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## PARTICIPATION IN PUBLIC RELIGIOUS PRACTICES DURING THE COVID-19 PANDEMIC. BETWEEN VARIOUS LIMITATIONS AND THEIR PROPORTIONALITY\*\*\*

### Abstract

*The right to manifest religion or belief in community with others is one of the essential components of religious freedom. However, it has been significantly curtailed in many countries owing to the Covid-19 pandemic. This article identifies the scope of the introduced restrictions, their proportionality, and their impact on the functioning of religious communities. Section 1 sets out three different approaches to participation in public religious practices in selected countries with severe (Germany), moderate (Poland), and liberal (Belarus) restrictions. In section 2, an international perspective on access to religious buildings in times of emergency is presented. The conclusions of this research are juxtaposed in section 3 with the jurisprudence of the highest national courts in Germany, the United States, and France, in order to highlight proportional legal solutions for the protection of religious freedom and public health. In the last section, the consequences of the introduced restrictions are analysed from the perspective of religious associations,*

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using the example of Poland. Lastly, predictions concerning future participation in religious services are also made.

### **Keywords**

*COVID-19; pandemic restrictions; religious freedom; religious practices; sociology of law*

## **INTRODUCTION**

Freedom of religion is one of the fundamental rights in democratic societies, and participating in religious services is a crucial part of the existence and identity of many individuals. This right includes various components, such as the freedom to begin or stop practising a religion, and the freedom to manifest one's religion or belief in worship and teaching. Although various declarations and normative documents protect the right to practise a religion, it is noticeable that the number of court disputes concerning religious freedom has been steadily increasing.<sup>1</sup> These disputes provide proof that religion still has considerable significance in contemporary socio-normative discourse. Issues associated with freedom of religion have become more pronounced during the Covid-19 pandemic, when public health restrictions have taken priority over the right to participate in religious ceremonies, thereby raising many questions about their proportionality.

Although freedom of religion is regarded as one of the fundamental individual rights of each human being, there are limitations to this right when it comes to protecting public order, health, or the rights and freedoms of others.<sup>2</sup> Undoubtedly, the current pandemic is one such factor which justifies limitations in this sphere, because religious ceremonies

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<sup>1</sup> It is stressed from the perspective of international and national judiciaries. See the Guide on Article 9 of the European Convention. Freedom of thought, consistency and religion, Council of Europe 2020, No. 9, p. 7.

<sup>2</sup> Religious freedom does not bestow a general right for applicants to gather to manifest their religious beliefs wherever they wish. See *Pavlides and Georgakis v. Turkey*, 2 July 2013, European Courts of Human Rights, No. 9130/09 and 9143/09, para. 29. The limitations are set out on the international, regional, and national normative levels. The consistency, fairness and clarity of these limitations are not always convincingly defined, as they provide the basis for conflicting interests. See F. Raza, *Limitations to the Right to Reli-*

have been shown to be one of the most common situations leading to infection,<sup>3</sup> and for that reason remote or virtual gatherings are recommended.<sup>4</sup> This paper will analyse selected national legal orders to consider whether the introduced restrictions are proportionate. Is it legally acceptable to suspend the right to participate in religious ceremonies for reasons of public health, or can this right only be partially limited? What factors should be taken into consideration with the introduction of such restrictions? What consequences ensue from improvements made to restrictions for individuals and religious associations? How would it be possible to reduce the negative consequences for worshippers connected with limited access to religious services?

At the beginning of the analysis, it is possible to formulate a preliminary thesis about national legislators' profound interference in religious freedom all over the world being usually disproportionate during the pandemic.<sup>5</sup> Although the basic idea of reducing personal contact during a pandemic is reasonable, the disease has changed the functioning of many religious associations and is still causing difficulties for adherents who are partially or entirely deprived of the opportunity to participate in religious worship.<sup>6</sup> The research has an interdisciplinary nature,

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gious Freedom: Rethinking Key Approaches, "Oxford Journal of Law and Religion", Issue 9, 2020, pp. 435 and 440.

<sup>3</sup> According to a study by Serina Chang et al. published in "Nature", religious gatherings are among the ten most common places for infection. See S. Chang, Emma Pearson, P.W. Koh, J. Gerardin, B. Redbird, D. Grusky & J. Leskovec, *Mobility network models of COVID-19 explain inequities and inform reopening*, "Nature", Issue 589, 2021, p. 82.

<sup>4</sup> WHO, *Practical considerations and recommendations for religious leaders and faith-based communities in the context of COVID-19*, available at: <https://www.who.int/publications/i/item/practical-considerations-and-recommendations-for-religious-leaders-and-faith-based-communities-in-the-context-of-covid-19> [last accessed 1.5.2022].

<sup>5</sup> Detailed analysis concerning the impact of the pandemic on various spheres of public activities in the member states of the Organization for Security and Co-operation in Europe, including religious freedom, was prepared under the title OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic. It is available at: <https://www.osce.org/odihr/human-rights-states-of-emergency-covid19> [last accessed 25.4.2022].

<sup>6</sup> From the scholarly literature, it is obvious that many people have a need to live in a community and to share their religious feelings with others. See W. Trillhaas, *Religion-sphilosophie (The Philosophy of Religion)*, Berlin: De Gruyter Lehrbuch, 1972, pp. 194-219; Z.J. Zdybnicka, *Człowiek i religia (The Man and the Religion)*, Lublin: Towarzystwo Naukowe KUL, 1993, p. 154.

from normative analysis focused on selected legal orders, various ways of reducing attendance in religious ceremonies, and the internal regulations of religious associations; to sociological considerations about the personal feelings of worshippers and their expectations with regard to restrictions in the future. In the text, the sociological analysis plays a demonstrative and service role concerning the broader legal analysis.

The Covid-19 pandemic is a very dynamic medical and social phenomenon. Legal changes in various world countries took place as a consequence or as an attempt to overtake different waves of the virus and as a result of subsequent scientific research in the field of epidemiology. For this reason, the initial stages of a pandemic and the initial stages of introducing various legal regulations were marked as crucial. Therefore, deliberations in this paper end with the third pandemic wave, which occurred in European countries at the beginning of the summer of 2021. This 1.5-year period from the first cases of the disease in Europe to the beginning of the summer of 2021 is sufficient for our analysis. At that time, changes in legal regulations were frequent, varied, and met with many social reactions, also on the part of religious organizations.

The paper is divided into four parts. In the first, three different approaches to the restrictions related to religion in connection with the Covid-19 pandemic will be indicated. The first model is typified by Germany, where the restrictions were severe and made it impossible to attend religious ceremonies for months. The second approach, typified by Poland, involved moderate limitations: public ceremonies were not suspended and there were only limits on the number of worshippers in religious buildings. The third solution, characteristic of Belarus, meant that there were no restrictions on access to religious buildings in the first wave of the pandemic. The next part of the paper will be devoted to the analysis of the international standards of the freedom of religion, in terms of access to places and buildings of worship. The analysis is mainly based on the European Convention and the jurisprudence of the ECHR, and specifies the circumstances under which restricting access to religious celebrations is permissible. In the third part, the international standards are compared with the jurisprudence of the selected national courts, which have treated the wholesale suspension of religious ceremonies as unlawful. This comparison is the basis for an evaluation of the legal regulations in Germany, Poland, and Belarus. In the last part

of the analysis, the outcome of the legal analysis is contrasted with the views of Polish worshippers on the introduced restrictions, including their expectations with regard to their future impact, bearing in mind that Poland's restrictions are classed as moderate.

In order to obtain sociological data, a total of 20 Individual in-depth interviews (IDIs) were conducted, along with an online survey (CAWI). 957 people took part in the online survey. Only the responses of people identifying with any religious community (722 people) were taken into account in the statistical analysis. 614 people professing Christianity participated in the survey (587 representatives of the Roman Catholic Church, 4 members of the Orthodox Church, 12 representatives of Protestant Churches and 11 people who define themselves as representatives of other Christian denominations). In addition, 15 followers of Buddhism, 4 followers of Hinduism, 3 followers of Judaism, 1 follower of Islam, and 68 people who declared belonging to a other than the above-mentioned list of religions and denominations participated in CAWI. The online survey was conducted in accordance with the principles of open access: anyone who entered the relevant website could participate. To this end, the address with the questionnaire was disseminated among various internet forums devoted to religious belief, on mailing lists and on Facebook pages available to the research authors. The sample selection in the IDIs was deliberate: five members of the priesthood, five people living in religious communities, five religious journalists, and five lay people involved in the organization of religious life. Of these, 16 people represented the Roman Catholic Christian faith (dominant in Poland<sup>7</sup>), and one each of the following denominations: Protestant Christian, Orthodox Christian, Sunni Islam, and Visha Hinduism. These people were selected because of their above-standard commitment to religious life. Getting to know their opinions and personal motivations allowed for a more in-depth picture of the assessment

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<sup>7</sup> According to Statistics Poland, 91.9 per cent of Poles over the age of 16 in 2018 declared membership of the Roman Catholic Church. The same survey showed that membership of the Orthodox Church was declared by 0.9 per cent, and of Protestant Churches by 0.3 per cent; and of all the other religious denominations by 0.5 per cent. See p. Ciecieląg, A. Bieńkuńska, *Życie religijne w Polsce. Wyniki badań społecznej* (*Religious Life in Poland. The Results of Social Cohesion Research*), Warszawa: Główny Urząd Statystyczny, 2018, p. 1.

of restrictions introduced during the pandemic and their impact on religious life in Poland.

The research was exploratory and presented a broad picture of the phenomenon, therefore the voice of smaller religious communities was taken into account as well. It is worth emphasizing that the techniques used in the research do not ensure representativeness. In the case of CAWI, the most likely related problems are access to the Internet and to the questionnaire (depending on many social, demographic, and geographical factors), internet proficiency,<sup>8</sup> as well as a personal commitment to religious life, which – when high – most probably increased the motivation to participate in the survey.<sup>9</sup> On the other hand, CAWI is a democratic technique that does not require significant funds and is easy to apply to rapidly changing social phenomena such as the Covid-19 pandemic. IDI was chosen for its qualitative nature. It is a technique that enables the respondents to develop their statements, and simultaneously it enables the interviewer to inquire about interesting or new issues. IDI made it possible to reveal the subjective reactions to the restrictions and changes in the religious practices of Polish believers. Neither technique used in this research allows us to draw conclusions about the general population of believers in Poland, but they can be a source of quantitative and qualitative hypotheses about changes in religious practices during a pandemic. They also explain at least some ways of interpreting and assessing the restrictions and allow us to inquire about the sources of various observed phenomena. The methodology used in the sociological research allowed the triangulation of the obtained data, combining qualitative and quantitative techniques.<sup>10</sup>

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<sup>8</sup> P. Stopher, *Collecting, Managing, and Assessing Data Using Sample Surveys*, Cambridge: Cambridge University Press, 2012, pp. 387-400.

