccination is left entirely up to parents: those who decide not to have their children vaccinated are only obliged to sign a

declaration.⁵⁷ Other countries, however, have legislation imposing compulsory vaccination, including France, where exemption for certified medical reasons is allowed only.⁵⁸ In the Czech Republic, the Constitutional Court intervened on the matter, stating, in general terms, that this obligation is justified by the need to protect public health and safety. It subsequently stated that, although compulsory vaccination does indeed constitute a compression of the fundamental right to personal autonomy, it is a necessary sacrifice for the prevention of epidemics. The same Court defined vaccination as an act of ‘social solidarity’.⁵⁹

According to the Hungarian Constitutional Court, compulsory vaccination is legitimate, even if it interferes with the religious convictions or conscience of parents, since its purpose is to protect the health of children and is based on scientific and not ideological grounds. For the Turkish Constitutional Court, a child whose parents refuse to vaccinate him or her needs protection so that his or her right to health is protected.⁶⁰

This is the situation in economically developed countries. In what was once called the ‘third world’, the lack of vaccination coverage is not attributable to religious or philosophical reasons, but rather to the lack of effective health protection systems. In April 2019, Italian newspapers reported on a serious measles epidemic in Madagascar, which killed more than 1,200 people in a country where only 58% of the population is vaccinated against the virus.⁶¹ At the same time, a cholera epidemic in Mozambique required the intervention of the WHO, which sent a large quantity of vaccines to the African country.⁶² Another measles outbreak, this time in the islands of Samoa, caused a major health emergency and several dozen deaths in December 2019.⁶³ In the Democratic Republic of Congo, more than five thousand children died during 2019, according to UNICEF estimates, also due to a measles outbreak.⁶⁴

Thus, while the possibility of avoiding vaccination is being debated in industrialized nations, in economically less developed nations, it is materially impossible for a large proportion of the population to access vaccines. According to the Colombian Constitutional Court, the existence

of a fundamental right of minors to be vaccinated and the unconstitutionality of the behaviour of public authorities that do not guarantee this right can be affirmed. According to this principle, vaccines are defined as “a primary good that must be available to all”.⁶⁵

This different approach to the question of compulsory vaccination can be seen as an aspect of a more general issue, of fundamental importance in contemporary democracies: that of the need to find a balance between social interests, in our case identifiable in the protection of public health, and individual interests, identifiable in the recognition of personal choices in matters of treatment, especially if derived from faith in a religious doctrine.⁶⁶

4. Vaccination requirements in Italy

The concern for the social interest is at the basis of the document entitled European Vaccine Action Plan 2015–2020, published by the World Health Organization,⁶⁷ which highlights a significant increase in infections with measles and rubella in Europe⁶⁸ and indicates the achievement of at least 95% vaccination coverage as a public health objective for the entire European area. In Italy, the website of the National Centre for Diseases and Health Prevention of the Higher Institute of Health⁶⁹ shows a table depicting the evolution of the spread of the most important infectious diseases that can be prevented through vaccines. They further explained that the aim of the renewed introduction of the vaccination obligation is to prevent children from contracting serious diseases. On the same site, one can read the text of the report presented to the Health Commission of the Chamber of Deputies, which underlines that, starting in 2013, there has been a significant decrease in vaccination coverage in Italy. This coverage has fallen below the threshold of 90%, the quota that guarantees herd immunity for diseases such as measles and rubella—from 90.4% in 2013 to 85.3% in 2015.⁷⁰

The same text reports that in 2016 there were sixty cases of tetanus (with twenty deaths), twelve cases of vaccine-preventable meningitis, and

a significant increase in hospital admissions of children under one year of age infected by coughing. In the first six months of 2017, three thousand cases of measles were recorded, with around one thousand hospitalizations for serious complications, while between 2005 and 2015, rubella affected 163 pregnant women.

This situation prompted the government to intervene with Decree-Law no. 73 of June 7, 2017,⁷¹ containing “Urgent provisions on vaccination prevention”, converted by Law no. 119 of July 31, 2017,⁷² in order to “ensure the protection of public health and the maintenance of adequate conditions of epidemiological safety in terms of prophylaxis and vaccination coverage” (art. 1, 1st paragraph). The law establishes that ten vaccines are compulsory and free of charge (anti-polio, anti-diphtheria, anti-tetanus, anti-hepatitis B, anti-pertussis, anti-Haemophilus influenzae B, anti-morbidity, anti-rubella, anti-mumps, anti-mumps, anti-vaccination), providing for a derogation—or a deferment of the obligation ‘only in the event of an ascertained danger to health—in relation to specific documented clinical conditions, certified by the general practitioner or the freely chosen paediatrician’ (Art. 1, 3rd paragraph). 1, III co.). In reality, the vaccination requirement in Italy has never been abolished, but with the Presidential Decree No. 355 of January 26, 1999, the sanction of non-admission to school of children who had not been vaccinated was removed, which made the requirement less incisive.

At the beginning of the millennium, vaccination coverage in Italy reached 96% of the population and the National Vaccine Plan for 2005-2007 was based on the fact that, in an aware and educated society, the obligation was to be considered outdated.⁷³ On the contrary, the 2017 law had to reintroduce some sanctions against parents, guardians or custodians who do not comply with the vaccination obligation: Article 4, paragraph 4, states that they must be summoned by the local health authority for an interview and then, if they do not comply, they must be fined. In addition, school managers must check that all minors enrolled in their schools comply with the vaccination requirement, asking for the relevant

documentation and reporting cases of non-compliance to the ASL – local sanitarian institute (art. 3, paragraphs I and II). In the case of educational services for infants and kindergartens, which include a range of users from zero to six years old—and, therefore, are not subject to compulsory schooling—the presentation of certificates attesting the fulfilment of the vaccination obligation “constitutes a requirement for access” (art. 3, paragraph III). Finally, Art. 4 recommends that minors who cannot be vaccinated for health reasons be placed “as a rule, in classes with only vaccinated or immunized children”.⁷⁴

The enforcement of this law has caused the triggering of controversy—sometimes even resorting to violence—by those who, gathered in the generic galaxy of so-called anti-vaxxers, dispute the usefulness of vaccines—often claiming that they are dangerous—and believe that the vaccination requirement violates their self-determination and freedom of care. In fact, contrary to what was envisaged by the 2005–2007 Vaccine Plan mentioned above, the greater education and awareness that characterizes contemporary Italian society has not translated into greater confidence in the usefulness of vaccines. Paradoxically, it is precisely among the more educated and health-conscious population that convictions about the uselessness and, often, the harmfulness of vaccines have spread.

This unexpected situation is mainly due to two factors: firstly, the effectiveness of vaccines and the high rate of immunization achieved up to a few years ago have almost completely eradicated infectious diseases that in the past caused deaths and serious disabling consequences. Not seeing the effects of diseases leads to an underestimation of their danger. Secondly, the anti-vaccination movements find a sounding board on the internet and social networks, managing to spread their theories among those who, wishing to find out about health issues, search for news on the internet with the risk of coming across overblown theories or so-called post-truths.⁷⁵

These are theories that spread especially on the web and feed the phenomenon of fake news, which, when it comes to important issues such as

health, security, migration, or even politics, can have serious consequences for ‘the quality and even the security of the democratic order of coexistence’.⁷⁶ In this age of indiscriminate access to information, the vaccination issue is thus part of the so-called “post-truth” culture, (77) which makes science questionable, and anti-scientific positions that appear simpler and more convincing almost acceptable; from this point of view, even medical achievements, which undoubtedly include vaccines, can be presented as opinions and vaccines as dangerous products, the efficacy of which can legitimately be doubted.⁷⁸

Jurisprudence on the merits has also shown itself to be sympathetic to certain anti-vax inclinations. For example, the Court of Rimini (civil section – labour), with the judgment of March 15, 2012, affirmed the right to compensation for damages in favour of a child suffering from “autistic disorder associated with average cognitive retardation attributable with reasonable scientific probability to the administration of the MPR vaccine”.⁷⁹ Previously, it had been the Court of Busto Arsizio to establish a link between autism and polio vaccination.⁸⁰ The labour section of the Court of Pesaro, with the judgment of July 1, 2013, n. 260, has recognized the compensation, established by the law of February 25, 1992, n. 210, in favour of the parents of a child who suffered a cot death 21 days after the administration of the vaccine. The CTU appointed by the judge had considered simply “possible” a correlation between vaccination and death of the child, without “providing certainty or probability of the link between the two events”, but in the device reads that “the causal link between vaccination and death” should be stated “in terms of high probability”.⁸¹

More attentive to scientific evidence are the interventions of the higher courts. The Court of Appeals of Bologna, with sentence no. 1767 of February 13, 2015, completely overturned the decision of the Court of Rimini in 2012, stating that there is no causal link between vaccination and autism. In fact, according to child neuropsychiatrists, the most plausible hypothesis is that autism spectrum disorders have a genetic cause, and that scientific evidence leads to the exclusion of any relationship between vaccines and

autism.⁸² Even the most recent case law of the Supreme Court has stressed that there is no evidence in the scientific literature of the reasonable likelihood of a causal link between vaccines and autism, rejecting an appeal against a denial of compensation.⁸³ In this way, the case law denies the validity of one of the reasons that underlie the request for recognition of conscientious objection to the mandatory vaccines.

The Constitutional Court has intervened on the constitutionality of compulsory vaccination on several occasions. In all of them, the legitimacy of compulsory vaccination was reaffirmed as an expression of the duty of solidarity. With sentence no. 307 of June 22, 1990, the Court affirmed the compatibility of the obligation with Article 32 of the Constitution, since it aims to protect the health not only of those subject to it, but of the community: “it postulates the sacrifice of each person’s health for the protection of the health of others” (n. 2 in law). Compulsory vaccinations are, in other words, an expression of the spirit of solidarity that is the basis of democratic coexistence and justifies the sacrifice of individual autonomy.⁸⁴

Solidarity, which we find referred to in Article 2 of the Constitution, is in fact a duty and presupposes, in addition to respect for individual conscience, the secularity of public institutions.⁸⁵ In this sense, a conscientious objection on religious grounds to compulsory vaccinations, the purpose of which is also solidarity, could be considered contrary to the principle of secularity.⁸⁶ In the subsequent sentence No. 132 of March 27, 1992, the Constitutional Court reiterated the constitutionality of the obligation and recalled that parental authority is based on the interests of the child, “its function and its limit”, and that the judge is entitled to intervene if the parents “fail to fulfil their obligations and thus jeopardize the fundamental goods of the child, such as health and education” (considered in law).

Recognition of the conscientious objection of parents with respect to the vaccination obligation imposed on their minor children would lead to a conflict between the freedom of conscience of adults and the protection of the health of minors, which cannot be resolved by sacrificing the latter.⁸⁷

In addition, a possible conscientious objection to vaccines would not be inspired by ‘a conflict between freedom of conscience and the act imposed by law’,⁸⁸ but by the right not to be subjected to impositions regarding personal choices. Thus, the necessary prevalence of the best interests of minors would require that the protection of the health of the peers with whom the unvaccinated will come into contact also be assessed. This leads to the conclusion that there is an incompatibility of this conscientious objection with the aims of democratic systems.⁸⁹ The protection of parents’ consciences cannot – and must not – ever translate into prejudice for minors themselves. As the Supreme Court of the United States stated in *Prince v. Massachusetts*, “parents may be free to become martyrs, but they are not free to make martyrs of their children”.⁹⁰

Most recently, the Constitutional Court ruled in its judgment No. 5 of January 18, 2018. In addition to recalling that the new rules on compulsory vaccinations were also determined by a measles epidemic that caused four deaths during 2017 (n. 3,8 in law), the Court stressed the need for the legislature, when intervening in matters involving the right to health, to be guided by the “ever-evolving acquisitions of medical research” (n. 8.2.1 in law).⁹¹

5. Is there a right to conscientious objection to compulsory vaccination?

Given that Italian constitutional jurisprudence does not seem to leave much room for the recognition of conscientious objection to compulsory vaccination, it seems useful to check the position of European jurisprudence. Generally speaking, the European Court of Human Rights is very cautious about recognizing new forms of conscientious objection.⁹² Article 9 of the European Convention for the Protection of Human Rights protects freedom of conscience, along with freedom of thought and religion. However, it does not explicitly refer to the right to conscientious objection, which we find instead in Article 10 2. of the Charter of Fundamental Rights of the European Union, according to which this right “shall be recognized in accordance with the laws governing its exercise”. For years,

the jurisprudence of the Strasbourg Court was cautious in its interpretation of article 9, stating that a general right to conscientious objection could not be derived from it.

The Court's position changed with the judgment of the Grand Chambre, *Bayatyan et al. v. Armenia* of July 7, 2011,⁹³ which concerned a case of conscientious objection, on religious grounds, to compulsory military service.⁹⁴ It states that the Convention is "a living instrument, which must be interpreted in the light of current conditions and the ideas prevailing at the present time in the democratic States" (no. 102). Therefore, the fact that all the member states of the Council of Europe (at the time, there were only four countries that were against it) provide for the right to conscientious objection to military service in their legislation, shows that there is a common understanding of its recognition.

With the judgment of *Mushfig Mammadou and Others v. Azerbaijan*, of October 17, 2019,⁹⁵ the Court again stated that the recognition of conscientious objection to military service, even if subject to the performance of substitute civilian service, is necessary for the effective protection of the right to religious freedom as provided for in Article 9 of the Convention. The principles established by the Court in these two judgments could, in the future, be extended to other forms of conscientious objection.

