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# Religious Freedom in the Time of the Pandemic

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**Abstract:** The subject of the paper is the issue of restrictions on religious freedom during the COVID-19 pandemic imposed by European countries. The period under examination covers the interval from March to December 2020. The issue is analyzed from the point of view of respecting human rights in a situation of conflict between the values of public health and religious freedom. In this context, the perception of importance and urgency regarding the values that should be protected and the concept of “essential goods”, which are understood differently in secular and religious perspectives, are of particular importance. Another essential issue is not only the scope but also the “depth” of state intervention in the life of religious communities. In Europe, there was a wide variety of national approaches to restricting religious freedom in order to ensure public health. Some of them pursued a very restrictive policy in this area, others moderate, and others very soft. One also could observe the difference in decisions made by most countries during the first and the second waves of the pandemic. A significant element enabling a possible evaluation of the applied solutions is the matter of their duration. Are the introduced limitations only temporary, implemented due to the extraordinary situation, or should they be viewed as a part of a “radical political experiment”, as a result of which the very understanding of religious freedom and its place in the hierarchy of human rights will change. The arguments of a philosophical, theological, legal and sociological nature are analyzed using methods appropriate to each of these disciplines.

**Keywords:** human rights; religious freedom; public health; pandemic; restrictions; discrimination; essential goods; Europe; France



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## 1. Religious Freedom in the Time of the Pandemic

The pandemic has exposed the true face of our Western societies in many areas, which were previously somewhat hidden. Sometimes, this true face turned out to be better than the one we had known from our daily contacts, sometimes worse. The pandemic also revealed the attitude of the rulers of respective countries towards religious freedom. This is because religious activity involves the organization of assemblies during which—regardless of their secular or religious nature—the virus spreads particularly easily. However, judging by the diversity of specific decisions related to restrictions on the right to religious freedom taken by individual governments, the virus was “less pious” in some countries and “more pious” in others; in some countries, it frequented the supermarket more often and, in others, the church.

A question arises, therefore, whether such a great variety of restrictions on the right to freedom of religion was introduced in Europe on the basis of scientific knowledge, or due to the panic into which state authorities in respective countries fell at the beginning of the pandemic, or whether it resulted from certain philosophical assumptions (pre-judices) about the importance of religion shared by politicians regardless of the pandemic itself? Were the sanitary arguments of major importance when it comes to the order of “switching off” and “turning on” particular areas of social life, or were understanding of “essential goods” and perception of the hierarchy of human rights equally meaningful? What were the reasons for the differences between countries in shifting or unchanging policies towards religion between the first and second waves of the pandemic?

The right to religious freedom is included in all the basic international documents related to human rights. In the Universal Declaration of Human Rights, we have Article 18, in the European Convention for the Protection of Human Rights and Fundamental Freedoms—Article 9, in the International Covenant on Civil and Political Rights—Article 18, and in the Charter of Fundamental Rights of the European Union—Article 10. The consonance of all these provisions is characteristic. They guarantee the “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching” (ICCPR, Art. 18, sec. 1). In a negative aspect, this right manifests itself as freedom from coercion that would impair the freedom to have or to adopt a religion or beliefs (ICCPR, Art. 18, sec. 2).

## 2. Restrictions on the Right to Religious Freedom

In the context of a pandemic, the question of the possibility of imposing restrictions on the exercise of the right to religious freedom by the state becomes particularly important. Since the right to religious freedom is exercised in human society, it must be subject—as if by definition—to certain restrictive norms (see [The Second Vatican Council 1965](#), n. 7; [Milcarek 2012](#), p. 123). This is reflected both on theological grounds and in the cited acts of international law. Let us first look at the theological reasons invoked in the teaching of the Catholic Church. The right to religious freedom is not simply one of many human rights, but the most fundamental right that is enjoyed by human beings not by the subjective disposition of an individual but by virtue of the person’s very nature. Religious freedom is the first of human freedoms and underlies all human rights. It is, in a way, the axis of human rights. “The civil and social right to religious freedom”, writes John Paul II, “inasmuch as it touches the most intimate sphere of the spirit, is a point of reference for the other fundamental rights and in some way becomes a measure of them” ([John Paul II 1988](#), n. 39). “Actuation of this right is one of the fundamental tests of man’s authentic progress in any regime, in any society, system or milieu” ([John Paul II 1979](#), n. 17).

The special role of the state in the protection of the right to religious freedom stems from the fact that only the state has at its disposal the tools of legal coercion. “(G)overnment is to see to it that equality of citizens before the law (. . . ) is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens” ([The Second Vatican Council 1965](#), n. 6). Interventions by the civil authority aimed at limiting the possibility of exercising the right to manifest religious beliefs—as we read in *Dignitatis humanae*—should not, however, be made “in an arbitrary fashion or in an unfair spirit of partisanship. Its action is to be controlled by juridical norms which are in conformity with the objective moral order. These norms arise out of the need for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice, and finally out of the need for a proper guardianship of public morality. These matters constitute the basic component of the common welfare” ([The Second Vatican Council 1965](#), n. 7).

In the strict sense, it is not the right to religious freedom that is subject to restrictions, but the way the right is exercised (see [Milcarek 2012](#), p. 145). Therefore, it can be said that the right to religious freedom is absolute in the internal dimension (*forum internum*) and limited in the external manner of expression (*forum externum*). Although the use of the right to religious freedom is subject to certain internal moral limitations (in the human conscience), from the social point of view, only those moral limitations that translate into legal restrictions are important. The criterion for limiting the exercise of the right to religious freedom is juridical (fair public peace) and moral (public morality), but the latter applies only to public activities, their public reception, and social consequences. However, how this fair public peace and public morality are understood also depends on the socio-political context. The point of reference in assessing the necessity to apply legal restrictions is public order as a basic part of the common good, necessary to preserve the

existence of society, and not the entire common good. Nor is it, for example, a state-defined *raison d'état*. The protection of religious freedom may not be suspended, either, when an exceptional public danger threatens the existence of the nation (see [Piechowiak 1996](#), p. 9). In the sentence above, a norm that limits the limiting norm is also provided: it is about maintaining integral freedom in society, which means that a person should be granted as much freedom as possible, and restrictions should be introduced only when they are necessary (see [Milcarek 2012](#), p. 149).