<sup>9</sup> D. Frippiat, N. Marquis, *Web Surveys in the Social Sciences: An Overview*, "Population", Issue 2, 2010, p. 295.

<sup>10</sup> N.K. Denzin, *Moments, Mixed Methods, and Paradigm Dialogs*, "Qualitative Inquiry", Issue 6, 2010, pp. 419-427.

## I. DIFFERENT APPROACHES TO ACCESS TO PLACES OF WORSHIP AT THE NATIONAL

### 1. THE PROHIBITION OF RELIGIOUS CEREMONIES IN GERMANY DURING THE FIRST WAVE OF THE COVID-19 PANDEMIC

In Germany, religious freedom has a constitutional basis, in article 4 of the Basic Law.<sup>11</sup> It is treated as a basic right for the protection of human dignity, and for that reason has been assigned a special position under constitutional freedoms.<sup>12</sup> According to para. 2 of article 4, the undisturbed practice of religion is guaranteed. Although this practice may be limited owing to reasons of public health or safety,<sup>13</sup> the current literature suggests that it would be controversial to say generally that public health takes priority over religious freedom, as the basis for limitations of the former is found in article 2 para. 2 GG, in contrast to religious freedom, which is free from such limitations in article 4 GG.<sup>14</sup> Owing to Germany's federal structure, it is also guaranteed in the constitutional acts of the free states (*die Länder*). For example, according to article 107 para. 2 of the Constitution of the Free State of Bavaria,<sup>15</sup> the undisturbed practice of religion shall be protected by the state. Religious freedom occupies a high position in relation to other individual rights in the ju

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<sup>11</sup> Basic Law for the Federal Republic of Germany from 23th May 1949, *Journal of Laws 100-1*, last amended by Article 1 of the Act of 28 March 2020 (BGBl. I p. 404), herein-after as GG.

<sup>12</sup> H.D. Jarass, *Glaubensfreiheit*, [in:] H.D. Jarass and B. Pieroth (eds), *Grundgesetz für die Bundesrepublik Deutschland. Kommentar (Basic Law for the Federal Republic of Germany. A Comment)*, Munich: C.H. Beck, 2016, p. 169.

<sup>13</sup> M. Morlok, *Einzelfälle der Beschränkung der Religionsfreiheit*, [in:] H. Dreier (ed), *Grundgesetz. Kommentar. Band I (The Constitution. A Comment. Volume I )*, Munich: C.H. Beck, 2013, p. 131.

<sup>14</sup> Ph. Bender, *Verwaltungsrechtlicher Rechtsschutz gegen Gottesdienstverbote durch Maßnahmen zur Eindämmung des Corona-Virus (Administrative Legal Protection against Bans on Religious Services through Measures to Contain the Corona Virus)*, "Neue Zeitschrift für Verwaltungsrecht", Issue 9b, 2020, p. 5, A. Schaub, S. Gölzer, A. Fischer-Uebler, *Religionsausübung in Zeiten der Covid-19 Pandemie*, "Deutschesverwaltungsblatt", Issue 3, 2022, p. 148.

<sup>15</sup> Constitution of the Free State of Bavaria in the version announced on 15 December 1998, *Journal of Laws 1998, 100-1-I*, p. 991, 992.

risprudence of the Bavarian Constitutional Court,<sup>16</sup> which sets no limitations on this right in relation to the individual rights of other people.

For the sake of unity, the most important rules are introduced with agreements between all the free states at the government level. On this basis, on 16 March 2020, in the agreement made in response to the Covid-19 epidemic, public celebrations in churches, mosques, and synagogues were prohibited.<sup>17</sup> This decision initiated a debate in Germany about possible restrictions on religious freedom. It was pointed out that religious freedom, much more than other fundamental rights, is based on common attendance and community.<sup>18</sup> Legal actions were initiated in a few cases.<sup>19</sup> One of them ended successfully, with the Federal Constitutional Court deciding to provide exceptions to the general prohibition on organizing public activities in a mosque. According to the court's reasoning, the general closure of mosques was a deep violation of the freedom of religion, especially when Muslim associations had tried to cooperate with state institutions in order to eliminate the threat of infection. Institutions responsible for health should prepare, together with religious associations, regulations which make the exceptional organization of services possible.<sup>20</sup> The judgment in which the general prohibition on religious ceremonies was questioned constituted a turning point

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<sup>16</sup> Bavarian Constitutional Court Judgment of 22 March 2018, *Vf. 3-VII-18*, Bavarian Constitutional Court Judgment of 3 April 2020, *Vf. 8-VII-18*.

<sup>17</sup> Agreement between the federal government and the heads of government of the federal states in view of the corona epidemic in Germany from 16 March 2020, available at: <https://www.bundesregierung.de/breg-de/aktuelles/vereinbarung-zwischen-der-bundesregierung-und-den-regierungschefinnen-und-regierungschefs-der-bundeslaender-angesichts-der-corona-epidemie-in-deutschland-1730934> [last accessed 1.5.2022].

<sup>18</sup> Ch. Hillgruber, *Action Against Ban of Religious Celebration*, "Tagespost", 6th April 2020, available at: <https://www.die-tagespost.de/kirche-aktuuell/aktuell/Staatsrechts-Hillgruber-Vorgehen-gegen-Gottesdienstverbote-mehr-als-berechtigt;art4874,207076> [last accessed 1.5.2022]; Ph. Bender, *supra* note 13, pp. 5-6.

<sup>19</sup> B.J. Berkmann, *Coronakrise und Religionsfreiheit. Das Zusammenspiel staatlicher und kirchlicher Normen in Deutschland, speziell in Bayern* (*The Corona Crisis and Freedom of Religion. The Interaction of State and Church Norms in Germany, Especially in Bavaria*), NomoK@ non-Webdokument available at: <http://www.nomokanon.de/abhandlungen/030.htm, No.19-25> [last accessed 25.4.2022].

<sup>20</sup> German Federal Constitutional Court Judgment of 29 April 2020, *1 BvQ 44/20*, available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429\\_1bvq004420.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429_1bvq004420.html) [last accessed 1.5.2022].

for legislators at the level of the free states, which started to introduce less severe restrictions, while still seeking to protect public health.

From the end of April 2020, the free states transformed the general prohibition on organizing religious ceremonies into permission with various forms of restrictions.<sup>21</sup> In Bavaria, from 4 May 2020, the number of people who could participate in religious ceremonies inside buildings was determined by the number of seats, but with 2 meters of space between people. Outside buildings, the required space between worshippers was reduced to 1.5 meters. Up to 50 people could take part in an outdoor ceremony. A ceremony could last up to 60 minutes. All participants had to cover their nose and mouth.<sup>22</sup> Currently, the required space between people inside buildings is reduced to 1.5 meters. It is prohibited to sing during ceremonies in those districts in which a 7-day infection rate exceeds more than 100 people. Everyone has to wear an FFP2 mask. If the number of expected worshippers is greater than the number of free seats, earlier registration should be introduced.<sup>23</sup> For more detailed regulations for the protection of health (*der Infektionsschutzkonzept*), each religious community was obliged to apply to the Ministry of Health. Otherwise, each celebration at which more than ten people were expected had to be notified to the local health institution.<sup>24</sup>

## 2. LIMITED ACCESS TO RELIGIOUS CEREMONIES IN POLAND

Freedom of religion is located in the Polish Constitution among the personal freedoms and rights of each human being and, as in Germany, it is regarded as a basic right for the preservation of human digni-

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<sup>21</sup> The practice of having separate regulations for every free state is not entirely positively evaluated in the doctrine of law. See H.-J. Papier, *Umgang mit der Corona-Pandemie: Verfassungsrechtliche Perspektiven (Dealing with the Corona Pandemic: Constitutional Perspectives)*, Bonn: Bundeszentrale für politische Bildung, 2021, p. 7.

<sup>22</sup> Third Bavarian Order on measures of protection to prevent infection from 1 May 2020, *BayMBL.2020*, No. 239, para. 2.

<sup>23</sup> Thirteenth Bavarian Order on measures of protection to prevent infection from 5 July 2021, *BayMBL.2021*, No. 384, para. 8.

<sup>24</sup> Twelfth Bavarian Order on measures of protection to prevent infection from 5 March 2021, *BayMBL.2021*, No 171, para. 6 point 8.

ty.<sup>25</sup> The regulation of Article 53 is more complex than other personal rights, since it embraces selected components, such as freedom of religious choice, freedom to manifest religion and freedom to participate in celebrations. Article 53 para. 5 of the Constitution guarantees that the freedom to manifest religion can be limited only on a statutory basis under detailed provisions, such as the protection of public security, public order, health, morals, and the freedoms of others. The freedom of religion is located in the group of rights stipulated in article 233 para. 1 of the Constitution, which cannot be limited in war time or other kinds of states of emergency. This proves that freedom of religion is assigned a high priority in Polish law.

These high-level guarantees of the freedom of religion were not maintained during the pandemic, however, because all the restrictions had (and still have) an under-statutory status, and were even introduced without any declaration of a state of emergency in Poland, despite the legal basis for this being provided in article 232 of the Constitution.<sup>26</sup> On the basis of the order issued by the Health Minister, from 14 March 2020, only 50 people could attend religious ceremonies, both inside and outside churches, including religious officials.<sup>27</sup> The number of people was reduced to 5, excluding religious officials, on 25 March 2020,<sup>28</sup> and was binding during Easter, which in Poland, where the ma-

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<sup>25</sup> M. Olszówka, *Komentarz do art. 53. Uwagi wstępne* (Introductory Remarks), [in:] L. Bösek and M. Safjan (eds), *Konstytucja RP. Tom I. Art. 1-86* (The Constitution of the Republic of Poland. Volume I. Art. 1-86), Warszawa: C.H. Beck, 2016, p. 1249.

<sup>26</sup> According to this article, a state of natural disaster may be introduced by the government in order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting the characteristics of a natural disaster. In the literature, commentaries suggested that this emergency state is binding in Poland de facto, but not de jure. See M. Florczak-Wątor, *Niekonstytucyjność ograniczeń praw i wolności jednostki wprowadzonych w związku z epidemią Covid-19 jako przesłanka odpowiedzialności odszkodowawczej państwa* (Unconstitutionality of Restrictions on the Rights and Freedoms of an Individual Introduced in Connection with the Covid-19 Epidemic as a Premise for State Liability for Damages), "Państwo i Prawo", Issue 12, 2020, p. 6.

<sup>27</sup> Order of the Health Ministry from 13 March 2020 on the declaration of an epidemic threat in the territory of the Republic of Poland, Journal of Laws 2020, item 433 as amended, para. 5 No.1 Point 4 and para. 6 No.1 Point 6.