The Strasbourg Court dealt with the issue of compulsory vaccination only in the case of *Solomakhin v. Ukraine* of March 15, 2012,⁹⁶ which concerned the case of a young Ukrainian man who suffered from several chronic diseases and was forcibly vaccinated against diphtheria during a hospital stay in 1999, although he had expressed his opposition. Following this vaccination, his medical condition had deteriorated, but Ukrainian case-law held that the link between vaccination and the worsening of his health had not been proved. Solomakhin died in 2010 of a heart attack. In the meantime, he had filed a lawsuit to determine whether the Ukrainian law establishing the vaccination requirement conflicted with Article 8 of the European Convention, which makes the legitimacy of a law interfer-

ing with a person's private life and physical integrity conditional on the presence of a legitimate aim and its necessity in a democratic society. For the Strasbourg judges, the vaccination obligation established by Ukrainian law has a legitimate aim—the protection of health—and is necessary to prevent epidemics among the population.⁹⁷ The Solomakhin sentence does not examine the question of the possibility of exercising a conscientious objection, since, in this case, the objection was determined by the physical condition of the subject.

Conscientious objection to compulsory vaccinations on religious grounds was recently addressed by the Grand Chamber of the European Court of Human Rights in its decision on *Vavricka and Others v. the Czech Republic* on April 8, 2021, a particularly interesting judgment. The Strasbourg Court, in its most solemn composition, had to decide on a case concerning vaccinations during the COVID-19 pandemic, in the months when vaccinations began and, in some countries, compulsory vaccinations were introduced for certain categories of workers. The case was brought by Czech citizens who had been fined and banned from attending kindergarten for not having their children vaccinated in 2013, at a time when compulsory vaccination had been abandoned in many countries in favour of the recommended vaccine system.⁹⁸

The Court was asked to determine whether the refusal of compulsory vaccination could be considered an expression of freedom of thought, conscience, and religion and, if so, whether State interference could be considered justified. In fact, the applicants, while invoking freedom of belief and religion, did not indicate specifically which religion they were invoking, nor the reasons why the religion they professed was opposed to vaccines, nor, of course, why subjecting their children to vaccination constituted a violation of that freedom. In the text of the reasoning, the Court reviews the constitutional jurisprudence of European countries that provide an obligation to vaccinate. It stresses that this has always been considered legitimate from a constitutional point of view, because it is intended to protect public health, and because it is provided for by

general and neutral laws. No European State allows conscientious objection to compulsory vaccination.

The European Court of Justice points out that every state has a duty to protect the health of its citizens, defending the population from dangerous contagious diseases, an objective that, according to science, can be achieved thanks to vaccines, which scientific research considers to be one of the most effective and economical public health interventions. Regarding the possibility of considering anti-vaccine theories as expressions of freedom of belief and religion, the Strasbourg Court noted that, although the parties had invoked the protection provided by Article 9 of the Convention, there was no evidence in their application that it was a religiously inspired claim. It was a question of verifying whether the vaccination requirement had in fact led to a violation of their freedom of thought and conscience, which is protected by the Convention itself.

Taking up the precedent of *Boffa and others v. San Marino* of the European Commission of Human Rights, the Court stated that Article 9 cannot be interpreted as an absolute guarantee of the right to behave in the public sphere according to one's personal convictions. In particular, compulsory vaccination laws comply with the criterion of neutrality, since compulsory vaccinations are compulsory for everyone, regardless of their professed religious faith or personal convictions. The Court, therefore, concludes that there has been no violation of Article 9 of the Convention: "Personal opinions contrary to vaccination are not such as to constitute a conviction or belief of sufficient force, seriousness, cohesion and importance as to attract the guarantees provided for in Article 9".⁹⁹ As the Italian Constitutional Court observed in Ordinance no. 134 of 1988, generally speaking, those who believe in vaccination are not in a position to take advantage of the guarantees provided for in Article 9. 134 of 1988. Those who oppose vaccinations generally do so on the basis of assertions of a "meta-legal character", opposing a law that aims to protect public health with a "generic and subjective conviction of its inappropriateness".¹⁰⁰ However, even if opposition to vaccines were justified by adherence to a

particular religious faith, one must remember that Article 9 of the European Convention states that States may restrict, by law, the exercise of the right to religious freedom in order to protect public health, which is the protection underlying the laws imposing compulsory vaccination.

6. Religions and vaccines during a pandemic

On the way back from the recent apostolic trip to Hungary and Slovakia, during the traditional press conference on the papal flight, a Danish journalist asked Pope Francis, who called vaccination an act of love,¹⁰¹ how to overcome divisions with those who do not want to be vaccinated. The Pope acknowledged the existence of the problem, replying that we need to “talk to these people with serenity” to clarify their doubts, and added, with a hint of irony: “Even in the College of Cardinals, there are some deniers and one of them, poor man, is hospitalized with the virus. It’s the irony of life...’¹⁰² He was referring to a well-known cardinal who, despite the clear words of Pope Francis and contrary to the official position of the Catholic Church on vaccination against COVID-19, claimed that vaccines are immoral because they are developed on cells from aborted fetuses and are actually used to secretly inject a microchip under the skin and thus control the entire world population.¹⁰³

Since their appearance, COVID-19 vaccines have, in fact, aroused mistrust and opposition in some groups, based on conspiracy theories—often outlandish, sometimes religiously motivated.

In the United States, within the categories subject to the obligation of vaccination against COVID-19, there have been requests for exemption on religious grounds.¹⁰⁴ The reasons are those that we have already examined in relation to other vaccines and concern the usefulness of vaccination in general, the presence in the composition of vaccine preparations of substances forbidden by religion, and the procedure for preparing the vaccines. It should be noted that these are widespread opinions among the faithful, sometimes supported by some local religious leaders, but not officially endorsed by the religious authorities who, on the contrary,

have approved the use of vaccines and invited the faithful to undergo vaccination, in some cases setting an example themselves.

On December 21, 2020, on the eve of the distribution of COVID-19 vaccines, the Catholic Congregation for the Doctrine of the Faith published a document entitled ‘Notes on the Morality of the Use of Certain COVID-19 Vaccines’¹⁰⁵.

The question addressed was once again the lawfulness of vaccine preparations made from cell lines derived from aborted fetuses, on which, as we have already seen, the Pontifical Academy for Life had already pronounced itself. Catholic doctrine reiterates what has already been established in the past, namely that if ethically acceptable vaccines are not available, it is also permissible to use those produced using cells from fetuses: the morality of vaccination against COVID-19 ‘depends not only on the duty to protect one’s own health, but also on that of pursuing the common good’ (n. 5). With this Note, therefore, the Catholic Church removes all doubt as to the lawfulness of COVID vaccines, even though, since January 2021, the words of Pope Francis have always been clear: “I believe that, ethically, everyone should take the vaccine; it is an ethical option, because you are risking your health, your life, but you are also risking the lives of others”.¹⁰⁶ In his *Urbi et Orbi* message for Christmas 2020, the pope likened the discovery of the COVID vaccines to a “light of hope” shining in the darkness of the pandemic, calling for this light to be available to the whole world: “Vaccines for all, especially for the most vulnerable and needy in all regions of the planet”.¹⁰⁷

On July 23, 2021, in a message on the social platform ‘Twitter’, the World Health Organisation declared that COVID vaccines are *halal* under Islamic law, as they do not contain any pork derivatives.¹⁰⁸ In February 2021, the Medical Fiqh Symposium examined issues relating to the permissibility of vaccines according to Islamic doctrine and principles, producing a document entitled ‘Sharia Rulings regarding the Use of COVID-19 Vaccines, the Purchase of these Vaccines and the Financing of their Distribution with

Zakat Funds'.¹⁰⁹ First of all, the chemical composition of the various anti-COVID vaccines was examined, verifying that neither pork nor products of human origin are present; furthermore, the process of transforming the substances they contain is deemed to comply with the Sharia rules concerning metamorphosis according to Islamic law. For these reasons, the use of COVID-19 vaccines is permissible under Sharia law. Indeed, it is considered compulsory if it is declared as such by the laws of individual states, and Muslim believers are urged to obey the rules laid down in this regard by governments, since these rules are intended to protect human life, which is also one of the aims of Islamic law. Point 3 of this document examines the possibility of using funds from zakat to buy and distribute anti-COVID vaccines: it is stated that such use is lawful, since its aim is to eradicate a disease that constitutes a danger for all mankind, provided that not all the funds from zakat are used for this purpose.¹¹⁰ The text concludes with an invitation to all governments to collaborate in the battle against COVID-19, to consider vaccines a humanitarian problem and therefore to favour their distribution, urging Islamic scholars, imams, and prayer leaders to be vigilant against false news and 'irregular *fatwas*' that generate confusion about the legitimacy of these vaccines.

Sometime later, on the eve of the month of Ramadan, the Al-Azhar Fatwa Center issued a *fatwa*¹¹¹ stating that vaccination does not interrupt compulsory fasting: the vaccine, which works by injecting part of the virus' genetic code to stimulate the recipient's immune system, is not to be considered either a food or a drink and, therefore, does not constitute a violation of fasting.¹¹² The Indonesian Ulema Council has also declared that vaccination does not interrupt fasting and has called for it to be continued;¹¹³ as have the Council of European Muslims¹¹⁴ and the president of the two holy mosques in Saudi Arabia.¹¹⁵

The Jewish religious authorities appear to be totally in favour of the anti-COVID-19 vaccination. On the website of the Rabbinical Assembly—an association founded in the United States at the beginning of the 20th century—a page is dedicated to COVID-19, with indications on following

the hygienic precautions prescribed to prevent contagion, and some reflections on the legal and ethical issues posed by vaccines. The obligation to vaccinate is considered Torah-compliant, as it is an expression of the command to preserve oneself and not to harm others.¹¹⁶ As soon as vaccines became available, the State of Israel began a massive campaign to immunize the population, supported by the country's most important religious personalities, who consider vaccines to be *halakhah*-compliant.¹¹⁷ In fact, in the face of the coronavirus pandemic, all the world's religions appear to be in agreement in recommending vaccination and in disproving the false news about vaccines. However, in the United States, there have been numerous attempts to refuse the COVID-19 vaccine, claiming exemption on religious grounds, which have generally been rejected by the courts. The rules imposing compulsory anti-COVID vaccination on certain categories of workers do not provide for the possibility of exemption except for certified medical reasons and, where these rules have been challenged, the courts have confirmed their legitimacy, since they are neutral and generally applicable, and therefore not discriminatory.¹¹⁸

7. The contribution of religions to the anti-COVID-19 vaccination campaign

On April 27, 2021, a coalition of 145 religious leaders—including the secretary of the Lutheran World Federation, the former Archbishop of Canterbury, and the president of the US Council of Churches, as well as Jewish, Islamic and Buddhist leaders—signed a letter calling for the production of COVID vaccines to be increased and distributed to the entire world population.¹¹⁹

The letter states that only if everyone has access to vaccination will they be safe from the virus, but this can only be achieved by declaring COVID-19 vaccines a common good: “We need a People’s Vaccine, not a profit vaccine”. According to this document, the real moral issue is not the position of the vaccines, but their distribution, which excludes poor nations. The issue was already on the minds of religious leaders in December 2020, when COVID-19 vaccines were about to be authorized. On

December 22, 2020, the Ecumenical Council of Churches and the World Jewish Congress published a joint statement on the ethical issues related to the distribution of COVID-19 vaccines, which they described as the light at the end of the tunnel constituted by the pandemic.¹²⁰

The lack of vaccines available to poor countries is indicated as an ethical problem, which weighs on overcoming the emergency: without fair distribution, the world will not be able to get out of the pandemic: “This is a moral issue that requires intervention and action on the part of religious leaders”. The root of this commitment is indicated in the Holy Scriptures and in some principles shared by the two religious faiths, such as fairness and non-discrimination, the right to health as a fundamental human right, and the protection of life. Religious leaders are also asked to make efforts to disseminate correct information on vaccines, refuting scientifically unfounded theses and conspiracy ideas, which are sometimes based on anti-Semitic propaganda and, as such, must be discouraged. Religious leaders might also consider receiving the vaccine in the presence of the media, possibly in each other’s company, as an example of inter-faith solidarity and cooperation, if such an example can help overcome the fears of the faithful and counteract vaccine reticence within their communities. The possibility that some governments might decide to introduce compulsory vaccination is described as a draconian measure justified by the emergency context. The document therefore identifies several important issues: the role of religious leaders in spreading a culture of vaccination, the importance of a distribution of vaccines that does not exclude poor countries or marginalized population groups in rich ones, the legitimacy of compulsory vaccination, and the fight against coronavirus disease as a field of engagement for interreligious dialogue.

Since the beginning of the vaccination campaign, some religious leaders have made their decision to vaccinate public. Vatican sources reported that Pope Francis received the COVID-19 vaccine in February 2021, together with Pope Emeritus Benedict XVI. In the months that followed, the Pope repeatedly invited the faithful to get vaccinated, in what he called an ‘act

of love'.¹²¹ The Dalai Lama was caught on camera during the vaccination and used the occasion to appeal to the faithful to follow his example.¹²²

Calls for a fair distribution of vaccines have been repeated on several occasions. On the eve of the G7 meeting, held in Great Britain in June 2021, a number of leaders of world religions wrote to the British Prime Minister and other prime ministers, urging rich countries to intervene in favour of fairness in COVID-19 vaccinations.¹²³

Religious interventions in favour of vaccination have also taken place at the level of individual states or geographical areas. On July 22, 2021, the French newspaper *Le Figaro* published a letter signed by the Chief Rabbi of France, the president of the Protestant Federation and the president of the French Council of the Muslim faith. The letter invited the population to be vaccinated, trying to convince the doubters, and condemning the demonstrations of the anti-vax people who had compared the vaccination certificate to the yellow star imposed on Jews by the Nazi regime. An interesting point in this letter is the reference to the *Fraternité*, which, even in the face of the pandemic, is a fundamental pillar of democratic society: "To be vaccinated is to protect oneself and others. To be vaccinated is to be a guardian of one's brother. To be vaccinated is to be free at last".¹²⁴ *Fraternité*, as a religious and secular principle at the same time, was at the centre of the religious communities' thinking, even during the months of the lockdown, and pointed out to states as a global response to a global threat.¹²⁵

Alongside calls for an equitable distribution of vaccines, reaching out to those who might be excluded, some religious denominations intervened directly, setting up clinics for anti-COVID vaccination. In March 2020, during the Catholic Lenten period, Pope Francis bought 1,200 vaccines through the Apostolic Alms Administration for the homeless and illegal aliens who would otherwise not have been able to receive the vaccine. In the United States, several evangelical churches have temporarily turned into vaccination clinics, mainly for the benefit of African Americans and people who have little trust in public health authorities but do trust the

churches.¹²⁷ The Faiths4vaccines movement brings together Christians, Jews, and Muslims who work together to support the vaccination campaign, including by persuading those in charge of places of worship to help distribute vaccines, thus helping to achieve equity in vaccinations.¹²⁸ In Rome, on July 6, 2021, a vaccination hub for socially fragile and homeless people was inaugurated by the ASL Roma1 and by the extraordinary commissioner for COVID emergency. This hub is in a structure belonging to the Sant'Egidio community, thus reaching those who, due to objective or personal difficulties, would not have been able to book vaccinations through ordinary channels.¹²⁹

Although there are still some voices opposed to anti-COVID-19 vaccines, for example, among traditionalist Catholics or ultra-orthodox Jews, religious denominations have spoken out in favour of vaccination, helping governments to spread correct information to the faithful and, in many cases, making places of worship available for vaccinations. Collaboration between governments and religious authorities is always important, but in the pandemic emergency it proved fundamental.¹³⁰



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The sources referred to within this article can be found on page 161.