Let us now look at the issue of restricting the right to religious freedom from the point of view of international law. Rather characteristically, out of the four documents of international law cited above, only two mention the possibility of introducing restrictions on the manner of exercising the right to religious freedom: the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). In both documents, the relevant clauses are almost identical, except that in the ECHR, the limiting norm is additionally restrained by the introduction of the principle of democracy. In Article 9, sec. 2 of the Convention we read: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". The ICCPR provides in Article 4, sec. 1 the possibility of suspending individual rights "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed." However, the right to religious freedom is one of those rights that cannot be suspended even in the event of a state of emergency (Article 4, sec. 2).<sup>1</sup> An interesting comment can be found in the Office for Democratic Institutions and Human Rights (ODIHR) *Guidelines for Review of Legislation Pertaining to Religion or Belief*, which states that the right to religious freedom in its internal dimension (*forum internum*) is absolute and can never be suspended or limited, regardless of the circumstances (see [OSCE/ODIHR 2004](#), p. 10),<sup>2</sup> while in the case of introducing restrictions in the external scope (*forum externum*), three criteria must be met. Firstly, the restriction must be introduced by means of an Act (*limitation prescribed by law*), which means that it must be made sufficiently clear what is covered by the restriction and what is not covered. Secondly, the reason for introducing restrictions must be one of the premises specified in the limitation clause, i.e., protection of public safety, order, health, public morality or the fundamental rights and freedoms of other persons. Material premises have been catalogued in a closed manner; therefore, it is emphasized that national security, in accordance with Article 4 sec. 2 of the ICCPR, is not a sufficient premise in this respect. Thirdly, the words "strictly required" signify that the restrictions must be indispensable for the protection of the premises listed in the limitation clause; hence, the objectives cannot be achieved through the use of other available means or the restriction of other rights. Due to the nature of the right to religious freedom, limitations on the exercise of the freedom must be introduced at the last, not the first or the second place, and must not undermine the very core of religious freedom (see [Kwaśniewski et al. 2020](#)). In addition, limitations must be proportionate to the public interest they are intended to serve. All three conditions must be met together (see [OSCE/ODIHR 2004](#), pp. 18–19).

On a legal basis, as on a theological basis, we can say that religious freedom is not simply one of human rights, but it is one of the fundamental human rights, the protection of which is a *sine qua non* condition for a democratic rule-of-law state. This is also confirmed by the jurisprudence of the European Court of Human Rights, recognizing that the choice of a specific religion or axiological system is one of the most important elements forming a person's identity, determining his or her basic life choices and relationships with other people (see [European Court of Human Rights 2020](#)). For this reason, if, due to the factors

<sup>1</sup> Note that the list of rights that do not allow derogation is short and includes only seven instances, including the right to life, the prohibition of torture and slavery.

<sup>2</sup> ODIHR is an office of the Organization for Security and Co-operation in Europe (OSCE) dealing with the human dimension of security.

specified in the limitation clause, the restriction of the right to manifest religion is absolutely necessary, it should be rational and minimal (see [Jamal 2017](#), p. 102).

### 3. Ways of the Introduction of Limitations Regarding Religious Freedom

The very fact of introducing restrictions on participation in public religious celebrations during the pandemic is not a surprise. The virus is spread by droplets, and experts in the field of epidemiology, including the World Health Organization itself, argue quite unanimously that its spread can only be limited by reducing direct contacts between people. Exercising religious freedom in the external aspect, in turn, is naturally associated with people leaving their homes and gathering in the sacred space. Hence, churches are one of the places where infections can potentially occur. Whoever proceeds from the assumption that the virus is God's punishment and therefore does not harm the righteous, risks empirical falsification of his theory, as it happened, for example, in the Kiev Pecherska Lavra.<sup>3</sup> The linking of restrictions on the exercise of the right to religious freedom with the premise of concern for public health seems to be sufficiently proven.

However, individual countries of the European Union reacted to the epidemic in very different ways and introduced very different restrictions on the exercise of the right to religious freedom. We encounter a similar diversity in the United States.<sup>4</sup> Alexis Artaud de La Ferrière of the University of Portsmouth poses an important question: "Given that the mode and risk of viral transmission is the same in all these countries, why is there such a divergence in public policy?" ([de La Ferrière 2020](#)).

Theoretically, one can imagine at least three ways to determine the scope and form of the introduction of restrictions in the area of religious freedom. Firstly, state authorities determine their scope independently and impose top-down rules on churches and religious communities (e.g., Belgium, France, Ireland, Great Britain); secondly, state authorities negotiate forms and scope of restrictions with representatives of major churches and religious communities (e.g., Germany, Poland, Italy, or Austria in the second wave of the pandemic),<sup>5</sup> and thirdly, state authorities give those responsible for churches and religious communities autonomy in the way they care for the health of their followers (e.g., Spain or the Netherlands in the second wave of the pandemic). The choice of the method of introducing the restrictions shows in itself the attitude of state authorities towards religions and religious communities. While in the case of the first wave of the pandemic, the decision to impose the regulation could have resulted from the urgency of the situation and the necessity to act ad hoc, in the case of the second wave it was a very conscious choice. Undoubtedly, the greatest trust in churches and religious communities was shown in those countries where the third solution was applied. As a rule, the choice of the first solution was associated with the contesting of the imposed restrictions not only by individual believers (campaigns to collect signatures against restrictions on the internet, public prayers in squares in front of closed churches, "illegal" services),<sup>6</sup> but also with opposition from the bishops (see [Leplongeon 2020](#); [Source AFP 2020](#); [Katolicka Agencja Informacyjna 2020b](#)).

### 4. The Level of Restrictions Introduced

The aforementioned text by de La Ferrière refers to the first wave of the pandemic, and the conclusion drawn from the cursory research amounts to saying that it is difficult to

<sup>3</sup> The clergy of the Lavra first called on the faithful to disregard the sanitary rules and then had to close the temple due to 90 cases of infection and the imposed quarantine (see [OSCE/ODIHR 2020](#), p. 117).

<sup>4</sup> According to the Pew Research Center, 10 states banned religious gatherings, 15 states did not introduce any restrictions, and others imposed some restrictions (see [Villa 2020](#)).

<sup>5</sup> In Poland, the talks concerned, for example, the number of liturgy participants and the lifting of the obligation for the celebrant to wear a mask. In the case of Italy, agreements were signed with several religious communities containing arrangements tailored to the needs of a given group. In the case of Germany, the authorities reached an agreement with various faiths and religions on how to organize services for the Christmas season (see [The European Centre for Law and Justice 2020](#); [Spadaro 2020](#), pp. 362–64; [JMK, KF 2020](#)).

<sup>6</sup> It seems that in Europe we do not yet have research on changes in religious behavior during the pandemic, similar to that carried out by the Pew Research Center in the United States (see [Pew Research Center 2020](#)).

find a direct relationship between the degree of restrictions on religious communities and, for example, secularity of the state, democratic nature of societies, or the degree of their secularization. Nevertheless, here we get information that the restrictions not only could theoretically have been very different, but that they actually were. The author introduces four degrees of restrictiveness of state policy: very high, high, moderate and low, placing as many as 20 EU Member States in the first two categories. In these countries, all public religious celebrations were suspended (with some exceptions in the case of Austria).

The OSCE report *Human Dimension Commitments and State Responses to the Covid-19 Pandemic* also divides countries into four groups when it comes to the level of restrictions on the exercise of religious freedom (see [OSCE/ODIHR 2020](#), p. 117).

