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**Smart Cities, Smart Rights?
Some Reflections on Religious Pluralism,
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Smart Cities, Smart Rights?

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TITLE *Città intelligenti, diritti intelligenti? Alcune riflessioni sul pluralismo religioso, le tecnologie urbane e le nuove frontiere della tutela giuridica in Europa*

ABSTRACT Il presente contributo esamina il rapporto tra governance delle smart cities e tutela dei diritti fondamentali, con particolare riferimento alla libertà religiosa nel contesto europeo. A partire dall'interrogativo "Smart cities, smart rights?", l'analisi si concentra su come le infrastrutture digitali, i processi decisionali algoritmici, la pianificazione urbana basata sui dati e le tecnologie di sorveglianza incidano sullo spazio pubblico entro cui il pluralismo religioso si manifesta e viene regolato. Lo studio prende in considerazione gli ordinamenti nazionali, il diritto dell'Unione europea e la Convenzione europea dei diritti dell'uomo, con specifica attenzione alla protezione dei dati personali, al principio di non discriminazione e alle garanzie costituzionali della libertà religiosa. Si sostiene che le smart cities richiedano una progettazione fondata sui diritti ("rights-based design"), capace di integrare la libertà religiosa nella governance urbana digitale, in coerenza con il pluralismo costituzionale e la dignità della persona.

This paper examines the relationship between smart city governance and the protection of fundamental rights, focusing on freedom of religion in the European context. Starting from the question "Smart cities, smart rights?", it analyses how digital infrastructures, algorithmic decision-making, data-driven urban planning and surveillance technologies affect the public space in which religious pluralism is expressed and regulated. The study considers national legal systems, EU law and the European Convention on Human Rights, with particular attention to data protection, non-discrimination and constitutional guarantees of religious freedom. It argues that smart cities require a rights-based design capable of integrating religious freedom into digital urban governance, consistently with constitutional pluralism and human dignity.

KEYWORDS Smart cities; libertà religiosa; governance algoritmica; digital rights; urban surveillance

Smart cities; religious freedom; algorithmic governance; diritti digitali; sorveglianza urbana

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This paper revisits, with further additions and elaborations, the reflections presented at the Smart City Italian Conference III Edition, held on 14 April 2026 at the Department of Economics of the University of Genoa.



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1. Introduction: The Digital Transformation of Urban Space as a Legal Problem

The progressive establishment of the smart city paradigm imposes on the jurists a reconsideration that affects not only regulatory instruments but also the very categories through which law interprets the relationship between the individual, public authority, and space. Historically, the modern city was the privileged site for the emergence and consolidation of fundamental rights - consider, for example, the role of urban realities in the development of civil, political, and social liberties. However, the contemporary city appears to be a profoundly transformed space, in which the physical and digital dimensions are increasingly integrated, to the point of becoming largely indistinguishable¹.

This transformation results from a pervasive digitalization process manifested through the widespread adoption of technologies such as urban sensors, data collection and analysis systems, digital platforms, and algorithmic service management models. In this context, every activity carried out in urban space – from simple movement to the use of public services, from participation in collective events to religious practices – is susceptible to being recorded, translated into data, and subsequently processed².

This dynamic, often described with the term “datafication,” not only produces greater knowledge of urban reality but also helps redefine it. Indeed, data is not mere instruments of representation but elements that guide decisions, determine priorities, and influence resource allocation. In other words, the digital city is not only a “more informed” city but one in which knowledge becomes immediately operative and normative³.

It is precisely at this juncture that the legal relevance of the phenomenon emerges. Technologies that structure smart cities are not neutral: they incorporate criteria of selection, classification, and evaluation that reflect specific value choices. When, for example, an

¹ See J. TASIOLAS, *The Moral Reality of Human Rights*, in T. Pogge (ed.), *Freedom from Poverty as a Human Right*, 2007, 75-102; see R. KITCHIN, *Big Data, new epistemologies and paradigm shifts*, in *Big Data & Society*, 1/2014, 1-12; Id., *The real-time city? Big data and smart urbanism*, in *GeoJournal*, 79/2014, pp. 1-14.

² See R. KITCHIN, *Big Data, new epistemologies and paradigm shifts*, in *Big Data & Society*, 1/2014, 1-12; Id., *The real-time city? Big data and smart urbanism*, in *GeoJournal*, 79/2014, pp. 1-14.

² *Ibidem*.

³ See M. BATTY et al., *Smart cities of the future*, in *The European Physical Journal Special Topics*, 214/2012, 481-518; R. KITCHIN, *The real-time city?*, cit., 10-14. See R. G. HOLLANDS, *Critical interventions into the corporate smart city*, in *Cambridge Journal of Regions, Economy and Society*, 8/2015, 61-77; A. VANOLO, *Smartmentality: The Smart City as Disciplinary Strategy*, in *Urban Studies*, 51/2014, 883-898.

algorithmic system determines which urban areas require greater control or which services should be enhanced, it makes a choice that, while formally technical, produces effects like those of an administrative decision⁴.

Thus, we are witnessing a form of “technological normativity,” where rules are expressed not only through traditional legal sources but also through digital infrastructures and computer code. This evolution challenges some of the fundamental categories of public law, beginning with the distinction between act and fact, between decision and execution, and between discretionary power and technical automatism. In this scenario, the jurist’s role cannot be limited to verifying the formal conformity of new technologies with existing norms but must interrogate their capacity to affect, in practice, the conditions under which fundamental rights are exercised. The central issue thus becomes that of effectiveness: it is not enough for a right to be formally recognized if material and technological conditions make its exercise difficult or limited. Within this framework, religious freedom assumes paradigmatic importance. Unlike other rights, it presents a particularly complex structure that interweaves individual and collective dimensions, inner conviction and external manifestation. Religion is not merely a private matter, but a social practice expressed through visible behaviors, symbols, rituals, and forms of aggregation⁵. This public dimension of religion implies a necessary interaction with urban space. Places of worship, processions, and the use of religious symbols in public spaces are all manifestations requiring access, recognition, and regulation. In other words, religious freedom is intrinsically linked to the configuration of urban space and the ways in which it is organized and governed⁶.

