

Summer School on Human Rights – Webinar 2

Challenges for the CEC churches in the time of COVID-19

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Along with Spain, Italy and Belgium, France is one of the countries affected by Covid19 that adopted one of the toughest lockdowns in Europe, applied without nuance to the entire country. The responsibility of the media in the panic that has seized Western public opinion needs to be investigated. Indeed, the coverage of the health crisis, with news outlets reporting day after day the number of deaths, has caused a widespread anxiety, prevented any debate on the adequate response to the crisis and thus created the conditions for an unquestioned acceptance of the drastic measures taken by the government. These restrictions have had a deep impact on the life of different religions, and especially that of the Churches. I will try to present to you their impact on cults in France, as I have seen it as the President of a Protestant Church, but also through my ecumenical relations at regional and national level. I will mainly talk about three points: firstly, I will discuss the law that created a new state of health emergency and its impact on the rule of law. Secondly, I will address the issue of confinement from the point of view of freedom of religion and belief. And finally, I will talk about the problems and reactions I have observed at the level of Churches.

I. The law creating the state of health emergency and its impact on the rule of law

On 16 March, in a very solemn speech, the President of the Republic, in the name of the fight against the coronavirus pandemic, declared a nation-wide lockdown, thus depriving French people of most of their civil, political and social liberties, which were believed to be inalienable: freedom of movement, freedom of assembly, freedom of enterprise, freedom to work, freedom to practice religion, etc. The justice system has been brought to a virtual standstill, lawyers have been confined, temporary detention has been automatically extended, and the police (including the municipal police and others police forces) have been given full powers to apply these measures restricting the population's basic freedoms. Only 7 grounds could legitimize leaving home 1: work related travels when working from

¹ L'article 3 du décret du 23 mars énonce :

1. - Jusqu'au 31 mars 2020, tout déplacement de personne hors de son domicile est interdit à l'exception des déplacements pour les motifs suivants en évitant tout regroupement de personnes :

1° Trajets entre le domicile et le ou les lieux d'exercice de l'activité professionnelle et déplacements professionnels insusceptibles d'être différés ;

2° Déplacements pour effectuer des achats de fournitures nécessaires à l'activité professionnelle et des achats de première nécessité dans des établissements dont les activités demeurent autorisées par l'article 8 du présent décret ;

3° Déplacements pour motifs de santé à l'exception des consultations et soins pouvant être assurés à distance et, sauf pour les patients atteints d'une affection de longue durée, de ceux qui peuvent être différés ;

4° Déplacements pour motif familial impérieux, pour l'assistance des personnes vulnérables et pour la garde d'enfants ;

5° Déplacements brefs, dans la limite d'une heure quotidienne et dans un rayon maximal d'un kilomètre autour du domicile, liés soit à l'activité physique individuelle des personnes, à l'exclusion de toute pratique sportive collective et de toute proximité avec d'autres personnes, soit à la promenade avec les seules personnes regroupées dans un même domicile, soit aux besoins des animaux de compagnie ;

6° Déplacements résultant d'une obligation de présentation aux services de police ou de gendarmerie nationales

home is not possible, going out to purchase basic necessities like food, to attend a medical consultation, leaving home because of essential family-related reasons, because of a judicial or administrative convocation, or because of a community service requested by the administrative authority. It should be noted that the wording of the law and the definition of offences are all very vague, which leaves a lot of space for police interpretation, creating a risk of arbitrary enforcements.

The problem is that this deprivation of fundamental rights, and in particular of freedoms, has taken place without any legal basis. Indeed, restricting the movement of citizens does not fall within the competence of the executive power, since in France only a judicial judge, "le juge des libertés", can normally decide on an individual basis to deprive freedom of movement. Thus the decree of the 16th March 2020 has no legal basis. As a result, the Parliament hastily voted on March 23rd to pass a law creating a "state of health emergency" which can be used by the government "in the event of a health catastrophe that, by its nature and seriousness, endangers the health of the population". During the state of emergency, which is planned for 2 months but renewable, the law gives full powers to the executive, authorizing it to govern by ordinances. It strips Parliament of its powers and reduces it to the role of mere spectator, while it should be its mission to control the action of the executive by verifying at reasonable intervals whether the use of emergency powers is still justified. This law contains a measure effectively suspending any intervention by the Constitutional Council. In the facts, it represents a real suspension of the rule of law. France owes the Senate (with a right wing majority opposed to the President's party) an amendment which will cancel this law on the 1st of April 2021. This article prevents the permanent presence in the French law of legal disposal to suspend the rule of law. Similarly, the state of emergency law voted in 2015 following the Paris terror attacks had been incorporated into ordinary law. Anyway, the state of health emergency will remain a part of the French law's history. It is rare for a State to renounce on its own to the powers it has gained over the legislature and the judiciary.

