



HAL
open science

The French laïcité confronted with new challenges

Claude Proeschel

► **To cite this version:**

Claude Proeschel. The French laïcité confronted with new challenges. Church-State Relations in Europe: new challenges n, Nov 2007, bratislava, Slovakia. pp.30-50. halshs-00278531

HAL Id: halshs-00278531

<https://shs.hal.science/halshs-00278531v1>

Submitted on 13 May 2008

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.

The French laïcité confronted with new challenges

What is laïcité? The question has given rise to much discussion and a lot of controversy, especially in France. This is partly because the country sees a persistent phenomenon of people laying exclusive claim to the French term 'laïcité', which is not always easy to translate, it is true, but it is also due to the actual concrete conditions of its implementation. Of course, our aim here is not to take sides in the debate, as we have given considerable attention, in an earlier work¹, to defending the possibility of using the concept to qualify various systems involving Church-State relations in Europe and meeting a certain number of shared requirements and values.

On the other hand, we will attempt to shed light on the specific ways in which France has responded to these requirements and values, which are closely linked to the democratic project. We will then go on to examine, in the light of these specific aspects, the capacity of the system, which dates back more than a century², to meet the new challenges confronting it.

As in many other European countries, the two main questions currently facing the French system of Church-State relations are linked to the appearance of new interlocutors: Islam, of course, a phenomenon partly linked to the increased levels of immigration from Muslim countries, many of them former French colonies, and the challenge represented by the clearly stated intention of the public authorities, in a country characterized by separation of Church and State, of bringing about the emergence of a French Islam that is compatible with the republic; and the new religious movements, a group of miscellaneous socio-religious realities present in Western societies since the 1970s.³ These two cases are representative, at a more general level, of the question of how France can deal with religious pluralism. By examining them, we will thus subsequently be able to take a look at the concept of democracy used here, which would seem to be the most fruitful approach from a comparative standpoint. Each system and the corresponding management methods are at once the fruit of history, the socio-historical

¹ E.g. Proeschel, Claude, *L'Idée de laïcité*, L'Harmattan, 1985.

² The centenary of the 1905 Separation Law gave rise to numerous commemorations in France, and also to publication of some major scientific works. Among them, we can mention Bauberot, Jean, Wiewiorka, Michel, *De la Séparation des Eglises et de l'Etat à l'avenir de la laïcité*, Editions de l'Aube, 2005.

³ For a sociological analysis of these movements, which lies outside the scope of the present work, we can consult, for example, Willaime, Jean-Paul, *Sociologie des Religions*, PUF, 1995, chapter III, *Le religieux contemporain au miroir de la sociologie*, p.18-68, which also gives numerous bibliographical references. For Britain, which provides examples of another way of dealing with religious pluralism, we can also refer to Barker, Eileen, *New Religious Movements in Britain; the Context and the Membership*, *Current Sociology*, December 1988, 36(1): 208-248.

circumstances of its implementation, the socio-religious characteristics of the society under consideration, and also the democratic concept behind the State, and we must underline, for France, the weight, in its history, but also in the present and the foreseeable future, of the secular Republic in the collective imagination and links.

La laïcité, a cornerstone of French republican identity

A regime involving Separation of the Church and State

The separation of the Church and State that characterizes contemporary France was implemented by a law dated 9 December 1905⁴. We will attempt to briefly analyse the essence of the system here, together with the ways in which, in its philosophy and secular evolution, it meets the main principles concerning religion that all democratic States have to respect, i.e. autonomy as compared with the Churches and religion, and neutrality towards them, with the latter involving respect for freedom of conscience and worship, and the impartiality of the State, which must refrain from giving any legal, material or ideological preference to a particular religion. Management of the plurality–integration duality in modern States is indeed a major preoccupation. The guarantee of individual rights, in other words the conjunction of democratic citizenship and plurality, constitutes one of the most delicate problems facing our liberal societies, most of which are multicultural.

In the 1905 law, France put an end to a system of recognized religions that dated back to 1802. From 1905 on, there was no longer any recognized Church or religion, and religions and Churches lost their public nature. Furthermore, there must be no religious signs on any public buildings or in any public areas, such as courts, because they are open to all, and must hence comply with very strict rules concerning neutrality.⁵

There can thus no longer be any religious references in State services. Churches are no longer public services, but a set of private associations governed by common law. This led, in particular, to the end of their financing by the State, and the end of State intervention in their organization and operation.

