

DiReSoM

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Law Religion Multicultural Societies

Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات
多元化社会中的法与宗教



LAW, RELIGION AND THE SPREAD OF COVID-19 PANDEMIC

EDITED BY
FABIO BALSAMO - DANIELA TARANTINO

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**LAW, RELIGION AND THE SPREAD OF
COVID-19 PANDEMIC**

edited by

Fabio Balsamo - Daniela Tarantino

DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017 by Italian Scholars in Law and Religion.
www.diresom.net diresom.adec@gmail.com

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by *Rosa Geraci**

1. When religious freedom meets the rights to health

The Coronavirus emergency has led the Government and local authorities to adopt measures restricting religious freedom. The Ordinances and Decree-Laws of recent weeks have actually ordered the suspension of collective rites and worship and the limitation of access to sacred places, in order to deal with the emergency situation and protect the health of citizens. The state of major emergency has forced the Government to take some specific measures, which obviously must be proportional and appropriate to the risk, including the suspension of civil and religious ceremonies and the limitation on entering places of worship.

The Central Directorate for the Affairs of Religious Cults highlighted that liturgical celebrations "*are not forbidden ex se, but can continue to take place without the participation of the faithful, to avoid groupings that could become potential opportunities for contagion. Liturgical celebrations without the participation of the faithful and limited only to the celebrants and acolytes necessary for the officiating do not fall within the normative prohibition, since these are activities involving a limited number of people and, respecting appropriate distance and caution, do not represent groupings or cases of potential contagion*

*Ph.d. in Comparative Law at University of Palermo.

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that could justify a normative intervention of a restrictive nature". Similar considerations, according to a note, can be made for marriages "*which are not prohibited in themselves*" but only in order to avoid gatherings that are an opportunity for viral contagion. Conversely, the right to pity of the deceased is literally suppressed¹.

The measures taken if, on the one hand, they are felt to be necessary even by religious denominations themselves, on the other hand, lead one to question their legitimacy, since it is necessary to consider that religious freedom cannot be restricted, although some of its manifestations can be compressed in compliance with the rules of the constitutional order. In fact, this freedom is guaranteed by the constitutional charters of many countries of the world, and by the important international charters of rights (e.g. art. 9 ECHR).

It is unanimously agreed that restrictions on freedom of worship, introduced by the decrees, do not imply any infringement upon it, as they are functional to protect what is the only right defined as fundamental by the Constitution: the right to health, constitutionally also qualified as the interest of the community. It is clear, therefore, that this right weighs more heavily than all the others, since life is the supreme good that every legal system tends to achieve².

Nevertheless, there are divergent points of view on the suspension of religious ceremonies and the opening of places of worship. The former, certainly adequate for the protection of health, has been considered disproportionate because it excessively penalizes freedom of worship. On the contrary, the opening of places of worship was considered adequate to satisfy the interests of worship but, even with the observance of all other legal

¹ On the above, cfr. L. Decimo, A. Fucillo, M. A. Salem, *Fede interdetta? L'esercizio della libertà religiosa collettiva durante l'emergenza COVID-19: Attualità e prospettive*, in *Calumet – intercultural law and humanities review*, pp. 87-117 ff.; Lo Giacco, M.L. 2020, *In Italia è in quarantena anche la libertà di culto*, in www.diresom.net.

² It is important to consider that the limit on freedom of religion for health reasons is expressly laid down in the European Convention on Human Rights.

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precautions, insufficient and not proportionate to the risk of contagion. The debate is open³.

2. Protocol with Islamic communities

The need to adopt measures to contain SARS-CoV-2 epidemiological emergency makes it necessary to draw up a Protocol with religious denominations. Since 18th May faithful have been allowed to attend religious services in accordance with containment measures on Coronavirus, according to the protocols signed at Palazzo Chigi, seat of Italian Prime Minister, with religious communities, including Islamic ones, even if non-signatories of agreements with the State⁴.