The introduction of digital technologies into this space deeply modifies this relationship. On the one hand, the increased capacity for data collection and analysis can enable more efficient and inclusive management of religious needs, for example through improved space planning or fairer resource distribution. On the other hand, however, it introduces new risks related to the possibility of monitoring, classifying, and ultimately controlling religious practices⁷. What makes this transformation particularly complex is its often-invisible nature. Unlike traditional restrictions, which manifest through explicit normative or administrative acts, the interferences arising from urban technologies may operate indirectly, through functional logics that are neither immediately perceptible nor easily challengeable⁸.

⁴ See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms: Mapping the debate*, in *Big Data & Society*, 3/2016, 1-21; COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1 on the human rights impacts of algorithmic systems*, 8 April 2020, Appendix, paras. 1-13.

⁵ See J. TASIOLAS, *The Moral Reality of Human Rights*, cit., 75-102.

⁶ See *Convention for the Protection of Human Rights and Fundamental Freedoms*, Art. 9. See ECtHR, *Kokkinakis v. Greece*, App. No. 14307/88, 25 May 1993, paras. 31, 36, 48-49.

⁷ See R. KITCHIN, *Big Data*, cit., 1-12.

⁸ See M. BATTY et al., *Smart cities of the future*, cit., 481-518; R. KITCHIN, *The real-time city?*, cit., 12-14. See R. G. HOLLANDS, *Critical interventions*, cit., 61-77; A. VANOLO, “*Smartmentality: The Smart City as Disciplinary Strategy*”, *Urban Studies*, 51(5), 2014, pp. 883-898.



This gives rise to a significant theoretical challenge: law must confront forms of power that no longer express themselves solely through formalized decisions but through widespread, often opaque technical processes. In this context, the protection of fundamental rights – and in particular religious freedom – requires a reassessment of legal instruments that consider the technological dimension without abandoning the fundamental principles of the rule of law⁹. The issue also fits within the broader debate on the transformation of law-and-religion studies in the digital age. The digital transition does not merely provide new tools for the exercise or limitation of religious freedom, but reshapes the institutional, spatial, and procedural conditions under which religious identities and communities interact with public power. In sum, the digital transformation of urban space does not merely represent a change in context but a paradigm shift that requires rethinking how rights are conceived, exercised, and protected. It is on this ground that the following reflection is situated, aimed at investigating the new frontiers of legal protection for religious freedom in European smart cities¹⁰.

2. Religious Freedom and Public Space in European Jurisprudence

Religious freedom, within the system of the European Convention on Human Rights (ECHR), is one of the most complex rights and, at the same time, one of the most revealing of the tensions inherent in pluralistic societies. Its regulation, entrusted to Article 9 ECHR, lies at the intersection of individual and collective dimensions, between freedom of conscience and public space regulation, making it particularly sensitive to changes in social and institutional contexts. As is well known, the jurisprudence of the European Court of Human Rights has progressively clarified that religious freedom comprises two dimensions: on the one hand, the *forum internum*, which concerns the freedom to believe, not believe, or change religious conviction and enjoys absolute protection; on the other hand, the *forum externum*, which encompasses the manifestation of religion through worship, teaching, practices, and observance of rites, and can be subject to limitations. It is precisely in relation to this second dimension that the most problematic questions emerge. The manifestation of religion inevitably takes place in social space and often in public space, coming into contact – and sometimes into conflict – with other rights and interests such as security, public order, the protection of others' rights, and, in some legal systems, the principle of secularism¹¹.

⁹ See J. TASIOLAS, *The Moral Reality of Human Rights*, cit., 75-102.

¹⁰ On the interaction between law, religion and digital transformation, see P. ANNICCHINO, *L'interazione tra diritto e religione nella transizione digitale*, Torino, Giappichelli, 2025.

¹¹ See *Convention for the Protection of Human Rights and Fundamental Freedoms*, Art. 9. See ECtHR, *Kokkinakis v. Greece*, [cit.](#)

The [case of Kokkinakis v. Greece](#) represents the starting point of this jurisprudential development. In that case, the Court clearly affirmed that religious freedom is one of the “foundations of a democratic society,” emphasizing that religious pluralism is an essential element of democracy itself. However, even in this judgment a tension destined to characterize subsequent jurisprudence emerges on the one hand, the need to ensure effective protection of religious freedom; on the other, the recognition of the legitimacy of restrictions aimed at preventing abuse or protecting competing interests¹². This balance has been progressively constructed through recourse to the principle of proportionality and, above all, to the margin of appreciation. The latter constitutes one of the most characteristic tools of the Convention system and reflects the recognition that there is no uniform model of the relationship between state and religion in Europe. The Court therefore recognizes a certain discretion in defining how to balance religious freedom with other constitutional values. This approach is particularly evident in [Leyla Şahin v. Turkey](#), in which the Court was asked to assess the compatibility with Article 9 ECHR of the ban on wearing the Islamic headscarf at Turkish universities. There, the Court gave decisive weight to the principle of secularism, considered a fundamental element of the Turkish constitutional order, and recognized the state a wide margin of appreciation in regulating the presence of religious symbols in institutional public space¹³. This decision has provoked extensive doctrinal debate. On the one hand, it has been interpreted as legitimizing “strong” models of secularism, in which the neutrality of public space results in a limitation of religious visibility. On the other hand, it has been criticized for risking excessive compression of individual freedom, especially in the absence of a concrete threat to public order. This tension becomes even more pronounced in [S.A.S. v. France](#), which represents one of the most controversial points in the Court’s jurisprudence. In that case, the ban on concealing one’s face in public space was justified not based on traditional security or public order needs but on a new and problematic concept: that of “living together”¹⁴. The introduction of this criterion marked a significant shift. The Court acknowledged that the state may limit religious freedom to ensure the conditions for social interaction considered essential for collective life. However, this notion has been criticized for its indeterminacy and for the risk of grounding restrictions on majority values that are not always explicitly normative.

