TO THE EXCELLENT PRESIDENT OF THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS, DR. ANTONIA URREJOLA NOGUERA AND THE RAPPORTEUR FOR BRAZIL, COMMISSIONER DR. JOEL HERNÁNDEZ GARCÍA

"Where the right to religious freedom is denied, all other rights disappear in the face of the growing shadow of the state, and the whole building of freedoms is altered. Furthermore, when this space of first immunity is annulled, the State is tempted to usurp the place of God and becomes an instrument of manipulation or oppression"[1].

THE **BRAZILIAN INSTITUTE OF LAW AND RELIGION** (In Brazilian Portuguese: Instituto Brasileiro de Direito e Religião - IBDR), a civil society organization in the form of a civil association, registered in the national register of legal entities under the number 33.082.948/0001-92, with headquarters on Av. Caí, 634, Porto Alegre/RS - Brazil, which has as one of its primary goals to act in the defense, promotion and protection of human rights from conception, and fundamental civil liberties, in particular the right to religious freedom, freedom of expression and freedom of conscience[2], in this act represented by its Statutory President, Thiago Rafael Vieira, registered in the registry of individuals under the number 952.279.890-87, as well as by the President of its Deliberative Council, Davi Charles Gomes and other signatory members, together with the Representative leader of the Brazilian Federal Government in the Lower House of Congress, Mr. Federal Representative **Marco Antônio Feliciano**, registered in the registry of individuals under the number 131.175.328-11, resident at SQN 302 Bloco H Apartament 403 - Brasília - Brazil and the **Mixed Parliamentary Front in Defense of Human Rights and Social Justice**, in this act represented by their President, Federal Representative **Roberto de Lucena**, would like to request a hearing with Your Excellencies to address the situation of the fundamental right to religious freedom in Brazil during the coronavirus pandemic (COVID-19), in view of the facts and arguments below.

[1] "Donde se niega el derecho de libertad religiosa todos los demás derechos se desvanecen ante la sombra cresciente del Estado, y todo el edifício de las libertades queda alterado. Pero más aún, anulado esse espacio de inmunidad primera, el Estado se ve tentado a usurpar el lugar de Dios y se convierte en um instrumento de manipulácion u opresión". (RUBIO LÓPEZ, José Ignacio. La primeira de las libertades: la libertad religiosa em EE.UU. durante la Corte Rehnquist (1986-2005): una libertad en tensión. Navarra/España: Ediciones Universidad de Navarra, 2006, p. 578.)
[2] IBDR's Bylaws. Available at: https://www.ibdr.org.br/documentos . Accessed on April 17, 2021

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SUMMARY OF THE FACTS

The coronavirus pandemic has brought a series of challenges to public authorities in all Sovereign States. In view of the urgent need for isolation, many government officials have determined restrictive measures aimed at reducing the spread of COVID-19.

However, in order to prevent the spread of the disease some public authorities have incurred in excess, abuse and violations of human rights, since they have been restricting disproportionately and without due constitutional support, and without reason, the exercise of certain freedoms, among which even include freedom of religious and worship.

It is worth emphasising that the Constitution of the Brazilian State regulates constitutional mechanisms of crisis, such as the State of Defense and the State of Siege, according to the normative diction exhibited in article 136 and articles 137 to 139 of the 1988 Constitution of Federative Republic of Brazil. These were NOT adopted by the Brazilian State, highlighting that, even if they were, the exception actions would be bound by the limits imposed by the Brazilian Constitution itself in the limits of proportionality, and even these actions of exception to the Brazilian Constitution do not allow for theprohibition of religious freedom and freedom of worship.

However, the option was made to regulate the battle against the pandemic by the means of Decrees, in the State and Municipal realm, without discussion and approval in the respective legislative assemblies and city councils, in order to grant, by decision of the Supreme Federal Court, autonomy to state and municipal entities, observing the most restrictive measures towards the civil liberties that oppose the vertical effectiveness of fundamental rights. In this sense, several decrees have come to limit and even prohibit the holding of masses, services, among other collective in-person religious activities in various parts of the country.