<sup>28</sup> The basis for that was para. 6 No.1 Point 4 and para. 7 No.1 Point 3 of the order of the Health Ministry from 20 March 2020 on the declaration of an epidemic in the territory of the Republic of Poland, Journal of Laws 2020, item 491 as amended.

jority of citizens are Catholics, is usually celebrated in churches with many worshippers. From 20 April 2020, the number of participants inside churches was linked with their capacity, with the specification that there could be one person per 15m<sup>2</sup>, excluding religious officials.<sup>29</sup> Within the next few months this limitation was reduced to 1 person per 10m<sup>2</sup>, and then totally withdrawn. Religious ceremonies fell under the general regulations for all gatherings, which could not exceed 150 people inside buildings, with 2 meters of space between them.<sup>30</sup> In June 2021, the restrictions were eased, and currently places of religious worship are restricted to 75 per cent occupancy. Additionally, participants should wear masks and maintain a distance of 1.5 meters from other people.<sup>31</sup>

In contrast to Germany, in Poland no court action was brought against the introduced restrictions. Instead, people who were fined for not following these restrictions appealed against the decisions and the courts quashed them, mainly because of the lack of statutory basis for their introduction. In the most famous and commented judgment, the Voivodeship Administrative Court in Opole stated that such severe restrictions should have a statutory basis and remain proportional to the committed offences.<sup>32</sup> This judgment is significant not only for entrepreneurs who cannot conduct their businesses, e.g. as restaurateurs, but also for religious associations who are fined for exceeding the numbers of worshippers during celebrations.<sup>33</sup> A lack of statutory basis for

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<sup>29</sup> Order of the Council of Ministers from 19 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the epidemic, Journal of Laws 2020, item 697 as amended, para. 9 No.1 Point 3b.

<sup>30</sup> Order of the Council of Ministers from 29 May 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the epidemic, Journal of Laws 2020, item 964 as amended, para. 1, 2 and 8.

<sup>31</sup> Order of the Council of Ministers from 6 May 2021 on the establishment of certain restrictions, orders and prohibitions in connection with the epidemic, Journal of Laws 2021, item 861 as amended, see para. 26 para. 1 No.1.

<sup>32</sup> Voivodeship Administrative Court in Opole Judgment of 27 October 2020, No. II SA/Op 219/20.

<sup>33</sup> The media reported on many judgments, such as the District Court in Leżajsk judgment of 19 October 2020 which acquitted a priest from the charge of not supervising the number of worshippers in a church during a Holy Mass. See the description available at: <https://rzeszow.wyborcza.pl/rzeszow/7,34962,26411540,lezajsk-ksiadz-ktory-odprawial-msze-przy-thumie-ludzi-w-pandemii.html> [last accessed 1.5.2022].

the imposed restrictions is a justification for releasing religious officials from paying monetary fines.

### 3. FREE ACCESS TO RELIGIOUS CEREMONIES IN BELARUS

As in Germany and Poland, religious freedom is guaranteed in Belarus at the constitutional level, in article 31 of the Constitution of the Republic of Belarus. The constitutional legislator expressly declares that everyone has the right to participate in the performance of acts of worship and religious rituals and rites which are not prohibited by the law. This right is located among other individual rights. Safeguarding this and other individual rights and freedoms, according to article 21 of the Constitution, is the supreme goal of the State.

In contrast to Germany and Poland, Belarus did not introduce any limitations concerning religious freedom and participation in religious celebrations. The Belorussian authorities ignored the pandemic and opted not to introduce limitations in all spheres of public life. Instead, religious associations decided to establish their own internal rules for counteracting the pandemic, such as limitations on using water during celebrations or on close face-to-face contact.<sup>34</sup> The restrictions were not linked with limited access to religious buildings, which from the beginning of the pandemic to this day have been open to worshippers.

The lack of any restrictions on participation in religious ceremonies results in no court disputes in this sphere. Religious associations were not obliged to maintain restrictions, since none existed. Instead of restrictions connected with the pandemic, religious communities in Belarus grapple with more severe restrictions of their freedom which come from the state powers.<sup>35</sup> Access to religious practices is reduced owing

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<sup>34</sup> As an example, see the decree of the Catholic Archbishop of Minsk from 13 March 2020, available at: <https://catholic.by/3/news/belarus/11226-rasparadzhenne-starshini-kanferentsyi-katalitskikh-biskupa-u-belarusi> [last accessed 15.3.2021].

<sup>35</sup> According to the report prepared by the association Aid to the Church in Need, published on 20 April 2021, the freedom of religion in Belarus is threatened. See: <https://rfr.acninternational.org/reports/by/#endnote-2> [last accessed 2.5.2021]. The same conclusions come from other research, like the report prepared by the Pew Research Center on 12 November 2020 and published available at: <https://www.pewforum.org/essay/religious-restrictions-around-the-world/> [last accessed 2.5.2021].

to lack of places where they could be organized or difficulties with the state registration of religious associations. In other words, although the outbreak of the pandemic did not worsen the circumstances associated with participation in religious practices, in reality this right is endangered owing to other serious reasons.

### III. ACCESS TO PLACES AND BUILDINGS OF WORSHIP FROM AN INTERNATIONAL PERSPECTIVE

Although religious freedom is enshrined in many international documents, some possible limitations are foreseen. In the jurisprudence of the ECHR<sup>36</sup> and in the literature<sup>37</sup> they are regarded as exceptional, thus confirming the importance of this right.<sup>38</sup> The limitations can be introduced only on a normative basis, with a legitimate aim, and this has to be respected in a democratic society, the hallmarks of which are pluralism, tolerance, and broadmindedness.<sup>39</sup> One such legitimate aim is the protection of public health,<sup>40</sup> even though participation in religious ceremonies may contribute positively to the mental health of individuals.<sup>41</sup> A similar perspective on restrictions of religious freedom is present in the International Covenant on Civil and Political Rights<sup>42</sup> and in the

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<sup>36</sup> *Jehovah's Witnesses of Moscow and Others v. Russia*, 10 June 2010, ECHR, No. 302/02, para. 119.

<sup>37</sup> Ch. Grabenwarter, K. Pabel, *Europäische Menschenrechtskonvention (European Convention on Human Rights)*, Munich: C.H.Beck, 2016, p. 372.

<sup>38</sup> In this sense, the limitations play a positive protective role. H. Bielefeldt, *Limiting permissible limitations: how to preserve the substance of religious freedom*, "Religion and Human Rights", Issue 15, 2020, p. 14.

<sup>39</sup> *SAS v. France*, 1 July 2014, ECHR, No. 43835/11, para. 128..

<sup>40</sup> A threat of health is regarded as a strong reason for reducing religious freedom. Nevertheless, from the jurisprudence of the ECHR it is clear that this presence must be more than trivial. See F. Raza, *Limitations to the Right to Religious Freedom: Rethinking Key Approaches*, "Oxford Journal of Law and Religion", Issue 9, 2020, pp. 435 and 458.

<sup>41</sup> Public health and most religious systems share the same goal, namely the well-being of the individual. G.A. Du Plessis, *supra* note 7, p. 15.

<sup>42</sup> Article 18 para. 3 has similar wording to article 9 para. 2 of the European Convention, except for the condition of a democratic society as one of the rules necessary for restricting religious freedom. As the *Siracusa Principles* stated, all limitations shall be interpreted strictly and in favor of the rights at issue.

American Convention on Human Rights.<sup>43</sup> Although restrictions on religious freedom are not expressly mentioned in the EU Charter,<sup>44</sup> from the official explanation<sup>45</sup> it is clear that restrictions of this right are admissible and should respect the conditions of the European Convention.

Analysis of all of these documents leads to the conclusion that the right to participate in religious practices is a core element of religious freedom. In these acts, the right to practise religion "either alone or in community with others and in public or private"<sup>46</sup> is established. Though restrictions on religious freedom are legally possible, the exceptions are regulated narrowly. This is the same with the protection of public order, health, or morals. As the ECHR stated, normative rules should be accessible to the persons concerned and be formulated with sufficient precision to enable the addressee to answer a question about the degree that is reasonable in the circumstances, and regarding the consequences that a given action may entail.<sup>47</sup> In some countries, this normative basis is granted a statutory basis, which provides a higher level of protection.<sup>48</sup> Additionally, the ECHR jurisprudence suggests that the legislator should afford a measure of legal protection against arbitrary interference in religious freedoms by public authorities.<sup>49</sup> In this sphere, these authorities should not exercise legal discretion which would amount to unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise.<sup>50</sup> The enumeration of all exceptions from the perspective of the ECHR, both formal and material, is strictly exhaustive, and their definition is

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<sup>43</sup> Article 12 para. 3 is very close to article 9 para. 2 of the European Convention, regulating the same values as exceptions to the right of religious freedom.

<sup>44</sup> The same is characteristic of article 8 of the African Charter on Human and Peoples' Rights.

<sup>45</sup> Explanations relating to the Charter of Fundamental Rights available at available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007X1214%2801%29> [last accessed 2.3.2021].

<sup>46</sup> Article 9 para. 1 of the European Convention.

<sup>47</sup> *Krupko and Others v. Russia*, 26 June 2014, ECHR, No. 26587/07, para. 54.

<sup>48</sup> See article 107 para. 2 of the Constitution of the Free State of Bavaria and article 53 para. 5 of the Constitution of the Republic of Poland.

<sup>49</sup> *Metropolitan Church of Bessarabia and Others v. Moldova*, 13 December 2001, ECHR, No. 45701/99, para. 109.

<sup>50</sup> *Hasan and Chaush v. Bulgaria*, 26 October 2000, ECHR, No. 30985/96, para. 84.

restrictive.<sup>51</sup> The necessity of any restriction must be convincingly established and proportionate to the legitimate aim pursued.<sup>52</sup> Concerning religious freedom, the restrictions can tackle only its external form (*forum externum*), including various forms of religious manifestations. The internal part (*forum internum*), which embraces personal beliefs and the right to change them, remains inviolable.

Participation in religious ceremonies belongs to the external sphere of religious freedom and can be limited under strict conditions. Based on Article 9 para. 1 of the European Convention, it is questionable if the external signs of exercising religious freedom are equal in their value and in terms of the extent to which they can be limited. Should the right to change religion or beliefs be treated the same as the right to manifest religion in practice and observance? The order of the components is not accidental, because the right to observe a religion or change it is basic for all forms of its internal or external practice. The ways of practising a religion depend on its concrete basis. Nevertheless, the fundamental role of the choice of religion does not mean that participation in public celebrations can be restricted without any conditions or with liberally interpreted conditions. The European Convention creates the possibility of restrictions which are not illusory, but which are always exceptional. Although, in democratic societies, interference in the choice of religion itself is rather unimaginable, it is more probable that reducing various forms of religious celebration will occur. However, these forms of celebration are components of religious freedom and the consequences of a chosen religion. Their restriction leads to a violation of this fundamental right and may affect both the choice of religion and its component, which is related to the ability to practice religious rites.