Doctrinal scholarship has noted that this jurisprudence reflects a progressive “contextualization” of religious freedom, increasingly tied to the specificities of individual legal systems. This results in tension between the universalism of fundamental rights and the plurality of national models, leading to protection that is not always uniform. An additional element of complexity is that the Court tends to grant a broader margin of appreciation

¹² See Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 9. See ECtHR, [Kokkinakis v. Greece](#), [cit.](#)

¹³ See ECtHR, [Leyla Şahin v. Turkey](#), App. No. 44774/98, 10 November 2005, paras. 104-116, 121

¹⁴ See ECtHR, [S.A.S. v. France](#), App. No. 43835/11, 1 July 2014, paras. 121-122, 139-158.



precisely in cases involving public space and religious symbols. This is particularly relevant in the context of smart cities, in which public space assumes new configurations and new regulatory modalities. Indeed, if in the “traditional” dimension religious freedom is already subject to complex and variable balancing, the introduction of urban technologies risks further affecting these balances. Decisions regarding the use of public space – and therefore also the manifestation of religion – may be influenced by technical criteria, efficiency logic, or automated systems, partially removing them from traditional judicial control¹⁵.

In this sense, the jurisprudence of the European Court offers an essential frame of reference but is not yet fully adequate to address the challenges posed by the digitalization of urban space. Categories such as “limitation,” “interference,” and “proportionality” must be reinterpreted considering forms of intervention that no longer manifest solely through explicit acts but through widespread and often opaque processes. This gives rise to the need for an evolution of jurisprudence itself, capable of grasping the new ways in which rights can be affected. It is necessary to explore how the principle of proportionality can be applied in contexts in which decisions result from complex and not immediately transparent systems¹⁶.

Although this case-law does not directly concern smart-city technologies, it provides the essential parameters for assessing technologically mediated restrictions on religious manifestation in public space: legality, legitimate aim, necessity, proportionality, and effective review. In conclusion, religious freedom in European public space appears as a right in balance, constantly exposed to tensions between pluralism and integration, between individual autonomy and collective regulation. Smart cities, by introducing new forms of technological mediation, only amplify these tensions, making an in-depth reflection on the role of law in effectively protecting this fundamental right even more urgent.

3. The Algorithmic City: Public Decision, Technical Rationality, and Opacity

One of the most disruptive elements of the smart city paradigm is the progressive integration of administrative action with algorithmic systems, which entails a transformation not only of instruments but of the very rationality guiding public decision-making. In the traditional administrative model, the decision appears as the outcome of a formalized procedure, based on motivated acts susceptible to judicial review. In the algorithmic city, it tends to emerge as the result of data processing processes that are often automated and

¹⁵ See J. BURRELL, *How the machine ‘thinks’*, cit., 1-12. See COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1 on the human rights impacts of algorithmic systems*, 8 April 2020, Appendix, paras. 1-13.

¹⁶ See J. BURRELL, *How the machine ‘thinks’: Understanding opacity in machine learning algorithms*, in *Big Data & Society*, 3/2016, 1-12; B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21. See COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1 on the human rights impacts of algorithmic systems*, 8 April 2020, Appendix, paras. 1-13.

not immediately intelligible. This transition marks a shift from legal decision to computational decision, in which the evaluative moment is no longer entirely attributable to an identifiable human subject but is distributed among statistical models, predictive systems, and computing architectures. The literature has effectively described this phenomenon in terms of algorithmic governance, emphasizing how it entails a redefinition of the relationship between administration, citizens, and public authority¹⁷.

In this context, the algorithm is not simply a neutral instrument but an implicit regulatory device. It selects data, establishes correlations, identifies priorities, and ultimately guides decisions. This selective function is particularly relevant because it implies a form of power exercised not through explicit commands but through the structuring of decision-making possibilities¹⁸. A first critical element concerns the nature of the data used. Algorithmic systems operate based on historical data that inevitably reflect the social, economic, and cultural conditions of the context in which they were collected. This means that any inequalities or asymmetries present in social reality tend to be incorporated into decision-making models, with the risk of being reproduced or even amplified¹⁹.

In the urban context, this phenomenon is particularly relevant. Decisions related to service distribution, territorial planning, or public space management can be influenced by predictive models that consider demographic, behavioral, and territorial variables. However, such variables may be indirectly correlated with religious factors, especially in contexts characterized by strong territorial concentration of religious communities. In this sense, the algorithmic city introduces a form of indirect regulation of religious freedom. It is not a matter of explicit restrictions but of effects resulting from the logic of the systems used. For example, urban space planning might disadvantage areas with high concentrations of religious minorities or make access to resources necessary for the exercise of worship more difficult²⁰.

A second problematic element concerns the opacity of decision-making processes. Algorithms, especially those based on machine learning techniques, operate through complex models in which the link between input and output is not always constructible in a transparent manner. In this regard, the recent CJEU case-law on automated decision-making under the GDPR is particularly relevant by analogy. In [SCHUFA Holding and Dun & Bradstreet Austria](#), the Court strengthened the link between automated processing, transparency, and the effective exercise of individual rights, thereby offering useful criteria for assessing algorithmic decisions capable of affecting access to urban services and public spaces. This

¹⁷ See R. KITCHIN, *Big Data*, cit., cit., 1-12; Id., *The real-time city?*, cit., 1-14. See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21; J. BURRELL, *How the machine 'thinks'*, cit., 1-12.

¹⁸ For a broader reconstruction of the impact of digital transition on law-and-religion issues, see also P. ANNICCHINO, *L'interazione tra diritto e religione nella transizione digitale*, cit.

¹⁹ See R. KITCHIN, *Big Data*, cit., cit., 1-12; Id., *The real-time city?*, cit., 1-14. See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21; J. BURRELL, *How the machine 'thinks'*, cit., 1-12.

²⁰ *Ibidem*.



phenomenon, often described as the black box, poses a significant challenge for law. The principle of transparency, which is one of the pillars of the rule of law, presupposes the possibility of understanding the reasons for a decision. Similarly, the principle of motivation requires that the administration explain the criteria used. However, when the decision is the result of an algorithmic process, such requirements are difficult to satisfy in traditional terms²¹.