Trying to find some logic according to which one could make sense of the above results (Table 1), de La Ferrière assumes that, for example, the adopted restrictions could be directly related to the attempt to minimize personal contacts between believing citizens. Then, however, the least restrictions should apply in countries where we have the fewest *dominantes*, and the largest restrictions—where we have the highest percentage of *dominantes*. This would mean the smallest restrictions in Finland, Estonia, Sweden, the Czech Republic, Belgium, Denmark, Norway, and Latvia, and the largest restrictions in Poland, Romania, Italy, Croatia, Georgia, and Greece. According to the Pew Research Center, in the first group of countries we have the lowest percentage of people declaring participation in church services at least once a month, and in the second—the highest (see [Pew Research Center 2018](#)). The reflections could be supplemented with conclusions that would stem from taking into account the criterion of secularization. If we exclude countries where churches were demolished during the communist era, or where merely the construction of new ones was blocked, all the other countries have (or have had, until recently) a religious infrastructure suited to the high level of participation in Sunday worship. Since, for example, in France in the early 1960s, 40% of the French regularly attended the Catholic Mass, and today the figure is around 7% (the pessimistic scenarios mention a mere 1.8%) (see [Cuchet 2018](#), p. 87; [Dargent 2020](#); [Chambraud 2017](#)) and in the UK in 1980, 11.8% of the population regularly attended Christian Sunday services, while the figure was only 5% in 2015 (see [British Religion in Numbers 2020](#)), this means that the risk of getting infected in a church in France or Great Britain—without taking into account the restrictions related to the pandemic—would be almost seven—eight times lower than, for example, in a church in Poland, where there are still about 40% of *dominantes*. However, during the first wave of the pandemic, most countries in the first group mentioned above are among the countries with very high or high levels of restrictions, and Poland—theoretically the most vulnerable—is among countries with moderate levels of restrictions. A telling example is the position of Germany on the list (very high level of restrictiveness) and that of Spain (low level of restrictiveness), separated by only one percentage point in the number of *dominantes*. It turns out, therefore, that the criteria of regular religious practice and the possibility of ensuring adequate distance during services are not appropriate for understanding the differences among the restrictive policies vis-a-vis religion adopted by European countries during the first wave of the pandemic.<sup>7</sup>

The above data refer to the first half of 2020. Countries—to improve the readability of the table—are arranged in alphabetical order, ignoring more detailed criteria that differentiate countries within each group. The fact that a specific country is not mentioned in any of the groups means that it is not included in either of the two classifications. The quotas for public church attendance in the third group were usually between 5 and 50 persons or were tied to a certain number of square meters per person. Since legal regulations changed frequently, these data are not strict in nature, but only give a well-founded idea of the restrictiveness of individual countries in this respect.

<sup>7</sup> The considerations do not take into account the fundamentally different situation of Islam in some Western countries. The dynamically growing Muslim community often does not have a sufficient number of prayer rooms. If, however, this was the reason for introducing restrictions in relation to all religions, such an action should be considered irrational and unnecessary in relation to, for example, Christianity.

**Table 1.** The restrictiveness of selected OSCE countries regarding religious freedom due to COVID-19 during the first wave of the pandemic based on data provided by Alexis Artaud de La Ferrière (column A) and the Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR) (column B).

Level of Restrictions	Private Prayer in Places of Public Worship	Public Religious Gatherings	Country	
			A	B
very high	suspended	suspended	Cyprus	Cyprus
			Denmark	Denmark
			Germany	Germany
			Greece	
			Malta	
			Romania	Romania
			Slovenia	
			United Kingdom	United Kingdom
				Tajikistan
				Turkey
high	permitted	suspended	Austria	
			Belgium	
			Croatia	Croatia
			Estonia	Estonia
			Finland	Finland
			France	France
			Ireland	
			Italy	Italy
			Latvia	Latvia
			Lithuania	Lithuania
			Luxembourg	
			Portugal	
			Slovakia	
				Kazakhstan
	Kyrgyzstan			
	Uzbekistan			
moderate	permitted	permitted with limited number of persons	Czech Republic	Czech Republic
			Netherlands	Netherlands
			Poland	Poland
			Sweden	Sweden
low	permitted	permitted if distance is kept or without limitations	Bulgaria	Bulgaria
			Hungary	Hungary
			Spain	Spain
				Turkmenistan

In autumn 2020, the second wave of the pandemic began in Europe. Most European governments have reacted to it slightly differently when it comes to restrictions on religious freedom. The results of the analysis carried out by The European Centre for Law and



Justice (The European Centre for Law and Justice 2020) are presented in the table below (Table 2):

**Table 2.** The restrictiveness of selected OSCE countries regarding religious freedom due to COVID-19 during the second wave of the pandemic based on data provided by The European Centre for Law and Justice (as on 4 November 2020).

Level of Restrictions	Public Religious Services	Country
very high and high	prohibited public religious services	Belgium
		France
		Ireland
		United Kingdom
moderate	authorized and regulated religious services	Austria
		Germany
		Slovenia
		Spain (some regions)
		Switzerland
		Ukraine
low	authorized religious services	Bulgaria
		Croatia
		Czech Republic
		Denmark
		Estonia
		Finland
		Greece
		Hungary
		Iceland
		Italy
		Latvia
		Lithuania
		Luxembourg
		Malta
		Montenegro
		Netherlands
		Norway
		Poland <sup>8</sup>
		Portugal
		Romania
Slovakia		
Spain (some regions)		
Sweden		
Switzerland		

A glance at both tables shows that countries such as Belgium, France, Ireland, and the United Kingdom in both waves of the pandemic adopted a similar, i.e., restrictive, policy towards religion, while the other countries from the group with high restrictions during the first wave, included in the ECLJ classification, changed their policy and moved to the group of moderate restrictions' level (Germany, Slovenia) or to the low level of restrictions (Denmark, Greece, Malta, Romania). The question arises: what was the cause of this change and why did it not take place in the policies of all the countries?

### 5. Churches as “Superspreaders”

When trying to answer why in many countries, especially during the first wave of the epidemic, more restrictive rules were applied to religious gatherings than to other types of assemblies, one might guess that this stemmed from scientific analyses, which showed that the risk of infection in a religious building is much higher than in a secular facility.<sup>9</sup> Such a belief could not be scientifically grounded in the first wave of the epidemic, because the epidemic itself was a surprise not only for politicians, but also for epidemiologists. Thus, decisions made were based on uncertain knowledge. During the second wave of the epidemic, we have already had some studies, but the results were inconclusive. In a study by Serina Chang et al. published in *Nature*, it has been argued that religious congregations are among the six most common places of infection (COVID-19 hotspots). “Our model predicts that a small minority of ‘superspreader’ POIs [points of interest] account for a large majority of infections and that restricting maximum occupancy at each POI is more effective than uniformly reducing mobility” (Chang et al. 2020). These studies were referred to, inter alia, by the French government when prohibiting religious ceremonies. However, the authors of these studies do not talk about the necessity to close religious facilities, but about the expected increase in infections if POIs are partially opened or if they are opened without any restrictions. Religious sites are “only” in the sixth place on the presented risk list, which suggests that—if they were to be treated as equally important as others, i.e., without paying attention to what values they serve and what constitutional protection the right to religious freedom is subject to—religious sites should be closed as the sixth in the order. However, this is not the thesis of the discussed research. Research by the Municipal Health Services (MHS) in the Netherlands, on the other hand, presents the issue in an almost exactly the opposite manner. The infection rate in places of religious gathering is only 0.6%, which means it is much lower than in the home and family context, work and school environment, in restaurants or sports centers (Rijksinstituut voor Volksgezondheid en Milieu—RIVM 2020). The first three places of the highest transmission of infections indicated in the Dutch research were not included in the list of 20 POIs of the American research at all, due to the adoption of a different methodology. I am not able to assess the scientific value of the cited studies and the possibility of comparing their results, but it seems that they allow us to conclude that even during the second wave of the pandemic, the authorities' decisions to close the temples completely were not grounded in evidence-based knowledge. Otherwise, we would have to conclude that the decisions of the authorities of those countries that left their temples open during the second wave of the epidemic may have stemmed from a disregard for scientific knowledge. In this context, the commonsense statement that churches, i.e., buildings possessing, in principle, large surfaces (to a much greater extent than, for example, small shops or public transportation facilities) allow people to stay indoors safely while minimizing the risk of virus transmission, does not seem to be just a naive opinion (see Kwaśniewski et al. 2020).