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“RESPONDING TO PANDEMICS: PEER-TO-PEER LEARNING WITH THE #FAITH4RIGHTS TOOLKIT”*

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The “Faith for Rights” framework provides space for a cross-disciplinary reflection and action on the deep, and mutually enriching, connections between religions and human rights. The objective is to foster the development of peaceful societies, which uphold human dignity and equality for all and where diversity is not just tolerated but fully respected and celebrated.

The #Faith4Rights toolkit, which was launched and piloted online in 2020, provides peer-to-peer learning exercises as well as a practical case study on responding to pandemics.

ABSTRACT: The decades-long mutual avoidance between the faith-based and human rights movements has led to limited reciprocal literacy. Improving both the religious literacy of human rights actors and the human rights literacy of faith actors requires research, training and action-oriented dialogue among peers. This should be based on knowledge and respect, which requires time, trust and sound methodology. This is also the rationale and philosophy of the #Faith4Rights toolkit, which stresses that “faith and rights should be mutually reinforcing spheres.” The toolkit was drafted and refined over two years by faith-based and civil society actors, United Nations special rappor-

teurs and members of human rights treaty bodies at workshops that were convened by the Office of the High Commissioner for Human Rights on the campus of Collonges-sous-Salève. In view of the specific human rights challenges posed by the new coronavirus disease (COVID-19), the #Faith4Rights toolkit includes various peer-to-peer learning exercises in its modules as well as a practical case study on responding to pandemics. This article provides a brief overview of COVID-related exercises suggested in the toolkit concerning women, girls, and gender equality (module 5); minority rights (module 6); ethical and spiritual leverage (module 16); as well as research, documentation, and exchange (module 17). Faith actors can play an important transformative role, especially in the COVID-19 context, and their collaboration with other civil society actors is key for addressing the pandemic-related challenges and for “building back better.” High Commissioner Michelle Bachelet has stressed the importance of stimulating exchanges between different actors to “inspire interdisciplinary research on questions related to faith and rights” and of supporting a “long overdue cross-disciplinary reflection on the deep, and mutually enriching, connections between religions and human rights.”

KEYWORDS: Faith-based actors, Human right mechanisms, Peer-to-peer learning, #Faith4Rights toolkit, New coronavirus disease, COVID-19, Gender equality, Minority Rights, Hate speech, Interdisciplinary research

Leveraging Faith for Rights during the pandemic

The new coronavirus disease (COVID-19) poses specific challenges for persons belonging to religious or belief minorities. Many of them have difficulties in accessing adequate health care or face stigma, discrimination and hate speech. COVID-19 also has a gendered impact with exacerbated problems for women and girls. Faith actors can play an important transformative role, especially in the COVID-19 context, and their collaboration with other civil society actors is key for addressing the pandemic-related challenges and for “building back better.”

The #Faith4Rights toolkit, which was launched and piloted online in 2020, is particularly suited for online interaction among faith communi-

ties and minority groups because digital engagement is far more inclusive than traditional in-person consultative patterns. The #Faith4Rights toolkit includes various COVID-related peer-to-peer learning exercises in its modules as well as a practical case study¹. This innovative methodology not only raises awareness of discrimination against minorities, women and girls, but it also offers a toolbox for identifying practical remedies through exchanges of practices that promote socio-cultural change in a sustainable manner.

The #Faith4Rights toolkit was drafted and refined over two years by faith-based and civil society actors, UN special rapporteurs and members of human rights treaty bodies at workshops that were convened by the Office of the High Commissioner for Human Rights (OHCHR) on the campus of Collonges-sous-Salève². The participants stressed in the Collonges Declaration that the toolkit “is a prototype suggested for faith actors, academic institutions and training experts, to be further enriched and adapted to the various inter-faith engagement contexts.”³

The toolkit offers peer-to-peer learning modules to explore the relationship between religions, beliefs and human rights by stimulating an interdisciplinary discussion in relation to the 18 commitments on “Faith for Rights”⁴. This methodology serves a triple purpose: 1. engaging to ensure ownership, 2. thinking critically to face new challenges, and 3. reinforcing the mutual enhancement between faith and rights. The toolkit is a living document, which is open for adaptation by facilitators in order to tailor the modules to the specific context of the participants and it has already been enriched through a dozen updates during its first year of piloting in 2020.

This approach has also allowed for swift reactions to the advent of COVID-19 by including in the #Faith4Rights toolkit concrete ideas for peer-to-peer learning exercises on responding to pandemics. It includes a case study composed on the basis of real situations of negative stereotyping of religious minorities and instances of COVID-related hate speech. Such learning through sharing of experiences is also amplified

by inspiring examples of artistic expressions that have been regularly added to the toolkit.

This paper will provide a brief overview of COVID-related exercises suggested in the toolkit concerning women, girls, and gender equality (module 5); minority rights (module 6); ethical and spiritual leverage (module 16); research, documentation, and exchange (module 17); and a hypothetical case for debate in reference to an epidemic (annex G). These modules aim to stimulate exchanges between different actors to “inspire interdisciplinary research on questions related to faith and rights”⁵ and to support a “long overdue cross-disciplinary reflection on the deep, and mutually enriching, connections between religions and human rights.”⁶

The optimal benefit from the #Faith4Rights toolkit and its regularly updated 18 modules depends on the quality of moderation/facilitation of its peer-to-peer learning exercises. The task of a facilitator of such peer-to-peer learning events may be quite daunting because he or she needs to bring the participants together and stimulate true learning from each other. This cannot be achieved in a top-down manner but rather requires carefully listening to each other, on an equal footing, and trying to learn from all participants’ experiences.

Raising the right questions in a sensible manner and at the right moment in the flow of the dialogue is a prerequisite for finding answers. The idea is precisely to frame and guide a free but informed debate, which may also be heated at times. What the #Faith4Rights toolkit tries to achieve is precisely to empower the facilitator and all participants to constructively handle any controversial issues rather than avoiding them. These include gender equality, sexual and reproductive health and rights, as well as violence and political manipulation in the name of religion. It is obvious that facilitators of debates on these complex issues, particularly in tension zones among different faith communities, require skills and preparation, for which the #Faith4Rights toolkit offers ideas and support.

Women, Girls and Gender Equality

Module 5 of the toolkit mirrors commitment V of the “Faith for Rights” framework, which pledges to ensure non-discrimination and gender equality by revisiting those religious understandings and interpretations that appear to perpetuate gender inequality and harmful stereotypes or even condone gender-based violence. With regard to the various negative effects of COVID-19 on gender equality, the toolkit provides the facilitator of a peer-to-peer exchange with several questions: What are the most challenging consequences of the COVID-19 crises in the participants’ areas of work? How do they particularly affect girls and women? What are the areas of action where faith leaders believe they have the greatest chance to make a difference in facing these challenges? What promising practices can they share in this respect? What elements of the #Faith4Rights toolkit could be of practical utility in their work? What support or preparation would they feel necessary for them to use this tool in an optimal manner?

Already in April 2020, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) published a Call for joint action during the COVID-19 pandemic, referring to its “peer-to-peer learning webinars, in collaboration with Religions for Peace and other partners to explore how various faith communities can scale up collaboration around the diverse challenges posed by COVID-19 with a human rights-based approach with respect to women and girls. These webinars will use the #Faith4Rights toolkit as a resource.”⁷ Held within the CEDAW Knowledge Hub Initiative, the webinars on confronting COVID-19 from the prism of faith, gender and human rights⁸ as well as on keeping the faith in times of hate⁹ are available online as sources of inspiration for facilitators and participants. One of the learning objectives of module 5 is that participants reflect on the gendered impact of the coronavirus pandemic and explore how they can collaborate with all relevant civil society actors to address diverse challenges, especially for women and girls.

Minority Rights

Commitment VI on “Faith for Rights” pledges to stand up for the rights of all persons belonging to minorities and to defend their freedom of religion or belief as well as their right to participate equally and effectively in cultural, religious, social, economic, and public life, as recognized by international human rights law, as a minimum standard of solidarity among all believers.

Already in March 2020, the Special Rapporteur on minority issues, Fernand de Varennes, flagged that “the coronavirus outbreak endangers the health of all of us, with no distinction as to language, religion or ethnicity. But some are more vulnerable than others.”¹⁰ And the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, expressed extreme concerns “that certain religious leaders and politicians continue to exploit the challenging times during this pandemic to spread hatred against Jews and other minorities”.¹¹ He also called all religious leaders and faith actors to combat incitement to hatred, noting that “Resolution 16/18, United Nations Strategy and Plan of Action on Hate Speech, Rabat Plan of Action, #Faith4Rights toolkit, Fez Plan of action and UNESCO’s program to prevent violent extremism through education are some useful tools for such engagement and education”.¹²

With regard to responding to pandemics, the #Faith4Rights toolkit suggests that the facilitator might ask the participants how religious leaders could promote the dissemination of accurate, evidence-based health and scientific information on COVID-19. How could they draw on language from within their faith traditions to promote positive messages that strengthen the protection of universal human rights and affirm the dignity of all people, the need to protect and care of the vulnerable, and inspire hope and resilience in those affected by COVID-19 and related hate speech?

Furthermore, the #Faith4Rights toolkit facilitates access to related UN standards and guidance on new challenges, particularly in their faith-related dimensions. For example, the UN Human Rights Committee stressed in April 2020 that States cannot “tolerate, even in situations

of emergency, the advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence, and they must take steps to ensure that public discourse in connection with the COVID-19 pandemic does not constitute advocacy and incitement against specific marginalized or vulnerable groups, including minorities and foreigner nationals.”¹³

In addition, the UN Network on Racial Discrimination and the Protection of Minorities noted that “religious leaders have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech. Their actions or inactions can have lasting impacts on overall efforts at ensuring that the pandemic does not deepen inequalities and discrimination.”¹⁴ The #Faith4Rights toolkit is also referenced in the checklist¹⁵, which the UN Network designed in December 2020 to strengthen work in countries to combat racial discrimination and advance minority rights, including in developing COVID-19 response and recovery plans.

Ethical and Spiritual Leverage

Commitment XVI on “Faith for Rights” pledges to leverage the spiritual and moral weight of religions and beliefs with the aim of strengthening the protection of universal human rights and developing preventative strategies adapted to the local contexts and benefitting from the potential support of relevant United Nations entities. This commitment was taken up by Religions for Peace in its Statement on Coronavirus Crisis, published in March 2020: “Our core responsibility as faith actors is to translate ethical values into concrete actions. A compelling way to do this is to promote human rights, fraternity and solidarity through the ‘Faith for Rights’ framework. Beyond religious institutions and faith leaders, such a joint approach to face the current health crisis – and its severe economic and social implications – is also an individual responsibility. The ‘Faith for Rights’ framework and its 18 commitments reach out to individual theistic, non-theistic, atheistic or other believers in all regions

of the world to enhance cohesive, peaceful and respectful societies on the basis of a common action-oriented platform. To fulfil this responsibility of believers, in this broad definition of religion or belief, we encourage faith actors to use the online #Faith4Rights toolkit.¹⁶

Linked to this statement by Religions for Peace, the toolkit suggests several questions that facilitators may ask participants in peer-to-peer learning events, for example how to conceive a project that alleviates any negative consequences in their local context? What are these consequences and where are the entry points in the 18 commitments on “Faith for Rights” to these issues? What is the specific role that faith actors can play in this respect in order to complement rather than duplicate the contributions of other actors? Which practices in the religious sphere could either prevent diseases or increase the risk of their propagation? What are the lessons learned that may lead to preventive action by the participants who could integrate this in their own work?

The toolkit also points the facilitator to the World Health Organization’s interim guidance of April 2020 on practical considerations and recommendations for religious leaders and faith-based communities in the context of COVID-19.¹⁷ In May 2020, the High Commissioner for Human Rights addressed religious representatives and Faith-Based Organizations, saying that, “We need your far-sighted leadership; your sense of principle; and your voices of authority and concern to combat these hateful divisions. The struggle for equality and justice is at the heart of the human rights agenda, and at the heart of the UN’s work.”¹⁸

As a concrete follow-up to the Global Pledge for Action, OHCHR – together with the UN Alliance of Civilizations (UNAOC) and the Office of the Special Advisor on Prevention of Genocide (OSAPG) – have also organized a series of monthly webinars on topics where the role of faith actors is particularly influential, such as gender equality, hate speech, religious sites, minorities, atrocity crimes and interfaith dialogue.¹⁹ Aligning the efforts of these three UN entities in partnership with faith-based actors on a specific peer-to-peer learning program is a major shift from the traditional top-down approaches

to a genuine recognition of what faith actors have to offer and what the United Nations can learn from their action and wisdom.