This opacity directly affects the possibility of effective judicial review. Administrative judicial control is based, in fact, on reconstructing the logical-legal pathway that led to the decision. If such a pathway is replaced by a computational model not fully accessible, control risks become merely formal. In the case of religious freedom, this assumes relevance. Consider decisions regarding the authorization of places of worship, the regulation of the use of public spaces, or the management of religious events. If such decisions are influenced by algorithmic systems, it becomes essential to ensure that the criteria used are compatible with principles of non-discrimination and proportionality²².

Another critical profile concerns responsibility. In the traditional model, the administrative decision is attributable to a subject – the administration – who is legally accountable. In the algorithmic city, by contrast, the decision-making chain fragments: developers, technology providers, administrations, and automated systems intervene. This plurality of actors makes it more complex to identify the responsible subject in case of rights violations²³.

The literature has underlined how such fragmentation risks generating a sort of “diffused irresponsibility,” in which no actor is fully called upon to answer for the effects produced. This is particularly problematic when fundamental rights are at stake, as these require effective and not merely formal guarantees²⁴.

In this scenario, the need emerges to rethink legal instruments of control and protection. The principle of transparency must be extended to algorithmic systems through forms of accountability that make it possible to understand, at least in part, how models operate. At the same time, it is necessary to strengthen procedural guarantees, ensuring that citizens can challenge automated decisions that impact their rights. Finally, the algorithmic city raises a more general question concerning the relationship between law and technology. If public decision-making is increasingly mediated by technological systems, law cannot limit itself to intervening *ex post* but must be able to impact *ex ante* by guiding the very design of

²¹ See CJEU, [SCHUFA Holding \(Scoring\)](#), Case C-634/21, judgment of 7 December 2023; CJEU, [Dun & Bradstreet Austria](#), Case C-203/22, judgment of 27 February 2025; B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21.

²² See J. BURRELL, *How the machine ‘thinks’*, cit., 1-12. See COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1 on the human rights impacts of algorithmic systems*, 8 April 2020, Appendix, paras. 1-13.

²³ *Ibidem*.

²⁴ See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21.

technologies. This implies a dialogue between jurists, technologists, and administrators aimed at integrating fundamental rights principles into the structure of systems used²⁵.

In sum, the algorithmic city does not represent merely the evolution of administrative instruments but a transformation of the decision-making paradigm. It requires in-depth reflection on how rights – and in particular religious freedom – can be protected in a context where power is exercised increasingly through technical, widespread, and opaque processes. Recent CJEU case-law on automated decision-making confirms the centrality of transparency and contestability where algorithmic processes significantly affect individuals. Although developed in the field of data protection and scoring systems, these principles are relevant by analogy for smart-city governance, especially where automated tools influence access to public spaces, services, or administrative opportunities connected with the exercise of religious freedom.

4. Urban Surveillance and Religious Freedom: Between Security, Visibility, and the Deterrent Effect

The expansion of surveillance systems represents one of the most visible and at the same time most controversial manifestations of the digital transformation of contemporary cities. Indeed, if the collection and analysis of data constitute the operational foundation of smart cities, it is precisely through monitoring technologies that such collection occurs in a comprehensive and continuous manner. High-definition cameras, facial recognition systems, environmental sensors, and behavioral analytics platforms contribute to creating a “transparent” urban space, in which individual and collective activities become progressively traceable. This process, often justified in the name of security and efficiency, fundamentally reshapes the relationship between individuals and public space. From a legal perspective, the issue cannot be reduced to a simplistic opposition between security and freedom. Rather, it requires examining how surveillance concretely affects the exercise of fundamental rights, particularly religious freedom, which—as has been noted—is largely expressed through public and collective practices²⁶.

The jurisprudence of the European Court of Human Rights (ECtHR), while not yet systematically addressing surveillance in smart cities, has provided some fundamental guiding principles. In [*Big Brother Watch v. United Kingdom*](#), the Court examined the

²⁵ *Ibidem*.

²⁶ See L. EDWARDS, *Privacy, Security and Data Protection in Smart Cities*, in *European Data Protection Law Review*, 2/2016, 28-58. See J. W. PENNEY, *Chilling Effects: Online Surveillance and Wikipedia Use*, in *Berkeley Technology Law Journal*, 31/2016, 117-182; E. STOYCHEFF, *Under Surveillance: Examining Facebook’s Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, in *Journalism & Mass Communication Quarterly*, 93/2016, 296-311.

compatibility of mass surveillance systems with the Convention, emphasizing that due to their breadth and intrusiveness, such systems require particularly stringent safeguards. The Court highlighted that the mere existence of mass data collection tools is sufficient to affect the rights guaranteed by the Convention, even in the absence of actual use of the data. This point is especially significant, as it introduces a conception of rights protection that accounts not only for current interferences but also potential ones²⁷.

Applying this principle to religious freedom, it becomes clear that urban surveillance can affect individuals not only through direct restrictions but also through indirect effects, including the so-called chilling effect. The awareness of being observed, recorded, and potentially analyzed can influence behavior, leading individuals to limit the public expression of their religious beliefs. This reasoning allows the notion of interference to be read in functional rather than merely formal terms: surveillance may affect religious freedom even where no explicit prohibition of worship or religious manifestation exists, because it can alter the practical conditions under which individuals and communities decide whether to appear, gather, or participate in religious activities. This phenomenon is particularly relevant for religious minorities. In contexts marked by social tensions or negative stereotypes, surveillance may be perceived as a form of targeted control, even when formally neutral. This can result in reduced participation in collective practices, avoidance of public demonstrations, or, more generally, a compression of the external dimension of religious freedom²⁸.

From a legal standpoint, the central issue concerns the qualification of these effects. Traditionally, the notion of “interference” under Article 9 ECHR referred to explicit measures, such as formal prohibitions or restrictions. However, technological developments require questioning whether this notion can be extended to indirect forms of interference arising from the surveillance context²⁹. In this perspective, religious freedom cannot be protected solely against explicit normative or administrative interventions but must also be safeguarded against environmental conditions that make its exercise more difficult. Widespread surveillance, in fact, alters the quality of public space, transforming it from a place of free expression to a potentially controlled environment³⁰.