<sup>8</sup> In Poland, at the same time, we had a wave of attacks against clergy, sacred buildings, profanation of religious symbols and St. John Paul II monuments, interrupting services. This happened as part of a demonstration organized by abortion supporters after the ruling of the Constitutional Tribunal, which declared eugenic abortion unconstitutional.

<sup>9</sup> Bringing this reasoning *ad absurdum*, one should expect that where the greatest restrictions on religious freedom have been introduced, the infection rate is the lowest.



## 6. French Specificity

Therefore, what could the French authorities have been guided by when completely closing religious buildings? At this point, I am not going to make an academic analysis of the reasons for such behavior, but I will settle for merely presenting selected arguments that have been raised in public debate, subjecting them to a slight philosophical “processing”. The first is a lack of sheer prudence that often accompanies decisions taken ad hoc. The authorities had to take some decisions, based, however, on little knowledge of the nature of the phenomenon they were dealing with. The second factor was ignorance of the law relating to the possibility of restricting religious freedom in emergency situations and, consequently, broadening the interpretation of the authorities’ own competences. An example is the judgment of the French *Conseil d’État* of 18 May 2020, in which it considers the indefinite ban on liturgical celebrations introduced by the by the government as disproportionate and illegal (“*disproportionnée*” and “*manifestement illégal*”) (see [Conseil d’État—France 2020b](#)). When closing the temples during the second wave of the pandemic, the French government was already more precise, which resulted in the rejection by the *Conseil d’État*, on 7 November 2020, of the second complaint filed by the Catholic Church. The *Conseil d’État* considered that the prohibition of worship would be illegal only if it were general and complete (“*générale et absolue*”) and that the contested prohibitions can be considered as disproportionate only from the point where less restrictive regulation is possible. Therefore, the prohibition complete and necessary, but introduced for a limited time period, was considered to be in line with the French constitution (see [Conseil d’État—France 2020a](#)).

However, the French epic does not end there. Based on press releases, its most probable course can be recreated (see [Golonka 2020](#)). Although the *Conseil d’État* on 7 November 2020 rejected the Episcopal complaint, it obligated the prime minister to develop new arrangements with representatives of all religions by 16 November. The prime minister delayed consultations until the last day; meanwhile, a campaign of “civil disobedience” was launched in France under the hashtag #RendezNousLaMesse (“Give Us Back the Mass”). In many cities, the faithful gather on Sunday in the squares in front of closed churches for a prayer organized according to the sanitary regime. They pray the rosary and hold banners with the words *On veut la Messe* (“We want the Mass”). Gérald Darmanin, the minister of internal affairs, threatens the protesters with fines. This is strange as in France there is no ban on demonstrations and public gatherings. Police prefects in individual departments, however, refuse Catholics permission to manifest because of the secular nature of the state and the alleged ban on prayer in public space. Therefore, it is allowed to protest, kneel in public (e.g., as part of the Black Lives Matter campaign), but not to kneel with a rosary in hand. According to the theological criterion adopted by the secular state, the police should decide which kneeling is of religious nature, and which is secular in character. During the 16 November meeting of government representatives with representatives of religions, most likely four short recordings were shown of Masses that allegedly had been conducted in the manner considered not in line with the sanitary regime (one from Martinique and three from Bayonne), thus explaining the need to maintain the restrictions. As it turned out later, all the recordings had been filmed before the lockdown. On 21 November, the *Le Parisien* daily publishes a report on the “illegal” Mass in the Paris region. The vicar who holds it states that about 25% of the priests of his diocese secretly celebrate Mass for the faithful in compliance with sanitary rules. The courts in Clermont-Ferrand and Paris hold that the prohibition of demonstrations based on their religious nature has no basis in French law. On Thursday, 24 November, President Macron announces that up to 30 believers will be able to participate in acts of worship. Thus, the churches are opened, but on the terms proposed by Protestants, which seems to indicate a political, and not a strictly sanitary nature of the earlier decision (see [20minutes 2020](#)). The President of the Episcopal Conference publishes a brief announcement that he has spoken to President Macron and received a promise that on 26 November there would be a revision of the decision in the framework of partial lifting of the restrictions altogether. On 26 November, Prime Minister

Jean Castex does announce the partial lifting of restrictions across the country. Shops and shopping centers can be opened with a limit of one person per eight square meters. The prime minister, however, upholds his earlier decision regarding places of worship. Some bishops refuse to obey (Strasbourg, Perpignan, Rennes). In the evening, the Presidium of the Episcopal Conference decides that instead of the limit of 30 people, it will respect the rule of 30% church filling previously proposed to the government, but later withdraws from the decision in order not to exacerbate the conflict (see [Guénois 2020](#)). On Friday, 27 November, the Episcopal Conference challenges the ordinance to the *Conseil d'État*. The hearing takes place on Saturday, 28 November. During the hearing, the government is not able to present the grounds justifying the decision to limit the number of believers permitted to participate in worship to 30 persons. The Bishops invoke the following argument: in the Church of Saint-Sulpice in Paris, 30 persons attending signifies 205 square meters per person, whereas the FNAC shop in the Champs Elysees area can accommodate 604 people at a time. Meanwhile, the government representative, Pascale Léglise, argues that, after all, cinemas and theatres are still closed (see [Gonzalès 2020](#)). The bishops rebelled, and one of them, Bernard Ginoux, Bishop of Montauban, wrote a letter to priests and the faithful encouraging them to celebrate the Mass, under the sanitary regime, but without limiting the number of believers: "If certain persons (celebrants, liturgical actors, faithful) are fined at the end of the Mass, they should refuse to pay the fine on the spot. I ask that these facts be transmitted to me and I will instruct the lawyer of the diocese to take up these cases" ([Smits 2020](#)). In view of the announcement that the rules of the operation of sacred buildings would be changed from 15 December, Catholics remained alone on the battlefield, as the representatives of Judaism and Islam decided that they were able to wait two more weeks (see [Le Figaro 2020](#)). Meanwhile, the *Conseil d'État* decided on Sunday, 29 November, that, within three days, the government should reconsider ("*revoir*") its decision to limit the number of attendees in services to 30 persons (see [J.-L.D. avec AFP 2020](#)). Prime Minister Jean Castex on Thursday, December 3, announced a new rule that in the church should be granted at least six square meters per person and that the faithful should occupy every second row of pews, leaving two places between themselves or between families. He also announced that cinemas and theatres would be open from December 15 (see [Michalik 2020](#)).