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<sup>51</sup> The importance of religious freedom itself makes the interpretation strict. See *Otto Preminger Institut v. Austria*, 20 September 1994, ECHR, No. 13470/87, para. 50. Under the scope of the limitations the interests of national security are not present. See *Nolan and K. v Russia*, 12 February 2009, ECHR, No. 2512/04, para. 73.

<sup>52</sup> Although the national legislators benefit from a certain margin of appreciation in deciding whether and to what extent interference is necessary, the basic values of the European Convention limit the interpretation. See *Metropolitan Church of Bessarabia and Others v. Moldova*, 13 December 2001, ECHR, No. 45701/99, para. 119.

Participation in religious ceremonies is a significant component of many faiths.<sup>53</sup> Some of them have created detailed rules on how ceremonies should be organized.<sup>54</sup> Based on the jurisprudence of the ECHR, although states are not obliged to ensure special places or buildings for religious purposes,<sup>55</sup> the organization of celebrations in private cannot be a reason for punishing worshippers, even if their association was not registered in the state documents.<sup>56</sup> A state cannot impose on religious associations such rules for the organization of a place for celebrations that would be impossible to carry out, and which would not be proportionate to possible restrictions on religious freedom.<sup>57</sup> The right to organize religious ceremonies embraces not only private properties, but also public places.<sup>58</sup> The state authorities can introduce more severe restrictions on the organization of such ceremonies in public than in private. For all places of worship, the state authorities are ultimately responsible for the safety of worshippers and can punish those people that are guilty of encouraging violence.<sup>59</sup> The grounds for restrictions should have an objective and severe nature which would excuse interference in freedom which should be exercised without any obstacles.

Although there were disputes before the ECHR in which public health was assessed as a ground for restricting religious freedom,<sup>60</sup> they

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<sup>53</sup> The collective ceremonies are significant because they must be performed at specific times of the year or they are linked to special in a life of concrete people, such as baptisms or funerals. See J. Martinez-Torron, *Covid-19 restrictions and religious freedom: some comparative perspectives*, [in:] A. Madera, *The crisis of religious freedom in the age of Covid-19 pandemic*, Basel: MDPI, 2021, p. 57.

<sup>54</sup> E.g. in the Catholic Church the rules for celebrating Mass are contained in the General Instruction of the Roman Missal. See the version including adaptations for the Dioceses of the United States of America available at: [http://www.vatican.va/roman\\_curia/congregations/cddds/documents/rc\\_con\\_cddds\\_doc\\_20030317\\_ordinamordi-messale\\_en.html](http://www.vatican.va/roman_curia/congregations/cddds/documents/rc_con_cddds_doc_20030317_ordinamordi-messale_en.html) [last accessed 10.3.2021].

<sup>55</sup> *Griechische Kirchengemeinde München und Bayern E.V. v. Germany*, 18 September 2007, ECHR, No. 52336/99, para. 2, *Religious Community of Jehovah's witnesses of Kryvyi Rih's Ternivsky Discret v. Ukraine*, 3 September 2019, ECHR, No. 21477, para. 49.

<sup>56</sup> *Masaev v. Moldova*, 12 May 2009, ECHR, No. 6303/05, para. 26.

<sup>57</sup> *Association de solidarité avec les témoins de Jéovah and others v. Turkey*, 24 May 2016, ECHR, No. 36915/10 and 8606/13, para. 104.

<sup>58</sup> *Barankevich v. Russia*, 26 June 2006, ECHR, No. 10519/03, para. 26.

<sup>59</sup> *Karaahmed v. Bulgaria*, 24 February 2015, ECHR, No. 30587/13, para. 111.

<sup>60</sup> *Cha'are Shalom Ve Tsedek v. France*, 27 June 2000, ECHR, No. 27417/95, paras. 77 and 84, *Eweida and Others v. the United Kingdom*, ECHR, 27 May 2013, No. 48420/10, para. 83.

did not directly concern access to religious buildings. A remarkable dispute concerned the denial of access for a group practising Neo-Druidism to the historic site of Stonehenge to celebrate the summer solstice. The European Commission stated that the order issued by the District Council prohibiting all trespassing gatherings within a specified distance from Stonehenge was proportional, for public order reasons involving protection from the kind of disorderly behaviour which had occurred at this historic place during celebrations in previous years.<sup>61</sup> Then, in another case, the ECHR found a violation of religious freedom in restrictions on Greek Cypriots of Orthodox faith enclaved in the "Turkish Republic of Northern Cyprus", which prevented them from leaving their villages to attend religious ceremonies in places of worship or to visit a monastery.<sup>62</sup> In another judgment, the ECHR found a violation of religious freedom in the dispersal of a celebration held in a hall that has been rented in conformity with domestic law.<sup>63</sup> According to the ECHR jurisprudence, even in cases where the authorities had not been properly notified of a public event, but where the participants did not represent a danger to the public order, dispersal of a peaceful assembly by the police could not be regarded as having been "necessary in a democratic society".<sup>64</sup> From the presented judgments it can be seen that in the circumstances of a concrete dispute, the right to manifest religious freedom can be evaluated at a higher or lower rank, depending on other values which are significant for a democratic state. The threat of damaging world heritage sites may justify such restrictions, in contrast to national rules for crossing borders, or matters of public order, which in reality did not exist.

A common feature of disputes concerning public celebrations presented in the last paragraph is the connection between religious freedom from article 9 of the European Convention and the freedom of

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<sup>61</sup> *Pendragon v. the United Kingdom*, 19 October 1998, European Commission decision, No. 31416/96. The same reasoning concerning the unique historical and archaeological importance of Stonehenge was presented in the dispute *Chapell v. the United Kingdom*, 14 July 1987, European Commission decision, No. 12587/86.

<sup>62</sup> *Cyprus v. Turkey*, App. no 25781/94, ECHR, 10 May 2001, p. 243.

<sup>63</sup> *Krupko and Others v. Russia*, 26 June 2014, ECHR, No. 26587/07, para. 54.

<sup>64</sup> *Bukta and Others v. Hungary*, 25 September 2007, ECHR, No. 25691/04, para. 31, *Kasparov and Others v. Russia*, 3 October 2013, ECHR, No. 21613/07, para. 91.

assembly derived from article 11 of the same. Both guarantees supplement each other in the case of religious organizations, which have the right to establish places of worship and to hold religious services in places accessible to the public.<sup>65</sup> It is noteworthy that for both guarantees similar conditions for their limitations are established. Besides a normative basis for these restrictions and their necessity in a democratic society, the conditions for reducing freedom of assembly are more general, while for religious freedom they are more detailed.<sup>66</sup> For both guarantees, it is common that the protection of health may justify their limitations. It is questionable whether, for health reasons, this restriction should be treated as being on an equal level in religious and non-religious ceremonies.

Focusing on the current pandemic, the protected value in the form of public health is independent of the right to assembly, whether religious or of another nature. The more important issue is how people behave and how the virus can spread. The characteristics of each assembly can be different, and it is not a matter of law to decide whether religious ceremonies are more susceptible to spreading infection than other assemblies. If they are more susceptible to infection or contagion, then sanitary recommendations should put forward proposals which lead to a maximal reduction of the spread of the virus.<sup>67</sup> From a normative perspective, it is necessary to stress the special legal position of religious freedom which in its external part (*forum externum*) can be primarily reduced and, in highly exceptional circumstances, entirely excluded. Non-religious ceremonies should not be privileged over religious ceremonies because this would be inconsistent with the principle of equality and the fundamental role of religious freedom. For the latter reason, it would be acceptable to privilege religious ceremonies as a spe-

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<sup>65</sup> *Jehovah's Witnesses of Moscow and Others v. Russia*, 10 June 2010, ECHR, No. 302/02, para. 102.

<sup>66</sup> Although both exceptions to the rights of freedom of religion and association are to be construed strictly, only convincing and compelling reasons can justify restrictions on these rights. A state authority must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". See *Jehovah's witnesses of Moscow and Others v. Russia*, 10 June 2010, ECHR, No. 302/02, para. 108.

<sup>67</sup> WHO, *supra* para 5.

cial type of meeting distinguished in the European and many national legal systems, including the German, Polish, and Belorussian. Nevertheless, this kind of privilege should not be applied to the restrictions introduced to deal with the current pandemic, as it would pose a threat to all kinds of gatherings.

### III. ACCESS TO PLACES AND BUILDINGS OF WORSHIP – BETWEEN PROHIBITION AND VARIOUS RESTRICTIONS

The practical importance of exercising religious freedom is visible in the reactions of worshippers and national courts in those countries where ceremonies were entirely suspended.<sup>68</sup> Not only the Federal Constitutional Court in Germany (*Bundesverfassungsgericht*),<sup>69</sup> but the French Council of State (*Conseil d'État*)<sup>70</sup> and the American Supreme Court,<sup>71</sup> decided that the suspension of organized religious ceremonies and other similar restrictions is unlawful.

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<sup>68</sup> As it was stated in the literature, courts have become deeply involved in monitoring governments' policies and safeguarding the rule of law. See A. Madera, *The implications of the Covid-19 pandemic on religious exercise: preliminary remarks*, [in:] A. Madera, *The crisis of religious freedom in the age of Covid-19 pandemic*, Basel: MDPI, 2021.

<sup>69</sup> German Federal Constitutional Court Judgment of 29 April 2020, 1 BvQ 44/20, available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429\\_1bvq004420.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429_1bvq004420.html) [last accessed 26.2.2021].

<sup>70</sup> Order of the Council of State from 18 May 2020, No. 440366, available at: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-rassemblements-dans-les-lieux-de-culte> [last accessed 26.2.2021]. During the second wave of the pandemic, there were two other remarkable orders from 7 November 2020, No. 445825 et all, available at: <https://www.conseil-etat.fr/actualites/actualites/exercice-des-cultes-le-juge-des-referes-ne-suspend-pas-les-restrictions-prises-pendant-l-etat-d-urgence-sanitaire> [last accessed 26.2.2021], and from 29 November 2020, No. 446930 et all, available at: <https://www.conseil-etat.fr/actualites/actualites/limite-de-30-personnes-dans-les-établissements-de-culte décision-en-referendum-du-29-novembre> [last accessed 26.2.2021].

<sup>71</sup> The judgment of the Supreme Court of the United States from 5 February 2021, No. 20A136 (20-746), available at: [https://www.supremecourt.gov/opinions/20pdf/20a136\\_bq7c.pdf](https://www.supremecourt.gov/opinions/20pdf/20a136_bq7c.pdf) [last accessed 26.2.2021].