Another critical aspect concerns profiling. Even when surveillance systems are not designed to directly identify religious affiliation, they can still collect data that, when combined, allows inferences regarding such affiliation. For example, the frequency of access to specific locations, participation in events, or adherence to specific practices can be used

²⁷ See ECtHR, [Big Brother Watch and Others v. United Kingdom](#), App. Nos. 58170/13, 62322/14 and 24960/15, 25 May 2021, paras. 332-364, 387-425.

²⁸ See J. W. PENNEY, *Chilling Effects*, cit., 117-182.

²⁹ See Regulation (EU) 2016/679, Arts. 9, 22 and 35. See L. EDWARDS, *Privacy, Security*, cit., 28-58.

³⁰ See Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 9. See ECtHR, [Metropolitan Church of Bessarabia and Others v. Moldova](#), App. No. 45701/99, 13 December 2001, paras. 105, 117-130.

to construct behavioral profiles. This risk is directly connected to data protection law, which in the European context provides enhanced protection for data relating to religious beliefs. However, the challenge lies in the fact that such data can emerge not only from explicit declarations but also from indirect analyses, making their control more complex³¹.

Moreover, urban surveillance raises questions regarding the principle of proportionality. As already emphasized by ECtHR jurisprudence, any interference with fundamental rights must not only be prescribed by law and pursue a legitimate aim but also be necessary and proportionate. In the case of surveillance technologies, this entails careful assessment of the balance between security benefits and freedom costs. This assessment becomes particularly complex in smart cities, where surveillance systems are often integrated into broader infrastructures and operate continuously. The distinction between targeted and generalized surveillance tends to blur, making it more difficult to apply traditional proportionality criteria. In this context, procedural safeguards become increasingly relevant. The protection of religious freedom – as with other fundamental rights – cannot rely solely on substantive limits, but also requires mechanisms for control, transparency, and accountability. This entails, for instance, the establishment of independent oversight systems, access to information, and effective judicial remedies³².

Finally, urban surveillance raises a broader question concerning the transformation of public space. In European legal tradition, public space is conceived as a place of freedom, where individuals can express their identities, including religious ones. The spread of monitoring technologies risks altering this function, introducing a dimension of control that affects spontaneity and the plurality of social expressions. In conclusion, urban surveillance is not merely a security tool but a structural factor affecting the conditions for exercising fundamental rights. In the case of religious freedom, it raises particularly relevant issues, requiring an evolution of legal categories and the strengthening of safeguards to ensure that the pursuit of security does not result in the indirect compression of religious pluralism³³.

5. Religious Pluralism, Inclusion, and Fundamental Rights in Smart Cities

Religious pluralism today represents one of the most significant challenges for smart cities, not only on the socio-cultural level but especially on the legal one. Smart cities are not merely technologically advanced environments but spaces where digital management of

³¹ See P. CARDULLO, R. KITCHIN, *Being a citizen in the smart city: Up and down the scaffold of smart citizen participation in Dublin, Ireland*, in *GeoJournal*, 84/2019, 1-13; P. CARDULLO, R. KITCHIN, *Smart urbanism and smart citizenship*, in *Environment and Planning C: Politics and Space*, 37/ 2019, 813-830. See UN-Habitat, *People-Centered Smart Cities*, official programme page, 2020 (online source without page numbering).

³² See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21; J. BURRELL, *How the machine 'thinks'*, cit., 1-12. See Regulation (EU) 2016/679, Arts. 9, 22 and 35.

³³ See L. EDWARDS, *Privacy, Security*, cit., 28-58.



infrastructure and public services intersects with the fundamental right to freedom of conscience and religion. In this perspective, protecting religious pluralism cannot be understood solely as a guarantee of passive tolerance but as a structural principle requiring inclusive design of urban spaces and the technologies governing them. Doctrinally, religious pluralism is now interpreted as a principle mediating between fundamental rights and collective interests. Authors such as K. Motta and J. Habermas emphasize that recognition of religious differences is not only a matter of individual freedom but an essential condition for democratic legitimacy. In other words, pluralism is not merely a social fact but a normative constraint: institutions and urban infrastructures must be designed to ensure that all religious communities can exercise their practices without discrimination³⁴.

The European perspective offers a rich comparative framework. Countries such as Germany and the Netherlands, traditionally sensitive to regulating religious pluralism, have developed models combining freedom of worship, protection of association rights, and public space management through transparency and participation rules. In Germany, for example, local administrations must assess the impact of urban policies on religious communities, particularly regarding places of worship, religious schools, or collective activities. This approach has been analyzed doctrinally as an example of “inclusive planning,” aiming to integrate religious pluralism into urban planning. The adoption of urban technologies introduces new tools but also new complexities. Digital systems can help map the needs of different communities, anticipate participation flows in religious events, or facilitate access to worship spaces. However, these same tools can produce discriminatory effects if designed without inclusive criteria. Recent scholarship on algorithmic bias highlights how data collection systems can reflect historical prejudices, marginalizing some religious communities or privileging others, even unintentionally³⁵.

From a jurisprudential perspective, the European Court of Human Rights has repeatedly addressed cases where the management of public space interfered with religious freedom. Beyond the previously cited cases (*Leyla Şahin and S.A.S. v. France*), the Metropolitan Church of *Bessarabia v. Moldova* judgment is notable, where the Court recognized that the failure to register a religious association could harm not only the right to worship but also full participation in social and civic life. This principle is particularly relevant for smart cities: technology, if not regulated inclusively, risks generating effects analogous to formal denial of rights³⁶.

³⁴ See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21; J. BURRELL, *How the machine ‘thinks’*, cit., 1-12. See Regulation (EU) 2016/679, Arts. 9, 22 and 35.

³⁵ See J. Martínez-Ariño, *Governing Religious Diversity in Cities*, in <https://www.rug.nl/rcs/news/archive/2020/dr-julia-martinez-arino-publiceert-boek?lang=en>.