In early December, both Great Britain and Ireland abandon previous ill-considered restrictions by opening churches.<sup>10</sup> In this context, Belgium, which defended the title of the country with the greatest restrictions for the longest time, became the "worst" place in Europe for the believers. However, here too some progress has been made. Additionally, here—as in France or Switzerland—the judges (Council of State), at the request of the Belgian Jewish community, found that the executive power excessively restricts religious freedom under the pretext of fighting the pandemic. The government was therefore obliged to ease the existing restrictions by December 13th. However, the introduced limit of 15 people per service (not counting children under 12 and the celebrant), may satisfy only religious minorities in this country (see [Federal Public Service Health, Food, Chain Safety and Environment 2020c](#); [VaticanNews 2020](#)). It certainly does not satisfy larger religious communities, including Catholics. The situation is dynamic and each week brings new decisions.<sup>11</sup> Generally, at this stage, the evolution of the state policy towards reducing restrictions on religious freedom can be noticed. However, this happens—in the case of the most restrictive states—only under the pressure of religious communities, most often with the use of a judicial route.

<sup>10</sup> Ireland opened churches on 1 December 2020 (see [Department of the Taoiseach 2020](#)) and Great Britain on 2 December 2020 (see [Ministry of Housing, Communities & Local Government 2020](#)).

<sup>11</sup> On 22 December, the Belgian Conseil d'État dismissed lawsuits against the government in which representatives of religious communities demanded an increase of limits of people allowed to attend services (see [Conseil d'État—Belgium 2020](#)).

## 7. Presumption of the Superiority of Public Health over Religious Freedom

It seems that if we put aside the accusations of anti-religious bias leading to legal discrimination, the most serious argument in the dispute “over churches” will be the matter of the adopted hierarchy of goods. This is a dispute in two dimensions. The first, fundamental, is whether during a pandemic all other constitutional goods and values should be subordinated to the value of public health. The second dimension concerns the hierarchy within the goods subordinated to public health and, consequently, is a dispute about the order in which particular areas of social life should be “turned off” and “turned on”.

Interesting considerations on the first topic are presented, for example, by Giorgio Agamben. Let us dwell a little longer on his observations. As I mentioned at the beginning, religious freedom in the external dimension must sometimes give way to public health. This happens, however, with the assumption that it does not stem from the importance or rank of the matters, but from their urgency. Religious freedom is always more important, i.e., higher in the hierarchy of values than public health. However, in order to ensure religious freedom, it is first necessary to guarantee a certain minimum degree of security, public order, health, public morality, and individual and community rights and freedoms. Providing a certain level of protection of life and health is essential to be able to strive for a good life. It is therefore a question of ensuring the right to religious freedom in such a way as also to meet the requirements related to public health. Jean Bodin once wrote: “Nevertheless it is certain that a commonwealth is not rightly ordered which neglects altogether, or even for any length of time, mundane activities such as the administration of justice, the defence of the subject, the provision of the necessary means of subsistence, any more than a man whose soul is so absorbed in contemplation that he forgets to eat and drink can hope to live long . . . ” (Bodin 1955, p. 5).

Agamben points out that the word “epidemic” includes the Greek *demos* (“*epi demos*”—on the people), while Homer’s *polemos epidemios* means a state of civil war (Iliad IX, 64; see Agamben 2020, p. 82). Viewed from the point of view of etymology, the pandemic is therefore a thoroughly political term and means a global civil war, i.e., against an internal, invisible enemy. According to Agamben, the pandemic and the accompanying ideology of “sanitary security” is now part of a political strategy to try to manage societies through “sanitary terror”. The term “Security State”, introduced by American political scientists in the context of the fight against terrorism, was replaced during the pandemic by the term “biosecurity” built around the concept of health. While until recently every citizen had the “right to health” (health safety), in the “Biosecurity State” there is a “legal obligation to health” (“*un’obbligazione giuridica alla salute*”), which must be fulfilled regardless of the price required to pay for it (see Agamben 2020, pp. 77–80, 82–83). *Biosecurity*, therefore, means a legal prohibition against taking an individual health risk under criminal sanction. Bernard-Henri Lévy speaks of the “transformation of the welfare state into surveillance state, with health replacing security” (Lévy 2020, p. 68). It is no longer based on the old social contract, but on the “new life contract”. Such a state resembles a large insurance company where one buys a life insurance policy, “risk-free certificate or a new kind of get-out-of-jail-free card, one that lets you transfer to another cell”, and one pays for it by giving up one’s freedom rights.

In a secularized society, health and physical life appear to be the most important values, i.e., standing the highest in the hierarchy of values. This is partly due to the treating of medicine as a kind of a substitute for religion, as a Manichean-Gnostic “religion”. In the dualistic vision of the world, on the one hand, we have disease treated as absolute evil, whose “secret agents” are bacteria and viruses. On the other hand, we have healing—achieved through therapy and thanks to doctors acting as priests of worship—as a secular substitute for salvation. In Agamben’s vision, the contemporary successors of theologians are virologists who seek a scientifically based strategy of action (see Agamben 2020, pp. 70–71). Medicine, when treated as a religion, becomes a total ideology, requiring the sacrifice of

everything to achieve or maintain health. The consequence of this approach is a complete transformation of the political system.

In his reflection, Agamben devotes a lot of space to the doctrine of the state of emergency, seeing it as a legal instrument allowing the suspension of the functioning of democratic institutions. Looking at how Western democracies actually function during the pandemic, Agamben concludes that introducing governance by decrees abolishes the traditional triple division of power, putting the power entirely in the hands of the executive. The degree of restriction of the right to movement and the right to religious freedom is—in his opinion—unheard of in Western history. Even during the two World Wars or the entire duration of the totalitarian systems in Russia and Germany, it never happened that authorities almost completely forbade people to leave their homes or ordered people to wear face masks (see [Agamben 2020](#), p. 61). At the same time, the drastic limitation of civil rights is carried out based on uncertain scientific knowledge. However, people accept, almost without opposition, restrictions introduced due to biosecurity, which they would have never accepted before. Paradoxically, breaking of social contacts, maintaining “social distance”, covering one’s face, cessation of any political activity and humble compliance with the recommendations of the authorities are presented as a model of civic responsibility (see [Agamben 2020](#), p. 83).<sup>12</sup> However, Agamben asks, what kind of social relations are possible between people reduced to a biological existence, with covered faces, maintaining a distance of 1.5 m from others, subject to constant surveillance through smartphones? What kind of political community is possible among people whose sensitive personal data concerning health and religion are collected in the name of protecting public health?<sup>13</sup> How is a citizen supposed to feel, who—as it is proposed—would have to demonstrate a CommonPass confirming his or her state of health and vaccination status before boarding a train or plane? (see [The Commons Project 2020](#)). How is a citizen supposed to feel knowing that his every entrance to the temple is monitored by watchful authorities, checking that the legally permitted number of people is not exceeded during the service? Suspecting that, perhaps, the same control instruments were used to observe religious sites as those used in the case of a risk of a terrorist attack?<sup>14</sup> Agamben answers straightforwardly: like a refugee in his own country. Bernard-Henri Lévy goes further: like an inhabitant of a penal colony or the “animal farm” (see [Lévy 2020](#), pp. 68, 73). Agamben perceives the entirety of “Covid-related” changes as a permanent state of emergency, due to which the distinction between democracy and despotism is fading.<sup>15</sup>

Should Agamben’s comments be taken seriously? Firstly, when questioning one way of crisis management, an alternative option should be offered. Otherwise, we would risk chaos. Secondly, we do not know what will happen once the pandemic is brought under control, for example due to universal vaccinations: will all the rights and freedoms be restored, or will some “new” instruments of governance, considered more “effective”,

<sup>12</sup> Many countries provide the lists of several detailed rules of a “good citizen” in the time of the pandemic. For example, the government of Belgium on its website summarises them in the form of “6 golden rules”:

1. Respect the hygiene rules;
2. Take your activities outside;
3. Think about vulnerable people;
4. Keep your distance (1.5 m.);
5. Limit your close contacts;
6. Follow the rules on gatherings ([Federal Public Service Health, Food, Chain Safety and Environment 2020b](#)).

