

CEC Thematic Group on Human Rights

Reflections on Freedom of Religion or Belief during the fight against the COVID-19 pandemic

2020 marks a unique point in the history of Christianity in Europe, and indeed the entire world. This year Christians in many countries are prevented from gathering in person to commemorate and celebrate in Easter services the crucifixion, death and resurrection of Jesus Christ. The reason is legal measures to slow down the spread of the highly contagious Sars-CoV-19 virus and especially for vulnerable groups lethal Covid-19-disease caused by it. The prohibition of Easter celebrations in churches is just one example of far reaching restrictions on the exercise of many human rights and civil liberties world-wide, which are part of an effort to make physical distancing effectively prevent person-to-person infections.

Because there has not been any comparable restriction of religious freedom or many other fundamental rights in modern times, and because these rights are usually seen as the legal backbone of our democracy and the rule of law in Europe the Thematic Group on Human Rights of the Conference of European Churches has closely considered the issues at stake. It came to the following reflections:

1. The new type of corona virus is a serious challenge for humankind. With no wide-spread immunity, no vaccination and no approved medical remedy, this pandemic outbreak has the potential to disrupt national health systems worldwide and cause more deaths than medically indicated by the virus itself. It is therefore paramount to slow down its spread to allow national health systems to keep up with the rate of infection and to treat the number of people falling ill at any one time.
2. The best way to contain the epidemic is to severely limit physical contact between people. This means that all activities that are not absolutely essential have to be kept to the minimum. To shut down businesses, close shops, cancel commercial, cultural and sportive events, even prohibit private gatherings and celebrations is only possible, however, by seriously limiting several fundamental rights enshrined in national, international and European law.
3. These restrictions include the right to Freedom of Religion or Belief (FORB), which encompasses the freedom of every person to, “either alone or in community with others and in public or private, to manifest his [her] religion or belief, in worship, teaching, practice and observance¹”.
4. While some fundamental rights – such as freedom of conscience or of expression – do not depend on social contact others necessarily do. The Freedom of Religion or Belief, and the Freedom of Assembly or Association – are rights closely linked to community and gatherings, and are thus particularly affected by the current measures. ¹ European Convention on Human Rights and Fundamental Freedoms art. 9
5. The European Convention on Human Rights, as well as other human rights instruments, specifically mention public health as a reason for restricting FORB. Some states have even declared national emergencies, which also allow for some restrictions of fundamental rights under the

Convention. However, even those national constitutions – for example the German Basic Law, which do not mention concrete reasons to limit FORB will always regard the fundamental rights of others and key values of the constitutional order as inherent barriers to the exercise of FORB, and balance them accordingly in cases of conflict.

6. The current restrictions to fundamental rights, including FORB, are therefore generally legal and acceptable from the perspective of human rights. The protection of the weak and vulnerable is also a very high value from a religious perspective and needs to be balanced against the need for community and gathering.
7. Whilst in times of persecutions, massacres and genocides, and even previous pandemics, churches have been places of refuge and consolation for many believers, it is important to acknowledge that the prohibition of assemblies, including services, are not meant as religious discrimination and persecution. At present this measure is intended to safeguard human lives, both of the believers and of other members of society.
8. However, all restrictions of fundamental rights must have a legal base, be necessary, suitable, reasonable and generally proportionate in relation to the aim they serve and the right they limit. The principle of equal treatment, including the consistency of measures, must also be considered. In legal practice, these requirements give cause to complex assessments and complicated balancing, leading to decisions on a case by case basis.
9. The current threat – imminent and dangerous as it is – does not generally discharge the executive, or even the legislative branch of government from these requirements. Our legal order depends on them. Voices from the legal community and from several religious communities are raising questions asking if all measures are proportionate or if there is plausible consistency in the application of the ‘shut down’, especially with regard to the need to treat equally all actors according to their objective comparability.
10. At the same time, the imminence and danger of the situation has required governments to take very serious and far reaching decisions at very short notice and in many cases without any precedence to draw upon. It may be argued that medical institutions have for some time warned of the danger of a pandemic, and even suggested emergency plans. However, even if such warnings had been heeded and better pandemic plans had been prepared in advance, such a situation would have been new and threatening for all those in positions of political responsibility. Society – the bearers of fundamental rights – must be aware that the current restrictions primarily serve the moral imperative to protect human lives and are not, with a few deplorable exceptions, used for other political means.
11. Therefore, while it is always necessary in rule-based democratic states closely to observe, question and control the actions of government, especially when they are restricting fundamental rights, this is not the time for misunderstood “civil disobedience”. This stricture includes religious communities that are wary of having to celebrate their high feasts – Easter, Pesach, and Ramadan – without the customary social life and physical rituals associated with them.

12. If citizens have any doubts about the legality of any measure, the legitimate and appropriate way is to call upon the courts of law to evaluate and, if need be, correct the measures in questions. To do so, is not a sign of a lack of solidarity, but of the exercise of another fundamental right – that of legal protection.
13. Seeing the complexity of the issues at hand courts may not be able to rule on complaints in urgent procedure and provide preliminary rulings. It is necessary to realise that the issues facing the courts include the difficulty of judging what is necessary to protect human life whilst bearing in mind that human dignity is more than human life, and that humans need social contacts. It must be realised that it may take weeks, even months, until the legal system has been able to evaluate all these measures.
14. Meanwhile, even though some of the measures clearly pose questions as to whether they are adequate and in proportion, and guarantee equal treatment to the different social actors, citizens of all faiths and beliefs should exercise patience and good will. They should continue to follow the official regulations designed to protect others from infection and offer their help in places where the restrictions on social life is causing special hardship.