II. Confinement and Freedom of Religion and Belief

In the 8th Article of the decree implementing the law passed on March 23rd and creating the state of health emergency, all religious gatherings are explicitly prohibited². The article indeed lists places of worship among the places prohibited from receiving any public during the state of health emergency. There is however a nuance to this prohibition. "Worship establishments, falling under category V, are allowed to remain open but any gathering or meeting is prohibited with the exception of funeral ceremonies, which can welcome up to 20 people." With this rule, places of worship are open for individual meditation and only funerals are tolerated within the limit of 20 people attending. This decree calls for two remarks:

Firstly, religious practice has two dimensions: an internal and individual dimension, and an external and collective manifestation. The ban concerns the latter, the public and collective practice of religion.

ou à tout autre service ou professionnel, imposée par l'autorité de police administrative ou l'autorité judiciaire ;
7° Déplacements résultant d'une convocation émanant d'une juridiction administrative ou de l'autorité judiciaire ;

8° Déplacements aux seules fins de participer à des missions d'intérêt général sur demande de l'autorité administrative et dans les conditions qu'elle précise.

Cf. <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746694&categorieLien=id>

² Cf. Idem, article 8.IV.

Generally speaking, it can thus be considered that the problem is not freedom of religion or belief, but rather the freedom of religious practice. Indeed, since it is not possible to monitor hearts and minds, the problem arises when a religion becomes visible, concrete, palpable. Indeed, the ban on welcoming the public in churches, synagogues and mosques effectively only suspended collective religious practice, but not private or individual practice. Can we legitimately speak of an infringement on religious freedom as some have been suggesting?

Secondly, in France the government has not considered religious practice to be essential or vital. The law does not deal *per se* with religious freedom. It bans religious gatherings as part of a broader list of places open to the public that are subject to administrative closure under the state of health emergency. Collective religious practice is thus associated with social and cultural life, and is subject to the same ban as cinemas, bars, restaurants, theatres, concert halls, libraries, museums, leisure centers, etc.

Finally, it should be noted that the wording of this ban on religious gatherings has not been widely contested. All religious leaders, including Christians, Jews and Muslims, called for the respect of health measures set out by the government to save life. This reaction should be seen in the context of the panic created by the media coverage of the health crisis.

In France, a progressive and differentiated deconfinement (based on a departmental map) was implemented from 11th May 2020 onward. Priority has been given to economic and educational activities. To this end, meetings of 10 people or less have first been allowed while requiring a full compliance with sanitary measures. The ban of collective religious practice was not lifted. The Ministry of the Interior had, however, taken care to call a meeting of religious leaders to inform them that, depending on the developments of the health situation, religious gatherings should be possible again from the 2nd of June onward (the Monday after Pentecost). This announcement led to some uproars by conservative circles, especially Catholics and some evangelical Protestants, who demanded the authorization to celebrate services on Pentecost day, and not the next day. Following the announcement of this demand, the rector of the Grand Mosque of Paris asked that religious gatherings should be authorized from May 24th so that Muslims could celebrate Eid el-Fitr, which marks the end of Ramadan.

With the silence of the Ministry of the Interior, several associations referred the matter to the judge des Référés of the Council of State, stating that, since the deconfinement of 11th of May, religious activities had been subject to a stricter ban than other activities, where a gathering of 10 people was now tolerated. On 18th of May 2020, the judge des Référés of the Council of State ordered the Government to lift the total ban on gathering in places of worship and to enact instead measures that would be proportionate to the health risks and appropriate to the beginning of "deconfinement". In his ruling, the judge des Référés of the Council of State recalled that freedom of worship, which is a fundamental freedom, also includes among its essential components the right to participate collectively in ceremonies, particularly in places of worship. It must however be reconciled with the constitutionally valid objective of protecting health.

Thus, in France, it was through an appeal to the Council of State that collective religious practice in compliance with restrictive measures was gradually allowed again.

III. Problems and reactions of the churches

Churches, like societies, have just lived through a completely new period in history. Never before have our personal lives, nor those of our society, or even of the globalized economy, been slowed down, suspended or even put on hold in this way. It has been a few decades since humanity last became so collectively aware of its fragility and interdependence. With regard to the way in which the Churches have experienced this period, I will make four remarks.