The basic and common reasoning for all the judgments was founded on the principle of proportionality. All the courts stressed the basic function of religious freedom, which includes, as a significant component, the right to take part in religious ceremonies. If there are possibilities of using less restrictive measures for protecting public health, then a direct ban on the attendance of religious ceremonies, which is not precisely justified by the national authorities, is regarded as disproportionate.<sup>72</sup> Various possibilities had to be considered for safeguarding public health during public assemblies, including religious ceremonies. A general suspension of the latter should only be the last option if no less restrictive measures are feasible for attaining the goal.<sup>73</sup> It may be assessed as reasonable when the pandemic is severe and there are many infected people.<sup>74</sup> Even in such a dangerous situation, a blanket prohibition on attending religious ceremonies should be treated as exceptional and temporary, because of the fundamental nature of religious freedom.

For the US Supreme Court, the principle of equality played a significant role in an analysis of various restrictions imposed on religious organizations (and other organizations). Granting in part the application for injunctive relief against a general ban on indoor worship in California, Justice Gorsuch observed that:

*California is not as concerned with the close physical proximity with hairstylists or manicurists to their customers, whom they touch and remain near for extended periods.<sup>75</sup>*

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<sup>72</sup> Order of the Council of State from 18 May 2020, No. 440366, available at: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-rassemblements-dans-les-lieux-de-culte> [last accessed 26.2.2021].

<sup>73</sup> German Federal Constitutional Court Judgment of 29 April 2020, No. 1 BvQ 44/20, available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429\\_1bvq004420.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429_1bvq004420.html) [last accessed 26.2.2021].

<sup>74</sup> This kind of reasoning was used by the Council of State in the judgment from 7 November 2020, No. 445825, in which the limitations of attendance in religious ceremonies were upheld.

<sup>75</sup> The judgment of the Supreme Court of the United States from 5 February 2021, No. 20A136 (20-746), available at: [https://www.supremecourt.gov/opinions/20pdf/20a136\\_bq7c.pdf](https://www.supremecourt.gov/opinions/20pdf/20a136_bq7c.pdf) [last accessed 26.2.2021].

Similar reasoning was used by the French *Conseil d'État* during the first wave of the pandemic when religious buildings were closed, while public transport, trade centres, libraries and cultural institutions could function, with restrictions. The inconsistency between the restrictions introduced owing to public health protection may serve as an additional reason not to deprive worshippers of their right to attend religious celebrations.

The reasoning in each of the analysed judgments does not mean that there are no reasons for the partial closure of religious buildings. In none of the analysed judgments was the danger of the pandemic disregarded. In particular, the German *Bundesverfassungsgericht* carefully analysed all the conditions which were offered by the Muslim association to organize prayers during Ramadan with the preservation of health precautions.<sup>76</sup> The Tribunal found them to be justified. In the judgment of the US Supreme Court, the application was partially denied with respect to the percentage capacity limitations and the prohibition on singing and chanting during indoor services. The French Council of State ordered the Prime Minister to introduce proportionate measures against the threat to public health and factual circumstances associated with the progress of the pandemic. As was mentioned above, in the autumn wave of the pandemic, the Council of State even approved the timely closure of religious buildings owing to the high number of infections.<sup>77</sup> The courts in each of the analysed judgments searched for a balance between two conflicting values, namely religious freedom and public health, trying to guarantee both of them to the maximal degree. Simultaneously, the courts were aware that it was not possible, objectively speaking, to fully realise these two values.

Professional, substantial balancing has to be based on thorough information, which usually comes from non-judicial sources. During a pandemic, the most valuable information about the characteristics of the virus – concerning transmissibility and new variants – comes from epidemiologists. It is debatable how politicians and lawyers should respond to the data provided by such scientists. Justice Kagan pointed out

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<sup>76</sup> German Federal Constitutional Court judgment of 29 April 2020, No. 1 BvQ 44/20, available at: [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429\\_1bvq004420.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429_1bvq004420.html) [last accessed 26.2.2021].

<sup>77</sup> The judgment of the Council of State from 7 November 2020, No. 445825.

in the dissenting opinion to the presented judgment of the US Supreme Court that:

*Justices of this Court are not scientists. Nor do we know much about public health policy. Yet today the Court displaces the judgments of experts about how to respond to a raging pandemic.<sup>78</sup>*

This reasoning is an example of judicial restraint, which was presented as a resignation from analysing the consequences of the medical reasoning to the spiritual needs of individuals. In this statement, public health took total priority in the conflict with issues of religious freedom. On the opposing side was the opinion of Justice Gorsuch, who stated, that:

*Of course we are not scientists, but neither may we abandon the field when the government officials with experts in tow seek to infringe a constitutionally protected liberty.<sup>79</sup>*

The pro-active approach is based on the assumption that balancing between various values, even if one of them is public health, is not only possible, but necessary in each court dispute. This approach is most crucial in times of emergency, such as the current pandemic, when the restrictions placed on individual rights seem to be enormous. A blanket ban on religious ceremonies is also an example of this tendency. The role of the judiciary is not to blindly follow medical recommendations, which are increasingly detailed thanks to better knowledge about the pandemic.<sup>80</sup> In any case, epidemiologists should not replace judges or

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<sup>78</sup> The judgment of the Supreme Court of the United States from 5 February 2021, No. 20A136 (20-746), available at: [https://www.supremecourt.gov/opinions/20pdf/20a136\\_bq7c.pdf](https://www.supremecourt.gov/opinions/20pdf/20a136_bq7c.pdf) [last accessed 26.2.2021].

<sup>79</sup> The judgment of the Supreme Court of the United States from 5 February 2021, No. 20A136 (20-746), available at: [https://www.supremecourt.gov/opinions/20pdf/20a136\\_bq7c.pdf](https://www.supremecourt.gov/opinions/20pdf/20a136_bq7c.pdf) [last accessed 26.2.2021].

<sup>80</sup> For that reason, it is true that better knowledge about the pandemic should have resulted in less drastic restrictions with the aim of protecting public health. See H. Schmitz, C.-W. Neubert, *Vorübergehende Zulässigkeit schwerster Grundrechtseingriffe zum Schutz kollidierenden Verfassungsrechts am Beispiel von Covid-19-Schutzmaßnahmen (Temporary Admissibility of the most Severe Encroachments on Fundamental Rights to Protect Conflict-*

state powers.<sup>81</sup> Their recommendations should be taken seriously by politicians, judges, and members of other professions, but this does not mean that judges are exempted from their role of administering justice. Neither does it mean that judicial activism should prevail over judicial restraint in all disputes.

#### IV. ACCESS TO PLACES AND BUILDINGS OF WORSHIP – VARIOUS RESTRICTIONS AND THEIR CONSEQUENCES

The analysed judgments, together with the international standards of religious freedom, lead to the conclusion that the complete closure of religious buildings or a ban on the organization of public religious celebrations is not the most welcome solution during a pandemic. There should be a compromise between public health and the community's right to manifest beliefs.<sup>82</sup> Rather than prohibit such ceremonies, it would be better to specify some restrictions that would be in line with medical recommendations and which should be followed by the participants of religious celebrations. Currently, this model prevails not only in Belarus, Germany, and Poland, but in many European countries, including France, where the limitations during the second-autumn wave of the pandemic were more severe than in Germany. Measuring and balancing the two values of public health and religious freedom provides an opportunity to find a compromise that can make it possible to ensure the partial protection of both values.<sup>83</sup> Such balancing, which

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ing Constitutional Law Using the Example of Covid-19 Protective Measures), "Neue Zeitschrift für Verwaltungsrecht", 2020, p. 670.

<sup>81</sup> H.-J. Papier, *supra* para 20, p. 5.

<sup>82</sup> According to archbishop Paul Gallagher, Secretary for Relations with States of the Holy See, any limitations on the exercise of human rights for the protection of public health must stem from a situation of strict necessity. During the pandemic, the understanding of religious freedom is being eroded. See the speech of the archbishop to United Nations on 23 February 2021, available at: <https://www.vaticannews.va/en/vatican-city/news/2021-02/gallagher-un-videomessage-human-rights-coronavirus.html> [last accessed 1.5.2022].

<sup>83</sup> A conflict between different human rights cannot be resolved by postulating an abstract hierarchy between them in which one right will be sacrificed in favor of the other. See H. Bielefeldt, *supra* para 37, p. 13.

creates a chance for limited access to religious practices, is possible at the current stage of the pandemic. If the situation becomes more severe and dangerous for public health, the balancing could consider other solutions involving stricter restrictions on religious expression. From the presented judgments, it is obvious that the closure of religious ceremonies is the most drastic solution and that it should be applied only if it is impossible to organize celebrations in another way.

Nevertheless, in our research, most respondents (52 per cent) supported the complete closure of places of worship in the event of a worsening epidemiological situation. The details are presented in Chart 1. It is worth noting, however, that over one-third (37.6 per cent) of respondents do not consider such a solution a good idea. It is likely that as a result of the implementation of such restrictions they would feel that their rights were being unjustly limited.

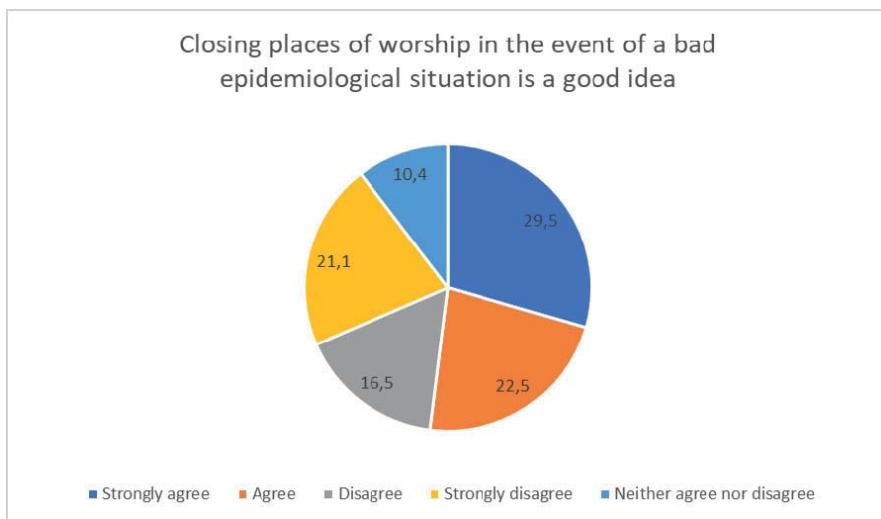


Chart 1. Support for the closure of churches

This is confirmed by the results of the IDIs conducted with people who are particularly committed to religious life. None of the respondents expressed support for the closure of churches, and some referred in this context to the right to freedom of conscience and religion.