³⁶ See ECtHR, *Leyla Sahin v. Turkey*, App. No. 44774/98, 10 November 2005, paras. 104-116, 121. See ECtHR, *S.A.S. v. France*, App. No. 43835/11, 1 July 2014, paras. 121-122, 139-158. The relevance of *Metropolitan Church of Bessarabia* lies precisely in showing that obstacles to recognition, organization, and participation may

A key aspect concerns managing conflicts between different religious communities in urban space. The digital city, through sensors, data, and predictive algorithms, can facilitate organization and coexistence, for example by regulating the use of shared spaces for different religious celebrations. However, if algorithmic logics are not designed with attention to neutrality and transparency, indirect discrimination may arise, privileging majority religions or more represented urban areas at the expense of less visible minorities. This underscores the need to introduce technology governance tools oriented toward inclusion. Emerging scholarship and practice agree on the necessity of a design for all approaches, integrating fundamental rights into urban system design. This means that algorithms, platforms, and applications cannot be considered neutral tools but must be assessed and controlled regarding their impact on religious rights and pluralism³⁷.

Another dimension concerns citizen participation in the design and management of the digital city. For religious pluralism to be effective, it requires not only non-interference but also the ability to contribute to the definition of urban and technological rules. Smart cities, through participatory digital governance tools, can enable consultations, reporting of discrimination, and system adjustments. This approach aligns with deliberative democracy principles and the European legal perspective of effective participation in processes affecting fundamental rights³⁸.

Finally, religious pluralism in smart cities raises issues of legal responsibility. Who is accountable if an algorithm indirectly penalizes a religious community? How can effective remedies be ensured for those experiencing technological discrimination? Comparative scholarship suggests a multi-level model: administrative responsibility, system transparency, judicial control, and independent monitoring. In this framework, the smart city is not merely a technical context but a laboratory of rights, where religious pluralism becomes a structural criterion for the effectiveness and legitimacy of urban policies³⁹.

In summary, religious pluralism in smart cities is not an ancillary issue but central to constructing legally inclusive urban spaces. Technology offers unprecedented tools to reconcile diverse needs but imposes on the law a more sophisticated mediation and safeguarding function: protecting religious freedom requires intervention both in the physical design of space and in algorithmic functioning, ensuring that digital innovation does

indirectly impair the collective dimension of religious freedom. In the smart-city context, comparable effects may arise not from refusal of legal registration, but from technologically mediated exclusion from urban spaces, services, or participatory procedures.

³⁷ See J. BURRELL, *How the machine 'thinks'*, cit., 1-12; B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21. See COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1 on the human rights impacts of algorithmic systems*, 8 April 2020, Appendix, paras. 1-13.

³⁸ See P. CARDULLO, R. KITCHIN, *Being a citizen*, cit., 1-13; P. Cardullo, R. Kitchin, *Smart urbanism*, cit., 813-830. See UN-Habitat, *People-Centered Smart Cities*, official programme page, 2020 (online source without page numbering).

³⁹ See P. CARDULLO, R. KITCHIN, *Being a citizen*, cit., 1-13.



not produce inequalities or discriminatory effects and that pluralism remains an operational, not merely theoretical, principle.

6. New Frontiers of Legal Protection: Perspectives and Tools in Smart Cities

The evolution of cities toward intelligent models involves a complex redefinition of the ways fundamental rights, and in particular religious freedom, are protected. The increasing pervasiveness of urban technologies-predictive algorithms, surveillance systems, digital management of public spaces-presents challenges that are not fully addressed by traditional law or established jurisprudence. This creates a need to develop legal and institutional tools capable of addressing the complexity of interactions between technology, urban space, and religious pluralism⁴⁰.

First, the urgency of integrating the protection of religious rights into urban and technological design processes is clear. Recent scholarship refers to rights by design, a concept analogous to privacy by design developed in the context of data protection⁴¹. According to this perspective, the protection of fundamental rights cannot be guaranteed solely ex post, through judicial appeals or corrective legislation, but must be embedded from the outset in the design of digital platforms and urban infrastructures. This requires the definition of technical criteria, guidelines, and standards that ensure algorithms and administrative procedures comply with principles of non-discrimination, proportionality, and transparency⁴².

From a jurisprudential standpoint, the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have already outlined principles that can be adapted to this context. Jurisprudence on the principle of proportionality provides an essential reference point: any limitation on religious freedom, even indirect or algorithmic, must be justified by a legitimate aim, necessary to achieve the intended objective, and proportionate in effect. In this sense, the rulings [S.A.S. v. France](#) and [Leyla Şahin v. Turkey](#) indicate that the Court recognizes restrictions on religious expression only if such restrictions respect a rigorous balance between public interests and individual rights⁴³.

⁴⁰ See B. D. MITTELSTADT, P. ALLO, M. TADDEO, S. WACHTER, L. FLORIDI, *The ethics of algorithms*, cit., 1-21; J. BURRELL, *How the machine 'thinks'*, cit., 1-12. See High-Level Expert Group on AI, *Ethics Guidelines for Trustworthy AI*, 2019, pp. 14-20, 24-31.

⁴¹ On this topic see P. ANNICCHINO, *L'interazione tra diritto e religione nella transizione digitale*, cit.

⁴² M. HILDEBRANDT, *Law for Computer Scientists and Other Folk*, Oxford, Oxford University Press, 2020; COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems*, 8 April 2020; UN-Habitat, *People-Centred Smart Cities*, official programme page, 2020.

⁴³ See ECtHR, Grand Chamber, [Leyla Şahin v. Turkey](#), no. 44774/98, 10 November 2005; ECtHR, Grand Chamber, [S.A.S. v. France](#), no. 43835/11, 1 July 2014; ECtHR, *Guide on Article 9 of the European Convention on Human Rights. Freedom of thought, conscience and religion*, updated 5 March 2026.