Shifting from the classical top-down approach to a peer-to-peer learning mode does not negate the importance of guidance from high-level religious authorities. Both tracks indeed complement each other. Leadership is always of the essence. The document on Human Fraternity for world peace and living together, signed by Pope Francis and the Grand Imam of Al-Azhar in February 2019, is a case in point. The two spiritual dignitaries “resolutely declare that religions must never incite war, hateful attitudes, hostility and extremism, nor must they incite violence or the shedding of blood.”²⁰ The Catholic Church and Al-Azhar also “pledge to make known the principles contained in this Declaration at all regional and international levels, while requesting that these principles be translated into policies, decisions, legislative texts, courses of study and materials to be circulated.”

Commenting on it from a human rights perspective, a statement on behalf of OHCHR indicated that the document on Human Fraternity resonates in many ways with the “Faith for Rights” framework on the role and responsibilities of religious actors. Inter- and intra-religious engagement can be a healing tool of reconciliation and peacebuilding in people’s hearts and minds. Such engagement should lead to sustainable change on the ground. Human rights tools provide useful peer-to-peer learning opportunities that faith actors can seize and enrich.²¹

Research, Documentation and Exchange

Module 17 of the #Faith4Rights toolkit refers to a panel discussion on multi-stakeholder action to address COVID-19, during which High Commissioner Michelle Bachelet stressed the importance of exchanging experiences and creating sustainable partnerships. She underlined this point with a captivating example of interfaith collaboration: “Let me give you a recent example of such interfaith support: A Lutheran church in Berlin has hosted Muslim worshippers who were unable to take part in Friday prayers at their mosque because of social distancing rules. So the

Imam led prayers in German and Arabic, stressing that the pandemic has brought people together. The church's pastor was moved by the Muslim call to prayer in the church and she said that 'we have the same concerns, and we want to learn from you. And it is beautiful to feel that way about each other.' I would like to emphasize the powerful image of a male imam and a female pastor praying together and acting in solidarity.²²

In search of such inspiring grass-roots experiences, OHCHR has been conducting peer-to-peer learning events, including civil servants in Nigeria (with the Oslo Coalition on Freedom of Religion or Belief), faith-based and humanitarian actors in Denmark, South Asia and globally with Religions for Peace, with academic institutions (Oxford University, Vrije Universiteit Amsterdam and University of Pretoria) and the Special Rapporteur on freedom of religion or belief and students from more than 50 countries (with UNICRI and OSAPG). In all these webinars, the #Faith4Rights toolkit has been used, notably its exercises related to COVID-19. One key take-away of these webinars has been the need to improve both the religious literacy of human rights actors and the human rights literacy of faith actors.

It has been particularly useful to discuss a hypothetical case study, which is based on real-life elements, exemplifying the role and responsibilities of the State and religious leaders during an epidemic. In this scenario,

Faith *for* Rights

followers of A-Religion, which is a religious minority community in the fictitious State of Itneconni, face discrimination through the Prime Minister’s emergency order to curb the spread of the infectious virus called ANOROC-20 as well as hate speech broadcasted via public television from the religious leader of B-Religion which constitutes the vast majority of Itneconni’s religious demography.

While the scenario was designed as a hypothetical case study,²³ one participant during a peer-to-peer learning event asked why the #Faith-4Rights toolkit had invented some funny names for the states and religions in this scenario, whereas a similar case had actually happened in the participant’s district. This real-life feedback illustrates the importance of peer-to-peer learning between civil servants, faith-based actors, and human rights mechanisms in order to prevent any overreach of extraordinary measures as well as to safeguard human rights and civic space for everyone.

This may also fulfil the long-term transformative commitment XVII on “Faith for Rights” which aims at the “exchange of practices, mutual capacity enhancement and regular activities of skills updating for religious and spiritual preachers, teachers and instructors, notably in areas of communication, religious or belief minorities, inter-community mediation, conflict resolution, early detection of communal tensions and remedial techniques. In this vein, we shall explore means of developing sustained partnerships with specialized academic institutions so as to promote interdisciplinary research on specific questions related to faith and rights and to benefit from their outcomes that could feed into the programs and tools of our coalition on Faith for Rights.”

Ultimately, both movements inherited a limited reciprocal literacy from the decades-long mutual avoidance between religion and human rights. The only alternative to destructive confrontation or immobility is better understanding of both “faith” and “rights” through research, training and action-oriented dialogue among peers. This should be based on knowledge and respect, which requires time, trust and sound methodology. This is

also the rationale and philosophy of the #Faith4Rights toolkit, which stresses that “faith and rights should be mutually reinforcing spheres.” This overarching aim resonates well with a famous quote by Max Planck, whose discovery of energy quanta won him the Nobel Prize in Physics: “If you change the way you look at things, things you look at change.”²⁶



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The views expressed in this article are those of the co-authors and do not necessarily reflect the views of the United Nations.

*This article was first published in the magazine *Fides et Libertas*. Special Edition on Covid-19 and Religious Liberty, 2021

The references of this article can be found on page 169.

DOCUMENTS 2021

Find the direct links in the online magazine at www.aidlr.org/publications in the title of the annual documents.

EUROPEAN INSTITUTIONS

EUROPEAN UNION STRATEGIES

Strategies bring together standardization bodies, policy makers, technology suppliers and first responders from several EU countries who will collaborate over three years to improve the interoperability of crisis management solutions both within and between countries.

EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030)

5 of October 2021

https://ec.europa.eu/info/sites/default/files/eu-strategy-on-combating-antisemitism-and-fostering-jewish-life_october2021_en.pdf

Multiannual Indicative Programme 2021-2027 for Human Rights and Democracy – appendix

https://ec.europa.eu/international-partnerships/system/files/mip-2021-c2021-9620-human-rights-democracy-annex_en.pdf

EUROPEAN UNION GUIDELINES ON THE PROMOTION AND PROTECTION OF FREEDOM OF RELIGION AND BELIEF

Guidelines are non-binding documents which aim to facilitate the implementation of European directives.

The EU Guidelines on the Promotion and Protection of FoRB was adopted by the Council on June 24, 2013

https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/137585.pdf

The European Parliament intergroup on Freedom of Religion or Belief and Religious Tolerance periodical report.

23 of April 2022

<http://www.religiousfreedom.eu/2022/03/23/elementor-1023/>

EUROPEAN PARLIAMENT RESOLUTIONS

Resolutions do not contain specific regulations, nor do they directly result in actions. They are meant to establish frameworks for the EU. A resolution is an impetus for further investigation into a subject, and to what extent actions are desired and possible. It can also be a starting point for the immediate drafting of regulations or an action program.

Resolution on the situation in Cuba, namely the cases of José Daniel Ferrer, Lady in White Aymara Nieto, Maykel Castillo, Luis Robles, Félix Navarro, Luis Manuel Otero, Reverend Lorenzo Rosales Fajardo, Andy Dunier García and Yunior García Aguilera

16 December 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0510_EN.pdf

Resolution on the human rights situation in Myanmar, including the situation of religious and ethnic groups

7 October 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0417_EN.html

Resolution on a new EU-China strategy

16 September 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0382_EN.html

Resolution on the blasphemy laws in Pakistan, in particular the case

of Shagufta Kausar and Shafqat Emmanuel (2021/2647(RSP))

29 April 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0157_EN.pdf

Resolution on the humanitarian and political situation in Yemen

11 February 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0053_EN.html

Resolution on the human rights situation in Vietnam, in particular the case of human rights journalists Pham Chi Dung, Nguyen Tuong Thuy and Le Huu Minh Tuan

21 January 2021

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0029_EN.html

EUROPEAN PARLIAMENT RECOMMENDATIONS

Recommendations allow the EU institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed. They have no binding force.

EU-India relation

29 of April 2021

The European Parliament recommends to the to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy concerning EU-India relations:

1. (ab) place human rights and democratic values at the heart of the EU's engagement with India, thereby enabling a results-oriented and constructive dialogue and deeper mutual understanding; develop, in collaboration with India, a strategy to address human rights issues, particularly

those concerning women, children, ethnic and religious minorities and freedom of religion and belief, and to address rule of law issues such as the fight against corruption, as well as a free and safe environment for independent journalists and civil society, including human rights defenders, and to integrate human rights considerations across the wider EU-India partnership.

https://www.europarl.europa.eu/doceo/document/TA-9-2021-0163_EN.html

EUROPEAN PARLIAMENT REGULATIONS

No regulation on FoRB in 2021.

EUROPEAN COMMISSION

European Commission Dialogue with churches, religious associations or communities and philosophical and non-confessional organisations

Dialogue with churches, religious associations or communities and philosophical and non-confessional organisations.

10 December 2021: Extraordinary high-level meeting with religious leaders

At the request of President von der Leyen, Vice-President Schinas held an extraordinary high-level meeting with leaders of major European religions and organisations. Representatives from seven major European communities participated in the meeting: Catholics, Protestant, Orthodox, Muslim, Jewish, Hindu and Buddhist. The aim of the meeting was to reaffirm the Commission's commitment to the dialogue with churches and religious organisations and their important role in the European project. Vice-President Schinas underlined in particular that respect for all religions and beliefs is a core value of the European Union. Participants

agreed that common values and identity should be based on the recognition of different identities and diversity, including religious ones. Religious traditions can and must be seen as part of our cultural life. Religious festivals were considered by all participants as moments of sharing and opening to others and must be seen as a moment where different people of faith – as well as people without affiliation – can be brought together.

<https://ec.europa.eu/newsroom/just/items/50189>

10 June 2021: Article 17 dialogue meeting on the European Green Deal

In the context of the Article 17 dialogue, the European Commission (Cabinet of Executive Vice-President Timmermans) presented the recent developments in the European Green Deal, in particular with the issue of the just transition dimension. Following the presentation, an exchange of views took place with the Article 17 dialogue partners (see report of the meeting and list of participating organisations below).

5 May 2021: Article 17 dialogue meeting on the European Commission Action Plan on Integration and Inclusion (2021–2027)

In the context of the Article 17 dialogue, the European Commission (DG HOME) presented its Action Plan on Integration and Inclusion (2021–2027) and the potential role religious and non-confessional organisations may play in this context. The meeting allowed an exchange of views between the Article 17 partners who were present and Commission services.

5 February 2021: Annual high-level meeting with non-confessional organisations

Vice-President Schinas hosted the annual high-level meeting with non-confessional organisations. The theme of this year's meeting was "The European way of life". The meeting looked at how the Covid crisis may have affected and challenged this way of life and the responses to these challenges. The meeting also addressed the European response to

the current crisis, as well as recent developments such as the Migration and Asylum Pact, inclusion and integration as well as progress towards an EU Health Union.

UNITED NATIONS

HUMAN RIGHTS COUNCIL REPORTS

The **Special Rapporteur** is requested by the **Human Rights Council** to present every year an annual report at one of its regular sessions in Geneva. **The Special Rapporteur's annual reports** include a description of the activities carried out during the year in the framework of the mandate normally include discussion of specific themes or issues of particular relevance on **FoRB**.

A/HRC/49/44 – Report of the Special Rapporteur on freedom of religion or belief, Dr. Ahmed Shaheed (description on the situation on 2021)

2 March 2022

<https://www.ohchr.org/en/documents/thematic-reports/ahrc4944-rights-persons-belonging-religious-or-belief-minorities>

*Comment on the Report of the Special Rapporteur on FoRB, Dr. Ahmed Shaheed

UN report cites numerous violations of human rights *“Religious minorities vulnerable in conflict”*

Hateful rhetoric is a powerful weapon to create harmful realities for minorities in fragile settings. Religious minorities are singled out for attacks both by authorities and private citizens in several countries.

A rise in the number of conflicts globally in recent years has deprived many religious communities of their fundamental human rights, including freedom of religion or belief. This is documented in the recent report of the UN Special Rapporteur on freedom of religion or belief. The report 22-page report is entitled:

“Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity” <https://www.ohchr.org/en/documents/thematic-reports/ahrc4944-rights-persons-belonging-religious-or-belief-minorities>

In 2020 a total of 82.4 million people were forcibly displaced, representing more than one percent of the global population. This situation is compounded by the refugee crisis resulting from the war in Ukraine.

The report points out that hate speech “fosters an environment where discrimination is not just tolerated but sanctioned by political leaders” (p. 5). In situations of conflict religious minorities are often labelled as “foreigners” leaving them exposed to violence. The report cites several examples of such behavior. One example relates to the war in Ukraine: “In the Ukrainian regions of Donetsk and Luhansk, de facto authorities regularly accuse “non-traditional” Christian denominations like the Church of Jesus Christ of Latter-Day Saints and Jehovah’s Witnesses of being spies for Ukraine and “Western interests.”

The hateful rhetoric is evidenced in social media, and even in educational curricula, “influencing future generations”. In Yemen leaders of Houthi-held areas are changing the curriculum to reflect their understanding of Islam.

Through violence, intimidation and discriminatory legislation states try to restrict the human rights of religious minorities or eradicate such communities. “Myanmar is allegedly committing genocide against the Rohingya through a systematic campaign to extinguish or expel their communities from Rakhine State, inflicting widespread and often indiscriminate violence.” (p. 6). It was reported that thirty-four Christian churches and three Islamic religious sites were destroyed in Myanmar in a ten-month period in 2021.

Forced conversions

The report is a long list of human rights violations experienced by religious minorities during conflict. Forced conversions are one form of human rights violations. The goal of forced conversions is to have religious

minorities abandon their faith identity and become assimilated into the main culture. “Evidence suggests that forced conversions of minorities have occurred in Nigeria, Myanmar, Afghanistan, Pakistan, and Sudan” (p. 7).

Sexual and gender-based violence is yet another form of oppression used to destroy minority communities. The harrowing stories of Yezidi women in Iraq who were sexually assaulted and enslaved by ISIL soldiers, is one example. The plight of Christian women in Northern Nigeria is another example.

Conflict as excuse for human rights violations

The UN Special Rapporteur notes that “several State authorities have invoked situations of conflict or insecurity as either politically convenient justifications for their failure to fulfil their human rights obligations or to instrumentalize fragility of certain communities to further their political goals” (p. 9). The treatment of Uyghurs in China, Palestinians in Israel and Sri Lanka’s counterterrorism measures are cited.