*However, I think that this aspect of closing is one that for many people would strike their freedom. I am simply forbidden to do something that is granted by my elementary human rights. So, I personally would not go in this direction. (...) the closure of churches would probably seem to people like a restriction of their religious freedom and the right to profess their faith (IDI No. 11)*

The idea of closing churches during the pandemic was considered 'paranoid' (IDI no. 4), 'tragic' (IDI No. 2), or the result of the actions of anti-religionists (IDI No. 5 and 19). At the same time, in the context of Western European countries, Poland was presented as an oasis of religious freedom (IDI No. 19). These statements, however, only came from representatives of the Catholic Church. Respondents from smaller religious groups pointed out that their places of worship are in reality closed (e.g. because they are located in spaces rented in shopping centres) (IDI No. 16 and 20). In only one interview it suggested that – in case of a deteriorating situation – mass should not be held in public, but at the same time that churches should be left open for shorter services or individual prayers (IDI No. 2).

Avoiding the complete closure of religious buildings during a pandemic should be linked with rules which would protect public health. Religious associations should be involved in the preparation of these detailed rules since they have contact with their worshippers and know the characteristic features of the celebrations. The prepared solutions should remain under state control, as should their medical verification. Such regulations are present in Bavaria, where religious organizations are encouraged to prepare their regulations concerning health measures during the pandemic.<sup>84</sup> If the regulations are approved, then the religious community is not obliged to announce to the state each celebra-

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<sup>84</sup> The current rules binding for the Archbishopric of Munich and Freising are available at: <https://www.erzbistum-muenchen.de/im-blick/coronavirus/cont/103814> [last accessed 10.3.2021]. The decree of the Archbishop of Munich and Freising *Regulations for holding committee meetings in the area of ecclesiastical asset management* was issued on 18 May 2020 and was extended many times, and has binding force until today. The German regulation is an example of consent between states and religious legislators in favour of recognising the autonomous sphere self-governance of religious communities. See M. Pearson, *Empathy and procedural justice in clash of rights cases*, "Oxford Journal of Law and Religion", Issue 9, 2020, pp. 8–10.

tion where more than ten people are expected to attend.<sup>85</sup> In contrast to Germany, in Poland, the state regulations were not officially discussed with religious communities, although the President of the Polish Episcopal Conference publicly asked for the limitations on the numbers of worshippers in churches to be lifted<sup>86</sup> or for easing of restrictions after the last wave of the pandemic in spring 2021.<sup>87</sup> In Belarus, limitations were prepared only by the religious associations, from their initiative, and without any approval by the state authorities.

The religious organizations in Germany and Poland approved the introduced state limitations, even if they had a severe form, as during Easter of 2020 when religious buildings in Germany were closed and Polish churches could contain only five people. Simultaneously, the difficulty that this posed for worshippers and their spiritual life was stressed.<sup>88</sup> The bishops encouraged worshippers to stay at home or even encouraged politicians to prolong the restrictions.<sup>89</sup> All the Catholic

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<sup>85</sup> Eleventh Bavarian Order about measures of protection before infection from 5 March 2021, *BayMBI.2021, No. 171, para. 6 points 5 and 8*.

<sup>86</sup> The request to the Prime Minister was formulated on 8 December 2020 and concerned reducing the space one person had to occupy in a religious building from 15 m<sup>2</sup> to 7 m<sup>2</sup>. The reason for this, presented by the archbishop, was the upcoming Christmas period, and its deeply religious character. The motion is available at: <https://episkopat.pl/przewodniczacy-episkopatu-do-premiera-prosze-o-zmniejszenie-limitu-wiernych-do-1-osoby-na-7-m2/> [last accessed 10.3.2021].

<sup>87</sup> The request to the Prime Minister was announced on 7 June 2021. It was connected with the easing of restrictions in other spheres of public life. The President of the Polish Episcopal Conference stressed that participation in public religious practices should not be excluded from the softening of restrictions. See the official version of the letter at the website of the Polish Bishops' Conference <https://episkopat.pl/przewodniczacy-episkopatu-apeluje-do-premiera-o-zmniejszenie-obostrzen-w-kosciolach/> [last accessed 21.6.2021]. Lack of consultations was typical for other European countries such as Spain or Portugal, too. See J. Martinez-Torron, *Covid-19 restrictions and religious freedom: some comparative perspectives*, [in:] A. Madera, *The crisis of religious freedom in the age of Covid-19 pandemic*, Basel: MDPI, 2021, p. 58.

<sup>88</sup> Comment of the spokesperson of the Polish Bishops' Conference from 4 November 2020 available at: <https://wiadomosci.wp.pl/nowe-obostrzenia-dotkna-kosciola-ksleszek-gesiak-to-trudne-6572099587132096a> [last accessed 20.2.2021].

<sup>89</sup> Before Easter 2020, the archbishop of Gniezno in Poland stated clearly that he expects a prolongation of the restrictions for the holidays. See the statement of the archbishop available at: <https://wiez.pl/2020/04/06/prymas-o-50-osobach-w-kosciolach-na-wielkanoc-to-nierozsadne-oczekuje-przedluzenia-restrykcji/> [last accessed 11.3.2021]. This attitude was negatively assessed in the law doctrine as too uncritical

bishops decided to quash the obligation to attend Sunday Mass.<sup>90</sup> The same announcement was made by some bishops in Belarus.<sup>91</sup> Nevertheless, in many parishes in Poland, the limitations were disregarded.<sup>92</sup> It is a sign that for many people participating in religious ceremonies has great significance for their spiritual life, and as a consequence, they disregarded the pandemic, or they became accustomed to it and did not view it as a serious threat to their health. For some religious officials, it is also hard to enforce the limits in churches, for two reasons. Firstly, as they explain, their role is to encourage people to visit churches and not to forbid them to come. It is difficult for them to say 'no' to people who want to attend a service:

*I have a hard time when someone comes and I have to say that they can no longer enter. Someone made an effort, came earlier... I'm not talking about those who come one minute before the start. But some come 15 minutes early. People come to us 30 minutes before mass to find a place. One may stay outside, but it's cold.*  
(IDI no. 7)

Secondly, it is difficult to deal with those who believe in conspiracy theories and expect resistance to the restrictions:

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towards the introduced limitations. See G. Maroń, *Polskie prawodawstwo ograniczające wolność religijną w okresie pandemii koronawirusa SARS-CoV-2 a standardy państwa prawa – wybrane zagadnienia* (Polish Legislation Restricting Religious Freedom during the SARS-CoV-2 Coronavirus Pandemic and the Standards of the Rule of Law – Selected Issues), "Przegląd Prawa Publicznego", Issue 1, 2021, pp. 45-46.

<sup>90</sup> In some dioceses, like Poznań, this exemption is in force to this day. See the decree of the archbishop of Poznań from 13 October 2020, available at: <http://archpoznan.pl/pl/web/homilia/view/id/dekret-duszpasterstwo-w-czasach-pandemii> [last accessed 11.3.2021].

<sup>91</sup> On 3 April 2020, the Catholic archbishop of Mińsk appealed to the elderly and sick to stay at home instead of attending religious celebrations. See the announcement available at: <https://catholic.by/3/news/belarus/11325-artsybiskup-kandrusevich-prosits-vernika-zastavatstsa-domu> [last accessed 15.3.2021].

<sup>92</sup> An example of this is the situation in one parish in southern Poland where a maximum of 30 people were allowed to attend a religious celebration, and in reality there were more than 160. One of the inhabitants informed the police, who fined the priest. The denunciation was assessed by the priest as a deep mortal sin. See the report, available at: <https://krakow.wyborcza.pl/krakow/7,44425,26816534,na-mszy-160-zamiast-30-wiernych-interweniuje-policja-parafia.html> [last accessed 25.4.2022]. This tendency is not known in Germany, where the restrictions are generally followed.

*They are angry with the ministers. They believe that ministers should rebel against the state and not obey the restrictions. (IDI No. 4)*

*This is a group of people who probably just like to have some conspiracy theory up their sleeve. They are definitely suggesting that there is no pandemic, that this is a worldwide conspiracy, that there are forces behind it and we have all been deceived. They assert the right not to obey the rules that apply to us. I have met with such people. They came to us with great accusation that we, as priests, had allowed ourselves to be manipulated by the state into believing in an alleged pandemic. (IDI No. 2)*

Ultimately, the actions of participants diverge from the law, which is not feasible for either health reasons or the state authority. Any police reactions will lead to increasing disrespect towards the introduced restrictions.

The improved restrictions on religious freedom were assessed critically by lawyers. They were evaluated as the most severe in the history of human rights.<sup>93</sup> According to Grzegorz Maroń, human rights cannot be suspended in times of emergency. Indeed, in such times they should be protected with special caution.<sup>94</sup> It was also stressed that the limitations should last for as short a time as possible.<sup>95</sup> In the sphere of protecting religious freedom, the attitudes of lawyers were firmer than those of the heads of religious associations.

Many religious ceremonies were made available online.<sup>96</sup> The extent to which this form is traditionally substituted for attendance is debatable. This is a question that concerns the internal organization of each religious association and the rules for the organization of religious cere-

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<sup>93</sup> Ph. Bender, *supra* note 13, p. 5.

<sup>94</sup> G. Maroń, *supra* note 86, p. 46.

<sup>95</sup> H. Schmitz, C.-W. Neubert, *supra* note 77, p. 671.

<sup>96</sup> This form of attendance is popular among worshippers. In Poland many masses are broadcast by TV channels. From 15 March 2020 to 13 April 2020 the average audience on Sundays and holidays for public TV was 1,700,000. See the statistics available at: <https://www.wirtualnemedia.pl/artykul/duzy-wzrost-ogladowosci-mszy-swietych-koronawirus-analiza> [last accessed 11.3.2021]. In Munich, the online celebrations from the cathedral are followed by 4.000-8.000 people. From the beginning of the online transmissions, more than 3 million people took part. Available from the official answer from the Archbischöfliche Prälatur München und Freising from 25 February 2021 to the questions of the authors of this paper.

monies. Many religious leaders and worshippers stressed that electronic ways of communication can be helpful, but cannot completely replace traditional celebrations.<sup>97</sup> The same view is expressed by worshippers. More than half of the respondents (54.9 per cent) participated in religious practices streamed via the Internet at least once during the pandemic, although only 15.1 per cent had been doing it regularly. Details are shown in Chart 2.

