

## FREEDOMS AND PROHIBITIONS IN THE CONTEXT OF “LAÏCITÉ” (CONSTITUTIONAL SECULARISM)

The last decades have seen the emergence, in a fragile social context, of new phenomena, such as the rise in communitarian demands and the misuse of secularism for the purpose of stigmatisation; the *Observatoire de la Laïcité* has therefore decided to issue a succinct, precise reminder of what *Laïcité* means in terms of freedoms and prohibitions.

### 1. PROHIBITIONS AND LIMITS TO INDIVIDUAL FREEDOMS IN THE FRAMEWORK OF “LAÏCITÉ”

- The principle of secularism means that the State and religious organisations are separate. There is therefore no state-run public worship. The State neither recognises, nor subsidises, nor salaries any form of worship. Exceptions and adjustments to the ban on funding are defined in the legislation and case-law; they concern in particular chaplaincies, which are paid for by the State<sup>1</sup>.
- No religion can impose its prescriptions on the Republic. No religious principle can be invoked for disobeying the law.

### PROHIBITIONS AND LIMITS IN SPECIFIC AREAS

- In the administration, public services, and firms and associations with a public service mission, employees and agents are not allowed to manifest their religious, political or philosophical beliefs by signs, clothes or proselytism. Agents and employees represent in fact the nation as a whole, and must therefore adopt a neutral and impartial attitude, both towards the public and towards those they work with. Infringements are recorded, and can be sanctioned.
- In private enterprises with no public service activity, manifestations of religious beliefs may be restricted or prohibited by the company’s regulations, if this is justified by the nature of the work and on condition that the limitation is proportionate to the desired objective<sup>2</sup>.
- In the public area, in the sense of a common space (public streets and areas open to the public or used for public services), the Law of October 11, 2010 prohibits concealing one’s face. The

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<sup>1</sup> In accordance with Article 2, paragraph 2 of the law of December 9, 1905.

<sup>2</sup> Article L 1121-1 of the *Code du travail*; Article L 1321-2-1 of the *Code du travail*; Directive 78/2000 CE of the *Conseil d’État*, November 27, 2000.

law is not based on the *laïcité* principle, but on public security considerations and the minimum demands of life in society<sup>3</sup>.

## **PROHIBITIONS AND LIMITS IN PUBLIC SERVICES**

- Under the law of December 9, 1905, patients can practice their faith in public health institutions as long as they do not impede the functioning of the department, and subject to the requirements of public order, security, health and hygiene. The freedom to choose one's doctor does not apply in emergency situations (a doctor cannot be challenged by a patient). Nor can freedom of choice run counter to the doctors' duty roster or the organisation of medical consultations required for ensuring the continuity of public service. In the case of a patient's refusal to accept treatment (a blood transfusion, for instance), while the patient's consent remains the basic principle, entailing therefore his or her right of refusal, the courts accept that for performing an act essential for survival doctors may disregard the rule<sup>4</sup>.
- For mass catering in public institutions, the responsible authority, necessarily neutral, must not take into account religious prescriptions concerning food, (*halal* or *casher*), but can offer a choice of menus, with or without meat, for instance. However, in certain closed public institutions (for example prisons, boarding establishments or hospitals) or in the army, in application of Article 2, paragraph 2 of the Law of December 9, 1905<sup>5</sup>, the supervisory authority must take into account the fact that certain persons may not have the opportunity to practice their faith elsewhere. In such cases, the *laïcité* principle requires that steps be taken to enable such persons to comply with the food prescriptions of their religion, as long as they do not disturb the functioning of the public service and do not constitute a form of pressure on the members of the group who do not wish to follow suit<sup>6</sup>.
- In public sector primary and secondary schools it is forbidden for pupils to manifest ostensibly their religious affiliation by signs or clothes<sup>7</sup>. In such places, and at an age when the foundations of knowledge are acquired and critical faculties developed, the aim is to protect children from pressures aimed at making them wear such a sign, and to prevent conflicts between those wearing the sign and those who do not.
- In public sector higher education establishments, although all faculty members enjoy freedom of expression, all staff members charged with a mission, including individual contractors, whether or not they are in contact with students, are subject to the rules applicable to all officials and public servants and to private sector employees providing a public service. However, such obligations, including that of neutrality, cannot be imposed on outside speakers invited to give a one-off lecture in a public sector establishment. Furthermore, teachers cannot refuse to give a class on the grounds, for instance, that one or several students are wearing religious signs.

## **SPECIFIC BEHAVIOURS AND PROSELYTISM IN VARIOUS AREAS**

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<sup>3</sup> Decision of the *Conseil constitutionnel*, n° 2010-613 DC, October 7, 2010.