Covid-19 restrictions have in several instances been used to justify restrictions on the rights of religious or belief minority communities. In Sri Lanka, India, and Myanmar Muslims have been accused of importing the virus or increasing the rates of infection. Some areas have seen a “corona jihad” on social media.

There is evidence that authorities in some countries have actively worked to prevent religious minorities from receiving humanitarian aid. The report points out the obligations of humanitarian actors to pay attention to affected communities’ religious beliefs.

Repeal anti-conversion laws

The report by the UN Special Rapporteur on freedom of religion or belief concludes with lists of recommendations. The first of 12 recommendations for states is to “Promote and protect freedom of religion or belief for minorities by repealing anti-conversion and anti-blasphemy laws...” (p. 20).

The primary recommendation for United Nations and the donor community is to “Avoid broad generalizations about the relationship between religion and conflict” (p. 21). The report has a recommendation for civil society actors: “Faith-based leaders and influencers should use their authority to promote inclusive, peaceful and just conflict resolutions and to prevent tensions arising, particularly where conducted in the name of religion or belief.” (p. 22).

HUMAN RIGHTS COUNCIL RESOLUTIONS

HUMAN RIGHTS COUNCIL (HRC) RESOLUTIONS

Human Rights Council resolutions are texts that represent the position of the Council’s members (or the majority of them) on particular human rights issues and situations. Resolutions focus on either country specific or thematic human rights issues, and can lead to actions that help address these issues.

A/RES/76/157 – Resolution adopted by the General Assembly
16 December 2021

Combating Intolerance, Negative Stereotyping, Stigmatization, Discrimination, Incitement to Violence and Violence Against Persons, Based on Religion or Belief :Resolution / Adopted by the General Assembly.

<https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp>

A/RES/76/156 – Resolution on Freedom of Religion or Belief
16 December 2021

Freedom of Religion or Belief: Resolution / Adopted by the General Assembly

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/402/61/pdf/N2140261.pdf?OpenElement>

A/76/380 – Interim report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed

5 October 2021

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/274/90/pdf/N2127490.pdf?OpenElement>

A/HRC/47/24/Add – Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association: Ending Internet shutdowns: a path forward.

15 June 2021

<https://undocs.org/A/HRC/47/24/Add.2>

A/HRC/46/30 – Report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed

Countering Islamophobia/anti-Muslim hatred to eliminate discrimination and intolerance based on religion or belief

13 April 2021

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/086/49/PDF/G2108649.pdf?OpenElement>

A/HRC/RES/46/6 – Resolution adopted by the Human Rights Council on Freedom of religion or belief.

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

23 March 2021

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/076/40/pdf/G2107640.pdf?OpenElement>

POLITICAL AND CIVIL INSTITUTIONS REPORTS

USCIRF 2022 United States Commission on International Religious Freedom – Annual Report

https://www.uscirf.gov/sites/default/files/2022-04/2022%20USCIRF%20Annual%20Report_1.pdf

ACN International – Religious Freedom in the World 2021 Report

<https://acninternational.org/religiousfreedomreport/wp-content/uploads/2021/04/Executive-Summary-2021-EN-single-pages-small.pdf>

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 4. Loi Debré, 1959.
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 6. C&L no 53, 1997, p. 35.
 7. Smidt, Corwin "Evangelicals Versus Fundamentalists: An Analysis of the Political Characteristics and Importance of Two Major Religious Movements Within American Politics." Paper presented at the Annual Meeting of the Midwest Political Science Association, April 20-23, 1983, Chicago, Illinois. Cited in Jelen 1987.
 8. Jelen, T. G. (1987). The Effects of Religious Separatism on Partisan Identification, Voting Behavior, and Issue Positions among Evangelicals and Fundamentalists in 1984. *Sociology of Religion*, 48(1), 30
 9. Most significantly, French public authorities cover the costs of maintenance for Catholic (as well as Jewish and Reformed) places of worship built prior to 1905.
 10. Art. 13.2, UDHR; Art. 12.2, ICCPR.
 11. Op. cit., p. 327.
 12. Rousseau, JJ. *The Social Contract*, 2.3.
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 15. Op. cit.

THE PRINCIPLE OF COOPERATION AS AN INSTRUMENT FOR MANAGING RELIGION IN SPAIN – Jaime Rossell Granados

1. JEMOLO, A.C., *I problema pratici della libertà*, Milán, 1961, p. 131.

2. 1.2. While it is true that the 1953 Concordat was repealed as a consequence of the signing of the 1979 agreements, the scheme of benefits enjoyed by the Catholic Church remained virtually unchanged. In fact, its explicit mention in the constitutional text shows the extent to which it was present in the legislator's mind, and the fact that the signing of these agreements occurred a few days after the Constitution was promulgated suggests that the scheme that the Catholic Church was to enjoy was already outlined.

1.3. STC 24/1982, of 13 May, STC 19/1985, of 13 February, or STC 166/1996, of 28 October.

1.4. The freedom of ideology, religion and worship of individuals and communities shall be guaranteed without any limitation, in its manifestations, other than that necessary for maintaining the public order protected by law.

3. No one shall be forced to make statements about their ideology, religion or beliefs.

4. The State shall have no official denomination. Public authorities shall take into account the religious beliefs of the Spanish society and shall maintain the consequent relations of cooperation with the Catholic Church and other denominations'.

5. STC 177/1996, of 11 November, and STC 101/2004, of 2 June

6. Organic Law 7/1980, of 5 July, on Religious Freedom.

7. You can find a detailed and comprehensive study on this law in NAVARRO-VALLS, R., MANTECÓN SANCHO, J. and MARTÍNEZ-TORRÓN, J. (coords.), *La libertad religiosa y su regulación legal. La Ley Orgánica de Libertad Religiosa*, Iustel, Madrid, 2009.

8. On the occasion of its fortieth anniversary, various studies have been published analysing the validity and enforceability of the Law. See, for example, the monographic issue dedicated to it in 'Derecho y Religión', vol. XV, 2020.

9. Currently, this national Registry, under the responsibility of the Ministry of the Presidency, Relations with Parliament and Democratic Memory, contains more than 17,400 religious entities.

10. As provided for in Article 8 of the LOLR, this administrative body is composed 'on a parity and stable basis, by representatives of the State Administration, Churches, Denominations or Religious Communities or Federations thereof, which, in any case, shall include those that are noticeably ingrained in Spain, and by persons of recognised competence whose advice is considered to be of interest in matters related to this Law... This Commission shall be responsible for making studies, reports and proposals on all matters relating to the application of this Law, and in particular, and on a mandatory basis, for preparing and issuing opinions on the Cooperation Agreements or Conventions referred to in the preceding Article'. In 2001, Portugal provided for a similar body in its Law on Religious Freedom, giving it greater powers than the Spanish one. In 2013, the Spanish legislator, aware of the Portuguese success, reformed this body with a new objective: a) assigning new duties to the Advisory Commission to improve its performance within the legal framework and also turning it into a consultative body for the regional and local administrations; b) coordinating a new composition, incorporating similar bodies existing in other Autonomous Communities and religious denominations that had been recognised as being 'noticeably ingrained'; and, lastly, improving the functioning of the Advisory Commission, which acts in Plenary and Permanent Commission, by creating Working Groups that will work on the issues assigned to them, and which may include people who are not members of the Advisory Commission.

11. See ROSSELL, J., *La LOLR en el contexto de la Unión Europea*, in ROSSELL, J. and NASARRE, E. (coords.), *La Ley Orgánica de Libertad Religiosa (1980-2020)*. Por la concordia religiosa y civil de los españoles, CEU Ediciones, Madrid, 2020, pp. 47 et seq.
12. This possibility of signing agreements with the State has led to the creation, within our ecclesiastical law system, of four levels of relationship between the State and religious groups understood as such. The first place would be occupied by the Catholic Church, followed by non-Catholic denominations that have signed a cooperation agreement, religious denominations that are noticeably ingrained and, lastly, denominations registered in the Registry of Religious Entities. In all cases, all of them have, as collective subjects, the right to religious freedom. The Law recognises the right of all of them to exercise their religious freedom and to develop its contents, although, in practice, this has only been achieved by groups that belong to one of the federations that have signed an agreement with the State or have been recognised as noticeably ingrained. This possibility of signing agreements with the State has led to the creation, within our ecclesiastical law system, of four levels of relationship between the State and religious groups understood as such. The first place would be occupied by the Catholic Church, followed by non-Catholic denominations that have signed a cooperation agreement, religious denominations that are noticeably ingrained and, lastly, denominations registered in the Registry of Religious Entities. In all cases, all of them have, as collective subjects, the right to religious freedom. The Law recognises the right of all of them to exercise their religious freedom and to develop its contents, although, in practice, this has only been achieved by groups that belong to one of the federations that have signed an agreement with the State or have been recognised as noticeably ingrained. As noted above, the Constitution does not determine that this is the system through which cooperation is implemented in our system. In fact, agreements with non-Catholic denominations may be a sign of cooperation put into practice, but it is not the only one possible, as the unilateral legislation technique is also possible, albeit taking into account the opinions of the groups that are affected. It may not be, in the opinion of some, the most egalitarian system, but it is undoubtedly the most operational one in Europe today.
13. On 3 January 1979, the Agreements on Legal Affairs, on Education and Cultural Affairs, on Economic Affairs and on Religious Assistance to the Armed Forces and Military Service of Clerics were signed. The Convention of 5 April 1962 on the Recognition of Civil Effects of Non-Ecclesiastical Studies in Catholic Church Universities remains in force, and an Agreement on Matters of Common Interest in the Holy Land was signed on 21 December 1994.
14. Although numerous laws have been passed in relation to the provisions of the text of the Agreements, one example is the Exchange of Notes between the Spanish Government and the Holy See, in 2006, aimed at reforming the direct financing model applicable to the Catholic Church, which had been previously negotiated with the Spanish Episcopal Conference.
15. A legal concept that, despite remaining undetermined for a long time, was regulated in 2015 by Royal Decree 593/2015, of 3 July, which regulates the declaration of religious denominations that have become noticeably ingrained in Spain. Currently, this status is assigned to the following religious denominations: the Catholic Church, the Federation of Evangelical Religious Entities of Spain (FEREDE), the Islamic Commission of Spain (CIE), the Federation of Jewish Communities of Spain (FCJE), the Church of Jesus Christ of Latter-day Saints, the Church of Jehovah's Witnesses, the Federation of Buddhist Communities of Spain, and the Orthodox Church.
16. Law 24/1992, of 10 November, approving the Cooperation Agreement between the State and FEREDE.
17. Law 25/1992, of 10 November, approving the Cooperation Agreement between the State and FCJE.
18. Law 26/1992, of 10 November, approving the Cooperation Agreement between the State and CIE.
19. In the Community of Madrid, framework collaboration agreements of an administrative nature have been

signed with the Evangelical Council of Madrid (on 18 October 1995), with the Israeli Community of Madrid (on 25 November 1997), and with the Union of Islamic Communities of Spain (on 3 March 1998), while in Catalonia they have been signed with the Evangelical Council of Catalonia (on 21 May 1998), the Israeli Community of Barcelona (on 15 April 2002), the Islamic and Cultural Council of Catalonia (on 1 April 2004), and the Local Bahá'í Community of Barcelona (on 15 December 2004).

20. In addition to the denominations that have signed an Agreement with the State, Buddhists, Mormons, the Orthodox Church and Jehovah's Witnesses are currently recognised as being noticeably ingrained.

21. Law 15/2015, of 2 July, on Voluntary Jurisdiction.

22. See the work by FERNANDEZ GARCIA, A., 'La Fundación Pluralismo y Convivencia. Ayudas públicas y transparencia', *Anuario de Derecho Eclesiástico del Estado*, XXXV (2019), pp. 165-190.

23. This was stated by the Independent Expert Gay McDougall in her report on minorities and their effective political participation, presented to the Human Rights Council in the 2009 Forum on Minority Issues. See A/HRC/FMI/2009/3.

24. ROSELL, J., *El principio de cooperación como herramienta para el desarrollo de la libertad religiosa: el modelo español*, in MARTÍNEZ DE CODES, R.M. y CONTRERAS, JAIME (coords.), *Espacios secularizados, espacios religiosos: Europa e Iberoamérica. Percepciones, complementaciones y diferencias*, Tirant lo Blanch, Valencia, 2017, p. 83.

FREEDOM OF CONSCIENCE AND RELIGIOUS FREEDOM IN FRENCH PUBLIC LAW – Pedro Torres

1. French Constitution, Article 1.

2. Point 5 of the Decision of the Constitutional Council n° 2010-613 DC of October 7, 2010.

3. Article by Bénédicte Lutaud, published in *Le Figaro*, on November 19th, 2019. Consulted online December 1st 2021: <https://www.lefigaro.fr/actualite-france/une-religieuse-catholique-refusee-d-une-maison-de-retraite-pour-port-du-voile-et-de-l-habit-20191119>

4. The supporters of the Concordat, that is, a treaty between the French State and the Holy See.

5. Supporters of the pure and simple separation of church and state.

6. Baubérot, *Histoire de la laïcité en France*, PUF, 2nd edition, 2003, p.118.

7. A.Briand, quoted in *Rapport public du Conseil d'État, Considérations générales, Un siècle de laïcité*, p. 258.

8. Spain's Supreme Court Decision STS 3533/2015 of July 6th 2015. Consulted on December 1st 2021: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-Supremo-avala-el-derecho-de-una-opositora-adventista-del-Septimo-Dia-a-no-ser-examinada-en-sabado>.