A second area concerns transparency and accountability of digital systems. International scholarship emphasizes that algorithmic opacity constitutes one of the main threats to religious freedom in smart cities. Predictive systems and public space management platforms, if not subject to clear and auditable criteria, can produce indirect discrimination that is difficult to challenge. In this context, tools such as independent audits, algorithmic fairness certifications, and periodic reporting become essential to ensure that technological decisions do not unfairly impact fundamental rights⁴⁴.

At the same time, citizen and religious community participation emerges as a central element of effective protection. The right to religious freedom, as highlighted by ECtHR jurisprudence, is not limited to individual protection but implies the possibility of actively participating in shaping public space and managing services. Digital participatory governance tools, such as consultation platforms, reporting systems, or virtual assemblies, can help ensure that the needs of different religious communities are integrated into administrative decisions, reducing the risk that urban technologies reproduce or amplify inequalities⁴⁵.

Comparative perspectives offer useful insights. In Scandinavia, studies on interfaith forums and municipal collaboration show participatory forms of governing religious diversity. In Germany, the cooperative model of state-religion relations, based on neutrality and partnership rather than strict separation, has enabled forms of local state–interfaith governance, especially in urban contexts such as Hamburg and Rhine-Ruhr⁴⁶.

A third element concerns legal responsibility and access to remedies. As highlighted earlier, the fragmentation of the decision-making chain in algorithmic cities—among technology providers, developers, administrations, and automated systems—makes it complex to assign responsibility for potential violations of fundamental rights. Scholarship and practice suggest a multi-level approach, combining civil and administrative liability, independent oversight mechanisms, algorithmic review tools, and accessible judicial remedies. Ensuring effective remedies thus becomes a prerequisite for the credibility of

⁴⁴ See F. PASQUALE, *The Black Box Society: The Secret Algorithms That Control Money and Information*, Cambridge, Harvard University Press, 2015; R. BRAUNEIS, E. P. GOODMAN, *Algorithmic Transparency for the Smart City*, in *Yale Journal of Law & Technology*, 20/2018, 103-176; A. D. SELBST, D. BOYD, S. A. FRIEDLER, S. VENKATASUBRAMANIAN, J. VERTESI, *Fairness and Abstraction in Sociotechnical Systems*, in *Proceedings of the Conference on Fairness, Accountability, and Transparency*, ACM, 2019, 59-68.

⁴⁵ See ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, cit.; J. MARTÍNEZ-ARIÑO (ed.), *Governing Religious Diversity in Cities: Critical Perspectives*, London-New York, Routledge, 2020; P. CARDULLO, R. KITCHIN, *Being a "citizen" in the smart city*, cit., 1-13.

⁴⁶ See L. P. GALAL, L. L. LIEBMANN, M. NORDIN, *Routes and relations in Scandinavian interfaith forums: Governance of religious diversity by states and majority churches*, in *Social Compass*, 65(3), 2018, 329-345; A. KÖRS, A.-K. NAGEL *Local "formulas of peace": Religious diversity and state-interfaith governance in Germany*, in *Social Compass*, 65(3), 2018, 346-362; A. KÖRS, *Lokale Governance religiöser Diversität. Akteure, Felder, Formen und Wirkungen am Fallbeispiel Hamburg*, in *Aus Politik und Zeitgeschichte*, 68/2018, 34-40.



smart urban policies themselves⁴⁷. Finally, smart cities raise the broader question of redefining public space in an inclusive key. Religious freedom, in its collective dimension, requires not only the possibility of worship but also access to social spaces, public demonstrations, and shared services. Technology, if designed correctly, can facilitate this access but may also introduce new barriers: geolocation, predictive profiling, or automated space management can inadvertently disadvantage religious minorities. In this sense, the smart city becomes a legal laboratory, where law must intervene both on the substantive level-protecting rights-and the procedural level-ensuring guarantees, transparency, and participation⁴⁸.

In conclusion, the new frontiers of legal protection in smart cities require an integrated and multidisciplinary approach. Religious freedom cannot be protected solely through formal prohibitions or permissions: it must be incorporated into urban decision-making processes, technological design, data management, and the definition of public spaces. Combining traditional legal instruments, procedural innovations, and inclusive algorithmic governance represents the most promising path to ensuring that smart cities do not become sites of discrimination, but models of pluralism, participation, and respect for fundamental rights. These developments suggest that the protection of religious freedom in smart cities should not be framed only through the traditional language of direct restrictions, but also through the procedural guarantees developed in the fields of data protection and automated decision-making: transparency, access to meaningful information, contestability, human oversight, and effective remedies.

7. Towards an Integrated Model of Legal and Technological Governance in Smart Cities

Transitioning from theoretical analyses and case studies to the construction of an operational model for protecting fundamental rights in smart cities represents the most complex and ambitious challenge for jurists, administrators, and technologists. In this context, religious freedom and pluralism cannot be considered isolated principles but structural elements of an urban system that integrates technological innovation and

⁴⁷ See Regulation (EU) 2016/679, General Data Protection Regulation, arts. 15(1)(h), 22 and 35; Regulation (EU) 2024/1689, Artificial Intelligence Act, arts. 9-15, 26-27; CJEU, *SCHUFA Holding (Scoring)*, [cit.](#); CJEU, *Dun & Bradstreet Austria*, [cit.](#); COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1*, [cit.](#)