<sup>13</sup> In its Article 9, the EU General Data Protection Regulation states that data on religious beliefs, biometric data for the purpose of uniquely identifying a natural person, and data concerning health are classified as sensitive data, the processing of which is allowed only in exceptional and strictly defined situations (see [General Data Protection Regulation \(EU\)](#)).

<sup>14</sup> The OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) draws attention to the fact that the transfer of religious activity online, on the one hand enables people who, for various reasons, may have been previously deprived of such a possibility, to participate. On the other hand, however, it raises fears in many of the participants that the authorities could use this tool to collect information about their religious affiliation, religious activity, and the course of religious meetings (see [OSCE/ODIHR 2020](#), p. 118).

<sup>15</sup> “È difficile decidere se noi viviamo oggi in Europa in una democrazia che assume forme sempre più despotiche di controllo o in uno Stato totalitario che si maschera da democrazia” ([Agamben 2020](#), p. 95).

remain permanent? Will the “social distancing” mentality fade away after a few days, or will people constantly try to “avoid the risk” of meeting another person? Will students return to university lecture halls to talk freely with their professors, or will the virtualization of education, in which a human can be replaced by a machine, dominate the future? Religion contributes something very important to the debate about this future; namely, it makes the value of health and physical life relative, without taking away any of their fundamental nature.<sup>16</sup> This is well illustrated by the scene outlined by Josef Pieper, in which the beloved person is put in a situation of martyrdom. It is easy to imagine the mothers of young Christians standing before a Roman proconsul, or the wife of an innocently persecuted person brought to trial in a modern totalitarian state. Pieper writes that of course, these women do not want to lose their beloved sons or husbands; of course, they are terrified of the suffering that awaits them, and of course, they wholeheartedly want them to miraculously save their lives and return home. However, could they, invoking their love, seriously want a man they love so much to take advantage of an opportunity that might appear (or an opportunity that is even offered) and to free himself by committing vileness? (see [Pieper 1997](#), pp. 189–90). Are we not flooded with sadness when a person close to our heart denies himself and everything he believed in, even if he had saved his life this way? Does the mother of a traitor suffer less than does the mother of a martyr? To emphasize that there exist ultimate values, before which the penultimate values must give way, is the proper role of religion in this situation. Religion protects not only from putting undue value on health, but also from placing excessive hope in medicine, thus preventing the medicine from turning into a kind of quasi-religious superstition.

#### 8. The Dispute over “Essential Goods”

The second challenge in the context of the doctrine of the state of emergency introduced due to the pandemic, as I mentioned, concerns the hierarchy within the goods considered subordinate to public health. Consequently, it is a dispute about the order or sequence in which particular areas of social life should be “turned off” and “turned on”. National governments often used the concept of goods and services that are essential for the functioning of society. It seems that, apart from all that was associated with the efficient operation of the health service, the main focus was on the possibly normal functioning of the economy. Essential goods are, therefore, everyday shopping, going for a walk with the dog, but also leaving home to go to work. These decisions on what was seen as essential were associated with the assessment of the goods that are worth taking a risk by the State of increasing the number of infections, and which type of risk should be considered unnecessary. What to open first: supermarkets, restaurants, casinos, hairdressers, cinemas, or churches? A good illustration of the dispute over the priority between economic values and human rights is the—admittedly American—case of the opening of casinos in Nevada. The governor of Nevada decided that income from the casinos constituted such a significant part of the state budget that discrimination against religious people on the basis of economic interests should be considered fully justified (see [Supreme Court of the United States 2020b](#)). In this case, it is not about closing churches, but about limiting the number of persons who can participate in services to 50, regardless of the churches’ surfaces, while the casinos were allowed to fill them up to 50 percent capacity. Thus, the dispute in practice—like in France and in many other countries—concerned the arbitrariness (the lack of an objective criterion on the basis of which such a limit of persons was determined) of decisions made by administrative authorities concerning the number of admissible persons in the sacred space, because the application of the same criterion to churches as to casinos would, for that particular chapel, increase the admissible number of persons to 90. Calvary Chapel Dayton Valley was unsuccessful in all possible legal instances, and the US Supreme Court refused to deal with the case, the main argument

<sup>16</sup> “Earthly existence is important, but much more important is eternal life”—wrote Cardinal Sarah in a letter to Presidents of Episcopal Conferences ([Sarah 2020a](#)).



being that the casinos are “vital to the State’s economy” and, therefore, that “for-profit assemblies are important and religious gatherings are not”. As Justices Samuel Alito, Neil Gorsuch, Brett Kavanaugh and Clarence Thomas point out in their dissenting opinions, the Supreme Court recognized the functioning of churches as one of the “ordinary”, “non-essential” forms of activity, comparable to movie theatres or fitness salons, not paying attention to the fact that the first amendment to the Constitution guarantees “free exercise of religion, not gambling” (see [Supreme Court of the United States 2020a](#); [Kavanaugh 2020](#); [Cummings McLean 2020](#)). The case only concerned increasing the accessibility to religious services by 40 additional persons, which could be considered as not very important, but from the point of view of the arbitrariness of decisions taken at the detriment of religious communities, it is very symptomatic (see [Kwaśniewski et al. 2020](#)). In Europe, such a symbolic event was the imposition of a fine on Cardinal Juan Jose Omella for celebrating Holy Mass for the victims of the epidemic at the Basilica *Sagrada Família* in Barcelona. About 200 people attended the Holy Mass, while an order of the Department of Health allowed only 10 persons to attend the service. It would not be surprising, if not for the fact that the Basilica can accommodate about 9000 persons, and during the visiting hours, for tourist purposes, it can accommodate 1000 people (see [San Martín 2020](#)).

The dispute over the definition of “essential goods” was also present in the already mentioned French case. In the complaint by the Episcopal Conference to the *Conseil d’État* we read: “–the contested decree is disproportionate and unnecessary to pursue the objective of combating the covid-19 epidemic since, on the one hand, a strict health protocol can be put in place allowing the performance of religious ceremonies without health risk, on the other hand, that religious worship is an essential good for the faithful and, finally, that other enclosed places are open to the public even though their activity is not essential”.<sup>17</sup>

The most far-reaching restrictions imposed on churches and religious communities deprived them of the possibility of holding public services at all, or radically limited the permitted number of persons participating in them. In the case of the Catholic Church, this meant that the faithful could not fulfill the Church-imposed obligation to participate in the Sunday Mass. The very fact of the existence of this obligation and the need for bishops to issue a dispensation to act otherwise, indicate its importance from the point of view of Catholic theology and ecclesial discipline. Most often, bishops encouraged to participate in the broadcasts of the Holy Mass online. While it is possible to take part, in a virtual manner, in the liturgy of the word, which should be heard, full participation in the Holy Mass is not feasible, as it is impossible to receive Holy Communion by accepting—as Catholics believe—the true Body and Blood of Christ.