This affirmation has seen some exceptions, but these are always aimed at ensuring religious freedom under the best possible circumstances. Although the State no longer recognizes any religions, in fact, it continues to be aware of them, and in particular, it has to ensure freedom of conscience and

⁴ We do not deal here with case of Alsace-Moselle, a set of three French departments that, at the time of passing the law, were under German occupation as a result of the 1870-1871 war. They continue to be governed by a system of recognized religions. Some French overseas territories are also governed by specific systems, such as French Guyana, where Catholicism is the State religion.

⁵ It should be noted that France sought to avoid having this measure, a logical consequence of non-recognition, cut the country off from its religious roots, as the provision is only valid for the future.

worship, subject to conserving public order. In particular, this led it to pay certain categories of ecclesiastical staff, such as those acting as chaplains, and hence enable people in closed environments or unable to travel (e.g. those in hospitals, boarding schools, prisons, etc.) to exercise the rites linked to their religion.

In a situation of separation, Churches benefit from almost total freedom, together with a high level of organizational autonomy. A question can be raised here, mainly for the Catholic Church: can it have and be governed by its own set of laws and rules that differ from the positive law governing society as a whole? French judges, for their part, consider that the Church is the sole entity qualified to draw up and interpret its own rules. Knowledge and interpretation of ecclesiastical law thus lies outside the scope of ordinary courts.⁶

It should be noted that here we are in the presence of an exceptional system that leads, in most cases, to jurisdictional immunity. Admittedly, it can be said that the organizational rules governing the Churches feature certain particularities stemming from their very essence. However, they could be seen as presenting characteristics that it should be possible for ordinary courts to interpret, as is the case for the articles of association governing companies⁷.

Under such separation, what happens concerning the State's autonomy? Moving beyond the disappearance of dispensing objectively recognized religious services, a notion that no longer has any meaning, because religion and beliefs are transferred entirely to private spheres, the Churches no longer have the structuring social and moral role that was entrusted to them by the previous system of recognized religions. They are placed in a situation of ideological competition, a "free market", to quote the analogy used by Peter Berger. They can thus no longer use this moral dimension as an argument for increasing their influence, or strengthening their position of authority, and the autonomy of the State is thereby reinforced.

Moreover, it is important to note that this criterion has undergone a change of nature in the course of the period since 1905. In 1946, France became one of the few countries with *laïcité* written into its Constitution: article 1 states that "France is a Republic, indivisible, secular, democratic and social." Furthermore, under the terms of article 2 of the 1958 Constitution, "France is a secular Republic. It ensures equality of all its citizens before the law, irrespective of their origin, race or religion." From being a legal principle, *laïcité* has thus moved on to become a constitutional principle. This leads us to a major point for the present work, because it means that any laws passed

⁶ We use the term "ecclesiastical law" deliberately here, as in some languages the expression "canon law" corresponds to the field of public law covering relations between Churches and public authorities.

⁷ Aside from all judgement concerning the principle as such, a concrete problem has appeared: due to this bias, judges have been led to rule against associations that were opposed to the hierarchy, soon after the 1905 law was passed, but also in more recent times. Thus no churches can be allocated to traditionalist Catholics who broke with Rome.

by the French Parliament and going against this principle would be censured by the Constitutional Council.

Freedom of conscience and worship, for their part, which were already strongly guaranteed by the previous system, were further strengthened and set out in detail in the separation system. They are included at the beginning of the 1905 text. Article 1 thus states that “the Republic ensures freedom of conscience”, and article 31 sets out court penalties for any persons infringing on these rights. During the twentieth century, freedom of conscience also gradually took on a constitutional nature in France.⁸ These freedoms were also strengthened, through their proclamation and the guarantees provided, by the fact that France signed several international agreements.⁹

We can thus state that today, religious freedom in France constitutes one of the major fields of freedom.

Concerning freedom of worship and the changes in attitudes characterizing the solutions brought to the corresponding problems, this freedom is based on the will to comply with two principles: religious freedom and public order. This is fully justified in a democratic State, because it is not a judge’s or a politician’s role to rule on the meaning or value of a religious act. On the other hand, such persons can and must rule whether any such act can cause grave damage to other people. A judge thus ruled, for example, that dismissal of a ritual supervisor in a restaurant providing kosher food was not justified because the reason put forward was the supervisor’s unauthorized absence for 23 days to attend his son’s funeral in Israel; the employer, who in turn applied strict observance of Jewish law, could not ignore the obligations set out in that law.¹⁰