Thus, the scenario was set: legal inconsistencies, violation of fundamental rights and restrictive normative collisions, violating civil liberties and fundamental rights ensured by the Brazilian Constitution and in international treaties dealing with human rights, such as the American Convention on Human Rights “Pact Of San Jose, Costa Rica” and the International Covenant on Civil and Political Rights.

Therefore, many of these decrees, because they clearly violate human rights and are unconstitutional were questioned in the Brazilian Courts, either through court injunctions (*writ*) as through judicial review, with favorable as well as unfavorable verdicts, regarding the possibility of in-person and collective religious events, even with restraints. Legal challenges in the Brazilian Courts have always been in the direction of insurgency against prohibition.

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In the view of this controversy, the Social Democratic Party (PSD) petitioned the Supreme Federal Court (STF) questioning the constitutionality of the Decree 65.563/2021 of the State of São Paulo, which completely prohibited the holding of services, masses and other collective religious activities as measures to cope with the Covid-19 pandemic, as extracted from art. 2nd, II, "a", which states:

> Art. 2 The emergency measures instituted by this decree consists on the **prohibition** to:
>
> II – hold:
>
> a) Worship services, masses and other religious activities of a collective nature;

In the Statement of Non-Compliance with the Fundamental Precept (Ação de Descumprimento de Preceito Fundamental), assessed under no. 811 in the Supreme Federal Court[3], distributed to Judge Minister Gilmar Mendes, the party argued that the normative act, on the grounds to stablishing regulations to refrain the transmission of coronavirus established exception restrictions (prohibitions) to the constitutional right to religious freedom entering its inviolable and essential core by prohibiting the right to worship.

It is noteworthy to mention that IBDR participated in the aforementioned trial, in the condition of *amicus curiae*[4], arguing that the complete prohibition of services, masses and in-person religious activities violates the essential nucleus of human law, religious freedom and its constitutional exteriorization, which is freedom of worship. In light of this, these rights are inviolable and guaranteed, in the form solemnly declared by item VI of article 5 of the Brazilian Constitution, in the following terms: "*freedom of conscience and belief is inviolable, the free exercise of religious services being granted and, in accordance with the law, the protection of places of worship and their liturgies is guaranteed".*

Emphasizing the inviolability of worship in the Brazilian legal system, the Constitution of the Federative Republic of Brazil, in its article 19, item I, provides that it is forbidden for the Federal Government, the States, the Federal District and the Municipalities to hinder the functioning of religious worship services and churches, according to the constitutional text:

[3] ADPF 811. Link: https://portal.stf.jus.br/processos/detalhe.asp?incidente=6136541
[4] Order of admissibility attached in the annex, with the present.

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> Art. 19. It is **forbidden** to the Federal Government, the states, the Federal District and Municipalities:
>
> I - to establish **religious services or churches**, subsidize them, **hinder their functioning** or maintain with them or their representatives relations of dependency or alliance, except, as established by law, the collaboration of public interest; (emphasis added).

However, by a majority of votes (9x2), the plenary session of the Federal Supreme Court decided to maintain the prohibition to hold collective and presential religious activities in the State of São Paulo as a measure to face the Covid-19 pandemic. The Court understood that such a prohibition does not harm the essential nucleus of religious freedom, which is collective worship, and that the priority of the present moment is the protection of health and life.

In other words, the highest instance of the Brazilian courts ruled that mayors and governors can obstruct, through decrees, without due democratic process of discussion and approval of a law in the respective legislative houses, citizens from participating in their religious activities, therefore, hindering them, to exercise the human and constitutional right with a fundamental scope, a non-negotiable guarantee of freedom of religion and belief.

In addition, since it is a matter discussed in the context of concentrated constitutionality control, it was expected that the Brazilian Supreme Court would define more objective parameters in its decision, that is, in what terms the possibility of this restriction would be given. It should be noted that several Brazilian states and municipalities have established restrictions of 10% to 30% of the capacity of the temples of any services, in addition to biosafety measures. This insubordination is related to the complete prohibition of services of any religion.