⁴⁸ See R. KITCHIN, M. DODGE, *The (In)Security of Smart Cities: Vulnerabilities, Risks, Mitigation, and Prevention*, in *Journal of Urban Technology*, 26/2019, 47-65; R. KITCHIN, *The Ethics of Smart Cities and Urban Science*, in *Philosophical Transactions of the Royal Society A*, 374, 2016, 1-15; UN-Habitat, *Centering People in Smart Cities: A Playbook for Local and Regional Governments*, Nairobi, UN-Habitat, 2021; J. MARTÍNEZ-ARIÑO (ed.), *Governing Religious Diversity in Cities*, [cit.](#)

constitutional values⁴⁹. Advanced scholarship identifies several key guidelines. First, the need to integrate fundamental rights and technological design: algorithmic systems must be designed with potential impacts on individual and collective rights in mind, avoiding the replacement or diminishment of human judgment by technical logic. This principle connects to the concept of ethics by design, which requires the inclusion of fairness, transparency, and non-discrimination criteria already during the development phase of urban platforms⁵⁰. Second, there is a need for enhanced procedural guarantees. Citizens must be able to understand how urban technologies influence administrative decisions, access the data and criteria used by algorithms, and exercise effective control through judicial, not only administrative, instruments. ECtHR and CJEU jurisprudence provides a consolidated framework: the principle of proportionality, the right to an effective remedy, and the principle of transparency must also apply in the algorithmic and digital realm. Third, active participation of religious communities is essential. Effective pluralism goes beyond formal tolerance, requiring that communities influence the rules governing urban space and technologies. Comparative experiences, for example in the Netherlands and Scandinavia, show that inclusion in decision-making processes reduces conflict, increases the legitimacy of urban policies, and prevents indirect discrimination⁵¹.

Fourth, it is crucial to address fragmented responsibility in smart cities. The decision-making chain often involves software providers, algorithm developers, public entities, and local authorities. Scholarship suggests a multi-level approach, combining civil and administrative liability, independent audits, and algorithmic accountability tools to ensure that any violations of fundamental rights do not go unremedied. In this context, the role of a “technology officer” or “data steward” becomes central for assigning responsibility and supervising urban platforms⁵². Fifth, comparative jurisprudence indicates the need to extend the notion of indirect interference to technological systems. As suggested by ECtHR rulings ([Big Brother Watch](#), [Metropolitan Church of Bessarabia](#)) and scholarship on algorithmic

⁴⁹ See UN-Habitat, *People-Centred Smart Cities*, official programme page, 2020; OECD, *Smart City Data Governance: Challenges and the Way Forward*, OECD Urban Studies, Paris, OECD Publishing, 2023; World Economic Forum, G20 Global Smart Cities Alliance, *Governing Smart Cities: Policy Benchmarks for Ethical and Responsible Smart City Development*, 2021.

⁵⁰ See European Commission, High-Level Expert Group on Artificial Intelligence, *Ethics Guidelines for Trustworthy AI*, 8 April 2019; European Commission, *Ethics by Design and Ethics of Use Approaches for Artificial Intelligence*, 2021; M. HILDEBRANDT, *Law for Computer Scientists and Other Folk*, cit.; Regulation (EU) 2024/1689, Artificial Intelligence Act, arts. 9-15; See ECtHR, Grand Chamber, *Big Brother Watch and Others v. United Kingdom*, cit.; CJEU, *SCHUFA Holding (Scoring)*, cit.; CJEU, *Dun & Bradstreet Austria*, cit.; COUNCIL OF EUROPE, *Recommendation CM/Rec(2020) 1*, cit.

⁵¹ See J. MARTÍNEZ-ARIÑO (ed.), *Governing Religious Diversity in Cities: Critical Perspectives*, cit.; L. P. GALAL, L. L. LIEBMANN, M. NORDIN, *Routes and relations in Scandinavian interfaith forums*, cit., 329-345.

⁵² See OECD, *Smart City Data Governance: Challenges and the Way Forward*, OECD Urban Studies, Paris, OECD Publishing, 2023; N. VAN ZONEN, *Data Governance in Smart Cities: Challenges and Solution Directions*, in *Smart Cities*, 2021; Harvard Kennedy School, Data-Smart City Solutions, *The Growing Role of the City-Level Chief Data Officer*, 2024; Council of Europe, *Recommendation CM/Rec(2020) 1*, cit.



governance, interference with religious freedom may stem not only from formal measures but also from technological and organizational conditions of urban space. This implies that rights protection must consider the cumulative and systemic effect of technologies, not just their isolated application⁵³. Sixth, managing conflicts between different religious communities and preventing indirect discrimination requires tools for ethical predictive analysis and governance. Algorithms can be used to identify imbalances, facilitate equitable access to public spaces, and coordinate religious events, provided they are subject to transparent and participatory criteria and independent monitoring⁵⁴. In this sense, technology becomes not only a source of risk but also a tool to strengthen inclusion and plurality. Finally, the future perspective entails a multidisciplinary dialogue between law, technology, and urban sociology. Governance of smart cities must be interpreted as an integrated process, in which law intervenes not only ex-post but also guides technological choices, defines standards, controls responsibility, and promotes participation. This multidimensional approach allows for the prevention of discrimination and the creation of smart cities truly compatible with fundamental rights⁵⁵.

In summary, the concluding section highlights that smart cities are not merely a technical evolution of traditional cities but a laboratory of rights. Religious freedom and pluralism, to be fully protected, must become structural criteria of urban and technological design, supported by innovative legal instruments, active participation, and clear responsibility. Only in this way can the smart city translate the technological promise into a space of pluralism, inclusion, and effective protection of fundamental rights.

⁵³ See ECtHR, Grand Chamber, *Big Brother Watch and Others v. United Kingdom*, [cit.](#); ECtHR, *Metropolitan Church of Bessarabia and Others v. Moldova*, [cit.](#); COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1*, [cit.](#); R. KITCHIN, *Thinking Critically about and Researching Algorithms*, in *Information, Communication & Society*, 20/2017, 14-29.

⁵⁴ See European Commission, High-Level Expert Group on Artificial Intelligence, *Ethics Guidelines for Trustworthy AI*, [cit.](#); A. D. SELBST et al., *Fairness and Abstraction in Sociotechnical Systems*, [cit.](#), 59-68; B. D. MITTELSTADT et al., *The Ethics of Algorithms*, [cit.](#); COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1*, [cit.](#)

⁵⁵ See UN-Habitat, *People-Centred Smart Cities*, [cit.](#); OECD, *Smart City Data Governance*, [cit.](#); COUNCIL OF EUROPE, *Recommendation CM/Rec (2020) 1*, [cit.](#); Regulation (EU) 2024/1689, *Artificial Intelligence Act*, [cit.](#); J. MARTÍNEZ-ARIÑO (ed.), *Governing Religious Diversity in Cities*, [cit.](#)