Lastly, we now have to show how the Separation system ensures the impartiality of the State towards the Churches and religion. It is true that it puts an end to the distinction between recognized and unrecognized religions, in that henceforth no religions are recognized. But can we say for as much that these religions are in equivalent positions? Certain factors would seem to point in the opposite direction, such as the importance attached, for example, to the religions that were formerly recognized, to which Islam is often added, in public forums of expression such as radio or television, or in chaplaincies. The same can also be said for the historic importance of Catholicism in the

⁸ This principle was confirmed in the Preamble to the 1946 Constitution, and reaffirmed in the 1958 Constitution, which confirmed respect for freedom of conscience and the equality of all citizens before the law. In 1977, the Constitutional Council recognized the constitutional validity of the principle in its decision dated 23 November 1977.

⁹ Here in particular, we must note the importance of the ratification by France, on 3 May 1974, of the European Convention safeguarding human rights and fundamental freedom, dated 4 November 1950. In its jurisprudence, the European Court of Human rights, whose decisions are binding on the signatory countries, attaches considerable importance to freedom of conscience.

¹⁰ CA, Patis, 25 May 1990, quoted in Madiot, Yves, *Le juge et la laïcité*, in *Pouvoirs*, November 1995, p.73-84, p. 70.

French calendar, and also in public life. The framework in which the French population lives is of Christian origin, as can be seen in the rule that Sunday is a rest day. We could argue that this constitutes a shift, and a trend towards a return to a system of recognized religions. But this phenomenon is above all historical and non-essential, so it would seem to us to be advisable to consider it mainly as a sign of the weight of certain religions in the history of France, rather than a deliberate desire to adopt an impartial attitude. It is true that the calendar shows Christian origins, but through history, it is also French, in a country that is nonetheless strongly marked by the process of secularization of the State, and the two elements are not incompatible. The neutrality implemented by the Separation law did not seek to cut the country off from its roots¹¹. We could say that French people with minority religions express their opinions in a space-time and a symbolic system that is far from neutral from a denominational standpoint, but that they do so in full freedom and equality.

So how can problems of reconciliation between freedom, equality, respect for public order and ensuring correct operation of public services be solved? We can use an example here to illustrate the general path adopted, which is very closely linked to the concept of republican individualism, and enable us to understand an aspect that we will go into in greater detail: the close correlation between the mode of construction and values of the French Republic, and the type of Church-State relations within it.

Our illustration is based on what is often known as the reconciliation between school hours and religious hours, which vary with the denominations concerned. In all the affairs linked to this question, the attitude taken by justice, and in particular the Council of State, which is called on to give the final rulings for cases concerning the administration and public services, has adopted a constant line of approach: refusing to grant collective leave of absence, but providing a systematic possibility of negotiation on a case-by-case basis that usually results in granting the dispensation required. Thus the Central Consistory of Israelites in France was unable to obtain cancellation of article 8 of the 1991 application order confirming the obligation of regular attendance for pupils without dispensations for religious reasons, because the provision did not set out to “prevent pupils who so request from benefiting individually from the authorizations necessary to exercise a religion (...) provided that such absences are compatible with execution of the tasks inherent to their studies (...)” and could not be construed as having any such effects.¹² The Council of State further considered that systematic absence on Saturdays was not compatible with the obligations imposed on pupils in a higher mathematics class in the case concerned.

¹¹ Furthermore, this was one of the keys to the successful implementation of the separation system in France.

¹² CE, 14 April 1995, Central Consistory of Israelites in France; and, on the same date, Kozen, quoted in Madiot, Yves, *Le juge et la laïcité*, in *Pouvoirs*, November 1995, p.73-84, p. 80.

Through its jurisprudence, the Council of State here expresses the essence of “French laïcité”: respect for religious freedom, but worries about such freedoms, and refusal to let them result in disintegration of the nation into religious and cultural communities that are the source of their own laws.

Other methods of resolution are envisaged at times, tending towards increased consideration, by the administration, of certain religious practices. Here we can mention the problem presented to public employees by religious festivals that are not included in the list of public holidays in France. The problem has been dealt with in various circulars, but without modifying the general system applicable to paid holiday leave; they asked the department heads to grant leave of absence to the employees wishing to take part in the ceremonies corresponding to the main festivals for their religion, but only to the extent that such absence remained compatible with normal operation of the department.

The latest proposal to this end, which was not implemented, was that put forward in the report of the Stasi Committee in 2003, of “enabling staff members to select a religious festival day as part of their credit of paid holiday leave”.¹³ The principle of granting individual authorizations is still present.