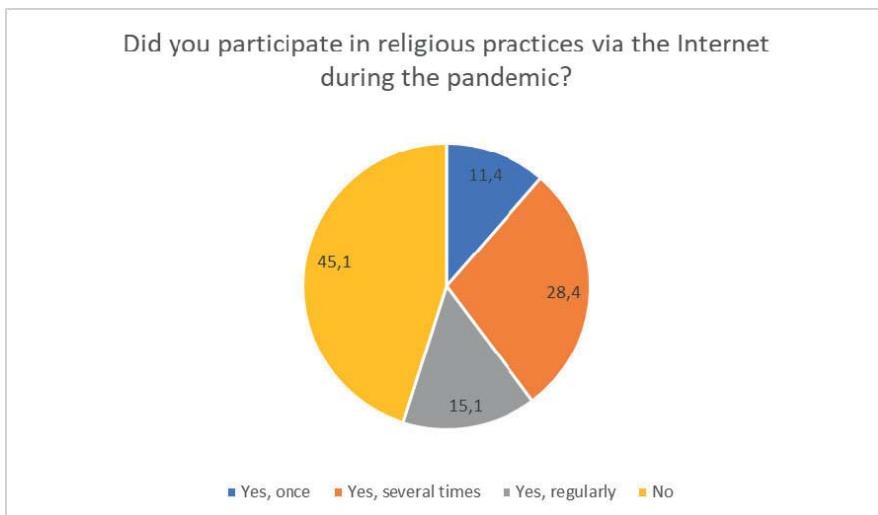


Chart 2. Participation in religious practices via the Internet

It is worth noting that for the vast majority of our respondents (59.9 per cent) streaming is not a satisfactory substitute for personal participation in religious services. At the same time, the percentage of people who have no opinion on this issue is high (23 per cent). Details are presented in Chart 3.

<sup>97</sup> See the brief of Cardinal Robert Sarah, prefect of the Vatican's Dicastery for Liturgy and Sacraments from 15 August 2020 "let us return to the Eucharist with joy", available at: <https://www.catholicnewsagency.com/news/full-text-cardinal-robert-sarah---let-us-return-to-the-eucharist-with-joy-58368> [last accessed 1.5.2022].

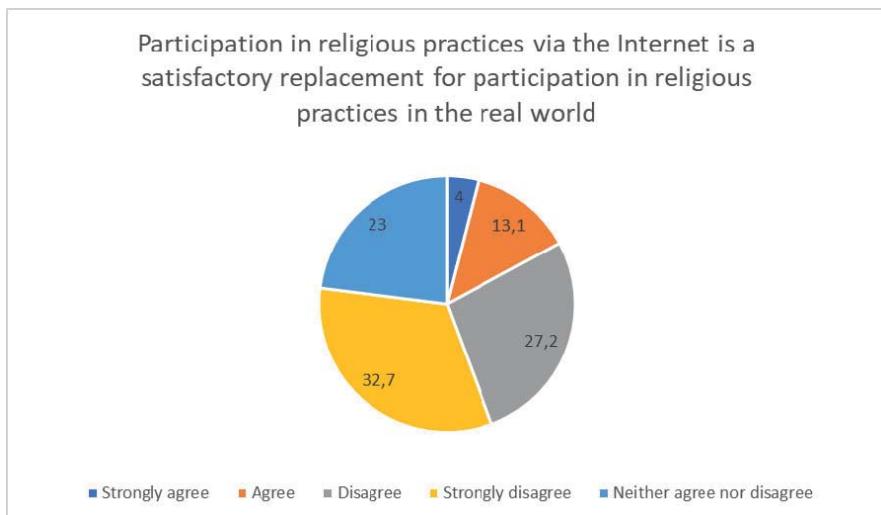


Chart 3. Satisfaction with participation in religious practices via the Internet

The view that online services are insufficient was not reflected in the IDIs. Although some respondents pointed to the disadvantages of religious services streamed over the Internet, they were – as organizers – focused on the practical aspects of this process. Attention was drawn to both the spectacular reach of some streams and the fact that online viewers did not match the number of people who participated in services before the pandemic. We write more about the potential effects of the electronification of religious practices in a later part of the text when addressing the potential long-term effects of the pandemic.

A minority of religious leaders approved electronic attendance in celebrations without major reservations.<sup>98</sup> Compulsory electronification is also treated as a chance for wider access to religious celebrations, as an opportunity to present their offers, and to increase the creativity of these practices.<sup>99</sup> In some communities, celebrations are partially organ-

<sup>98</sup> An example of this is the statement of Bishop Heiner Wilmer from Hildesheim, who stressed that he did not feel burdened by the pandemic, and that Jesus is present in the Bible in the same way that he is present in the mass. See B. Leven, *Mehr Wehleidigkeit (More Self-Pity)*, "Herder Korrespondenz", Issue 5, 2020, p. 5.

<sup>99</sup> S. Winter, *Gottesdienst und rituelles Handeln in der Pandemie-Krise (Worship and Ritual Action in the Pandemic Crisis)*, [in:] W. Schaupp, W. Kröll and H.-W. Ruckenbauer (eds), *Die Coro-*

ized in religious buildings, as the worshippers come to them after Masses attended online, to receive Holy Communion.<sup>100</sup> If the visits were organized in accordance with Covid-19 regulations, this could be a good and original solution to the threat posed by the pandemic.

Owing to the pandemic and the introduced restrictions, many worshippers, partially encouraged by religious leaders, decided to stay at home and follow celebrations online, or resigned entirely from religious observance. About half of our respondents (51,6 per cent) decreased their participation in religious ceremonies during the pandemic, and only about 5,4 per cent increased their involvement. Details are presented in Chart 4.

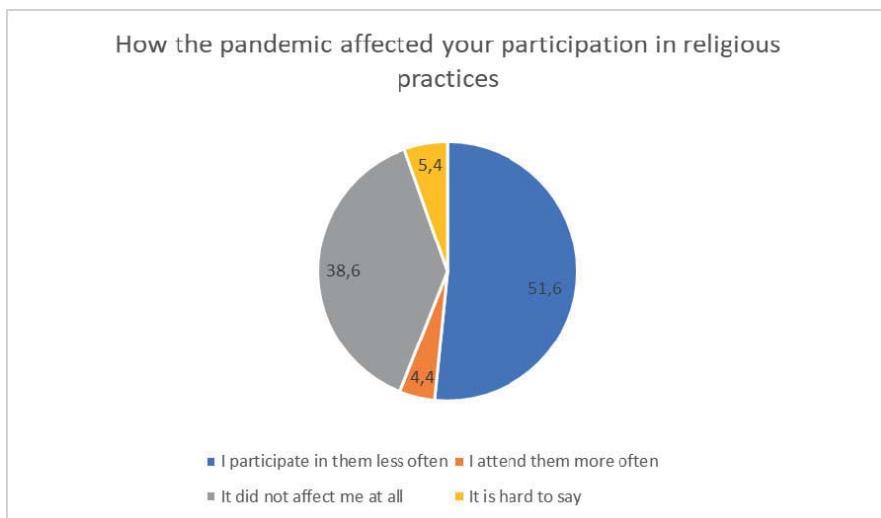


Chart 4. Impact of the pandemic on the frequency of participation in religious practices

*na-Pandemie. Ethische, gesellschaftliche und theologische Reflexionen einer Krise (The Corona Pandemic. Ethical, Social and Theological Reflections on a Crisis)*, Baden Baden: Nomos, 2020, p. 375.

<sup>100</sup> This practice was questioned by the archbishop of Dublin, and the same goes for drive-in Masses, as no gatherings of people indoors and outdoors are permitted. Holy Communion can only be distributed in the church to mourners attending a Funeral Mass, to those celebrating the Sacrament of Marriage and to the essential ministers that make the celebration of Mass online possible. See the Clarification for Parishes regarding Level 5 Restrictions from 4 March 2021, available at: <https://www.dublindiocese.ie/statement-of-the-irish-catholic-bishops-conference-on-the-publication-of-the-framework-document-for-a-return-to-the-public-celebration-of-mass-and-the-sacraments/> [last accessed 10.2.2021].

It is worth mentioning other studies carried out in Poland on the same topic.<sup>101</sup> In surveys conducted by Boguszewski, Makowska, and Podkowińska, only 20.1 per cent of respondents reported a decrease in participation in religious practices; 10.6 percent – an increase, while 43.5 per cent did not notice a change. The differences between these results may be due to many factors. First of all, the study mentioned above were performed in a typologically representative manner. Moreover, it did not consider people who do not practise religion, even though they declare belonging to a religious community. However, it also seems essential that the questions were formulated differently. While the survey described in detail in this article asked about religious practices in general, the second study asked about “praying, meditating, and other practices”.<sup>102</sup> It seems likely that the respondents interpreted the question in the first survey more often as related to participating in community out-of-home practices, while in the second survey – more as related to practices done alone or with loved ones. Interestingly, both studies recognised the end of the third pandemic wave in June 2021 as the research time turning point. An earlier study from 2020, which also asked about “meditation and prayers, and other practices”,<sup>103</sup> found an even greater proportion of people whose way of practising religion has not changed (75 per cent). So this may be a picture of change that has happened over time. In this interpretation, along with the months of the restrictions, the share of believers decreased, whose religious practices had not changed. To be sure of this, however, these results would have to be compared with the studies carried out later.

In addition to the spiritual consequences, religious institutions are suffering financially. If fewer people are participating in religious services, then less money is collected for religious purposes. In Poland, the financing of religious associations is an interesting subject for press reports because it is based on voluntary collections from worshippers, and public opinion is of the view that the financing is not transparent. Nev-

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<sup>101</sup> R. Boguszewski, M. Makowska, M. Podkowińska, *Changes in intensification of religious involvement during the COVID-19 pandemic in Poland*, “Plos One”, Volume 17(6), 2022, p. 6.

<sup>102</sup> *Ibid.*, p. 6.

<sup>103</sup> M. Bożewicz, *Wpływ pandemii na religijność Polaków*, “Komunikat z badań Centrum Badania Opinii Społecznej”, 2021, Vol. 74, p. 2.

ertheless, it has been reported that some bishops withdrew from or reduced the payments taken from parishes for the functioning of the central diocese institutions.<sup>104</sup> Of our respondents, 43.3 per cent provided financial support to their religious community before the pandemic and continue to do so. However, as many as 15.3 per cent stopped providing the support they had previously given. At the same time, only 2.7 per cent decided to provide support when they had not previously devoted their money to the needs of the community. Thus, it is clear that the reports about the financial problems of religious communities seem to be relevant. It can be assumed that this is a significant change, though not devastating. The disturbing reports in the media about parishes going bankrupt can be considered to be a result of journalistic exaggeration or the overlapping of several specific local factors, to which the pandemic contributed only to a small extent. Details are presented in Chart 5.