Pope Benedict XVI, when he was in Austria with a pilgrimage in 2007, referred to an episode from the early Church history. “*Sine dominico non possumus!* Without the gift of the Lord, without the Lord’s day, we cannot live: That was the answer given in the year 304 by Christians from Abitene in present-day Tunisia, when they were caught celebrating the forbidden Sunday Eucharist and brought before the judge. They were asked why they were celebrating the Christian Sunday Eucharist, even though they knew it was a capital offence. *Sine dominico non possumus*: in the word *dominico* two meanings are inextricably intertwined, and we must once more learn to recognize their unity. First of all is there is the gift of the Lord, this gift is the Lord himself: The Risen one, whom the Christians simply need to have close and accessible to them, if they are to be themselves. Yet this accessibility is not merely something spiritual, inward and subjective: the encounter with the Lord is inscribed in time on a specific day. (. . . ) For these Christians, the Sunday Eucharist was not a commandment, but an inner necessity. Without him who sustains our lives with his love, life itself is empty. To do without or to betray this focus would deprive life of its very foundation, would take away its inner dignity and beauty” ([Benedict XVI 2007](#)).

<sup>17</sup> “– le décret attaqué est disproportionné et non-nécessaire pour poursuivre l’objectif de lutte contre l’épidémie covid-19 dès lors, d’une part, qu’un protocole sanitaire strict peut être mis en place permettant la réalisation des cérémonies religieuses sans risque sanitaire, d’autre part, que le culte religieux est un bien de première nécessité pour les fidèles et, enfin, que d’autres lieux clos sont ouverts au public alors même que leur activité n’est pas essentielle” (see [Conseil d’État—France 2020a](#)).



Saint Thérèse of Lisieux survived a flu epidemic in the convent during the winter of 1891/1892. As a result of the epidemic, many sisters died, and others fell seriously ill. Perhaps as the only healthy sister, she participated in the daily Mass. In her diary, she wrote: “All through the time the community was undergoing this trial, I had the unspeakable consolation of receiving Holy Communion every day. Ah! this was sweet indeed! Jesus spoiled me for a long time, much longer than He did His faithful spouses, for He permitted me to receive Him while the rest didn’t have this same happiness” ([Saint Thérèse of Lisieux 1895](#): Ms A 79v).

The understanding of the concept of “essential goods” by churches and religious communities is different from that of state authorities. In a secularized world, there is a lack of understanding for people for whom spiritual values are more important than material ones, and for whom life without Holy Communion is empty. Most often, the liturgy is seen by state authorities as just another ordinary assembly. The declining indicators of *dominicantes*, which show the percentage of Catholics who regularly attend Sunday Mass, do not help officials in a proper understanding of the nature of the liturgy. A certain kind of self-withdrawal of the churches did not help, either. Firstly, it manifested itself in the theological realm. Mainstream theologians, it seems, were afraid to be exposed to comments similar to those made by Bernard-Henri Lévy and related to overly simplistic religious interpretations (see [Lévy 2020](#), pp. 17–37). Therefore, they began to preach a kind of theology of the absence of God. To the question: “Where is God during the pandemic?” they would reply: “Please do not get God involved in this”.<sup>18</sup> The pandemic, however, is not an event to the slightest degree even comparable to the Holocaust and does not present an equally difficult theological challenge. Theologians, then, should not have much difficulty answering the question about its religious meaning, and therefore about how God is “involved” in the pandemic. The lack of a sensible theological interpretation of the events has opened up space to fundamentalist, or “traditional” interpretations, but ones not appealing to people living in a different context than the times of the plague or the Spanish flu. Quasi-religious interpretations have also appeared, in which secular prophets recount what the virus told them, or prophesy the revenge of Mother Earth if there is no immediate ecological conversion of humanity. The gesture of St. Francis, who hugged lepers, was lacking. The absence of the voice of the Catholic Church at a time when the world turned into a “field hospital” made it easier for politicians to make decisions in which religion was treated as “unnecessary risk”.

During the pandemic, however, the phenomenon known from the history of the persecutions returned: the Holy Mass celebrated “illegally”. According to *The Guardian*, some of the churches in England went underground, organizing “illegal” worship (see [Sherwood 2020](#); [Sośniak 2020](#)). We are dealing with a similar phenomenon in Ireland, where there are some priests, who invoke the right to conscientious objection (see [Brennan 2020](#)). “Secret” Masses are performed in France or Belgium. Thus, services are held—in accordance with the declarations—in compliance with the sanitary regime, but in breach of the law prohibiting religious gatherings. The modern commentary on many events consists of easily distributed memes. One of them, in French, shows several people sitting at the table. One of the meeting participants gives the commands: “You watch the door”. “If the police come in, you have to run out the window”. “You wait outside in the car, with the engine running”. Another man asks, “Are you planning a bank robbery?” “Not a robbery”, replies the woman, “just Sunday Mass”. Alas, police interventions in churches that ended with the interruption of Holy Mass did take place (see [Lutaud 2020](#)).

<sup>18</sup> An example of such an approach is the text by David M. Neuhaus SJ, “Il virus e una punizione di Dio?”, from which—after a very erudite exegesis—we only learn that the Bible does not call us to voice moral judgments or prophecies announcing misfortune, but to convert (see [Neuhaus 2020](#), pp. 238–43).

## 9. The Depth of State Interference in the Affairs of the Church

However, the prohibition of public worship was not the only type of restrictions introduced vis-à-vis churches and religious associations used by political authorities. In government ordinances, the most common required permits related to worship concerned the conduct of funerals with a limited number of participants. The second most important religious ceremony on the government list was marriages, most often permitted only in the presence of fiancées, witnesses, and the priest. It is interesting that, for example, in France, the government explicitly allowed only civil marriage ceremonies, and it was the *Conseil d'État* that subsequently interpreted from the regulation that consent to a civil marriage implicitly signifies consent also to a religious ceremony, which follows (see [Conseil d'État—France 2020a](#)). Mentioning only marriage ceremonies and funerals in the Belgian or French regulations means that, for example, baptisms of children, confessions, First Communion, and confirmations are prohibited. From the point of view of churches, prohibiting baptism is equivalent to prohibiting the admission of new members.<sup>19</sup> The limitations placed on the number of participants permitted at the wedding ceremony rather encourages the postponement of the marriage sacrament, i.e., until the post-pandemic period. At what level of restrictions could one talk about the infringement of the right to marry and to found a family? At the same time, it was possible to learn from the website of British humanists that the ceremonies called the “namings” were taking place normally.<sup>20</sup> Difficulties were also encountered in the access of priests to the sick and the dying. In Europe, the situation in this regard varied; often, hospital chaplains previously employed could still perform their ministry in a limited way (e.g., in Poland), but despite the dramatic increase in the number of patients, it was not allowed to increase the chaplains' presence.<sup>21</sup> Never in history—as one can read in Italian comments on social media—have people died in solitude in the name of simple risk, their bodies cremated without a normal burial.