La laïcité, a basis for republican individualism.

Once again, we see the mistrust that the French concept of social management, and in particular of religious management, harbours towards all types of communalization. Although the word has been used for a long time in French political language, it was not defined in reference dictionaries until 2004, when it was given a normative definition, with strongly negative connotations, as a “system that develops the formation of communities (of an ethnic, religious, cultural, or social nature, etc.), which could divide the nation to the detriment of integration”.¹⁴

The French concept of management of specific identities is anchored in the heritage of the Age of Enlightenment, and mainly the revolutionary heritage. It is linked to the notion of the French style of universal citizenship: in a democratic system thus set up, each person is granted all civil and political rights, in other words equal rights, whatever his or her religious beliefs. We often speak of transcendence of religious beliefs by citizenship; it should be noted that such transcendence constitutes a fundamental element of religious freedom and freedom of conscience. From a philosophical standpoint, French tradition is based on Rousseauist thinking in particular, and on his theory of the general interest, which cannot be reduced to the mere sum of individual

¹³ Report of the Stasi Committee, 2003, p.150. The Stasi Committee, named after its chairman, Bernard Stasi, was appointed by the President of the French Republic, Jacques Chirac, on 3 July 2003, with the objective of defining the elements at stake and the current difficulties of laïcité in France. Its report was published on 11 December 2003. It gave rise to a law concerning wearing religious signs in schools, which we examine in greater detail in the second part of the present work.

¹⁴ Petit Robert Dictionary, 2004.

interests. To enable the general interest to take precedence as being superior to private interests, the only legitimate consideration in public spheres, and carried solely by the thoughts and words of representatives of the nation and the people, all intermediate bodies, as groups at intermediate levels between the individual and the State¹⁵, must remain weak in society. In this logic, there is no room for any expression of belonging to any specific groups in the public sphere, and all such groups are relegated to the private sphere of each individual, with the term 'individual' taking on capital importance here. Rejection of differential treatment per group, and current acceptance of a possibility of negotiation on a case-by-case basis follow on from this line of reasoning.

More generally, the French *laïcité* is a fundamental element of the Republican pact, the idea of Republican unity that has underpinned and legitimized all political action in France since its entry into the modern era¹⁶. The universalism of citizenship is not very favourable for particularism. From the monarchy to the present day, France has set up a State that has gradually imposed a single loyalty, and the State has increasingly taken on a central role, which reached a summit in the twentieth century, in the structure of a society thought of and intended as a society made up of individuals, by becoming its main vehicle for unification.¹⁷

Schools play a central part here as a major vehicle for socialization and for the values of the Republic. The implementation of secular, free, obligatory primary schooling, under the Ferry laws passed in 1882, twenty years before the Separation law, had twin objectives in this respect. It was necessary, of course, to reduce the Catholic Church's influence on socialization of children by the schools, because of that Church's break with democratic ideas, and its openly clerical attitude. However, it was also necessary to create a neutral sphere in which autonomous knowledge could be passed on, in a fully open way, without autarchy. Each member of society, in the republican concept - and here we find echoes of Condorcet's thinking - has to be a responsible actor reflecting its values. The values passed on by schools, the basic values of the Republic and of those living together in that Republic, must be passed on while leaving all concerned free to exercise their reason. To do so, it is necessary to create a sphere that is free of particularism, in which each

¹⁵ The French revolution saw bans on these intermediate bodies under the terms of the Le Chapelier decree, dated 14 June 1791. It states: "There are no longer any corporations in the State; there is only the particular interest of each individual and the general interest. No one is allowed to seek to inspire any intermediate interests among citizens, or separate them from the Republic through a corporative spirit."

¹⁶ To be convinced of this, if need be, all we have to do is consult the speeches and the symbolism used by politicians during the present rich electoral year in France.

¹⁷ Here, we can consult two works by Pierre Rosanvallon, which are fundamental for a full understanding of this principle, and also the ways in which, from the start, it was able to compose with the existence, or even the influence of social bodies, and the evolution of this phenomenon in history. -Firstly, *l'Etat en France de 1789 à nos jours*, Seuil, 1990, in which he analyses this role of the French State, as a "social teacher".

