# WRITTEN OBSERVATIONS

*submitted to the European Court of Human Rights*
*in the case*

## ***Dalibor Magdić v. Croatia***

(Application No. 17578/20)

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1. The context of the application *Dalibor Magdić v. Croatia* (No. 17578/20) is that of the Covid-19 epidemic and the public policies aiming at containing it. These policies, going far beyond the health field, have severely restricted the exercise of certain rights and freedoms since March 2020. They have also expanded the role of states and their place in people's lives. Most individual acts, even the most trivial and daily ones, have become subject to state approval and control. The health crisis is not the first crisis to reinforce statism, which is often fostered by crises of all kinds.
2. The Covid crisis allowed everyone to experience the power of fear over society. In retrospect, the ease with which we consented to the abrupt surrender of so many freedoms is disturbing, especially when one considers that the danger was often overestimated. Obligations that would normally be inconceivable were accepted, such as the requirement to have a 'certificate' to leave one's house. The Covid crisis also allowed everyone to experience the media's power to stun the population, through the dissemination of messages causing an often irrational fear in the face of a danger that is both invisible and immeasurable.
3. The Covid crisis thus revealed how easy it is for public authorities to infringe on the rights and freedoms with the consent of the population, as long as a collective fear can be mobilized for this purpose. As Ronan Cormacain reminds us, "*Emergencies can be used as cover for profoundly damaging changes to the constitutional limits and restrictions on the exercise of governmental power*."[1] This was particularly the case with the health crisis, which in several European countries was added to other existing emergencies, such as terrorism.
4. The fear and confusion caused by any major crisis must not result in even greater power being given to governments, it must instead prompt the judges to exercise their control with greater care and firmness.
5. In this context, defendants of public liberties must be particularly vigilant. The European Centre for Law and Justice is committed to the freedom of collective worship,[2] the right to receive religious instruction,[3] and the right to take part in peaceful demonstrations.[4] Unlike some states, such as Spain and Poland, Croatia banned all public worship between 20 March and 2 May 2020.

## Facts

6. Public health policies in Croatia were organized by the Directorate of Civil Protection, according to the Law on the Civil Protection System of 19 March 2020.[5] The total ban on public worship was decided on March 19 and came into effect immediately, for thirty days.[6] It preceded a lockdown, prohibiting travel (with exceptions) from March 23.[7] No exceptions to the ban on public worship were tolerated, except for religious funerals.[8]

[1] Ronan Cormacain, ""Social Distancing" of Emergency Legislation during the Covid-19 Pandemic", UK Constitutionnal Law Association, 10 July 2020, available online.
[2] ECLJ, « Manifestations pour la liberté de culte – Strasbourg », November 2020, available here.
[3] Grégor Puppinck, Gaspard Dassonville, « Confinement : comment maintenir l'instruction religieuse et la catéchèse ? », *Aleteia*, 12 November 2020.
[4] ECLJ Officiel, « Reprise des cultes : à quelles conditions ? », Radio chrétienne francophone (RCF), 26 November 2020, available here.
[5] The text of the law can be downloaded here.
[6] Decision available here.
[7] Decision available here.
[8] See the press release of the Croatian Bishops' Conference drawing the consequences of the sanitary measures.

Public worship was legally resumed, with some restrictions, on May 2, two weeks after the original announcement.[9] The confinement was lifted gradually from mid-April and then completely on May 11.[10] Public worship was thus prohibited and penalized for six weeks, in particular six Sundays, including the Holy Week and Easter.

**Procedure**

7. The applicant, Dalibor Magdić, is a Catholic. On 15 April 2020, almost a month after the ban on public worship, he filed an application before the Court alleging a violation of his right to freedom of religion, protected by Article 9 of the Convention. He considered that this total ban was not proportionate to the legitimate objective of protecting public health. In particular, he noted that alternative measures that were less intrusive on religious freedom, such as the rule of social distancing, could have been preferred.
8. Prior to his application to the Court, Mr. Magdić did not pursue any domestic remedies. For this reason, it is possible that the Court will declare his application inadmissible, due to the non-exhaustion of domestic remedies. These observations will focus on the substantive issues raised by the applicant.
9. The Court has already recognized the "exceptional situation caused by Covid-19."[11] In these observations, the need to take health measures is not questioned, in the context of the worldwide epidemic of Covid-19. However, certain criteria must be considered in order to find the right balance between this imperative and the constant protection of individual liberties. The Court has already indicated that it is "fully aware of the difficulties raised by the covid-19 pandemic and of the fact that certain measures taken by the national authorities are likely to raise questions with regard to the requirements of the Convention."[12] In this case, in terms of freedom of religion, the compatibility of national measures with article 9 of the Convention must be considered in light of the principle of proportionality. The current observations focus on identifying criteria for assessing the conventionality of restrictions on freedom of religion.
10. These assessment criteria relate to the legality of the restrictions, the legitimate objective of protecting public health, the absence of an absolute prohibition, the absence of excessive restrictions both in range and duration, the absence of discriminatory restrictions both between religions and between religious and secular activities, the absence of arbitrary restrictions and the respect of the autonomy of religious communities.