Reflecting on the depth of state interference in matters closely related to the exercise of worship, it should be noted that, generally, where it was permitted to open temples to some extent for the purposes of public worship, an obligation to comply with state sanitary regulations was introduced. They also had their “liturgical dimension”, notes Cardinal Robert Sarah, Prefect of the Congregation of Divine Worship and the Discipline of the Sacraments (see [Sarah 2020a](#)). State laws in some countries required, for example, the obligation to cover the face during the liturgy, the obligation to keep a distance, signing up for services, rules on how to take places in church pews, the prohibition of giving each other the sign of peace by shaking hands, and sometimes, also interference in the manner of receiving the Holy Communion. An idea even appeared that, for sanitary reasons, not only should the reception of the Holy Communion be granted “on hand”, but also that the Holy Communion should be prohibited at all, as this constitutes an unnecessary risk (e.g., Bautzen and Görlitz in Germany) (see [xyz/se.pl 2020](#); [Katolicka Agencja Informacyjna 2020a](#)). Where, under state regulations, participant limits have been introduced, attempts have often been made to obligate priests to be enforcers of state law in relation to the faithful. It must be stated that the intervention of epidemiologists in the way of performing worship and the attempt to supervise what was happening in the church was considerable and it is difficult to say unambiguously whether it concerned only the way of manifesting faith (*forum externum*). Hence, for example, a letter from the Prefect of the Congregation of Divine Worship to the Presidents of the Episcopal Conferences, in which he encourages a quick return to the celebration of the Eucharist with the necessary concern for public health, but without one-dimensional reductionism. He points out that the sanitary standards can have a significant impact on the way the liturgy is experienced. In the letter, we read, “Due attention to hygiene and safety regulations cannot lead to the sterilization of gestures and

<sup>19</sup> Permitting public services each time also solved the problem of baptisms.

<sup>20</sup> “Ceremonies Provided by Humanists UK are Still Permitted across the UK” ([Humanists UK 2020](#)).

<sup>21</sup> An example is the initiative of the Archbishop of Paris, who wrote a letter to the directors of Paris hospitals, offering the services of 55 young priests as chaplains during the epidemic. The initiative did not meet with a positive response (see [Aupetit 2020](#)).

rites, to the instilling, even unconsciously, of fear and insecurity in the faithful". Therefore, he reminds us, not without reason, that "liturgical norms are not matters on which civil authorities can legislate, but only the competent ecclesiastical authorities" (Sarah 2020a).

## 10. Concluding Remarks

The sanitary regulations introduced during the pandemic significantly influenced the experience of religious freedom. In some countries, this was a decidedly negative impact, and it seems to have gone beyond what was necessary, adequate, and proportionate. In general, during the first wave of the pandemic, there were four types of governmental approaches to religious freedom, characterized by very high, high, moderate or low restrictiveness. In some countries, this approach was corrected during the second wave of the pandemic; in others, the governments staunchly defended their original course. The group of countries most determined to maintain a very high and high level of restrictions shrunk to four during the second wave of the pandemic (Belgium, France, Ireland, UK). However, they also had to loosen the limitations due to the social resistance or court decisions declaring them illegal (Belgium, France, Switzerland—Geneva). It seems that, in general, decisions of European governments to limit the right of religious freedom were not based on scientific evidence, but rather on uncertain knowledge. The differences in approach between countries were not justified by the different risk of virus transmission in religious facilities in each country. Rather, they resulted from the significance politicians attributed to religion (being a part of "essential goods" or not) and to different citizen's rights, or even from the positive—negative attitude of the authorities to religion in general. In countries where sacred sites were closed during the first wave of the pandemic, inevitably, decisions also during the second wave of the pandemic were not made *ex post* (based on existing national statistics on virus transmissions in holy sites), but *ex ante* (based on the predictions about the possible level of such transmission).

However, the resulting picture should be supplemented with one detail—the way of approaching the same issue where it depended solely on the decisions of the religious authorities (see Sarah 2020b). It is no coincidence that Cardinal Sarah, while encouraging a "return to the Eucharist", added that this return should take place "without limitations that go even beyond what is provided for by the norms of hygiene issued by public authorities or Bishops" (Sarah 2020a). Excessive restrictions introduced by church authorities at the diocese or parish levels could be the result of an exceptionally high sense of responsibility for the health and life of the faithful ("zero risk" strategy). However, they could have also resulted from the fear of becoming a "scapegoat" in the event that, for example, after the reopening of churches the number of infections rose drastically, even if such rise were not directly related to this reopening.

We also remember the meaningful images that reached us via television from the liturgy of Holy Week in the Vatican. The Pope, keeping distance from the faithful, communicating via the internet, celebrating the Way of the Cross alone on Good Friday in St. Peter's Square, despite the fact that it was the only place where the Catholic Church establishes the applicable rules independently (see Lévy 2020, p. 60). St. Peter's Basilica and St. Peter's Square, the Vatican Museums, and many other Vatican institutions remained closed for over six weeks (see Mares 2020). Was this a deliberate signal on how to approach the issue of respect for religious freedom in times of the pandemic? I do not know. The ecumenical Conference of European Churches has also taken a stance on the issue of religious freedom during the fight against the pandemic. The most important, it seems, sentence in the document reads, "... this is not the time for misunderstood 'civil disobedience'" (Conference of European Churches 2020).

Ultimately, what conclusions can be drawn out of these considerations? It seems that—as in the case of reflection on the functioning of the state in general—they will depend on whether we are merely dealing with certain transitional provisions, which will soon disappear without the trace, or whether we have to do with a change in the power paradigm, with a "radical political experiment", in which the understanding of

religious freedom and its place in the hierarchy of human rights is also fundamentally changing (see Lévy 2020, p. 32). Thus, the fact of a kind of “fading out” of religious holidays is striking (even if it is only a side effect of the legitimate government’s concern for public health)—the more important the day of the year from the point of view of the believers, the more restrictive state regulations. We already have Easter, the All-Saints’ Day and Christmas behind us. The recommendations of the European Commission for the “winter holiday season” were also heading in the same direction. Being fully aware—as it results from the statements of the Vice President of the European Commission, Margaritis Schinas—that pursuant to art. 17 of the Treaty on the functioning of the European Union, the European Commission does not have any competence in the field of religion, although recommendations for the states have been issued for Christmas (but not only), encouraging the introduction of the night-time curfews, avoiding “large services” and banning of communal singing (see Apelblat 2020).<sup>22</sup> As a result, in many countries you could go to the museum or the swimming pool, but at the same time it was recommended to avoid churches as they are still too dangerous. “Stay home, save lives” (see Federal Public Service Health, Food, Chain Safety and Environment 2020a). This last point deserves special attention. “Liturgical” masks will be easy to remove with the end of the pandemic, but it will be much more difficult to restore the believers’ trust in their governments, where today they have a sense of abuse of power by the authorities.

The situation is dynamic. It requires continuous observation and analysis across Europe, including empirical data.

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<sup>22</sup> One can imagine alternative solutions, for example Poland introduced a lockdown not before but after Christmas.



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