However, the Supreme Court wrote a "blank check" to governors and mayors so they can proceed to indiscriminately close temples, annihilating the constitutional principles of religious freedom, the dignity of the human person, and a secular collaborative State, all ensured by the Federal Constitution of Brazil, the American Convention on Human Rights, the Universal Declaration of Human rights - UDHR and the International Covenant on Civil and Political rights

Finally, the sanitary situation in Brazil is quite familiar for this petitioner organization, by the religious institutions, by the representative leader of the Brazilian Government of the House of Representatives, or by the political party arguing in the present case. For this reason, it was very embarrassing to witness one of the judges of

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the Brazilian Supreme Court in charge of this case, approaching the petitioner and the *amicus curiae,* who acted in favor of the request, as REALITY DENIERS.

Including the fact that all restrictive (such as reduction in the number of participants in meetings 70-90%) and preventive (as the use of mask and alcohol gel) measures, recommended by the health authorities, have been adopted by religious organizations.

The focus of the debate is on regards to the power of the State to, with the goal of safeguarding the right to life, restrict access to the temples to the minimum possible (one believer at a time, as exemplified by judge Nunes Marques in his vote), or restrict it entirely, at the risk of violating latent constitutional principles.

REGARDING HUMAN RIGHT TO FREEDOM OF RELIGION OR BELIEF

Honorable Commission, the need to implement precautions and measures in the fight against the propagation of the COVID-19 virus is undeniable, mainly in light of the preservation of the utmost human legal asset: the right to live.

Nevertheless, it is most important to bring to discussion the comprehension learned from the dark archives of history regarding the preservation of the right to "LIFE" and the its conservation in light of the human dignity of any citizen to guard his natural right. It is worth noting therefore, that there is no reason for the existence of preservation of human "life" if such a preservation is not accompanied by the preservation of human dignity. Therefore, the legal asset of "life" is preserved because of its dignity.

It is no coincidence that the Federal Constitution of the Federative Republic of Brazil constituted in its First Article, item III, the DIGNITY OF THE HUMAN PERSON as the foundation of the Democratic State of Law, especially that all rights, duties and guarantees must be sustained, among others, by this elemental reason, that among the fundamental guarantees, freedom of religion or belief is present, preserving the guarantee of the right of worship, as already emphasized.

To this end, the Universal Declaration of Human Rights - UDHR, written in 1948, defined the basic human rights in order to promote a dignified life for all inhabitants of the world, regardless of nationality, color, sex, ethnicity, political or religious orientation. The UDHR is, therefore, a normative framework that serves as a precondition for state and citizens' conduct. The normative principles contained therein have the function of inspiring and guiding the behavior of individuals and States. In this sense, the UDHR, in Article 3, establishes that “every human being has the right to life, liberty and security of the person”

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> Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, **and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.**

The rights listed in Article 3, that is, life, freedom and security are inseparable, given the concurrent or interdependent nature as a guiding principle of the rules for the preservation and guarantee of Human Rights. Regarding religious freedom and belief, this document declares:

> Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, **and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance**. (Our emphasis)

On the same subject of religious freedom and the preservation of the freedom of public and collective celebrations of faith, the American Convention on Human Rights, declares the guarantee of this right in Article 12:

> Article 12. Freedom of Conscience and Religion
>
> **1.** Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to **profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.**
>
> **2. No one shall be subject to restrictions that might impair his freedom to maintain** or to change **his religion or beliefs**.
>
> **3.** Freedom to manifest one's religion and beliefs **may be subject only to the limitations prescribed by law** that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
>
> [...] (our emphasis)

Article 12, item 3, of the American Convention on Human Rights mentions, thus, the possibility of limiting religious manifestation in cases which it is necessary for the protection of public health. However, such a limitation does not equate to suppression,

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restriction or absolute restriction on the exercise of the right to religious freedom, since such an understanding would render meaningless its main content and normative value.

The text establishes that "the freedom to manifest one's own religion and beliefs is subject only to the limitations prescribed by law". This means that the text does not allow any other form of restriction to religious freedom except as defined by the law, in the sense of a normative act made in compliance with the legislative process, as defined in Articles 49 to 59 of the Brazilian Constitution, excluding state and municipal decrees. Any other interpretation would put the right to religious freedom in a situation of total vulnerability, liable to be restricted by indirect means, without observance of legislative competence.

Indeed, in a systematic interpretation of the American Convention on Human Rights, it is possible to apply the understanding of art. 13, item 3, which declares that *"The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions*".