Sentence downloadable on PDF:

<https://www.poderjudicial.es/stfls/SALA%20DE%20PRENSA/NOTAS%20DE%20PRENSA/20150819%20TS%20Contencioso%2006-07-2015.pdf>

CHINA: HOPES DASHED – John Graz

1. www.oikoumene.org
2. Nome completo: The Three Self Patriotic Movement of the Protestant Churches in China.
3. Eleanor Albert and Lindsay Maizland, Religious Freedom in Russia, Council on Foreign Relations, 100. Last updated, September 25, 2020, 8:00 am (EST).
4. Le manifeste chrétien, pubblicato nel 1954 (1950). Philip L. Wickeri, Seeking the Common Ground Protestant Christianity, The Three Self Movement and the China's United Front, WIPF & STOCK, Eugene, Oregon, 2011. Previously published by Orbis Books 1988.
5. Constitution of the People's Republic of China (Adopted at the Fifth Session of the Fifth National People's Congress on December 4, 1982).
6. Il primo missionario, Abraham LaRue, arrivò a Hong Kong nel 1888. Nel 1904 c'erano 64 membri battezzati. Nel 1930 la missione in Cina fu organizzata in una Divisione con 156 chiese, 9.456 membri e 17 istituzioni educative e 11 istituzioni mediche. Nel 1950 i membri erano 21.000. Daniel Jiao, Chinese Union Mission, Encyclopedia of Seventh-day Adventists. www.encyclopedia.adventist.org. Ansel Oliver, Chinese Protestant leaders visit to headquarters precedes official visit to China next year, ANN, 04.10.2011.
7. Adventists Review staff, Wilson, GC Leaders Visit Adventist in China, Adventist Review, April 20, 2012. 8 Andrews McChesney, Woman Who Opened 400 Churches in China, adventistmission.org
9. Da notare la presenza di ADRA - Adventist Development and Relief Agency, e altre ONG.
10. Alain Peyrefitte, Quand la Chine s'éveilla ... le monde tremblera, Fayard, 1973, 1980.
11. China, uscirà raccomandata per paesi di particolare preoccupazione (CPC). Annual Report 2021.
12. Arielle Del Turco, Religious Freedom in China, The History, Current Challenges, and the Proper Response to a Human Rights Crisis, Issue Analysis, December 2020 Edition. frc.org/china
13. Ibidem
14. Une megachurch dynamitée par le gouvernement chinois, info Chrétienne, 15 janvier 2018.
15. Ibid. nota 54.
16. Ibid. note 62-65.
17. Brice Pedroletti, Attacchi uiguri: la Cina alle prese con il terrorismo di massa, Le Monde, pubblicato il 20 maggio 2014 alle 19:04.
18. In, Lin XIN and Lin Xiaoyi, China issues regulations clergy, February 09. 2021, Globaltimes.cn
19. China introduces new regulations restricting religious practice, April 30, 2021, ICN Independent Catholic News, May 25, 2021.
20. Eleanor Albert and Lindsay Maizland, Religious Freedom in Russia, Council on Foreign Relations, 100. Last updated, September 25, 2020, 8:00 am (EST).
21. David Alexander Palmer, Le protestantisme en Chine, January 2006, www.researchgate.net/publication
22. Juliette Duléry, dottorando in Scienze Sociali a Parigi Diderot e specialista del Protestantismo cinese. www.la-croix.com/Religion/Protestantisme/En-Chine-evangelique-expansion-2019-03-18

CORONA – A THREAT TO RELIGIOUS FREEDOM? – Harald Mueller

1. This article is a revised manuscript (as of 30.11.2021) of the lecture in the university library which I gave on 24.10.2021 at the Theological University in Friedensburg.

2. For example, Lower Saxony, Ordinance of 17.4.2020: Lower Saxony GVBl. 2020, page 74: § 1 para.5 Prohibited are: No.3: Meetings in churches, mosques, synagogues ... This provision was declared unconstitutional by the BVerfG in its decision of 29.4.2020 in connection with the general closure of mosques (1 BvQ 44/20).

3. Gesetz- und Verordnungsblatt NRW 2020, page 221 a, Ordinance of 16.4.2020.

4. Art. 4 GG: (1) Freedom of faith, conscience and religious and philosophical belief shall be inviolable. (2) The undisturbed practice of religion is guaranteed.

5. For example, Art. 8 GG: (1) All Germans have the right to assemble peacefully and without arms, without registration or permission. (2) For assemblies in the open air, this right may be restricted by law or on the basis of a law.

6. Standing case law of the BVerfG, for example in the "headscarf" decisions, 27.1.2015, 1 BvR 471/10 and 14.1.2020, 2 BvR 1333/17.

7. VG Berlin, 7.4.2020, 14. L 32/20.

8 BVerfG, 29.4.2020, 1 BvQ 44/20.

9. See <https://www.bundesregierung.de/resource/blob/974430/1949532/d3f1da493b643492b6313e8e-6ac64966/2021-08-10-mpk-data.pdf> (accessed: 28.11.2021). "A church service is something different from a visit to a disco," the then Minister President of North Rhine-Westphalia, Armin Laschet, commented on this <https://www.zeit.de/news/2021-08/10/laschet-3g-regel-gilt-nicht-fuer-gottesdienste> (accessed: 21.11.2021).

10. For example, Hamburg Ordinance of 26.11.2021, § 11 paragraph 3, <https://www.hamburg.de/ordinance/> (accessed: 30.11.2021).

11. See <https://www.bundesregierung.de/resource/blob/974430/1982598/defbdf47daf5f177586a5d34e8677e8/2021-11-18-mpk-data.pdf?download=1> (accessed: 21.11.2021).

12. In Saxony, according to Section 18 of the Corona Emergency Ordinance of 19.11.2021: The obligation to present proof of vaccination, convalescence or testing and to have the respective proof checked by the person in charge applies to meetings of churches and religious communities. In addition, churches and religious communities regulate their meetings for the purpose of religious practice on their own responsibility with binding effect. Hygiene concepts must be drawn up for meetings in churches and religious communities for the purpose of religious practice and adapted to the particular infection situation. In Thuringia, the 3-G rule for religious events is contained in Section 18 para. 1 no. 9 of the Corona Ordinance (24.11.2021), in Rhineland-Palatinate in Section 6 para. 1 of the Corona Ordinance there (23.11.2021).

13. The Minden Administrative Court (VG Minden) had considered a compulsory test before religious services issued by the district of Minden-Lübbecke in spring 2021 to be only a minor and, in view of the incidence of infection, proportionate encroachment on religious freedom.

In view of the incidence of infection, judgement of 5.5.2021, 7 L 312/21. 3

14. Standing case law: for example, BVerfG 27.1.2015, 1 BvR 471/10 and 14.1.2020, 2 BvR 1333/17.

15. See <https://www.meinekirchenzeitung.at/wien-noe-ost-der-sonntag/c-menschen-meinungen/was-says->

the-catholic-bioethics-to-these-vaccines_a21358 (accessed: 27.11.2021).

16. Liberty and Health Alliance: <https://libertyandhealth.org/german/>

17. The requirements for "undue hardship" do not seem to be very high. It is defined as "more than a minimal burden on operation of the business".

<https://www.eeoc.gov/laws/guidance/what-you-should-know-workplace-religious-accommodation> (accessed: 28.11.2021).

18. See <https://www.wired.com/story/religious-exemption-covid-vaccine-mandate-supreme-court-law-critical-of-the-us-legal-development-of-religious-exemptions/> (accessed: 27.11.2021), <https://www.npr.org/2021/09/28/1041017591/getting-a-religious-exemption-to-a-vaccine-mandate-may-not-be-easy-heres-why?t=1638127963873> (accessed: 28.11.2021).

19. See <https://www.fisherphillips.com/a/web/iELRzyXNX:95eTLLGEdubN/2jtxR8/vaccine-request-for-religious-exemption-accommodation-related-to-covid-19-vaccine.pdf> (accessed: 28.11.2021). https://www.safefederalworkforce.gov/downloads/RELIGIOUS%20REQUEST%20FORM_FINAL%20REVIEW_20211003%2010.29%2011am.pdf (accessed: 28.11.2021).

20. Thus a draft letter from the California-based Hebrew Conservative Union, see: <https://hebrewconservativeunion.org/>, which I have as a PDF file. Its content is certainly not representative of Jewish people as a whole. It reads (in part):

October 15, 2021

To Whom It May Concern,

[Name] is a member of the worldwide community of the Hebrews seeking a religious exemption from an immunization requirement. This letter explains how the Hebrew teachings may lead individual Hebrews, including [Name] to decline vaccines.

The Hebrew community has been in existence for over 4000 years, our people have been displaced from our ancestral territories due to those who have persecuted and imposed their will and/or rule on our people for the purposes of suppressing our identity, way of life, diet, health, purification & sanitation, religious beliefs, and faith.

We are a priesthood people, we have historically preserved and followed the teachings, laws, rules, customs, diet, health, purification & sanitation, and religious observances of our faith, to which we are bound. Our faith thus requires that we uphold our teachings, values, and ethics, which have survived for thousands of years. Our identity and faith are therefore inseparable from our heritage.

Our Hebrew faith teaches that a person may be required to refuse a medical intervention, including a vaccination, if his or her conscience comes to this judgment. The following authoritative Hebrew teachings demonstrate the principled religious basis on which a Hebrew may determine that he or she ought to refuse vaccines:

- Vaccination is not morally obligatory.
- There is a moral duty to refuse the use of medical products, including vaccines, that are created using human cells lines derived from abortion (1) and was experimented by using

animal cruelty, which is totally contrary to our Hebrew teachings.

- A person's assessment of whether the benefits of a medical intervention outweigh the undesirable side-effects are to be respected unless they contradict authoritative Hebrew moral teachings.
- A person is morally required to obey God first according to his or her conscience.

A Hebrew is not allowed to receive vaccines for a variety of reasons consistent with these Hebrew teachings, and there is an authoritative Hebrew teaching universally obliging Hebrews to not receive any vaccine. An individual Hebrew may invoke our Hebrews teaching and Articles of Faith to refuse a vaccine that used abortion-derived cell lines at any stage of the creation of the vaccine, animal substances (2), and was tested on animals (3).

1) <https://lozierinstitute.org/an-ethics-assessment-of-covid-19-vaccine-programs/w>

2) 'A material used in the early stage of the manufacturing process of COVID-19 mRNA Vaccine BNT162b2 contains a component that is derived from bovine milk.' <https://www.nottsapc.nhs.uk/media/1642/covidvaccinefaqspfizer.pdf> – accessed 2021-09-07

3) Our Hebrew teachings consider "vaccines tested on animals" to be animal cruelty

21. See www.dv-religionsfreiheit.org.

22. See <https://www.faz.net/aktuell/politik/ausland/papst-franziskus-wirbt-fuer-corona-impfungen-17492666.html> (accessed 28.11.2021).

23. Statements dated 8.9.2021 and 16.9.2021, <https://www.ekd.de/bedford-strohmann-ungeimpfte-non-exclusion-68260.htm> (accessed: 28.11.2021).

24. See <https://www.nadadventist.org/news/covid-19-vaccines-addressing-concerns-offering-counsel> (accessed: 28.11.2021).

25. See <https://adventist.news/news/reafirming-the-seventh-day-adventist-churchs-response-to-covid-19-1> (accessed: 28.11.2021).

RELIGIOUS FREEDOM AND COVID-19 IN PORTUGAL – Jorge Botelho Moniz

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RELIGIONS AND CONSCIENTIOUS OBJECTION TO VACCINES DURING THE COVID-19 PANDEMIC – Maria Luisa Lo Giacco

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1. C. CARDIA, *Between Law and Morality. Conscientious objection and law*, in *State, Churches and confessional pluralism*, Telematic journal (<https://www.statoechiese.it>), May 2009, p. 3.
 2. S. RODOTÀ, *Problems of conscientious objection*, in *Quaderni di diritto e politica ecclesiastica*, 1993, no. 1, p. 59.
 3. Cf. F. LATTUNEDDU, *Il processo autopoietico dell'obiezione di coscienza*, in *Quaderni di diritto e politica ecclesiastica*, 2015, no. 3, p. 877; V. TURCHI, *New forms of conscientious objection*, in *Stato, Chiese e pluralismo confessionale*, cit., October 2010, p. 2.
 4. Cf. P. CONSORTI, "Obiezione di coscienza" to military service, fiscal objection and to compulsory vaccinations in the most recent case law, in *Quaderni di diritto e politica ecclesiastica*, 1993, no. 3, p. 651.
 5. See G. TRIPODI, *Il rifiuto delle vaccinazioni: mito e realtà nei movimenti antivaccinali*, in *Rivista Gaslini*, 2005, no. 3, p. 74.
 6. M. BONATI, *Obedience is not (anymore) a virtue*, in *Research & Practice*, 2017, no. 33, p. 99.
 7. G. TRIPODI, *Il rifiuto delle vaccinazioni*, cit., p. 74 (<http://www.liberascuola-rudolfsteiner.it/2017/12/30/saluto-genesi-le-fonti-della-salute-fisica-psichica-e-spirituale/>)
 8. <http://www.segnaldalcielo.it/vaccini-contro-levoluzione-spirituale-la-profezia-di-rudolf-steiner/>
 9. https://www.libriomeopatia.it/articoli/opinioni_omeopatiche.php
 10. <http://www.comilva.org/>
 11. *The 3V Movement - Vaccines We Want Truth* (<https://www.vaccinoviogliamooverita.it/>). The statutes state that

the aim of the political movement is to 'pursue the objective of being well [...] starting from the realisation of one's own self within a society of solidarity and equity'.

12. Cf. P.L. LOPALCO, Vaccinations. Fraud, beliefs and scientific evidence, article in *Health International* (<http://www.saluteinternazionale.info/2012/10/vaccinazioni-frodi-fedi-ed-evidenze-scientifiche/>), 22 October 2012, pp. 1-3.

13. See the CESNUR website (<http://www.cesnur.com/gruppi-teosofici-e-post-teosofici/la-societa-antroposofica/>).

14. Also on this religious group, see the CESNUR website (<http://www.cesnur.com/la-corrente-metafisica-e-i-movimenti-cristiani-di-guarigione/la-christian-science>).