-Secondly, *Le Modèle politique français. La société civile contre le jacobinisme français de 1789 à nos jours*, Seuil, 2004

individual, by learning to use his or her own free will, is able to build up his or her own autonomy, in a way that is not determined by such original groups as that individual may belong to, and also able to meet and spend time with individuals from other groups. Schools are thus seen, and the use of the term is symptomatic, as a “sanctuary” where individuals can learn to live together while respecting shared values and individual convictions alike.

In this, schools are currently especially representative of the ways in which France set out, and continues, to meet the fresh challenges of plurality.

Fresh challenges

Islam and the Republic

As we have seen, the State no longer recognizes religions. Nonetheless, it cannot ignore their existence, and it has to guarantee, as a positive mission, freedom of worship. In particular, it cannot ignore the place that Islam has taken in French society, and it has begun to implement the conditions necessary to respect the freedom of that religion in conjunction with respect for public order and the major citizen values that underpin French society. The number of Muslims living in France is evaluated at about 4 million, but the figure is highly uncertain, because no demographic surveys or censuses can include questions concerning religious beliefs. French integration, which relegates to the private sphere all manifestations of belonging to specific groups, and which partly bases on that relegation the resulting respect for certain basic principles such as equality, has here had to face new situations. In France, discussions have been centred on three points: wearing the Islamic veil, a visible sign of belonging to a religious group, in public places, and especially at school, with its implications in the field of equality of the teaching provided for all children¹⁸; the interference of certain requirements concerning religious practices with the operation of public services, such as in the health field: refusal by some women to see a male doctor, requests for specific opening hours in municipal swimming pools to be set aside for women, etc.; and a real guarantee of religious freedom in the face of a shortage of places of worship.

Although French law has to ensure that religious freedom is respected, and that each individual is able to comply with the instructions and traditions of his or her religion, this can never be done to the detriment of fundamental individual rights, the superior standards of society, and here equality between

¹⁸ Here, for example, we are thinking of requests for girls to be exempted from physical education classes.

men and women. In this field, in fact, even though individuals benefit from constitutional guarantees, and in many cases from guarantees provided under international law, in concrete terms a given practice may still go against a fundamental right, and it is here that the State or judges will have to give their assessments, such as in the field of compatibility with public order. These are the only aspects within their competence, and they cannot examine the meaning of a religious gesture.

In this domain, the French State has started to implement a series of measures, by setting up several committees, some of which have led to drawing up charters setting out the principles to be obeyed in the field, in public services.¹⁹ One of the most recent working groups is that chaired by André Rossinot, *Laïcité in public services*, dated September 2006, and which begins by reaffirming the anchoring of laïcité at the core of the Republic and its values, and then goes on to put forward a series of proposals on how to act to consolidate it in public services. It concludes with the necessity of ensuring that all concerned share the values in question: “a Republican principle that is essential for peaceful coexistence of all the components of society, laïcité translates a vision of the common good forged by our history and through the choices made by the French people. It expresses the idea that the State rests directly on the citizens’ will, without subordination to any authority above that will.”

La laïcité, and education in it, are thus the essence of the past and present of France, and according to the report, they are also the only possible path for the future, if we are to avoid the danger of splitting society into separate groups or communities. The law cannot suffice, and training is essential, mainly for descendants of immigrant populations. In particular, it is necessary to ensure that through education, it is possible to recognize the impressive integrating nature of this concept of laïcité. It forms a major element of citizenship, and it constitutes a fundamental tool to create social and national links.

All these questions had already been envisaged by the Stasi committee, referred to above, which was able, in particular, to provide a text of rare density on the meaning and the elements at stake for laïcité in France, with a

¹⁹ Here, we can mention the example of the *Charte de la laïcité dans les services publics*, drawn up on the basis of a text put forward by the National Council for integration, and whose contents are set out in a circular issued by the French Prime Minister on 13 April 2007. It states that the Republican principle of laïcité must be respected in the public services, which thus supply guarantees and apply the obligations. These rights and duties concern both public employees (strict neutrality) and users (equality of treatment). The Charter must be distributed widely throughout all the services and it must be displayed in a visible and accessible way in all places open to the public.

multidimensional, wide-ranging content. It also set out a series of proposals in the most delicate fields, but for the moment, they have not been put into effect, except for one law, passed in March 2004, concerning wearing at school visible signs of belonging to a particular religion, and whose text reproduces the proposals put forward on the subject in the Committee's report²⁰. The report recommended the following provisions: "To ensure respect for freedom of conscience and for the specific nature of private establishments under contract, all clothing and signs showing that the wearer belongs to a particular religious or political group are banned in schools, colleges and sixth-form colleges (...) The banned clothing and religious signs are ostensible signs, such as large crosses, veils or skull caps. The following are not seen as signs showing that the wearer belongs to a religious group: discreet signs such as medallions, small crosses, stars of David, hands of Fatima or small Korans."