Likewise, in order to recognize its character as a fundamental human right, the restriction of the manifestation of religious freedom must not be permitted by indirect methods or means, including through state and municipal decrees.

In addition, from a material perspective, any limitations to religious manifestation established by law need to be minimal, justified, non-arbitrary, transparent, non-discriminatory, even if temporary. In this context, the Brazilian Constitution, which was put into effect under the protection of God (constitutional preamble), specifies in the heart of its declaration of rights that "*no one will be obliged to do or fail to do anything except under the law*" (article. 5, II), so that the Law, in particular, would be basic the only means to, on a temporary basis, restrict, but never prohibit (it is inviolable) the exercise of rights inherent to religious freedom.

In Brazil, however, some limitations imposed on the grounds of public health reasons proved to be disproportionate, nullifying the essential tenets of religious freedom. These imposed limitations include things such as the total prohibition of religious services, masses and presential religious activities. In some cases, even virtual religious broadcasts, without any kind of agglomeration, were prevented by authorities. Such prohibitions put the right to religious freedom and worship in Brazil in unprecedented danger, deserving the attention and concern of the international community, specifically organizations working for the protection and defense of human rights.

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THE SECULAR STATE

The word *laicity* comes from the root word lay, or layman. Etymologically "lay" originates from the primitive Greek *laós*, which means people or common people. From *laós* came the Greek word *laikós*, from which the Latin term *laicus* arose. The term lay infers the opposite to the religious, to that which is clerical.

Laicity is above all a political phenomenon and not a religious problem, that is, it comes from the State and not from religion. It is the State that asserts itself and, in some cases, imposes secularity. The secular state initiative may have sectors of civil society as a starting point, but as a general rule, there is “a mobilization and mediation of the politician so that the secular intentions become operational and empirically accomplished.

Laicity is, therefore, a notion that has a negative, restrictive quality. It can be succinctly understood as the exclusion or absence of religion from the public sphere, which implies the neutrality of the State in religious matters. This neutrality has two different meanings, and the first is: exclusion of religion from the State and from the public sphere. One can speak, then, of neutrality-exclusion. The second, on the other hand, refers to the State's impartiality with respect to religions, which results in the State's need to treat religions equally. In this case, it is about neutrality-impartiality.

In the institutional dimension, secularism or laicity is systematized through the adoption of five rules:

> 1) negative neutrality, which establishes the absence of State intervention to the free expression of religiosity and the beliefs of individuals or groups, with a view to guaranteeing the right to religious freedom;
>
> 2) positive neutrality, which is characterized by the concept of isonomy of the State towards religions, preventing it from granting any aid, subsidy or influence, directly or indirectly, in favor of the institutions or their organizations, nor to one or some of them;
>
> 3) freedom of apostasy, which determines the equal legal dignity of atheism;
>
> *4)* neutrality of civil laws, which establishes the separation between the laws that govern society as a whole and religious moral norms.[5]
>
> 5) and, still a fifth one, which is collaborative neutrality, is found in European countries: Portugal, Italy, Spain and Germany, in addition to Brazil, where it is

[5] UGARTE, Pedro. Un archipiélago de laicidades. In: UGARTE, Pedro; CAPDEVILLE, Pauline (Orgs.). Para entender y pensar la laicidad. Colección Jorge Carpizo. Vol. I. Cidade do México: Ed. UNAM, 2013, p. 31-65.

characterized by benevolence with religion and the possibility of collaborating with it and with its entities, for the common good[6].

Taking into account the dimension of individual values, the secular state is also closely related to the promotion of principles in the public sphere, such as freedom of conscience and religion, individual and collective self-determination, tolerance and equality.

Thus, the sedimentation and adherence to these values provide to secular State the status of a paradigm for a desirable model of society from a democratic point of view, in which no one is deprived of (or obliged to) believe in something and adopt a specific lifestyle.

THE EVOLUTION OF SECULAR STATE IN COMPARATIVE LAW

It must be emphasized that the secularization of the State as well as secularization of society are social processes that cannot be generalized and universalized, and must be historically and socially contextualized. The secularization process does not occur in the same way in all countries. Each country has a set of social and cultural features and circumstances that enable various forms of secularism. In this way we can speak about the French secularism, American secularism, Brazilian secularism, etc.