15. <https://scienzacristianadotnet.wordpress.com/domande-e-risposte/>

16. <https://www.christianscience.com/press-room>

17. <https://scienzacristianadotnet.wordpress.com/domande-e-risposte/>

18. <http://www.labiolca.it/rubriche/vaccini-e-salute/ccosa-dicono-la-chiesa-cattolica-islam-il-giu-daism-and-their-witnesses/>

19. See J.D. GRABENSTEIN, What the World's religions teach, applied to vaccines and immune globulines, in *Vaccine*, 31 (2013), no. 16, pp. 2011-2013.

20. Jainism is a religion from the Indian sub-continent that is considered heterodox from Hinduism, with which however it shares some aspects, such as non-violence, which is also reflected in its dietary rules. Cf. A. FUCCILLO, *The Food of the Gods. Diritto, religioni, mercati alimentari*, Giappichelli, Torino, 2015, pp. 82-93; A. PELISSERO, Food rules in the Hindu tradition, in A.G. CHIZZONITI (ed.), *Food, religion and law. Nourishment for body and soul*, Libellula, Tricase, 2015, pp. 185-201. On Hinduism in general, with references also to Jainism, see H.P. GLENN, *Legal Traditions in the World. The sustainability of difference*, Bologna, il Mulino, 2011, pp. 455-499.

21. On religious dietary rules in Judaism see S. DAZZETTI, *Le regole alimentari nella tradizione ebraica*, in A.G. CHIZZONITI (ed.), *Cibo e religione: Diritto e diritti*, Libellula, Tricase, 2010, pp. 87-109. On Islamic food rules see L. ASCANIO, *Le regole alimentari nel diritto musulmano*, in A.G. CHIZZONITI (ed.), *Cibo e religione*, cit., pp. 63-84.

22. See J.D. GRABENSTEIN, *What the World's religions teach*, cit., p. 2015.

23. See the website of the organisation, created on the initiative of the Federation of Islamic Organisations in Europe (at <https://www.e-cfr.org/>).

24. Cf. A.I. PADELA, S.W. FURBER, M.A. KHOLWADIA, E. MOOSA, *Dire Necessity and Transformation: Entry Points for Modern Science in Islamic Bioethical Assessment of Porcine Products in Vaccines*, in *Bioethics*, 2014, pp. 1-8 (<https://onlinelibrary.wiley.com/doi/abs/10.1111/bioe.12016>). The legal rule of *istihala* is also reported in an opinion by the Dar Al-Iftha Al-Missriyyah, an institute linked to the Egyptian government and a centre for the study of Islam and Islamic law: in <https://www.dar-alifta.org/Foreign/ViewFatwa.aspx?ID=9396>.

25. See J.D. GRABENSTEIN, *What the World's religions teach*, cit., pp. 2016-2018.

26. There have been cases of armed attacks on vaccination clinics in Nigeria, Afghanistan and Pakistan. In Quetta, a terrorist carried out an attack on a polio vaccination centre in January 2016, leaving 15 people dead. In September 2015, an immunisation centre in Peshawar had been hit and at least six people killed.

27. The text of this document can be found at: http://www.mednat.org/vaccines/production_vaccines_from_human_fetuses_aborted_cells.pdf.

28. Note on the use of vaccines, 31 July 2017, published at <http://www.academyforlifeva/content/pav/en/the-academy/activity-academy/note-vaccines.pdf>

29. The Amish, in addition to not vaccinating, do not make their children attend public schools, as they consider the law establishing compulsory schooling to be contrary to their faith: see, on this, the U.S. Supreme Court decision *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
30. Cases of refusal of medical treatment for their children by parents belonging to this congregation are reported by P.A. OFFIT, *Bad Faith*, in R. FRETWELL WILSON (ed.), *The Contested Place of Religion in Family Law*, Cambridge University Press, Cambridge-New York, 2018, pp. 285-307. The author also reports the episode of a measles epidemic that broke out in Philadelphia in 1990, which resulted in the death of a number of children, children of believers of that religious group, who had not been vaccinated and whose parents had also denied them access to medical care once they had contracted the disease (pp. 287-293).
31. See J.D. GRABENSTEIN, *What the World's religions teach*, cit., pp. 2015-2016.
32. See M. TOMASI, *Vaccines and public health: comparative paths in the balance between individual rights and solidarity duties*, in *Comparative and European Public Law*, 2017, 2, p. 463.
33. See A. NOVAK, *The Religious and Philosophical Exemptions to State-Compelled Vaccination: Constitutional and Other Challenges*, in *University of Pennsylvania Journal of International Law*, 7 (2005), pp. 1101-1117.
34. See D. RUBINSTEIN REISS, *Thou Shalt Not Take the Name of the Lord Thy God in Vain: Use and Abuse of Religious Exemptions from School Immunization Requirements*, in *Hastings Law Journal*, 65 (2014), pp. 1567-1568 and pp. 1586-1588.
35. See *Jacobson v. Massachusetts*, 197 U.S., 11 (1905); *Zucht v. King*, 260 U.S., 174 (1922). A brief commentary on the two judgments in H. LU, *Giving Families their Best Shot: A Law-Medicine Perspective on the Right to Religious Exemptions from Mandatory Vaccination*, in *Case Western Reserve Law Review*, 63 (2013), pp. 875-877.
36. *Prince v. Massachusetts*, 321 U.S. at 158 (1944). The case concerned a nine-year-old boy whom his grandmother, a Jehovah's Witness, sent around selling religious pamphlets. The Supreme Court starts from the specific case to establish a general principle, namely that the protection of the religious freedom of parents or those exercising parental authority over a child can never override the necessary protection of the child's best interests.
37. *Prince v. Massachusetts*, 321 U.S. at 166-167 (1944).
38. See E. CARA, *County Bans Unvaccinated Minors From Entering Public Spaces, a First in the U.S.*, in *Gizmodo*, March 27, 2019, at <https://www.gizmodo.com.au/2019/03/county-bans-unvaccinated-minors-banned-from-entering-public-spaces-a-first-in-the-us/> (accessed May 15, 2019); M. GOLD, T. PAGER, *New York Suburb Declares Measles Emergency, Barring Unvaccinated Children from Public*, in *The New York Times*, March 26, 2019, <https://www.nytimes.com/2019/03/26/nyregion/measles-outbreak-rockland-county.html> (accessed May 15, 2019).
39. In https://www.governor.wa.gov/sites/default/files/proclamations/19-01%20State%20of%20Emergency.pdf?utm_medium=email&utm_source=govdelivery (accessed 15/05/2019).
40. *Statement on Vaccinations from the OU and Rabbinical Council of America*, November 14, 2018 (at <https://www.ou.org/news/statement-vaccinations-ou-rabbinical-council-america/> - accessed 15 May 2019).
41. Cf. M. EHRENKRANZ, *Scientology's Flagship Boat Has Been Quarantined After A Confirmed Case Of The Measles*, in *Gizmodo*, May 3, 2019, at <https://www.gizmodo.com.au/2019/05/scientologys-flagship-boat-has-been-quarantined-after-a-confirmed-case-of-the-measles/> (accessed 15 May 2019).
42. See E. CHEREMINSKY, M. GOODWIN, *Religion Is Not a Basis for Harming Others: Review Essay of Paul A. Offit's Bad Faith: When Religious Belief Undermines Modern Medicine*, in *The Georgetown Law Journal*, 104 (2016), p. 1122; A. NOVAK, *The Religious and Philosophical Exemptions to State-Compelled Vaccination*, cit., pp. 1115-1120. See, also, M.A. HAMILTON, *Let's Restore the Public Good to a Place of Honor and End Vaccination Exemptions*

Other Than Those Absolutely Necessary, in *Verdict - Legal Analysis and Commentary* from Justia, 26 August 2019, posted at <https://verdict.justia.com/2019/08/26/lets-restore-the-public-good-to-a-place-of-honor-and-end-vaccination-exemptions-other-than-those-absolutely-necessary> (accessed 7 February 2020).

43. See L.E. LEFEVER, *Religious Exemptions from School Immunization: A Sincere Belief or a Legal Loophole*, in *Penn State Law Review*, 110 (2006), pp. 1047-1048 and 1062-1063.

44. See L. FRIEDMAN ROSS, T.J. ASPINWALL, *Religious Exemptions to the Immunization Statutes: Balancing Public Health and Religious Freedom*, in *The Journal of Law, Medicine & Ethics*, 25 (1997), pp. 202-204.

45. See M.A. HAMILTON, *The Vaccine for Pollyanna Attitudes Toward Public Health and Religious Beliefs: Religious Exemptions for Vaccinations and Medical Neglect Need to Be Repealed Now and the Federal Government (and the Insurance Industry) Need to Incentivize the States to Do So*, in *Verdict - Legal Analysis and Commentary* from Justia, 12 February 2015, pp. 5-6 (published at <https://verdict.justia.com/2015/02/12/vaccine-pollyanna-attitudes-toward-public-health-religious-beliefs> - accessed 7 February 2020). See, also, M.A. HAMILTON, *Children Have a Right to Live and Be Vaccinated, and Two Legal Reforms Are Needed*, in *Verdict - Legal Analysis and Commentary* from Justia, 28 April 2019, at <https://verdict.justia.com/2019/04/28/children-have-a-right-to-live-and-be-vaccinated-and-two-legal-reforms-are-needed> (consulted 7 February 2020).

46. Cf. M. CABURAL SUMMERS, *New York State Legislature Passes Bill Ending Religious Exemptions to Vaccinations*, June 13, 2019, at <https://usaheald.com/new-york-state-legislature-passes-bill-ending-religious-exemptions-vaccinations/> (accessed 22 July 2019).

47. The text of the law at https://nyassembly.gov/leg/?default_fid=&leg_video=&bn=A02371&term=2019&Summary=Y&Actions=Y&Text=Y (accessed 22 July 2019).

48. In Washington state, Act No. 1638 of 3 May 2019 (at <https://app.leg.wa.gov/bills/summary?BillNumber=1638&Initiative=false&Year=2019> - consulted 7 February 2020), in Maine, Act No. 586 of 12 February 2019 (at https://legislature.maine.gov/bills/display_ps.asp?PID=1456&snum=129&paper=HP0586 - consulted 7 February 2020).

49. See, for a brief commentary on this law, D. RUBINSTEIN REISS, *Vaccines, School Mandates, and California's Right to Education*, in *UCLA Law Review Discourse*, 98 (2015), pp. 100-108. The text of the measure is posted at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB277 (accessed 4 February 2020). In 2016, the law was challenged, but the District Court of California, in *Whitlow v. California*, 203 F.Supp.3d, 1079 (2016), ruled that the exclusion of unvaccinated children from school is a measure proportionate to the protected state interest, namely preventing epidemics and protecting the health of other children and the general population. Duties of solidarity prevail over individual freedom. See M. TOMASI, *Vaccines and Public Health*, cit., pp. 465-467.

50. *Brown v. Stone*, 378 So. 2d at 218 (Miss. 1979).

51. An up-to-date overview of the legislative measures on compulsory vaccination and exemptions in the individual states is published on the website of the National Conference of State Legislatures, where all legislative texts can also be consulted: <https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx> (accessed 7 February 2020).

52. The Religious Freedom Restoration Act was enacted in 1993 by the United States Congress in order to better protect individual religious freedom. It provides that, in the case of laws that affect the exercise of the right to religious freedom, the court must apply the strict scrutiny test to the case, i.e. a test of whether that limitation is in fact strictly necessary to guarantee a higher public interest. The test has been developed in Supreme Court jurisprudence since the 1960s. For a commentary on the Religious Freedom Restoration Act, see M.L. LO GIACCO, *La tutela della libertà*

- religiosa negli U.S.A. Il Religious Freedom Restoration Act, in R. COPPOLA, L. TROCCHI (eds.), *Minorities, Secularity, Religious Factor. Studi di diritto internazionale e di diritto ecclesiastico comparato*, Cacucci, Bari, 1997, pp. 245–264.
53. See R. BUCCHIERI, *Religious Freedom versus Public Health: the Necessity of Compulsory Vaccination for Schoolchildren*, in *Boston University Public Interest Law Journal*, 265 (2016), pp. 266–267; R.D. SILVERMAN, *No More Kidding Around: Restructuring Non-Medical Childhood Immunization Exemptions to Ensure Public Health Protection*, in *Annals of Health Law*, 12 (2003), no. 2, p. 283.
54. See S. CLARKE, A. GIUBILINI, M.J. WALKER, *Conscientious Objection to Vaccination*, in *Bioethics*, 31 (2017), no. 3, pp. 155–161.
55. Cf. R. BARKER, *No Jab - No Pay, No Jab - No Play, No Exceptions: The Removal of Conscientious and Religious Exemptions from Australia's Childhood Vaccination Policies*, in *Quaderni di Diritto e Politica Ecclesiastica*, 2015, no. 2, pp. 515–518.
56. See M. TOMASI, *Vaccines and Public Health*, cit., pp. 459–461.
57. See M. TOMASI, *Vaccines and Public Health*, cit., pp. 460–463.
58. See M. TOMASI, *Vaccines and Public Health*, cit., pp. 467–468.
59. The judgments of the Constitutional Court of the Czech Republic are cited. in M. TOMASI, *Vaccines and Public Health*, cit., pp. 470–471.
60. Judgments cited in S. PENASA, *Vaccine Obligations: an itinerary in comparative constitutional jurisprudence*, in *Quaderni Costituzionali*, 2018, no. 1, pp. 54 and 69.
61. See *Measles epidemic in Madagascar, over 1200 deaths*, in *La Stampa*, 14 April 2019, at <https://www.lastampa.it/esteri/2019/04/14/news/epidemia-di-morbillo-in-madagascar-oltre-1200-morti-1.33695171> (accessed 23 July 2019).
62. See A. VIGNE, *Measles epidemic in Madagascar, over 1200 deaths*, in *il Giornale.it*, 14 April 2019, at <http://www.il-giornale.it/news/mondo/epidemia-morbillo-madagascar-oltre-1200-morti-1679287.html> (accessed 23 July 2019).
63. Cf. K. RICCARDI, *Samoa islands, measles outbreak: red flags to flag the unvaccinated. Mass immunisation started*, in *Repubblica.it*, 5 December 2019 (https://www.repubblica.it/esteri/2019/12/05/news/isole_samoa_po-linesia_emergenza_morbillo_ba_ndiere_rosse-242635936/).
64. This is reported at <https://www.unicef.it/doc/9534/congo-il-morbillo-sta-mietendo-vittime-tra-i-bambini-pi-di-5000-sono-morti-dallinizio-dellanno.htm> (accessed 7 February 2020).
65. Colombian constitutional jurisprudence is cited by S. PENASA, *Vaccination Obligations*, cit., pp. 53–54.
66. S. PENASA, *Obblighi vaccinali*, cit., p. 60, is also of this opinion.
67. http://www.euro.who.int/_data/assets/pdf_file/0007/255679/WHO_EVAP_UK_v30_WEBx.pdf
68. See p. 5 of the document.
69. <http://www.epicentro.iss.it/temi/vaccinazioni/ObbligoVaccinale.asp>
70. http://www.epicentro.iss.it/temi/vaccinazioni/pdf/TESTO_Commissione_definitivo.pdf
71. <http://www.gazzettaufficiale.it/eli/id/2017/08/05/17A05515/sg>
72. <http://www.gazzettaufficiale.it/eli/id/2017/08/5/17G00132/sg>
73. Cf. F. ZUOLO, *L'obiezione di coscienza alle vaccinazioni obbligatorie: un profilo legislativo e concettuale*, *Relazione al Forum sul BioDiritto* (Trento 28–29 May 2008), p. 6 (in <http://www.medicinenaturali.net/vaccini/Zuolo.pdf>).