The question of the effects stemming from application of this law is of course wide open, as is that of its possible challenges before the European courts. In particular, we can wonder whether it is really adapted to suit the will expressed concerning citizen integration, and whether it does not rather raise the difficulty, which France has already faced on many occasions, of true recognition of pluralism and all its effects. Amongst other things, its future will determine the future of the French concept of *laïcité* and its level of faithfulness to the spirit of its initiators.

The French State no longer recognizes religions, but it has to dialogue with them to provide the best possible conditions for their freedom. Here, like many other European countries, France has come up against a major obstacle due to the absence of a body representing French Islam; this results from the wide variety of countries of origin for the various communities, and from the lack of a true institutional clerical body representing the Muslim religion. In the pure French tradition, which since the seventeenth century has seen tight control on the part of the French State over the organization of the religions present on its territory, and especially the Catholic denomination, and also in the tradition of the Napoleonic concordat and the corresponding religious police, with a large-scale reorganization of the religions after the period of the French revolution, with consultation but without any real participation in decision-making for the representatives of the various faiths, the State asked the French Muslims to set up a representative body, and it intervened in the procedure setting up the French Council of the Muslim Faith (*Conseil français du culte musulman - CFCM*), whose creation was adopted on 20 December 2002. Once again, the path "selected and imposed" by the State follows the Republican tradition of taking individuals into account and

²⁰ Report of the Stasi Committee, 2003, p.149-150. The full text was adopted unanimously, with one abstention concerning the passage dealing with the ban on religious signs at school.

rejecting groups or communities, and it gives priority to an individualistic approach to “religion”, within the meaning given to the term by liberal political philosophy, to the detriment of an ethnic and cultural approach. The reference for the constitution of the CFCM and its regional bodies, the CRCM (Regional Councils of the Muslim Faith - Conseils Régionaux du Culte Musulman), is the “mosque”, as the State refused to consider as “Muslim” any persons of Muslim origin and/or culture.

One subject dominates current discussions, which raise the question of the compatibility between separation and guarantees of religious freedom: the question of how to finance the buildings used for religious purposes. Since 1905, because of the separation, neither the State nor local authorities have provided any finance for buildings used for religious purposes. Of course, the 1905 law did not anticipate the possible appearance of new interlocutors in France. The following question is thus raised: are grants necessary to enable each person to exercise his or her beliefs in a suitable location? The alternative lies in private financing, which is heavily dependent on the social and economic situation of the persons concerned, or is provided through donations from other countries, an influence that opposes the will to set up French Islam. The French State is currently seeking solutions. A Committee chaired by Jean-Pierre Machelon, a professor at the René Descartes –Paris V University and a director of studies at the Ecole pratique des Hautes Etudes, was set up at the initiative of the Ministry of the Interior and Religions, to examine the legal aspects of the relations between the religions and public authorities; it published its report on 22 September 2006. The report includes a plan to enable local authorities to make direct grants for construction of buildings for religious purposes within their boundaries. Its general philosophy is as follows: based on a careful reading of the law and jurisprudence, and on a reaffirmation of the essential and fundamental nature of the freedom of religion, to perfect the existing legal instruments, authorize direct aid, modify the law governing local authorities, and increase the flexibility of the conditions of access to the status of “religious association”, a status providing certain financial advantages as compared with that of associations under common law.

It is worth noting that the proposals made in the Machelon report explicitly cover religions other than Islam, even though the media have highlighted this specific aspect. In particular, it covers the case of the evangelical Churches.

Sects or religious movements? A contrasted view of plurality

Here, we would like to attempt to provide empirical elements concerning a field at the cusp of freedom of conscience and freedom of worship, and which can be used to raise certain difficulties in implementing the latter in France: the question of sects. We approach it here as a question that is representative of the ways in which freedom to worship, in particular concerning its aspects of non-interference in organizational and spiritual matters, is, or is not, ensured in full, subject to compliance with individual

rights and public order, and the use made of this last notion. Indeed, clauses limiting religious freedom can easily be converted into instruments justifying State actions to control or suppress certain movements. In more general terms, the aim, in continuity of the various lines of thought set out above, is to grasp the possible difficulties that France could face in accepting or dealing with full religious pluralism of society.