³ N. Colaianni, *La libertà di culto al tempo del coronavirus*, in *Stato, Chiese e Pluralismo confessionale* (online journal), in www.statoechiese.it. On the topic, also see: P. Consorti, *Religion and virus*, in *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom, 2020, pp. 15 ff.; L. M. Guzzo, *Law and Religion during (and after) Covid-19 Emergency: the Law is Made for Man not Man for Law*, *ibidem* pp. 19ff.; A. Mantineo, *I have a dream: restarting, but going where?*, *ibidem*, ff. 29 ss.; M. L. Lo Giacco, *In Italy the Freedom of Worship is in Quarantine*, *ibidem*, pp. 37 ff.; F. Balsamo, *The loyal collaboration between State and religions at the testing bench of the Covid-19 pandemic. A perspective from Italy*, *ibidem* n AA.VV, *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom papers 1, pp. 47 ff.; G. Fattori, *Religious freedom at the time of coronavirus*, in AA.VV, *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom papers 1, pp. 57 ff.; M. Carnì, *Vatican City State and Covid-19 emergency*, in AA.VV, *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom papers 1, pp. 173 ff.; D. Tarantino, *“Non in pane solo vivet homo”. Catholics in front of Covid-19*, in AA.VV, *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom papers 1, pp. 195 ff.; M. D’arienzo, *Is the suspension of mass in public form legitimate?*, in AA.VV, *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom papers 1, pp.251 ff.

⁴ According to the protocol agreed with the Islamic Communities on 15th May "1.1 Any celebration religious is permitted in compliance with all the precautionary rules on the containment of the current outbreak. In particular, participants are required to wear suitable protective equipment and must maintain interpersonal distances of at least one metre. 1.3 Those entering places of worship for prayer shall be required to wear masks. [...]

1.5 Religious authorities are entrusted with the responsibility of identifying suitable forms of prayer in order to guarantee interpersonal distancing, by enforcing all safety requirements. 1.6 Access to place of worship, in this transitional phase, is restricted and regulated by volunteers and/or collaborators [...] Whereas the expected participation significantly exceeds the maximum number of admissions allowed, consideration should be given to increasing the number of functions. [...] 2.1 In order to promote compliance with the rules of distancing, it is necessary to reduce to a minimum the presence of officiating ministers, who are, however, always required to respect the minimum distance. [...]3.2 Entering the place of worship, masks and cleaning fluids must be available for those without them, and an external security officer, chosen by the religious authorities and wearing a badge, will ensure that the social distancing is respected and will limit access until permitted number of faithful. [...]4.2 At the entrance, a notice with essential information will be posted: - the maximum

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The Protocol, while respecting the right to freedom of worship, ignores the existence of bilateral agreements, balancing the exercise of religious freedom with the needs to contain the current epidemic.

As we read in the brief introduction "the need to adopt measures to contain the SARS-CoV-2 epidemiological emergency requested a Protocol with religious denominations to be drawn up. The Protocol respects the right of freedom to worship, and is not related to the existence of bilateral agreements, thus reconciling the exercise of religious freedom with the need to contain the current epidemic".

Rather, the aim here is to guarantee all religions that have expressed an interest in signing the protocols the exercise of worship in an associated form, albeit still in emergency conditions, balancing it with the constitutional asset of health, being a "fundamental right of the individual" and, at the same time, a "collective interest".

As for regulatory aspects of the protocol with Islam, like all the other protocols, it is divided into five sections. The first part is dedicated to regulating "access to places of worship" "during prayer". Religious celebrations and meetings are permitted, whatever form they may take in practice, in compliance with all the precautionary rules provided for to contain the outbreak. Participants are required to wear suitable respiratory protective equipment and to maintain social distance of at least one meter. Those who have a body temperature equal to or higher than 37.5°C will not be admitted, the same applies to "those who have been in contact with people positive for SARS-CoV-2 in the previous days", though such a circumstance is difficult to verify.

In order to comply with the distancing measures, the legal representative of the entity shall identify a person responsible of the place of worship who shall

number of participants admitted, in relation to the capacity of the building; - ban on entering for those who have flu/respiratory symptoms, body temperature equal to or higher than 37.5° C or have been in contact with people positive for SARS-CoV-2 in the previous days".

