

7th Summer School on Union Rights 7-10 July 2020

Challenges for the KEK Churches in the time of COVID-19 in the Area Freedom of Religion or Belief and other fundamental rights

Short overview for Austria

For the member churches of the KEK in Austria the following is to note:

1. Regardless of applicable fundamental rights, also criminal law plays an important role in that matter. §§ 178 und 179 StGB regulates the intentional or negligent hazard of people through transmissible diseases. Both provisions address hazards, meaning that it not important for the actual danger to materialize. The statutory offences are fulfilled, if the endangerment is occurred or increased. COVID-19 is a transmissible disease.

Independent of instructions from the Government every leader of a parish, also the management of the churches has to take precautions for the risk of infections from COVID-19. In particular, for church services, official acts of the sacrament, and other church events. Otherwise, the respective leader would be liable for persecution.

2. The government mandated restrictions for the economic, private and public life through orders based on the epidemic law and the COVID-19 laws since the second week of March 2020 in Austria. All of them were temporary. The orders were limited to 14 days, but could be extended partially they were limited to a month. The COVID-19 laws are limited to the 31th of December 2020.

From the viewpoint of Art 9 Abs 2 ECHR but also other fundamental rights, it is possible to limit these fundamental and human rights to prevent the spreading of

COVID-19 and to avoid massive drawbacks for life and physical condition. All of these restrictions had to be temporarily and justified. In Austria there were neither explanatory statements for the multiple and massive restrictions nor for the gradual liberalization, in particular for a medical point of view. The Austrian government repeatedly referred to statements and expert's reports. The reports and the conclusions have never been published. This behaviour led to increased criticism.

Discussions about fundamental rights also took place. It was discussed if the COVID-19 app should be mandatory for the purpose of identification of infected people. This idea was declined, but it led to another difficult situation. The police has to identify the people who were in contact with the infected. Also problematic are the conditions of safety of big events, for example open air concerts, cinema visits. All attendees have to register their name, address and mobile number. All of this data is saved for 14 days. Officially, registration is voluntarily but if you have not registered than you are not allowed to enter or don't even get the ticket.

A couple of lawsuits are filled because of the COVID-19 laws and orders at the constitutional court in Austria. First rulings will be expected in July 2020.

3. In Austria, the accredited churches and parts of the confessional communities pursued a separate strategy:

At the 12th of March 2020 all representative of the accredited churches and religious communities were invited by the government and been asked temporary to ban all administration of the sacrament (baptising, communion) and other events, including any official event. Based on expert reports, religious activities should be avoided in order to prevent the spreading of COVID-19. This includes church services, communions, baptisms, marriages and funerals. Funerals and weddings were allowed up to 10 people.

The accredited churches and the religious communities followed the recommendation, a little bit later also the confessional communities. The limitation were set internally by order. I will spare the further details.

However in the same period from 15th of March to the 13th of April (Tuesday after Easter) a strict ban of entering the public area was ordered. Only a few exceptions were made and controlled. Therefore, it was possible for a single person to enter an open church for personal prayer. . Church services could not be attended. Insofar it is possible to say that a limitation of public religious activities took place. In this case the churches were treated the same, because the public and economic life got also restricted (with shutdown of companies). On the other side, churches insured that service were recorded to be viewed online, and the public television

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and radio broadcasting gave extra time to churches and religious communities . That lead to governmental public religious ceremonies via broadcast and television. Many Austrian parishes of the protestant churches livestreamed their services every Sunday.

The protestant church in Austria sent a letter from the bishop to all protestant homes for the holy week. This letter included blessings and devotions.

From the viewpoint of the religious law, however a different situation were problematic. The access to the hospitals, retirement homes and nursing homes including all visits by priests were factually prohibited. Theoretically, it would have been possible for a minister to visit people yet in practice, there are a few cases of minister of accredited churches, who were able to visit ill or dying people in hospitals and nursing homes. There are a many cases in which the wish of a visit from a minister was not granted. This is a forbidden restriction of private religious activities (religious freedom). It was similar for people in jail. Hence, churches started to protest against these – unlawful -restrictions.

Since the 13th of April the severe public, economic and social restrictions were gradually lifted. For the accredited Churches and religious communities, the limitation got looser on 15th of Mai 2020. That happened because of a discussion with the Austrian government. Concerning the matter it is critically to note that several stores were allowed to reopen since the first of Mai 2020 with a lot of costumers, yet church services were still prohibited. For the record indoor church services were limited by the number of the attendees, and a minimum distance that had to be kept. Outdoors church services were allowed if the necessary distance was complied with. The government asked to put a hold on any big events.

Governmental restrictions for participation to weddings and funerals would still apply. Although it was already possible to hold church services and other official acts with the necessary distance between people. Internally, the member churches of the KEK were asked to follow special rules to avoid the further spreading of COVID-19.

For the record, the youth ministry and the work with elderly people also had to temporarily close. That included confirmations too and any type of teaching in person. The confirmations were all shifted to the fall. Religious education, camps and congresses were not possible from 15th of March till the beginning of June 2020.

Also for the record, public religious activities were severe limited from 15th of March to 15th of Mai 2020. It was only possible through Internet, TV and Radio. From my perspective the limitation and the gradually removal of restrictions after

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eastern were justified by ECHR Art 9 para 2 till the beginning of Mai 2020. After the beginning of Mai it is not justified anymore with the exception of the mandatory minimum distance between people. The factual restriction of visits in hospitals and nursing home were no longer in compliance with Art 9 para 2 ECHR.

4. In consequence of the massive restrictions, churches would also suffer financially, as the lost all potential offeratorie. Income wise, only the churches were left with only taxes. That would apply generally and particularly in the Diakonie. It is also to mention that youth ministry worker, and staff members of the ministries could not do their work, but received their income. The different governmental aid lead to discriminations against churches and religious communities with the positive exception of companies managed by churches for example the Diakonie. Against this policy, I protested heavily on behalf of the churches. The reason is that accredited churches and religious communities have the status of corporations of public law. They are excluded from numerous subsidies and reliefs. That is constitutionally problematic. This matter is quite complex and will not explained in more details. It leads to violation of the rule of equality before the law regarding churches as opposed to other cooperate bodies. In Austria equality before the law is a constitutional right.

There is still a lot to say, yet little time. Hopefully, these few thoughts have been useful to you.

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