## 1. The legality of restrictions

11. The importance of the infringements of the rights and freedom in the situation of health crises requires a strict interpretation of the notion of "law," in order to respect the legislator's function as guardian of freedoms. Minimal infringements of rights and

[9] See explanations and references on the website of the Croatian Episcopal Conference.
[10] Decision available here.
[11] *Bah v. The Netherlands* (dec.), No. 35751/20, 22 June 2021, § 41.
[12] *Zambrano v. France* (dec.), No. 41994/21, 21 September 2021, § 32. Free translation.

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freedom can be based on texts of lesser legal value, such as regulatory acts, but this should not be the case for serious infringements which should result from a democratic decision. "Law," under the Covenant on Civil and Political Rights, is not conceived as a wide and broad legal basis empowering the executive to adopt regulatory measures restricting freedoms, but as parliamentary law.

## 2. The legitimate goal of public health protection

12. There is no doubt that the litigious measures the Greek government adopted aimed for the legitimate goal of public health protection, the Court having considered "there is no doubt the COVID-19 pandemic can have very serious effects non only on health, but also on society, on economy, on the State's functioning and on life in general."[13]
13. Public authorities not only had the capacity to restrain rights and liberties to protect public health; but they had the positive obligation as well, regarding article 2, to "take the necessary measures to the protection of the life of people within its jurisdiction."[14]
14. This being said, the protection of public health is not a right or freedom competing with religious freedom, but only a legitimate limit to the exercise of religious freedom.[15] The individual right is therefore the protected principle, and the protection of public health a limit to the exercise of this principle, which must be justified by the state that imposes it. Health policies to combat the Covid-19 epidemic have been able to reverse this relationship between public health and freedoms by making the former the principle and freedoms an adjustment variable that can, at best, limit the intrusive nature of certain health measures. Italian academic Adelaide Madera noted: "Several basic rights that normally enjoy robust protection under constitutional, supranational, and international guarantees, have experienced a devastating "suspension" for the sake of public health and safety"[16] Yet the State's obligations to protect fundamental rights do not diminish in times of pandemic, and constitutional guarantees cannot be set aside or forgotten, as the US Supreme Court recalled in November 2020.[17]



## 3. No absolute interdiction

15. The liberty to manifest one's religion or convictions can be subjected to proportionate "restrictions," but no general and absolute restrictions, for these would be "derogations" and would, consequently, infringe the very heart of freedom of religion.
16. This prohibition of general and absolute restrictions is confirmed by the prohibition in Article 4 of the 1966 Covenant of any "derogation" from freedom of religion, even "[i]n cases of public emergency which threaten the life of the nation and are proclaimed by

[13] *Cristian-Vasile Terheş v. Romania*, No. 49933/20, 13 April 2021, § 39. Free translation.
[14] *Lopes de Sousa Fernandes v. Portugal* [GC], No. 56080/13, § 164.
[15] See for example article 9 § 2 of the Convention. See also: CEDH, *Ceylan v. Turkey*, No. 23556/94, 8 July 1999, § 32-ii.
[16] Adelaide Madera, "Some preliminary remarks on the impact of COVID-19 on the exercise of religious freedom in the United States and Italy", Stato, Chiese e pluralismo confessionale, *Rivista telematica*, fascicolo No.16, 2020, p. 71.
[17] "But even in a pandemic, the Constitution cannot be put away and forgotten". *Roman Catholic Diocese of Brooklyn v Cuomo*, Supreme Court of the United States, 592 US (2020), 25 November 2020.