<sup>4</sup> *Conseil d'État*, October 26, 2001. *Senanayaké*

<sup>5</sup> Expenditures incurred by chaplaincies for ensuring that religions can be freely practiced in institutions such as primary and secondary schools, hospices, mental homes and prisons, may however be included in the corresponding budgets.

<sup>6</sup> *Conseil d'État*, February 10, 2016, n°385929, *M.B.*

<sup>7</sup> Law of March 15, 2004, regulating the application of the *laïcité* principle to the wearing of signs or clothes manifesting a religious affiliation in public sector primary and secondary schools.

- Specific behaviours can arise, such as refusing to shake the hand of a person of the opposite sex, to be with such a person in certain collective areas, to work with such a person or to be examined medically by such a person. While there is no rule imposing a given form of politeness, as practices vary according to country, age and social status, forms of behaviour contrary to the equality between women and men and to human dignity are unacceptable, and can be considered to be discriminatory.
- In public service areas (sports facilities, public swimming pools, etc.), requests for single-sex schedules can be refused, not on the basis of the *laïcité* principle, but on the grounds of gender equality and non-discrimination.<sup>8</sup>
- Religious proselytism, consisting in attempting to convince someone to join a religion other than simply by clothes or religious signs<sup>9</sup>, is forbidden in public services in the name of neutrality.
- The same holds true in private firms when, through the means employed or the message conveyed, they disturb the peace or the normal functioning of the enterprise. The same applies when communitarian pressure forces individuals to engage in religious practices, or practices presented as such, which they had not personally expressed the desire to abide by.

## 2. FREEDOMS AND RIGHTS GUARANTEED BY *LAÏCITÉ*

- *Laïcité* guarantees freedom of conscience for everyone; this includes the freedom to believe or not to believe, to practice a religion, to be atheist, agnostic or to be an adept of humanist philosophies, to change religion or to cease to have any religion. A distinction must be drawn, however, between the freedom to believe and the freedom to express one's beliefs. There can be no restriction to the freedom of belief. The freedom of thought from which derives the freedom of conscience includes the freedom to criticise any idea, opinion or belief, subject only to the legal limits of the freedom of expression. The freedom to express one's religious convictions, however, can be limited for the sake of public order, under conditions defined by the law (see the first part of this note). Freedom must however always be the rule, and the limitations the exception, in view of the constitutional principles enshrined in our Republic and France's international commitments, with which such legal restrictions must be compatible.
- *Laïcité* guarantees the neutrality of the State, local authorities and public services, thereby ensuring their impartiality towards all citizens, regardless of their beliefs and convictions.
- The Republic neither recognises, nor salaries nor subsidises any form of worship. No religion or conviction can be either privileged or discriminated against. *Laïcité* is based on the separation between the Churches and the State, which means that the Churches cannot intervene in the functioning of the public authorities and that the public authorities do not manage the functioning of religious institutions.
- *Laïcité* is an emancipating factor in two ways. On the one hand, the State is emancipated from any form of religious control. *Laïcité* in France is based on the same principle as democracy: in neither case is the legitimacy of political authority founded on a supernatural basis, but on the sole sovereignty of the people of citizens. And secondly, *laïcité* emancipates religions

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<sup>8</sup> However, Article 225-3 of the *Code pénal* lists several exceptions, justified by “the protection of victims of sexual violence; considerations related to respect for privacy and decency, and the promotion of gender equality or the interests of men and women; and the freedom of association and the organisation of sporting activities”.

<sup>9</sup> *Conseil d'État*, November 27, 1996 ; n° 170207, 170208.

from any form of State control. It guarantees believers and non-believers and agnostics the same rights, in particular the same right to the freedom to express their convictions.

- *Laïcité* guarantees freedom of religion, but also freedom vis-à-vis religions: no one can be forced to respect religious dogma or prescriptions.
- With *laïcité*, the Republic guarantees the exercise of all civil rights, regardless of individual persuasions or beliefs.