In Spain, after a violent secularization process that took place in the 1930s that led to the loss of the privileges that the Catholic Church had in the Spanish nation, there was a return to confessional State and religious monopoly with the 1953 Concordat, which defined Catholicism as the only true religion. Only after the fall of the Franco regime, in 1975, there was again separation between church and State, however with a collaborative neutrality, as it can be seen in article 16 of its Constitution:

> Article 16 (...) No religion shall have a state character. **The public authorities shall take into account the religious beliefs of Spanish society** and shall consequently maintain **appropriate cooperation relations with the Catholic Church and other confessions.** (emphasis added).

[6] VIEIRA, Thiago Rafael; REGINA, Jean Marques. Direito Religioso: questões práticas e teóricas. 3ª. Ed. São Paulo: Edições Vida Nova, 2020, p. 133-168.

Other examples can be taken from North America and France. In the United States, the secularization process took place almost peacefully and quickly, with the consecration of the separation between church and state in the first amendment of 1791 to the Constitution of the United States:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.[7].

In France, unlike the United States, the process was progressive, tortuous and conflicting. The secularization of the State process in France began with the French Revolution in 1789, which affirmed freedom of conscience and subsequently the freedom of worship in 1791. After almost a century of the concordat regime, which preserved the tie between the State and religion, separation finally occurred in 1905, after many struggles, tensions and debate,

In Brazil since it is a well consolidated democracy, there is a model of collaborative secularism, as established by the 1988 Constitution of the Federative Republic of Brazil.

SECULAR STATE IN THE 1988 BRAZILIAN CONSTITUTION

The Brazilian Secular State, constituted as a Democratic State of Law (article 1 of the Brazilian Constitution of 1988), based on a Constitutional State established in the name of God (Constitutional Preamble) and based on the Dignity of the Human Person, ensures religious freedom and recognizes the religious phenomenon, including by allowing religious teaching in public schools, even in a confessional way, as an act of recognition of the existence of the religious phenomenon and its transcendence, and that man, as a soul holder, does not dispense that which is spiritual, as well as the pursuit of a common goal of the State and religion: the common good.

The 1988 Constitution of Brazil consecrates religious freedom and the secular nature of the Brazilian State, which translates into neutrality regarding religions, as stipulated in article 5, VI, but in a benevolent and collaborative manner, according to the text of article 19, item I.

[7] Constituição dos Estados Unidos da América – 1787. Disponível em: http://www.direitoshumanos.usp.br/index.php/Documentos-anteriores-%C3%A0-cria%C3%A7%C3%A3o-da-Sociedade-das-Na%C3%A7%C3%B5es-at%C3%A9-1919/constituicao-dos-estados-unidos-da-america-1787.html Acesso em: 17 de abril de 2021.

The fullness of religious freedom results in a varied ecosystem of beliefs and faiths, which necessarily leads to a multiplicity of thoughts. In a secular model like the Brazilian one, which recognizes the importance of faith in the pursuit of the common good and guarantees its voice in the public space, democracy is strengthened. This is the first and logical aftermath of a wide and unrestricted religious freedom[8].

Finally, the collaborative secular State in Brazil does not adopt an institutional stance regarding the "spiritual" issues, that is, it does not confess a specific faith or creed, however it recognizes the fundamental importance of religion as being the phenomenon capable of providing answers to existential issues without which it is impossible for human beings to have full dignity. Therefore, both place themselves in their spheres or orders, the State in the physical, material dimension, and religion, in the spiritual sphere, when seeking the common good, or, as it is written in the text of article 19, I, of "public interest".

THE SECULAR STATE IN THE FEDERAL SUPREME COURT'S APPROACH

The Supreme Court's concern in clarifying the meaning and scope of the principle of secularism in the Brazilian State can be verified in several judicial decisions, highlighting its own contradiction/inconsistency in the ADPF 811 final decision, which consists of the purpose of this request. In the ADI - Direct Action of Unconstitutionality 3510, in Minister Celso de Mello's vote, he rose concepts, limitations, and historical evolution of the Secularity principle:

> [...] since the remarkable Decree 119-A, of 01/07/1890, prepared by RUY BARBOSA and DEMÉTRIO RIBEIRO, at the time members of the Provisional Government of the Republic, the Brazilian legal system establishes the rupture between the State and the Church, with the termination of the imperial model established in the 1824 Monarchical Charter/Constitution, which proclaimed Catholicism as the Brazilian state's official religion.
>
> [...]
>
> Since 1890, it is known that secularism consists an essential principle of the Brazilian State's institutional structure, representing, in this context, a crucial political decision stipulated by the Founders of the Republic, whose option - taking into account their historical scenario - had as its scope the arduous experience accrue from the Political Charter of the Brazilian Empire's Political Charter/Constitution, especially the one from the severe

[8] VIEIRA, Thiago Rafael; REGINA, Jean. Direito religioso: Orientações Práticas em Tempos de Covid-19. 2ª. Ed., São Paulo: Edições Vida Nova, 2020, p. 22.

> conflict established between the Brazilian Monarchical State and the Roman Catholic Church, the well-known Religious Question or episcope-Masonic controversy (1872-1875), which opposed the imperial throne to the Catholic altar.
>
> [...]
>
> The State' secularity, as a core principle of the Brazilian constitutional structure, which inflicts the separation of the Church and the State, not only recognizes freedom of religion for everyone (which consists in one's right to profess or not any religious belief) but also guarantees all citizens full equality in matters of belief, as well ensuring to all full freedom of conscience and worship. (STF: ADI 3510 / DF, Min. Ayres Britto, j. 29/05/2008, p. 558)

On the other hand, in the ADPF 54 / DF, Minister Carmen Lúcia's vote highlighted the disengagement that must be maintained among the religious belief and the State:

> [...] Secularism is distinguished as an essential guarantee of individual religious freedom. Since the unlawful merger between the State and any religious beliefs, when endorsed by the State, can represent a constraint, even in a psychological aspect, on those who do not profess that religion. (STF: ADPF 54/DF, Rel. Min. Marco Aurélio, j. 12/ 04/ 2012, p. 228).

In his turn, Minister Gilmar Mendes stated in an *writ* scope:

> [...] It is unacceptable that the State adopts a certain religious conception as the official or the correct one, that can benefit or grant privileges to a specific religious group at the expense of all the others citizens. What should be settled is free competition in the "market of religious ideas", an expression that, according to Jônatas Machado, would have been pointed out by Oliver Wendell Holmes and Stuart Mill (MACHADO, Jônatas. Liberdade Religiosa numa comunidade constitucional inclusiva; dos direitos da verdade aos direitos dos cidadãos. In: Boletim da Faculdade de Direito da Universidade de Coimbra, 1996, p. 176). (STF - MS: 28960 DF, Rapporteur: Min. GILMAR MENDES, Judgment Date: 11/23/2011, Publication Date: 11/28/2011).

Testifying the neutrality proposed by the secular principle, Minister Celso de Mello alleges his vote in the ADPF 54, as follows:

> The State secularity/laicity principle imposes on public authorities an approach of absolute neutrality in regards to the different religious conceptions. (STF: ADPF 54 / DF, Min. Marco Aurélio, j. 12/04/2012, p. 335).

In agreement, was Ministro Dias Toffoli's statement in the RHC 126884/RJ:

> The State is not religious, nor is it an atheist. The state is merely neutral. (STF: RHC 126884 / RJ, Rel. Min. Dias Tofolli, j. 9/27/2016, p. 17).

Finally, there are the final decisions by ministers Luiz Fux and Alexandre de Moraes in the ADI 4.439:

> 1. The relationship among the State and religions, in its historical, legal, and cultural scope, is one of the most crucial matters of the State. The comprehension of the Brazilian Carta Magna, which, while maintaining our Republican tradition of religious freedom, ensured the inviolability of religion and religious manifestation, must be applied in its dual sense: protecting the individual and the various religious groups from any state intervention or decrees; (b) ensuring the secularism of the State, predicting full freedom for the State operation in regards to the religious dogmas and principles.

Nevertheless, the result of the ADPF 811, aim of this petition, dismissed the PSD's request to forbid mayors and governors to ban, by decree, the freedom of worship, on Brazilian state:

> Decision: The Federal Supreme Court, by its majority, altered the referendum's decision into a definitive judgment and dismissed the allegation of non-compliance of a fundamental precept, under the terms of the Rapporteur's vote, prevailing over the vote of Ministers Nunes Marques and Dias Toffoli, who considered the case to be valid. Presidency of Minister Luiz Fux. Plenary, 08.04.2021 (Session held by videoconference - Resolution 672/2020 / STF).