an official act." As noted in General Comment No. 29 on Article 4 (24 July 2001) CCPR/C/21/Rev.1/Add.11: "Derogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant." (§ 4).[18] The Committee further states: "Conceptually, the qualification of a Covenant provision as a non-derogable one does not mean that no limitations or restrictions would ever be justified." (§ 7). It is up to the judge to sanction any "derogation," and to assess the proportionality of any restrictions. The Human Rights Committee recalls in its General Comment No. 22 (48) (art. 18)1/ CCPR/C/21/Rev.1/Add.4, 27 September 1993 that "Article 18 (3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others." (§ 8)[19]

17. This is consistent with Article 15 of the European Convention on Human Rights, which only allows States to derogate from the obligations under Article 9 "to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law," provided that the procedural requirements of Article 15, third paragraph, are met.
18. Thus, on April 29th, 2020, the Constitutional Court of Karlsruhe condemned the ban on public worship on the grounds that the general nature of the ban was not justified, and therefore violated the religious freedom guaranteed by the German Constitution. According to the Court, restrictions must be adaptable to the circumstances. Similarly, the absolute prohibition of collective worship was severely disapproved by the French *Conseil d'État* as a "serious and manifestly illegal infringement" of religious freedom.[20]
19. In this case, it is worth recalling the case law in which the Court has recognized that, if a religious community cannot have a place to worship, its right to manifest its religion is rendered meaningless.[21]



## 4. No excessive restriction

20. The Prohibition of derogations does not preclude the adoption of restrictions "prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (Article 9.2 ECHR). According to the Court, "for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned."[22]
21. In the context of the Covid-19 epidemic, the Court did not lower its requirement in terms of protection of fundamental rights. Thus, it validated a national measure restricting the applicant's freedom of movement, insofar as the applicant retained numerous possibilities of going out and could still establish social contacts.[23] The interference was

[18] HRC, General Comment on Article 4, CCPR/C/21/Rev.1/Add.11, 24 July 2001.
[19] HRC, General Comment No. 22 (48) on Article 18, 1/CCPR/C/21/Rev.1/Add.4, 27 September 1993.
[20] Ordonnance du Conseil d'État, juge des référés, decision No. 440366, 18 May 2020. Free translation.
[21] *Solidarity Association with Jehovah's Witnesses and others v. Turkey*, No. 36915/10 and 8606/13, 24 May 2016, § 90.
[22] *Glor v. Switzerland*, 30 April 2009, No. 13444/04, § 94.
[23] *Terhes v. Romania*, No. 49933/20, 13 April 2021, § 43.

deemed proportionate by the Court as it did not completely extinguish the applicant's ability to use his right to freedom of movement. In the current case, the measures put in place by the Croatian State did not maintain any possibility for the exercise of the most important practice in the Catholic religion, namely participation in Holy Mass. It seems difficult to imagine that the Croatian State could justify that a total ban on worship was the only feasible measure for six whole weeks.

*No indue restriction on its scope*

22. The principle of proportionality requires that national authorities put in place the least restrictive possible measures in terms of their duration, geographical range, and purpose. Such measures should also consider, for example, differences of health situation between territories, or the size of religious buildings, the place of worship (indoor or outdoor), or the relative dangerousness of such or such particular religious practice.
23. It is for the national authorities to show that they have taken these circumstances into account to reduce, as far as possible, the infringement of freedom, considering scientific knowledge at the time of the events. In the case of the Greek authorities, they should demonstrate that the introduction of less stringent health rules was not possible.
24. The US Supreme Court in its decision in *South Bay United Pentecostal Church v Newsom* (2021) applied this test to ascertain the proportionality of the ban on singing in churches in California. It found that the authorities had failed to justify why less restrictive measures to achieve the same objectives had not been taken; the judges also made several less restrictive proposals that could have been implemented by the authorities, including the wearing of masks, the use of plexiglass windows, or the requirement of a distance between the singers and the faithful.



*No indue restriction on its duration*

25. Restrictions on freedoms must be prescribed for the shortest possible time. These restrictions could be aimed at addressing, according to the Court, "the difficult and unforeseen practical problems with which the State was confronted during the first weeks of the Covid-19 pandemic."[24] The duration of such restrictions should be specified at the time of their adoption; in addition, there should be an obligation to constantly evaluate the necessity of such measures in the light of the changing health situation and scientific knowledge.
26. The German Constitutional Court has recalled that "any extension of these temporary measures must be subject to a rigorous assessment of their proportionality, taking into account the current situation."[25]

[24] *Bah v. The Netherlands* (dec.), *op. cit.*, § 44. Free translation.
[25] Federal Constitutional Court of Germany (Bundesverfassungsgericht) 1 BvQ 28/20, 10 April 2020 Free translation.