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establish the maximum capacity of the worship building. In doing so, he shall take into account the ventilation systems and the minimum safety distance above mentioned; in any case, no more than 200 people may be admitted at the same time.

The following are some organisational requirements: volunteers and/or collaborators “equipped with” adequate personal protective equipment, disposable gloves and identification badge are in charge of regulating access⁵.

Finally, there is a closing clause, contained in Art. 1.10, according to which "in relation to particular aspects of worship which might involve close contacts, the competent religious authorities are responsible for identifying, for each confession, the most suitable forms of maintaining the necessary precautions" (Art. 1.10). It will therefore be left to the autonomy of the religion, within the framework of the protocol but without further specification by the Ministry, to identify, according to prudence, the cult practices that may require particular attention.

The provisions in sub 2 are dedicated to "precaution to be observed in liturgical services/religious celebrations/prayer". First of all, there is the need to "reduce to a minimum number the presence of officiating ministers, who are, however, always obliged to respect the minimum distance" (art. 2.1). Then there is the question of liturgical music or the accompaniment of ceremonies, providing that "the presence of only one cantor and one organist, suitably spaced out, is permitted".

With regard to the methods of communication of the prevention regulations, according to art. 4 religious authorities must publicize the protocols "through the methods that ensure the best diffusion".

⁵ A. Tira, *Normativa emergenziale ed esercizio pubblico del culto. Dai protocolli con le confessioni diverse dalla cattolica alla legge 22 maggio 2020, n. 35*, in www.giustiziainsieme.it; M.L. Lo Giacco, "A CHIARE LETTERE" - CONFRONTI" - I "Protocolli per la ripresa delle celebrazioni delle confessioni diverse dalla cattolica": una nuova stagione nella politica ecclesiastica italiana, in www.statoechiese.it.

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In the last section, under the heading "Other suggestions", art. 5 contains a first provision for which "If the place of worship is not in compliance with the regulations of this Protocol, the possibility of carrying out the functions outdoors, ensuring the dignity and compliance with health regulations, with up to 1,000 people, may be assessed". A second provision follows, in which it is specified that "the place of worship will remain closed if it is not possible to comply with the measures regulated above". Actually, this provision seems to have the purpose of avoiding meetings of faithful who do not respect the rules of health precaution set out in the previous articles, confirming the determination of the Islamic Community to avoid meetings of the faithful outside the respect of the rules of prevention so far illustrated.

3. Islamic vision of right to health

On all sides, Islamic authorities remind the faithful of the necessary distancing from one another, accompanying the prohibitions with a series of health and hygiene recommendations such as the sanitation of all premises and the prohibition to shake hands during the greeting and to limit oneself to the verbal greeting of peace. This is how the fatwa containing *Recommendations and instructions in the light of updates regarding the "Coronavirus" alert*⁶ of the Italian Islamic

⁶ Such rules, in addition to being in line with state legislation, find full legitimacy within the sacred texts. One of the fundamental principles of the Islamic religion is, in fact, that of the sacredness of life. V. Cor 5:32 "[...] he who slays a soul unless it be (in punishment) for murder or for spreading mischief on earth shall be as if he had slain all mankind; and he who saves a life shall be as if he had given life to all mankind", hence the obligation for the human being to safeguard his psychophysical integrity. Also consider the Prophet's words: Cleanliness is part of the faith, by virtue of which the Muslim faithful are obliged to wash their faces and hands before every prayer (Cor 5:6 "*Believers! When you stand up for Prayer wash your faces and your hands up to the elbows, and wipe your heads, and wash your feet up to the ankles*").

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Association of Imams and Religious Guides, as well as the Circular of the Union of Islamic Communities containing *Coronavirus emergency provisions for the Islamic communities of Italy*, were issued.