It is remarkable that the ultimate decision of the Federal Supreme Court, in the ADPF 811, was totally detached from all the precedents mentioned above, directly threatening religious freedom, disregarding any specific religious group, which emphasizes the need of this request.

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In view of this, it is highlighted the critical role that the international specialized legal doctrine puts out to this important precept, therefore they state:

PORTUGAL: “Indeed, the religious exercise knows one of its fundamental elements in the exercise of acts of worship (*exercitium religionis*). Religious freedom implies freedom of cultural activity, and “Without full religious freedom, in all its dimensions - in harmony with different legal provisions about the relationship between religious groups and the State - there is neither plenty cultural freedom nor full political freedom.[9]

SWITZERLAND: “Religious freedom and the equivalent neutrality of the State do not mean irreligiousness or even public atheism. Public atheism would not be religious neutrality, but a creed - negative, anti-religious.[10]

UNITED STATES: Religious freedom, resulting from the separation of state and religion, as John Witte asserts, “is one of the founding principles of the American tradition of religious freedom.[11]

SPAIN: “Where the religious freedom right is denied, all other rights disappear in face of the growing shadow of the State, and the whole structure of freedoms is altered. Furthermore, when this first immunity is annulled, the State is tempted to arrogate the place of God and becomes an instrument of manipulation or oppression.[12]

BRAZIL: “Religious freedom, added to freedom of belief, are the cornerstones on which all other freedoms, essential for democracy, are based. They are the first and most important freedoms of human beings.[13]

It is noteworthy that the supreme courts of the United States, France, Switzerland, Scotland, and Chile have already decided[14] that freedom of worship cannot be prohibited. Restricted, but never prohibited. It is important to note that the Council of State of the French Republic, which carries out the constitutional control of France, in a decision of December 2020 clear stated:

> “Freedom of worship has the character of fundamental freedom. As ruled by law, this freedom is not limited to the right of any individual to express the religious convictions of their choice, respecting public order. It also includes, among its essential components, the right to participate

[9] MIRANDA, Jorge. Manual de Direito Constitucional – Tomo IV Direito Fundamentais. 2ª Ed. Coimbra: Coimbra Editora, 1993, 358.
[10] RHONHEIMER. Martin. *Cristianismo y laicidade*. Madri: Rialp, 2009, p. 110.
[11] WITTE JR, John. Religion and the American Constitutional Experiment. Second Edition, Emory University, 2005, p. 152.
[12] “Donde se niega el derecho de libertad religiosa todos los demás derechos se desvanecen ante la sombra cresciente del Estado, y todo el edifício de las libertades queda alterado. Pero más aún, anulado esse espacio de inmunidad primera, el Estado se ve tentado a usurpar el lugar de Dios y se convierte en um instrumento de manipulácion u opresión”. (RUBIO LÓPEZ, op. cit., p. 578.)
[13] VIEIRA, Thiago Rafael; REGINA, Jean Marques. O Sol que Aquece a Democracia. TGC – Coalizão pelo Evangelho, 2020, disponível em: https://coalizaopeloevangelho.org/article/o-sol-que-aquece-a-democracia/. Acessed in: Nov 12, 2020.
[14] Documents attached to this request.

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> collectively, with the same limitation, in ceremonies, in particular in places of worship. Therefore, freedom of worship must be settled with the goal of the constitutional value of health protection." (No. 446930).

INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Commission on Human Rights has also expressed concern about the recurring offense to fundamental human rights during the prevention against the coronavirus pandemic in the American continent, and on April 10, 2020, passed resolution n. 4/2020, with 85 recommendations.

A member of the IACHR, Jurist García Hernández[15], highlighted in an interview about the situation of the pandemic and respect for human rights: "*Whenever policies are designed to shield the population's right to health, these policies must be based on a broad perspective of the whole set of human rights, based on the principle that they are universal and indivisible*".