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## 5. No discriminatory restriction

27. Restrictions on the exercise of freedom of religion must not discriminate, directly or indirectly, between the different religions under consideration, nor between practices of a religious or secular nature. Indeed, States must "assessing whether and to what extent differences between otherwise similar situations justify a different treatment."[26] Similarly, the Human Rights Committee recalls in its General Comment No. 22 that the criteria applied to restrictions cannot have the effect (let alone the purpose) of "discriminating" on any of the grounds of Articles 2, 4 and 26 of the Covenant, including "religion." Even if necessary and proportionate, "Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner." (§ 8).

*No unjustified difference in treatment between religions*

28. The State must consider differences in religious practices in order to avoid restrictions that may indirectly discriminate between religions. Indeed, the absence of differential treatment of persons in significantly different situations may result in a violation of Article 14 of the ECHR.[27] Thus, in the case of the imposition of a national measure that may affect religious practice, the State must consider the historical context, the particularities of the religion in question, whether dogmatic, ritual, structural or other.[28]
29. For example, the infringement on religious freedom through prohibition of public worship is much greater for the followers of religions that adhere to a public worship obligation. As a result, restrictions must be adapted as far as possible to the different religions. Failure to take account of the specific nature of religious denominations cannot result in a proportionate restriction on freedom of religion.
30. Several courts have recalled in their judgments the importance of the collective dimension of religions in the general exercise of freedom of religion, and of the celebration of the sacraments in several religions which, according to the doctrines, are not substitutable. In Scotland in particular, the Court recalled that "the celebration of the Eucharist at public Mass on Sunday is of particular importance. Participation in Mass is seen as an essential, not optional, part of the Catholic religion."[29] Similarly, in March and April 2021, the Supreme Court of Chile recalled that "Sunday mass would be the core of their religion. This is not a definition by the applicant, but the normative and authoritative definitions of those who lead the religion and worship that he professes."[30]
31. The recognition of this essential dimension also allowed the court of the District of Colombia (USA) to rule that the possibility of using virtual means could not be considered as allowing the effective exercise of the religious freedom of individuals. Thus "Unlike many other religious entities, the Church does not offer virtual worship



[26] *Chassagnou and others v. France* [GC], No. 25088/94, 28331/95 and 28443/95, 29 April 1999, § 91.
[27] *Thlimmenos v. Greece*, [GC] No. 34369/97, § 44.
[28] *Cha'are Shalom Ve Tsedek*, [GC], *op. cit.*
[29] *Philip & Ors for Judicial Review of the closure of places of worship in Scotland*, (2021).
[30] See: Javiera Corvalán, Jorge Precht, "La Corte Suprema y la libertad religiosa. Comentario de la sentencia de la Tercera Sala C.S, 01/04/2021, rol No. 21.963-2021", diarioconstitucional.cl, 3 mai 2021. Free translation.

services . . . . To the Church, "a weekly in-person worship gathering of the entire congregation is a religious conviction for which there is no substitute."[31]

*No difference in treatment depending on whether the activity is religious or secular*

32. The State must not treat religious activities more restrictively than similar secular activities. Thus, it may not impose stricter restrictions on a gathering held in a place of worship than in a secular place. Similarly, it may not, for example, prohibit religious instruction in schools or parishes, while maintaining the possibility of instruction in secular subjects. Similarly, it cannot prohibit the celebration of worship outdoors, while authorizing the holding of public political demonstrations outdoors, as the French authorities have sometimes done.
33. Such differences in treatment cannot be justified by a value judgement by the public authorities as to the "usefulness" of beliefs and the "necessity" of religious practices, or as to their "essential" character in comparison with secular activities. This incompetence should thus prohibit the authorities from authorizing the opening of shops, while keeping places of worship closed on the (implicit or explicit) grounds that the practice of religion is less useful, less vital, than that of trade.
34. The obvious difference in treatment between religious and secular activities, and particularly the imposition of less rigorous measures on secular activities, has been regularly criticized by State Parties in various jurisprudence. For example, in France, the finding of a less restrictive regime for secular activities receiving the public than for religious activities motivated the decision of the Council of State confirming the urgency of modifying the applicable derogation rules.[32] The Supreme Court of the United States also considered the blatant difference in treatment between religious and secular activities and noted that this difference in treatment was not justified because the risk of contamination was not higher in a place of worship than in other activities.[33] In another decision, it recalled that the First Amendment requires at least comparable treatment between religious and secular activities.[34]