The burial of the deceased Muslims is particularly important in this context. In this regard, the Union of Islamic Communities and Organizations in Italy (UCOII) has specified that, given the current ban on repatriating bodies to their countries of origin, the relatives of the deceased are required to bury their loved ones on Italian national territory, possibly in Muslim cemeteries or, alternatively, in the area pertaining to non-Catholic cult, so that the religious dignity of the deceased can be eternally assured. With reference to the rituals to be followed, the UCOII document specifies that in the case of an actual risk of contagion, one must limit oneself to wrapping the deceased in the shroud, without the ritual washing of the body. The funeral prayer is allowed, but in compliance with fixed measures: presence of a maximum of three people in addition to the Imam to avoid crowding, distance of one meter between those present and use of gloves and masks. It is also forbidden to hug and shake hands. However, the above indications encounter considerable difficulties in balancing public health needs and funerary religious freedom. In fact, it often happens that the Muslim faithful, by virtue of the importance recognized to the event of death (and the rituals connected to it), refuse to bury their loved ones in non-Islamic cemeteries. In order to resolve this situation, the UCOII has requested the government and the National Association of Italian Municipalities (ANCI) to facilitate the burial of the dead Muslims in Islamic cemeteries, even if from other provinces or regions⁷.

⁷ V. Fronzoni, From social distance to Muslim solidarity proximity at the time of Covid-19 in AA.VV., *Law, Religion and Covid-19*, edited by P. Consorti, DiReSom papers 1, pp. 261 ff.; S. Al Bukhari, *Al-Maktaba al-'Asriyya*, Beyruth, 1427 H., IV, n. 5728; A. Fuccillo, *La religione "contagiata" dal virus? La libertà religiosa nella collaborazione Stato-Chiesa nell'emergenza covid-19*, in *Osservatorio delle Libertà ed Istituzioni Religiose*, www.olir.it, 21/04/2020;

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The importance that the Islamic view attaches to the protection of individual and collective health can be seen not only from health and hygiene regulations, but also from the Koranic principle that Islam intends to 'facilitate' and not 'obstruct' the life of the faithful and the community⁸. Therefore, in a state of necessity, if life of individuals is in extreme danger, it is possible to break the Law⁹.

What was said above is consistent with the central and pivotal role that the interest of the community (*Ummah*) has compared to the individual one. The supremacy of the interest of the *Ummah* over that of the single *Homo Islamicus* would justify, in itself, a derogation of religious obligations, considering the current emergency, which puts the survival of the individuals at risk. Moreover, this hypothesis finds further confirmation, in a suggestion of the Prophet according to whom, in the case of epidemics, it is necessary to avoid fleeing from the zone of contagion in order to contain as much as possible, its spread¹⁰.

4. *The celebration of Ramadan during quarantine*

The suspension of religious ceremonies ordered to the whole national territory by the Prime Minister's Decree (DPCM) of 8th and 9th March 2020, and restated in the decree of 26th April 2020, is certainly the largest and most widespread restriction of religious freedom in Republican Italy.

For the above many priests, following the example of Pope Francis, broadcasted live streaming masses. Nevertheless, the strict nature of these requirements is clear, and is perceived even more strongly during these days by the Muslim community. Considering that *Ramadân* is underway, and is one of

⁸ Cor. 4:28 "Allah wants to lighten your burdens, for man was created weak".

⁹ Cor 16:115 "[...] As for those who are compelled to sin, without desire and without intention of sin, God is forgiving and compassionate".

¹⁰ "When you hear that [a plague] is in a land, do not go to it and if it occurs in a land that you are already in, then do not leave it, fleeing from it".

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the five pillars of Islam, together with the Koranic prohibitions of *ribā*, *ghārar*, and *maysīr*, and the obligation of *zakāt*, the coronavirus epidemic has left an unsettling stain on its celebrations this year.