### **FREEDOMS AND RIGHTS GUARANTEED IN VARIOUS AREAS**

- In the public area, in the sense of a common space (such as streets, public gardens, beaches, etc.), a person is free to wear religious signs, like any other sign expressing a person's convictions. For reasons of public security and in accordance with the minimum demands of life in society, it is however forbidden to conceal one's face.
- It is important to distinguish clearly between what constitutes an objective disturbance of the peace, which sets a legal limit to religious practices, and a subjective perception which does not in itself warrant a limitation of the "fundamental freedoms of movement, of conscience and personal freedom"<sup>10</sup>. Dress codes, forms of physical appearance or behaviour, presented or perceived as expressions of religious affiliation, are liable to provoke reactions of hostility or suspicion<sup>11</sup>. Prohibition of all signs reflecting a person's religious or other convictions in public areas (in the sense of the common space) would be an attack on the fundamental freedom to express one's convictions (in the realm of religion, politics, trade unions, philosophy). Under the French Rule of Law, characterised by the principle of freedom, one does not forbid all that one disapproves of.
- In a more general sense, in all areas, and with the exception of agents or employees carrying out a public service mission, people can dress as they wish, as long as they avoid forms of exhibition forbidden by law and abide by the rules concerning professional wear and the restrictions that may be imposed by requirements of public order, decency or hygiene, and by those justified by the nature of the task, and on condition that the limitation is proportional to the aim pursued.

### **FREEDOMS AND RIGHTS GUARANTEED IN BOARDING ESTABLISHMENTS, HOSPITALS, ARMED FORCES, PENITENTIARY STRUCTURES AND IN THE SCHOOL SYSTEM**

- The application of the *laïcité* principle must take into account the fact that certain persons are unable to practise their religion elsewhere, if they find themselves in boarding establishments,

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<sup>10</sup> *Conseil d'État* Order 402742, 402777, August 26, 2016 : *Ligue des droits de l'homme et autres - association de défense des droits de l'homme collectif contre l'islamophobie en France*.

<sup>11</sup> Such forms of dress, of physical appearance or behaviour, may be presented as signs of a common affiliation, but also of marks of respect or modesty. Such signs concern both men and women, but reservations mainly target women's clothes. Reservations or expressions of hostility mainly spring from the feeling that such manifestations are a symbolic aggression on the part of a religion seen as practising proselytism in the collective space. In the case of women's clothes, such signs are seen as an infringement of women's freedom, of their right to equality, even of their dignity, in violation of the principle of equality between men and women.

hospitals, the armed forces or in a penitentiary structure. That is why the Law of December 9, 1905 specifies that chaplaincies, paid for by the State, should be set up in such places.

- The Republic guarantees that public education be governed by the *laïcité* principle.
- In public higher education institutions, which are areas of debate and freedom of expression, the students, who have freely chosen their course of study, are free to manifest their convictions, within the limits of the proper functioning of the establishment<sup>12</sup>. However students' dress should be adapted to the requirements in terms of hygiene or security of certain activities or courses (physical or sporting activities, practical work in chemistry, manipulation of dangerous instruments, etc.) During examinations, in order to prevent fraud, students may be asked not to conceal their ears, so that the absence of communication devices can be checked. Furthermore, contestation of lectures in the form of threats, pressure or attempts to challenge the lecturer, or to exclude some of the students, can lead to disciplinary action, in addition to possible legal sanctions. Students of the teacher training colleges (*Écoles supérieures du professorat et de l'éducation - ESPE*), who have passed the competitive examination for entering the teaching profession, are ipso facto trainee civil servants, and thereby subject to the obligation of neutrality - whether they be already teaching or still students. Lastly, while the departments organising examinations are invited to avoid, as far as possible, sessions on religious feast days, if it proves materially impossible to do so that does not constitute a violation of the religious freedom of the candidates.

### **RELIGIOUS EXPRESSION IN THE PUBLIC AREA AND RELATIONS WITH THE CHURCHES**

- Ceremonies, processions or other external collective manifestations of worship are possible as long as they do not disturb the peace. Mayors can however impose a route or a location for such religious demonstrations, for reasons of security or road traffic.
- Religions are free, like any other social group, to express themselves on matters of society, ethics, politics or social affairs, as long as they do not preach discrimination, hatred or violence, or civil disobedience.
- Any citizen or organisation can express, by lawful means, hostility towards a draft bill, or even a law duly voted, on the grounds that they consider the text to be contrary to their convictions. However, once the bill becomes law they are bound to obey it and refrain from hindering its application. No one is however obliged to make use personally of a freedom granted by law. Expression of one's convictions cannot go so far as to question, in the name of principles considered to be "of a higher order", the legitimacy of decisions taken by democratic bodies.
- While the *laïcité* principle distinguishes between the Churches and the Republic, it does not prevent the public authorities from consulting representatives of the religions and the main philosophical schools of thought.

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<sup>12</sup> See the report of the Stasi Commission, 2003: "The situation of the Universities, although they belong to the public education system, is very different from that of the schools. University students are adults. Universities must be open to the world. There can therefore be no question of preventing students from expressing their religious, political or philosophical convictions. On the other hand, such manifestations must not lead to transgressing the institution's rules. It is not admissible for faculty members to be challenged owing to their sex or supposed religion, nor for teaching to be obstructed on principle."