## 6. No arbitrary restriction

35. The State is not competent to judge how essential the nature of a particular religious practice is, nor is it competent to unilaterally regulate such religious practices in detail. Indeed, "the State's duty of neutrality and impartiality is incompatible with any power of appreciation on its part as to the legitimacy of religious beliefs or the ways in which

[31] *UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA Capitol Hill Baptist Church v Muriel Bowser*, in Her Official Capacity as Mayor of the District of Columbia (CaseNo20-cv-02710 (TNM)) on 9 October 2020.
[32] Ordonnance du Conseil d'État français, *op. cit.*
[33] *SUPREME COURT OF THE UNITED STATES South Bay United Pentecostal Church v Newsom* (2021).
[34] *Roman Catholic Diocese of Brooklyn v Cuomo*, Supreme Court of the United States, 592US ____ (2020), 25 November 2020, Concurring opinion of Justice Gorsuch.

they are expressed."[35] The result is that the State has a duty to organize with neutrality and impartiality "the exercise of the various religions, cults and beliefs."[36]

36. Thus, the choice made by the State to authorize religious funerals to the exclusion of all other religious practices is not neutral and may be perceived as arbitrary when one considers the fact that for Catholics, Sunday worship is a religious obligation, which is not the case for participation in a funeral, which is not a sacrament. This principle has been reiterated by the District Court of Colombia, which firmly reiterated that it is not for the authorities "to say that [the Church's] religious beliefs" about the need to meet together as one corporal body "are mistaken or insubstantial."[37]
37. By deciding to allow certain religious practices rather than others, public authorities are stepping out of their role. They also step out of their role when they pretend to prescribe how religious practices such as the rite of communion, or singing, should be conducted, or impose, as has sometimes been the case in France, that Mass be celebrated with closed doors. In Strasbourg, the Prefecture of the Bas-Rhin department even prohibited praying "on one's knees" or even "silently"[38] during protests against the prohibition of Mass.
38. Similarly, the decision by some governments to allow a fixed number of worshippers in places of worship, regardless of their size - as was the case in France - is also arbitrary. In order to avoid such arbitrary restrictions, which undermine the neutrality of the state and the autonomy of religious communities, public authorities should, as far as possible, consult with the religious communities concerned.



## 7. The respect of religious communities' autonomy

39. The autonomy of religious communities is widely recognized in international legislation and by the European Court jurisprudence. It derives from the collective dimension of religious freedom and the incompetence of the State in matters of religion. This principle was recalled by the Grand Chamber in the *Sindicatul Păstorul v. Romania*,[39] *Fernández-Martínez v. Spain*,[40] and *Károly Nagy v. Hungary*[41] cases. From this principle derives a series of "institutional rights,"[42] including the liberty for religious communities to administrate themselves according to their doctrine. Without respect for the religious communities' autonomy, States step in the religious aera, they are no longer neutral nor impartial.

[35] For example: *Manoussakis and others v. Greece*, No. 18748/91, § 47; *Bayatyan v. Armenia* [GC], No. 23459/03, § 120.
[36] *S.A.S. v. France* [GC], No. 43835/11, 1 July 2014, § 127.
[37] *UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA Capitol Hill Baptist Church v Muriel Bowser*, in Her Official Capacity as Mayor of the District of Columbia (CaseNo20-cv-02710 (TNM)) on 9 October 2020, page 11.
[38] Valeurs actuelles, *Interdiction de prier, "même en silence"*, 16 November 2020.
[39] *Sindicatul Păstorul v. Romania* [GC], No. 56030/07, 12 June 2014.
[40] *Fernández-Martínez v. Spain* [GC], No. 56030/07, 12 June 2014.
[41] *Károly Nagy v. Hungary* [GC], No. 56665/09, 14 September 2017.
[42] See the closing Document from Vienna Conference, 19 January 1989, § 16.4. Quoted in Jean-Pierre Schouppe, *La dimension institutionnelle de la liberté religieuse dans la jurisprudence de la Cour européenne des droits de l'homme*, Pedone, 15 February 2015, p. 122.