Fasting during the month of Ramadan from sunrise until sunset has a precise Koranic basis in the Sura II, verse 185. Here we read: "*The month of Ramadhan [is that] in which was revealed the Qur'an, a guidance for the people and clear proofs of guidance and criterion. So whoever sights [the new moon of] the month, let him fast it; and whoever is ill or on a journey - then an equal number of other days. Allah intends for you ease and does not intend for you hardship and [wants] for you to complete the period and to glorify Allah for that [to] which He has guided you; and perhaps will be grateful.*"

Some social and cultural rites and traditions characterize Ramadân. Among them the *tarawih*, a prayer that is said only during this period immediately after the evening prayer in mosques or at home; the *iftar*, the fast-breaking meal eaten after sunset shared with neighbours and friends; the *Laylat al-Qadr*, literally "the Night of Power", which this year takes place on 20th May, marks for the Sunni tradition the night when the Koran was first revealed, and for the Shiites it coincides with the night the first imam Ali was killed. Muslims consider *Laylat al-Qadr* as a blessed night in which believers are invited to pray and recite the Koran invoking forgiveness for their sins.

A rather different celebration of Ramadan is the one that more than 1.8 billion Muslims in the world are experiencing these days, without the prayers of *tarawih* in the mosque, nor *iftar* with others. The mosques are closed and the *Umrah*, the pilgrimage to Mecca, is suspended. Likewise, considering the situation, it will not be possible to celebrate as usual the *Id al-Fitr*, the great feast that marks the end of fasting, and which this year will begin on the evening of 23rd May.

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Nevertheless, the obligatory fasting in *Ramadân* is confirmed, even though, considering the outbreak, it should be noted that the Islamic Shari'a provides for softening and exceptions¹¹.

It should be pointed out that it is not the first time in history that the sacred celebrations of Muslims are restricted due to outbreaks and wars. Indeed, in 1400 years of Islam history the collective prayer had to be suppressed several times.

Think of what happened in 930, in the Abbasid era, when the annual pilgrimage to Mecca was cancelled due to an attack to the most sacred place of Islam by the Carmates, Shiites from present-day Bahrain, who for about a hundred years took control of the east coast of the present Saudi Kingdom and Kuwait¹².

In the 19th and 20th centuries, cholera forced the suspension of the Hajj in 1837 and 1846 respectively. In those years twenty-seven outbreaks struck the pilgrims, with a subsequent closure of ports and imposition of quarantine for those coming from Saudi Arabia.

Another event that led to a suspension of the sacred celebrations for the Muslims was the Great Mosque seizure in 1979, an armed attack that began on 20th November and ended only the following 4th December, led by a former Saudi soldier and militant, Juhayman ibn Muhammad ibn Sayf al-Otaybi. On that occasion four to five hundred armed men took hundreds of pilgrims hostage and occupied the Great Mosque. In the fire fights that followed, about 130 people were killed, including Saudi policemen and assailants.

Though, our present should not be clouded by past experiences. Today, as a matter of fact, all religious confessions, without posing issues about the

¹¹ Traditionally, people who are travelling, or engaged in combat, pregnant and breastfeeding women, or during menstruation, and the sick, may postpone fasting, and the elderly and the seriously ill may abstain. Another legitimate cause of abstention from fasting is death threats.

¹² On that occasion, besides attacking Mecca, the symbols of Islam were desecrated". Among them the Black Stone, in the centre of the Kaaba, from which pieces were supposedly removed and stolen, and the Well of Zemzem, where the bodies of the murdered faithful were supposedly thrown.

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division of competences between civil and religious authorities, have taken an active role in identifying the appropriate measures to ensure respect for national rules also in the fulfilment of worship.

The peculiarity of the emergency we are facing requires us, however, to keep in mind the framework outlined by the Constitution, which gives particular attention and protection to the religious phenomenon. It differentiates it from other social phenomena, and recognizes autonomy and independence of all religious denominations, even if in a less marked way than the Catholic religion. Constitutional guarantees, if on the one hand they aim at preventing believers from being conditioned to some extent by political power, on the other hand they impose a balance between the different constitutional rights, but always within the limit established by the right to health.

It follows that the religious interest, although deserving protection, has to surrender to the superior interest of the State to preserve the health of people, including those who would like to participate to religious rites.