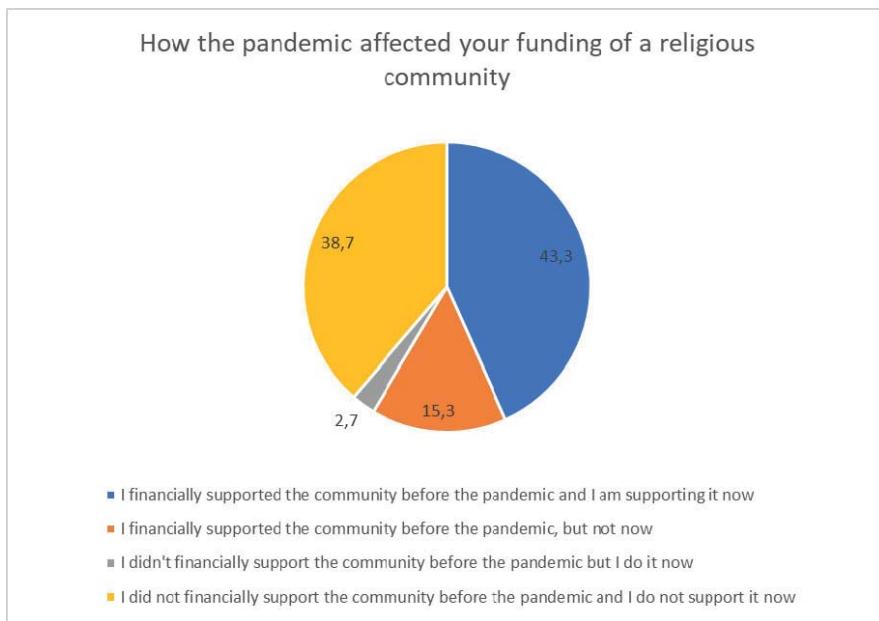


Chart 5. The impact of the pandemic on the financing of religious communities

<sup>104</sup> A. Sporniak, *Wirus uderza w finanse kościoła*, "Tygodnik Powszechny" 23 March 2020, available at: <https://www.tygodnikpowszechny.pl/wirus-uderza-w-finanse-kosciola-162781> [last accessed 1.5.2022].

In the IDIs, only members of the Roman Catholic Church addressed financial issues. It was pointed out that although the pandemic was associated with a loss of income, the worshippers still donated money to the needs of the community. They also used modern methods for donating: apart from a traditional collection in the church, online bank transfers and ATM-like kiosks became popular. Before the pandemic, these methods of transferring money were very rare, and in the case of kiosks – they did not occur at all. Thus, the results of the IDI analysis correspond directly with the results of the survey.

*Although people have stopped going to church and the number of people has decreased significantly, people care about the parish and the way the parish is financed through bank transfers (...) We are a bit in the red, but we do not feel abandoned and left to ourselves. (IDI No. 4)*

It seems that the pandemic did not greatly reduce the financial resources of religious communities, although it led to significant changes in the methods by which worshippers transfer money.

It is debatable if the financial losses should be compensated by states, as has been done in the case of entrepreneurs. The limitation of rights should be balanced with compensation.<sup>105</sup> In Germany, Poland, and Belarus the issue of compensating religious associations for their financial losses has not been discussed.

From a spiritual and sociological point of view, the current pandemic can be treated, not only as a threat, but also as a chance for religious organizations to adopt new approaches. Though limitations on the attendance of religious ceremonies were and still are severe, the pandemic is also understood as a chance for better organization and more awareness of the significance of spiritual life.<sup>106</sup> Two-thirds of our respondents believe that the pandemic will have a lasting impact on religious practices in Poland. Only one in five respondents expressed the opposite opinion. Details are shown in Chart 6.

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<sup>105</sup> H. Schmitz and C.-W. Neubert, *supra* note 77, p. 671.

<sup>106</sup> See Pope Francis, *To Heal the Word: Catechesis on the Pandemic*, 2021, Rome: Vatican Publishing House.

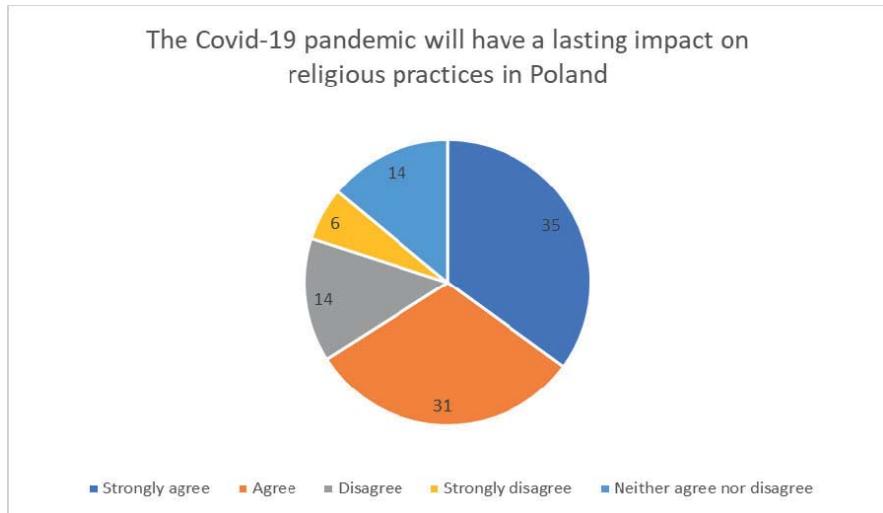


Chart 6. Opinion on the lasting impact of the pandemic on religious practices

There were many predictions about the religious situation following the pandemic in the IDIs. First of all, it was pointed out that the decrease in the number of people participating in services would be of a cleansing nature. Those who continue their religious observance will be spiritually renewed and reflective about religious rituals.

*I think the number of people will decrease. I think there will be some consolidation. Those who will practice will probably do it more consciously and more responsibly.* (IDI No. 1)

This more reflective approach to rituals will raise awareness of issues that are consistent with the doctrine of faith but – mainly owing to tradition – have not been popular in Poland so far. This concerns the content of the doctrine concerning e.g. biology or the materiality of the world, but also about specific solutions, e.g. giving Holy Communion in the hand in the Catholic Church.

*I am glad that the recommendation regarding Holy Communion in the hand has been introduced. It is a regular practice that has been accepted by the Vatican for many years. In Poland, owing to the strong tradition, as we know, it was associ-*

*ated with quite a lot of controversy. I see this as an opportunity to get used to it socially.* (IDI No. 13)

Other hopes about the post-pandemic situation focused on many different things. Respondents expect an improvement in the quality of pastoral activities, above all owing to the need to reach people who have permanently lost the habit of participating in religious life. The widespread streaming of services, which our respondents believe will continue after the pandemic, will also contribute to improving the sermons and behaviour of priests. The clergy will be aware that unprofessional behaviour will be widely ridiculed on the Internet, so they will put more effort into their performance. Healthy competition between parishes and priests will also become more common as the possibility of choosing which mass to attend will increase. It is worth noting that such opinions seem a bit too far-fetched, given the low satisfaction with online religious practice previously described in this article. The vast majority of believers seem to view remote participation as something transitory and temporary:

*In this online world we connect, we talk, but it is a bit more unnatural, and it seems to be a temporary situation and we hope that after the number of cases [of Covid-19] decreases, we will go back to the home meetings.* (IDI No. 9)

Thus, it seems unlikely that parishes or priests will become more competitive within one religious community. However, the hopes related to greater Internetization concern, not only religious practices, but also ways of contacting priests and ways of donating money for the needs of the community.

In the case of smaller religious denominations, widespread digitalization and the popularization of online meetings will significantly facilitate their daily operation. Hope for easier communication and organization also applies to people belonging to the Catholic Church, but involved in some minority groups within this community. What is unique for smaller denominations is that greater accessibility via the Internet also gives hope for the expansion of such communities to people who are dissatisfied with the Roman Catholic Church and yet seek to have their religious needs fulfilled.

*There are a lot of people who are alienated from the church here in our country. That is, they are disaffected with the Roman Catholic Church. Protestant churches have always been uncertain in some way and these people never even (...) wanted to come here, but because the services are online, they started to watch them. And we get information that they do it regularly (IDI No. 18)*

What seems to be particularly important is the fact that the only threat indicated by our respondents is that after the pandemic some people will permanently give up participating in religious practices. Meanwhile, the expected positive effects of the pandemic are numerous. A significant proportion of these expectations are related to the reduction in the number of believers in places of worship during the pandemic. Paradoxically, a restriction that has a legally dubious status for many believers ultimately provides an opportunity for the religious community to reform.

## CONCLUSIONS

Religious freedom, as one of the fundamental rights belonging to each individual, is binding, not only in safe conditions, but also in states of emergency, including the current pandemic. States can reduce the external sphere of religious freedom owing to extraordinary circumstances, including public health. The level of threat justifies lower or more severe restrictions on participation in religious ceremonies. Health-related factors should be balanced with religious freedom. The spiritual needs of worshippers should not be automatically neglected and treated as less significant. The introduced restrictions should be established with the engagement of religious communities and in-depth knowledge of the health risks. They should be precise and respected by religious communities as a whole, and the timeframe should be made public. If they last for long periods, there will be a need for the gradual introduction of less severe restrictions.

From the presented perspective, it is clear that a blanket ban on the organization of religious ceremonies during a pandemic is highly controversial and exceptional to the international standards of religious freedom. It is noteworthy that in those countries where the closure of religious buildings was the subject of judicial review, the courts quashed the state's orders and ordered that the legislation be revised to give worship-

pers the chance to attend religious ceremonies with the observance of clearly defined health protection measures. It is proof that religious freedom should not be automatically evaluated as less significant for people than public health. Striking a balance between these values seems to be necessary. This necessity was also evident in Belarus, from the opposite perspective, where religious associations introduced safety rules during services to protect public health independently of any state reaction.

From the presented facts it is noteworthy that the majority of religious communities accepted restrictions and even the closure of religious buildings due to the pandemic. The cautious approach of some religious leaders may justify the conclusion that lawyers defended the right to religious freedom more vigorously than clerics did. From the sociological perspective, the situations of the largest religious community in Poland and smaller communities are very different. The latter were affected to a much greater extent by the restrictions, owing to inferior organizational conditions. On the other hand, it is small communities that hope to increase their membership compared to the pre-pandemic era, while members of the Catholic Church believe that their community will experience a significant drain of worshippers. Different perceptions of the effects of the pandemic go hand in hand with different perceptions of restrictions. It can be assumed that also in other countries the religious freedom of members of smaller communities has been restricted to a greater extent. It is worth noting that restrictions on access to public religious services are a negative experience for the vast majority of worshippers, so it can be expected that after the pandemic is over all remote forms of participation will lose their popularity. Consequently, the possibility of physically participating in religious practices is still an important factor affecting the well-being of the faithful, so the issue of possible future legal restrictions related to this aspect of religiousness will certainly remain controversial. At the same time, it is hard to imagine that shortly it will be possible to organize religious ceremonies in closed spaces for thousands of people. Even if it is legal, many worshippers may still be afraid of infection. Religious associations will be obliged to consider alternative forms of services or attendance in order not to lose their worshippers and to continue their existence in spiritual and financial spheres. The pandemic has changed participation in public ceremonies, not only religious ones, for many years to come.