40. The European Court "*recalls that religious communities traditionally and universally exist in the form of organised structures. … Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference.*"[43] Indeed, the organizational functioning of the Churches (Catholic and Orthodox in particular), their ecclesial structure (ecclesiology) is an integral part of their doctrine. The State's interference with the free institutional functioning of the Church is an interference with religion itself, and consequently with the freedoms guaranteed in Articles 9 and 11 of the Convention.[44]
41. The Court often emphasized that "the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable."[45] The Court has consistently applied this principle.[46] Thus, the principle of autonomy prohibits the civil authorities from taking decisions internal to the life of the churches, for example on appointments[47] and transfers;[48] similarly, the principle of autonomy prohibits the State from obliging a religious community to admit or exclude a member.[49] *A fortiori*, the way rites are celebrated is the exclusive competence of religious organizations.
42. It derives from the religious communities' autonomy that they alone are competent to determine the methods of exercising their religion. Consequently, the public authorities cannot impose changes to the practice of religions "from outside" but must consult with the leaders of the religions in order to adopt the measures best suited to the circumstances.



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**Annex**

For information purposes, we reproduce below the recommendations made by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE, published in *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic,* 2020, p. 119-120:

[43] *Hasan and Chaush v. Bulgaria, [GC]*, No. 30985/96, §§ 62; see also *Kohn v. Germany* (dec.), No. 47021/99, 23 March 2000, and *Dudová and Duda v. the Czech Republic* (dec.), No. 40224/98, 30 January 2001.
[44] *Holy Synod of the Bulgarian orthodox Church (metropolitan Innocent) and others v. Bulgaria*, No. 412/03 and 35677/04, § 103, 22 January 2009.
[45] *CEDH, Hassan and Tchaouch v. Bulgaria, op. cit.*, § 62, see also notably *Serif v. Greece*, No. 38178/97, § 53, CEDH 1999-IX, *Metropolitan Church of Bessarabia and others v. Moldova,* above.
[46] Except for the section judgment in *Sindicatul*, which caused it to go back before the Grand Chamber.
[47] *Dudova and Duda v. Czech Republic, op. cit.*
[48] *Ahtinen v. Finland*, No. 48907/99, 23 September 2008.
[49] *Sviato-Mykhaïlivska Parafiya v. Ukraine*, No. 77703/01, § 146, 14 June 2007.

RECOMMENDATIONS

• Ensure that any limitations imposed on the right to manifest freedom of religion or belief are prescribed by law, necessary for the achievement of the legitimate aim of protecting public health, are proportionate and non-discriminatory and framed in a gender-sensitive manner.

• Ensure that such limitations are accompanied by guidance for the authorities responsible for implementing them and those affected, in order to minimize the potential misuse or lack of implementation of such measures.

• Ensure that individuals and communities have effective recourse to appeal or review measures in question and/or decisions taken regarding their implementation.

• Make sure that in the process of imposing limitations newly established religious or belief communities and those more recently established or numerically smaller religious or belief communities are afforded equal protection.

• In consultation with all religious or belief communities and taking gender considerations into account, periodically review the restrictions imposed, monitor their impact and adjust the level of restrictions in accordance with the evolving health and risk considerations.

• In cases when religious or belief communities resist implementing measures, avoid sensationalizing or misrepresenting such developments. They should not attribute blame to the community as a whole and should sanction only the individuals concerned, as appropriate.

• Ensure that the competent authorities that monitor places of worship for compliance with preventive measures are trained in both religious literacy and in freedom of religion or belief, deal with those attending places of worship with due sensitivity and are aware of and trained to deal with potential issues specific to men and women, including the different ways in which they might exercise their freedom of religion or belief in those spaces.



• Take steps to understand how the right to freedom of religion or belief of women and girls and young people is affected in oppressive homes and develop appropriate responses to address these concerns.

• Government leaders should speak out strongly and quickly against any forms of incitement to discrimination, hostility or violence on grounds of religion or belief; they should also proactively promote a counter-narrative of solidarity, hope and inclusion.

• Ensure that privacy and personal data are adequately protected in light of increased use of online media and technology by religious or belief communities.

• Establish permanent channels of communication and/or focal points at national, regional and local levels to build trust with representatives of different religious or belief communities.

• Proactively and systematically engage with all religious or belief communities within their jurisdiction to enable the phased, safe and evidence-based reopening of places of worship.

• Hold regular meetings with the focal points from religious or belief communities at national, regional and local levels. Such meetings should be used to set up crisis management systems, to ensure the best possible joint planning and response to emergency situations.

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