1. Between desert and effervescence

Confinement measures and the prohibition of gatherings in places of worship have considerably reduced the possibility of direct social relations, religious practice and church life. Numerous projects, regular meetings or highlights (confirmations, community celebrations, spiritual concerts) have had to be cancelled, suspended or postponed. And in fact, in some parishes this period of confinement was a long silence, a crossing of a desert, as those involved, for whatever reasons, were not able to invent an alternative spiritual presence or offer. In other places, this period of confinement gave rise to a real creative effervescence to maintain the connection to the community and propose a religious as well as spiritual offer, in particular by investing resources that had often been rather unexplored or neglected until then. In wanting to maintain the connection, this creative inventiveness was reinforcing the spirit of one of the etymological meanings of the word religion. The word indeed derives from the Latin verb *religare* and can mean 'to connect'. As it was not possible to meet physically, recorded celebrations have been posted on the internet; spiritual appointments, sometimes daily, have been proposed on social media; a telephone pastoral care and an epistolary pastoral³ care were developed, especially for the elderly or isolated people. Progressively, some pastors or parishes have tried interactive remote worship on Zoom. From time to time, these virtual worship assemblies have broadened their horizons, sometimes far away by welcoming people from abroad, sometimes close to home by welcoming people who would not have gone to worship physically. In view of this experimentation exploring the potential of these until now rather neglected tools to organize worship, we could say that the Covid19-induced *confinement* has contributed to the *deconfinement* of the Church and to the emergence of a "Church 2.0".

2. What pastoral care for a complicated bereavement?

Health restrictions have made it difficult, sometimes impossible, to accompany people at the end of their lives. The inability of families to support their relatives suffering from the disease, accompany parents locked in a nursing home, or be there physically for loved ones at the end of their life has been very traumatic. While many have been psychologically isolated, others were bound to feeling guilty for leaving a loved one with a sense of abandonment in the last moments of his life.

In addition, the ban on holding funerals with more than 20 people complicated the grieving process. Realizing how important it is to be able to come together, support one another, tell each other about the life of the deceased and to entrust him or her to God in collective prayer, the pastors struggled to find new ways to accompany the grieving process. Should there be a collective religious celebration at the end of the lockdown? Should there be a thanksgiving service on the first anniversary of the death? This questioning was as intense as it was brief. Indeed, very quickly, new habits were

³ Some pastors have begun to send letters to isolated seniors on a regular basis.

established, with some families even saying that they preferred a religious funeral in an intimate setting in the cemetery to a service in a church.

3. The hyper-contagiousness of the practice of singing

Unlike Germany and Austria, in France, the hyper-contagiousness of singing has not been identified. The churches in their recommendations did not ban singing. In practice, however, it is observed that singing is practiced with restraint and while wearing masks.

4. The administration of the Lord's Supper, everything and its opposite?

From a health point of view, communion under both species, in the body and blood of Christ, is not free from the risk of viral transmission. During the confinement, some communities abstained from the Eucharist, as they couldn't consider an alternative way to celebrate it than through an in-person liturgy. Others sent liturgies of the Eucharist to families by e-mail, entrusting them with the task of celebrating it in the household within the theological framework dear to the Protestantism of the universal priesthood of believers. Others celebrated the Eucharist across screens, inviting each participant to prepare the bread and wine in their own home, in order to enter together into a time of spiritual communion despite of physical distance between them.

Since the restarting of the worships, the practice of the Eucharist remains very complicated and uncertain, oscillating between those who have provisionally suspended the Eucharist and wait for the possibility to convene it again, and those who are experimenting with new settings that reduce the risks of contamination (intinction, under a single species, individual cups, etc.). Some more liberal parishes developed the practice of a Eucharist liturgy without the actual sharing of the bread and the cup. In particular, they state that communion cannot reside primarily in what one swallows, but rather in a common invocation of God's presence, in a common remembrance of Christ's last supper and in a prayer for communion.

IV. To conclude

It would have been interesting, from a human rights point of view, to also tell you about the discussions in France on the application of traceability of gatherings and its implications for individual freedoms. As time does not permit it, I conclude by noting that less sacramental theological cultures, such as the Reformed tradition which puts the Word of God at the heart of its ecclesial and religious life, were more easily able to adapt to bans on collective religious practice than more sacramental traditions for which being able to gather together is more essential.