It is necessary to set out a reminder here of certain principles, of a general nature or more specifically concerning France.

Society and a democratic State have no competence when it comes to assessing the validity of a religious doctrine. The premise of non-denominationality and the recognition of religious freedom prohibit them from passing judgement on individual beliefs. And yet public authorities have to control all actions that limit democratic public order, the general interest or individual rights, and they have to do so on the sole basis of evidence that such actions are illegal. If this is the case, how can legitimate defence of society be exercised in the light of the actions carried out by certain sects, within the scope of the standards governing religious freedom, equality, *laïcité*, and presumption of innocence that constitute the backbone of a democratic State?

As we have seen, the principle of the Church-State separation characterizing France since 1905 means that religious beliefs are not a public fact, and that religious actions lie within the realm of individuals, and solely in the private sphere of citizens. This explains why the State, faithful to its indifference shown towards religion, has never given a legal definition of the latter. Positive law is limited to regulating the life of the legal structures, together with the social practices that constitute a support for religions (associations, religious or not, and religious congregations). There is hence clearly a legal impossibility of determining the criteria that can be used to define the social forms that the exercise of religious beliefs can take, and a fortiori to make a distinction between a Church and a sect. The State knows little or nothing of these two notions, and thus a priori prevents no one from taking advantage of the legal possibilities provided in religious matters.

Sects are usually organized within the framework of non-profit-making associations under the French law of 1901, associations governed by common law, or associations acting as partnerships. This enables them to take advantage of a wider range of freedom than the larger religions, which come under the specific provisions of the Separation Law. These impose higher standards as to administrative control and financial transparency. The authorities, for example, are not called on a priori to monitor the movements of members within associations that are not seeking the status of a congregation, or that of a religious association.

Certain sects have sought, or are seeking, to set themselves up as religious associations. The public authorities are then able to control their activities very carefully, to make sure that they are strictly religious, a basic condition set out in article 19 of the Separation Law. More generally, the criteria that

are requested of a religious association form a set of presumptions that must be combined: long-term existence, universality, and acceptance of social order, guarantee of morality. The notion of minister of the religion is itself defined within limits that leave judges plenty of leeway for interpretation based on the internal organization of the religious movement under consideration. When asked for a ruling by the administrative court in Clermont-Ferrand, as to whether a local association of Jehovah's Witnesses could be exempted from property tax, the Council of State gave a fresh detailed definition, on 24 October 1997²¹, of the three criteria that can be used to determine whether an association is of a religious nature, and stated that in this specific case, it could benefit from the measure, as two of them were only contained implicitly in the jurisprudence applicable. The Council of State ruled as follows: firstly, the association must be given over to a religion, i.e. it organizes ceremonies bringing together believers who carry out certain rites jointly; minority religions must not be excluded. Secondly, the association must be given over fully and solely to that religion, which excludes cultural, editorial or social activities. Lastly, it must not disturb public order in any way. This condition was evoked in a ruling against the Jehovah's Witnesses of France, made by the litigation assembly dated 1 February 1985²². The Council of State refused to recognize the status of a religious association, considering that the association's activities did not comply with public order and the national interest. The absence of precise motivations for this last decision gave rise to a certain amount of criticism. Thus Professor Jacques Robert considered that such restrictions on freedom of belief led to reconstitution of recognized religions, a situation to which the law dated 9 December 1905 was specifically intended to put an end²³. It should be noted that in 1982, the French Ministry of the Interior and Decentralization requested special vigilance before granting any authorizations requested by religious associations presenting an "unusual nature from any standpoint whatsoever"²⁴, which further strengthened the presumption in favour of a system of recognized religions, and further underlined the difficulty, due to the weight of a majority religion, of integrating religious pluralism; this was also felt in the problems that French people have in conjugating Christianity in the plural. Several ministerial interventions in the French Parliament are symptomatic of this phenomenon. When a question was asked in the Senate on 22 December 1994 concerning the development of sects in France, the Minister of the Interior replied that the activities of pseudo-religious associations were being monitored with

²¹ *Le Monde*, 26-27 October 1997, p. 14.

²² *Le Monde*, 5 February 1985, p. 3.

²³ Quoted in Gest, Alain and Guyard, Jacques, *Les Sectes en France. Rapport fait au nom de la commission d'enquête parlementaire sur les sectes, décembre 1995*, 1995, p. 100.