Argüeles and others versus Argentina

In the ***Argüeles et al. Versus Argentina***'s case, settled on November 20, 2014[16], the Inter-American Court of Human Rights brought, in its decision, the limit of limits' theory. Every restriction on fundamental human rights must always satisfy an imperative social need, restricting the fundamental right at hand to the least possible extent, and this restriction must be carefully aligned to the achievement of the legitimate goal. Following is an excerpt:

> 226. The second limit of any restriction is related to the aim of the regulation; in other words, the reason claimed to justify the restriction is allowed by the American Convention, foreseen in specific provisions included in certain rights (for example, the purposes of protecting public order or health, of articles 12.3, 13.2. 15, the regulation of political rights, article 23.2, among others), or in the rules that establish general legitimate purposes (for example, "the rights and freedoms of other people", or "the right demands of the common good, in a democratic society", both in article 32) (...)

[15] Avaiable in: https://brasil.elpais.com/internacional/2020-04-19/presidente-da-cidh-coronavirus-pode-ser-desculpa-para-limitar-ainda-mais-os-direitos-dos-mais-vulneraveis.html.
[16] https://www.corteidh.or.cr/docs/casos/articulos/seriec_288_esp.pdf.

> 227. It might be determined whether, even when the rule is legitimate and its goal is enabled by the Convention, it is necessary and proportional. To assess whether the regulation under assessment meets this last requirement, the Court should evaluates whether:
>
> a) satisfies a crucial social need, in other words, it seeks to satisfy a vital public interest satisfaction; b) is the one that restrains the protected right to a lower extent, and c) it is intimately adjusted to the achievement of the legitimate objective.

It is what stated the article 32, II of the ACHR: "Each person's rights are limited by the rights of others, the safeguard of all and the right demands of the common good, in a democratic society", as well as its article 29, as follows:

> No provision of this Convention shall be interpreted as:
>
> a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
>
> b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
>
> c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
>
> d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

As widely expressed in this petition, the Brazilian Supreme Court's decision that allowed state and municipal decrees to prohibit religious and worship freedom in Brazil according to local demands, failed in providing the required considerations as established in the ***Argüeles et al. Case against Argentina*****, and limite itself to allowing the ban. In other words, as much as there is a social imperative of public interest satisfaction in face of the covid-19 pandemic, there should be a consideration in such a manner to ensure that restrictions would not be disproportionate or unreasonable. That was not done, the ban was merely allowed, which reveals the utmost feasible constraint.**

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Indeed, the recent Brazilian Supreme Court's decision prohibiting the exercise of worship during the pandemic did not take into account the universality and indivisibility of human rights and the importance of religious freedom.

REQUEST

In light of this, it is clearly noted that, in this specific scenario, there is undue state intervention in the religious freedom of Brazilian citizens, following the decision of the Federal Supreme Court in the judgment of ADPF 811.

Public authorities should not interfere with the functioning of religious activities as this would be a violation of the principles of human dignity, religious freedom, and secular State.

Ultimately, the BRAZILIAN INSTITUTE OF LAW AND RELIGION (IBDR), as well as the Representative leader of the Brazilian Government, in the Lower House of Congress, Mr. Marco Antônio Feliciano, and the Mixed Parliamentary Front of the National Congress in Defense of Human Rights and Social Justice, requests Your Excellencies for a hearing before the Thematic Committee on freedom of expression, and in particular on religious freedom, which will aim to:

a) To present more detailed information about the current situation of religious and religious freedom in Brazil;

b) Discuss the constraint's limits or restrictions on individual and collective freedoms, including religious freedom;

c) Discuss the applicability and the limit of the restrictions' applications on the freedom of expression of religion by Brazilian authorities during the COVID-19 pandemic, in accordance with the provisions of art. 12, item 3, of the American Convention on Human Rights, with the aim of avoiding the absolute restriction of this fundamental human right;

d) Request actions by the Inter-American Commission on Human Rights on the violation of the right to religious freedom in Brazil, in order to investigate, adopt specific preventive measures, pronounce and issue recommendations on the case.

In these terms, it requests approval.

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Porto Alegre, April 20, 2021.

THIAGO RAFAEL VIEIRA

Assinado de forma digital por THIAGO RAFAEL VIEIRA
Dados: 2021.04.20 16:23:18 -03'00'

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