74. On the legislative process that led to the enactment of Law No. 119 of 2017, see D. CODUTI, *La disciplina sulle vaccinazioni obbligatorie alla prova di forma di stato e forma di governo*, in *Rivista AIC*, No. 3/2018, pp. 605–638 (www.rivistaaic.it).
75. See G. MANFREDI, *Vaccination obbligatorie e precauzione*, in *Giurisprudenza Italiana*, June 2017, p. 1421.
76. F. PIZZOLATO, *Mutations of economic power and new images of freedom*, in *Costituzionalismo.it*, 2017, fasc. 3, p. 2.
77. Cf. A.M. LORUSSO, *Postverità*, Roma–Bari, Laterza, 2018.
78. See C. MAGNANI, *I vaccini e la Corte costituzionale: la salute tra interesse della collettività e scienza nelle sentenze 268 del 2017 e 5 del 2018*, in *Forum di Quaderni Costituzionali*, 12 April 2018, p. 1 (<http://www.forum-costituzionale.it/wordpress/>).
79. The judgment is published on the website of an organisation opposed to vaccines: http://www.comilva.org/wp-content/uploads/2014/09/Sentenza_TdL_Rimini_marzo2012.pdf. On this matter, S. TAFURI, D. MARTINELLI, R. PRATO, C. GERMINARIO, *Obbligo vaccinale e diritto alla salute: il valore della giurisprudenza nella pratica di sanità pubblica italiana*, in *Annali di igiene: medicina preventiva e di comunità*, 2012, n. 24, p. 196, observe that the Ministry of Health had not entered an appearance and that the expert appointed by the judge was a well-known antivaccinationist.
80. Court of Busto Arsizio, judgment 2 December 2009, no. 413, in http://www.comilva.org/wp-content/uploads/2014/09/20091202_Trib_BA_SL_413-09.pdf.
81. The text of this judgment can also be read at: http://www.comilva.org/wp-content/uploads/2014/08/TdL_Pesaro_260-13_20130701.pdf.
82. The idea that autism is caused by vaccines was put forward by Andrew Wakefield in a study published in the journal *The Lancet* in 1998. A few years later, when the research was shown to be unreliable, the journal withdrew the publication and Wakefield was struck off the British Medical Association.
83. Court of Cassation, Sec. VI Civ., Order No. 24959 of 23 October 2017.
84. See F. MINNI, A. MORRONE, *Il diritto alla salute nella giurisprudenza della corte costituzionale italiana*, in *Rivista AIC*, no. 3/2013, pp. 3–6 (www.rivistaaic.it). See also, more generally, M. CARTABIA, *La giurisprudenza costituzionale relativa all'art. 32, secondo comma, della Costituzione italiana*, in *Quaderni costituzionali*, 2012, 2, pp. 455–479.
85. Cf. L. CARLASSARE, *Solidarity: a political project*, in *Costituzionalismo.it*, no. 1/2016, pp. 46–52.
86. Cf. P. CONSORTI, *Diritto e religione*, 2nd ed., Laterza, Roma–Bari, 2014, p. 143.
87. See L. PRINCIPATO, *Obbligo di vaccinazione, 'potestà' genitoriale e tutela del minore*, in *Giurisprudenza Costituzionale*, 2017, 6, p. 3139. In general see M.L. LO GIACCO, *Il superiore interesse del bambino come limite alla libertà religiosa dei genitori*, in *Giurisprudenza Italiana*, 2019, pp. 782–786; P. MOROZZO DELLA ROCCA, *Responsabilità genitoriale e libertà religiosa*, in *Il diritto di famiglia e delle persone*, 2012, 4, pp. 1712–1715.
88. A. SPERTI, *Objections of conscience and fears of complicity*, in *Federalismi.it*, no. 20/2017 (25 October 2017), pp. 7–8.
89. On the best interests of children, see, most recently, E. LAMARQUE, *Prima i bambini. Il principio dei best interests of the child nella prospettiva costituzionale*, Franco Angeli, Milan, 2016.
90. *Prince v. Massachusetts*, 321 U.S. at 170 (1944). For commentary see T.J. ASPINWALL, *Religious Exemptions to Childhood Immunization Statutes: Reaching for a More Optimal Balance Between Religious Freedom and Public Health*, in *Loyola University Chicago Law Journal*, 29 (1997), pp. 118–125.
91. On Judgment No. 5/2018 see G. PASCUIZZI, *Vaccines: which strategy*, in *Foro Italiano*, 2018, I, pp. 737–741;

- U. ADAMO, *Materia 'non-democratic' e ragionevolezza della legge*, in *Consulta online*, 2018, I, pp. 296-317; A. IANNUZZI, *L'obbligatorietà delle vaccinazioni a giudizio della Corte costituzionale fra rispetto della discrezionalità del legislatore statale e valutazioni medico-statistiche*, in *Consulta online*, 2018, I, pp. 87-96; L. PEDULLÀ, *Vaccinazioni obbligatorie e doveri di solidarietà costituzionale (alla luce della sent. n. 5 del 2018 della Corte cost.)*, in www.forumcostituzionale.it, 11 September 2018.
92. See A. MADERA, *New forms of conscientious objection between burdens on religious freedom and third-party burdens. A comparative analysis of the jurisprudence of the U.S. Supreme Court and the Strasbourg Court, in State, Churches and Confessional Pluralism*, cit., no. 16, 2017, p. 30
93. E.C.H.R., *Grand Chamber, Bayatyan et al. v. Armenia*, 7 July 2011 (No. 23459/03) at <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-105611%22>].
94. On this judgment, which affirms a right to conscientious objection, see N. HERVIEU, *Liberté de religion (Art. 9 CEDH): Reconnaissance conventionnelle du droit à l'objection de conscience*, in *State, Churches and Confessional Pluralism*, cit., September 2011.
95. E.C.H.R., *Mushfig Mammadou et autres v. Azerbaïdjan*, 17 octobre 2019 (No. 14604/08, became final on 17 January 20209), at <https://hudoc.echr.coe.int/eng#%22itemid%22:%22001-197066%22>].
96. E.C.H.R., *Solomaikhin v. Ukraine*, dec. 24429/03.
97. For a brief comment on the judgment see S. SCALA, *Le vaccinazioni nell'Unione Europea tra la tutela del diritto alla salute e libertà di coscienza*, in *Diritto & Religioni*, 2015, 2, pp. 308-312
98. See the press release of the European Court of Human Rights (at: <https://hudoc.echr.coe.int/eng-press#%22fulltext%22:%22Vavricka%22>}).
99. No. 335 of the reasoning.
100. This decision of the Constitutional Court is also recalled by D. PARIS, *L'obiezione di coscienza. Studio sull'ammissibilità di un'eccezione dal servizio militare alla bioetica*, Passigli editori, Bagno a Ripoli, 2011, p. 133. The same author, however, states that a recognition of conscientious objection to compulsory vaccines 'can be reasoned with as long as one is faced with a deep inner conviction against vaccinations per se' (p. 135).
101. Expression used by Pope Francis in a video message on the vaccination campaign against Covid-19, 18 August 2021, reported by *Avvenire* it <https://www.avvenire.it/papa/pagine/il-papa-vaccinarsi-e-un-atto-d-amore> (accessed 6 October 2021).
102. See Press Conference of the Holy Father during the return flight from Bratislava, 15 September 2021, in <https://www.vatican.va/content/francesco/it/speeches/2021/september/documents/20210915-bratislava-voilo-ritorno.html> (consulted on 28 September 2021).
103. It is Card. L.R. Burke, former President of the Tribunal of the Apostolic Signatura, who contracted the virus in the United States in August 2021, ending up in intensive care. The news was reported by many press organs.
104. Cf. S. RENDA, 'I don't vaccinate myself, I believe in God': the latest no vax cunning to avoid the injection, in *Huffpost*, 15 September 2021, https://www.huffingtonpost.it/entry/non-mi-vaccino-credo-in-dio-lultima-furbizia-no-vax-per-evitare-liniezione_it_6141c6c9e4b0dda4cbd65038 (consulted on 29 September 2021); G. GIORGI, 'No vaccine, the Bible tells me so': in the USA the new frontier of the No vax in the name of religion, in *Open*, 16 September 2021, <https://www.open.online/2021/09/16/covid-19-usa-no-vax-religione/> (consulted on 29 September 2021).

105. In <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2020/12/21/0681/01591.html> (consulted on 30 September 2021).

106. Interview with Pope Francis, 9 January 2021, reported in <https://www.ilfattoquotidiano.it/2021/01/09/papa-eticamente-tutti-devono-vaccinarsi-lo-faro-anche-io-in-gioco-la-salute-ma-anche-la-vita-di-altri-inspiegabile-il-negazionismo-suicida/6060483/> (consulted on 5 October 2021). In the same interview, the Pope called the denialism of those who reject vaccination 'suicidal'.

107. Urbi et Orbi Message of the Holy Father Francis, Christmas 2020, at https://www.vatican.va/content/francesco/it/messages/urbi/documents/papa-francesco_20201225_urbi-et-orbi-natale.html (accessed 5 October 2021).

108. The news at https://www.repubblica.it/cronaca/2021/07/25/news/vaccini_oms_rassicura_i_musulmani-311669996/ (consulted on 30 September 2021).

109. The document at <https://www.iifa-aifi.org/wp-content/uploads/2021/03/IIFA-Symposium-on-Anti-Covid-19-Vaccines-Feb-2021.pdf> (consulted on 30 September 2021). The symposium was organised by the Organisation for Islamic Cooperation.

110. The zakat, which is one of the so-called five pillars of Islam, is a religious tax that every Muslim pays every year to charities and relief organisations.

111. The fatwa in Islamic law is a religious opinion, whose binding force derives from the authoritativeness of the source that issued it; it is therefore not a ruling: see P. CONSORTI, *Fatwa e diritto statale*, 5 June 2021, in https://people.unipi.it/pierluigi_consorti/fatwa-e-diritto-statale/.

112. The news is reported by S. VERRAZZO, Al-Azhar: "Vaccinating oneself is not violating Ramadan", in *Avvenire.it*, 14 April 2021, <https://www.avvenire.it/mondo/pagine/al-azhar-immunizzarsi-non-e-violare-il-ramadan> (accessed 4 October 2021).

113. In http://www.xinhuanet.com/english/2021-04/22/c_139898931.htm (accessed 23 April 2021).

114. See *The Declaration* at <http://eumuslims.org/en/media-centre/news/uk-muslims-urged-get-covid-19-jab-during-ramadan> (accessed 23 April 2021).

115. Cf. S.N. ALI - W. HANIF - K. PATEL - K. KHUNTI, *Ramadan and Covid-19 vaccine hesitancy - a call for action*, in *www.thelancet.com*, 17 April 2021, vol. 397, 1443-1444.

116. See Rabbi M. PELTZ, *Vaccination and Ethical Questions Posed by COVID-19 Vaccines*, in <https://www.rabbinicalassembly.org/sites/default/files/2021-01/Vaccination%20and%20Ethical%20Questions%20Posed%20by%20COVID-19%20Vaccines%20-%20Final.pdf> (accessed 4 October 2021). See also D. GOLINKIN, *Does halakhah require vaccination against dangerous diseases such as measles, rubella, polio and Covid-19?*, in <https://www.rabbinicalassembly.org/sites/default/files/2021-01/Golinkin%20vaccination%20final.pdf> (consulted on 4 October 2021).

117. See Rav A.M. SOMEKH, *Covid vaccine, what the Halakhah says*, in *moked*, 31 December 2020, <https://moked.it/blog/2020/12/31/vaccino-anti-covid-cosa-dice-la-halakhah/> (consulted 4 October 2021).

118. The blog *Religion Clause*, edited by H. FRIEDMAN (<http://religionclause.blogspot.com>), reports on these cases.

119. See the appeal at <https://mediacentre.christianaid.org.uk/world-religious-leaders-call-for-massive-increases-in-production-of-covid-vaccines-and-end-to-vaccine-nationalism/>

(accessed 29 September 2021). See also G. COURTENS, *Religious leaders for a 'common good' vaccine*, in *Voceevangelica*, 28 April 2021 <https://www.voceevangelica.ch/voceevangelica/home/2021/04/Mondo-leader-religiosi-vaccino-bene-comune-Covid-19.html> (consulted 29 September 2021).

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