²⁴ *Avis transmis le 27 juillet 1982 aux commissaires de la République de tous les départements par le ministère de l'Intérieur et de la Décentralisation*, quoted by Vivien, Alain, *Les Sectes en France. Expressions de la liberté morale ou facteurs de manipulation? Rapport au Premier Ministre, février 1983*, 1985, p. 67.

very careful attention. The authorities were making sure, amongst other things, that these groups, under cover of freedom of association, were not affecting individual liberties. In all cases, stated the Minister, the monitoring and measures could not deal in full with what was in fact a problem of society. The policy of the authorities had to encourage prevention and education. It should be noted that specific accusations such as “violation of conscience” were not retained, due to worries concerning the threat they brought against freedom of opinion²⁵. The policies of the French governments, which we will not examine in detail here, have shown a certain level of continuity in this field, translating especially into the existence of missions or organizations to monitor sectarian phenomena.

As we have said, the secular State has no competence when it comes to assessing the validity of a doctrine. The courts can only rule on disturbances of public order and personal rights. It is clear that this principle was applied in the ruling concerning the Church of Scientology, made in July 1997. The Church, which was the object of a severe Court of Appeal ruling in Lyon in July 1997 for fraudulent deception, nonetheless saw its description as a religion reaffirmed. The ruling, based on the fact that freedom of belief is one of the fundamental elements of French public liberties expressed in article 10 of the 1789 Declaration of Human and Citizens’ Rights, and that article 1 of the Separation Law ensures freedom of conscience and beliefs subject to observance of public order; and considering article 9 of the European Convention recognizing religious freedom for all persons, stated that “there is thus no point in wondering whether the Church of Scientology constitutes a sect or a religion, as freedom of belief is absolute; that to the extent that a religion can be defined by the coincidence of two elements, an objective element, the existence of a community, even a small one, and a subjective element, a shared faith, the Church of Scientology can claim the title of a religion and develop its activities in all freedom, within the framework of the existing laws, including its missionary activities, or even those of proselytism (...)”²⁶.

Administrative control of the notion of public order could limit religious freedom, but the administration’s powers of appreciation are very closely supervised. Thus in the International Society for Krishna Consciousness ruling dated 12 May 1982, the administrative judge set out a reminder that although it was up to prefect of police to ban public events and meetings in locations unfit for such use, and although he was also empowered to ensure, through appropriate measures, observance of the peace by disciples of the Krishna religion, he could not, without illegally disturbing freedom of religion, ban the religious ceremonies and services organized in the former hôtel d’Argenson for the intention, especially, of the persons residing in that

²⁵ Session held on 22 December 1994, in *Journal Officiel*, Senate, 23 December 1994.

²⁶ *Le Monde*, 30 July 1997, p. 7.

building²⁷. The judge thus stated that the absolute ban placed by the prefect of police on all ceremonies and all religious services organized by disciples of the Krishna religion in a building that they occupied, in the absence of reasons based on public safety and the peace, constitutes an illegal infringement of religious freedom.

The control of public order, which is very closely supervised, thus limits use of this notion against full exercise of religious freedom. Nonetheless, in France, at the level of the limitations placed on recognition of religious pluralism by granting the status of a religious association, the underlying system can be seen as showing similarities with that of recognized religions, for the benefit of traditional religions.

French laïcité has thus been built up on the basis of major principles suitable to establish and durably consolidate religious peace in that country: neutrality of the public authorities towards the Churches, legal autonomy for the latter, wide-ranging protection of conscience, and State participation in the practice of religion to ensure its freedom. This system is not a timeless, monolithic block; it is marked, in its practical applications, by its considerable complexity and its evolution since it was first implemented.

As we have seen, today's laïcité in particular does not involve ignoring religious facts. It requires not mere tolerance on the part of the State, but active organization.

The methods used to deal with the elements currently at stake would seem at times to show signs of difficulty in the face of religious pluralism. However, the latter is spreading very widely in France. The recognized value of Republican laïcité in the social pact can doubtless account for a certain level of rigidity, but it also provides a flexible integrating framework, based on respect for individual rights. Would it be advisable to seek ways to add a small dose of "multiculturalism", within the meaning given to the term by Will Kymlicka, to Republican individualism? This is without doubt one of the avenues currently being explored.

Claude Proeschel

²⁷ CE, 14 May 1982, International Society for Krishna Consciousness, in Jeuffroy, Bernard and Tricard, François (dir), *Liberté religieuse et régime des cultes en droit français. Textes, pratiques administratives, jurisprudence*, 1996, p. 774.