

CALL FOR PAPER

Technology and Innovation:

New Ways to Perform Known Activities?

Benevento, 15-16 December 2020

call2020@unifortunato.eu

PAPER

Title

Freedom of worship and protection of privacy in times of pandemics

Applicant: Dott. Fabio Balsamo – University Federico II of Naples – Ph.D in “Ordine internazionale e tutela dei diritti individuali” - SSD IUS/11. The applicant worked on ecclesiastical bodies and religious freedom. Also, he worked on analyzing the relationship between State and religion on the base of the principle of loyal collaboration.

Abstract

Freedom of worship and protection of privacy in times of pandemics

The action to combat the Covid-19 pandemic, in addition to the limitation of fundamental freedoms, has inevitably led to further sacrifices in the sphere of privacy of individuals, justified by pre-eminent reasons of public health and, in particular, by the need to trace, in case of positivity, the identity of the so-called “close contacts” of the subject subsequently found to be affected by the virus. On the basis of the emergency provisions dictated to stem the spread of the epidemic, it resulted that the stay, more or less prolonged, of any person in a place open to public attendance obliged the customer to provide their personal data, including telephone number and, in some Italian Regions, the details of the identity document.

This obligation did not concern the entry and stay inside the religious buildings, although there is no doubt that the buildings of worship, precisely because of their “*deputatio ad cultum publicum*”, constitute places open to the public and, above all, they are places where the stay of the faithful lasts for a period of time by no means negligible, that is, for the entire duration of the rites, prayers and ceremonies. Moreover, on the basis of the provisions of art. 9, par. 2d) and art. 30 of EU Regulation 679/2016 (GDPR), the possibility for religious institutions to collect the data of the participants would not have been abstractly precluded.

It must immediately be emphasized that the choice not to impose to religious denominations the obligation to collect the personal data of the faithful at the entrance to religious buildings must be evaluated with extreme favor, and this regardless of the adoption of effective anti-covid protocols suitable to avert any risk of contagion among the faithful participating in religious ceremonies, as well as signed between the State and religions. In other words, even for religious denominations that have not signed anti-covid protocols with the Italian State, free access by the faithful to the relative buildings of worship cannot be considered precluded, nor can the exercise of this right be considered conditional on the prior collection of the identification data of the individual faithful, in the case of spontaneous adoption, by the religious authorities, of suitable measures to contain the contagion.

In fact, beyond the importance attributable to the provisions contained in the anti-covid protocols signed between the confessional representations and the Italian Government, the *ratio* of this regime must be identified exclusively in the primary constitutional value recognized to the right to religious freedom and worship, that can tolerate partial compression in the face of higher public health needs, but always in compliance with even more stringent limits of proportionality and adequacy than those that can be invoked for other subjective legal situations. Therefore, the possible subjecting of the entrance to religious buildings to mandatory preventive operations of collection and storage of the identification data of the faithful, as provided for other places open to the public, would have represented an undue limit to the individual exercise of the right to religious freedom and worship. On closer inspection, in fact, similar restrictions or obstacles to the individual and associated exercise of freedom of worship, regardless of the prior signing of bilateral agreements or protocols on the management of the pandemic, would have been manifestly incompatible with the constitutional protection provided for by the art. 19 of the Constitution.

Nothing prevents religious confessions from spontaneously organizing anti-covid tracking forms, on a voluntary basis. In this sense, the experience of the Waldensian Table is emblematic. In these activities, the GDPR will in any case be applied, because confessional regulations issued on the subject of privacy are concretely applicable only with regard to institutional activities of religious organizations. Among the most important interventions we note the general Decree of the Italian Episcopal Conference of 24 May 2018, in which it was established that "*the processing of data relating to the faithful, ecclesiastical bodies, ecclesial aggregations, as well as persons who come into contact with the same subjects, is carried out in full compliance with right of the person to good reputation and confidentiality recognized by can. 220 of the Code of Canon Law (CIC) and can. 23 of the Code of Canons of the Eastern Churches (CCEO)*" (art. 1).

No lesser pitfalls and obstacles to the free exercise of worship lurk in digital technologies, which have not cleared the field of potential risks deriving from the proliferation of new forms of limitations both to the exercise of worship and to the full protection of people's privacy. In fact, it should not be overlooked that the possibility of participating in worship remotely and through the use of new digital

tools would seem to have been, at least in the first phase of the pandemic, accompanied by an uncontrolled dissemination of sensitive personal data, even of a religious nature, which has resulted in an excessive attenuation of the protection of the privacy of individuals.