



CHALLENGES OF RELIGIOUS ACCOMMODATION IN FAMILY-LAW AND LABOR, REGULATION OF PUBLIC SPACE AND PUBLIC FUNDING (FRENCH SOCIO-LEGAL REPORT)

**Secular Law, Religious Diversity and Public Space
Controversies, areas of tension and actors' contributions**

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Executive Summary

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Executive Summary

The religious diversity that characterizes French contemporary society, within a high degree of secularization, reveals in this society, probably more than elsewhere, how much the issue of the place of religion *sui generis*, and of religious minorities in particular, remains a particularly sensitive issue; it refers to what was the struggle for “laïcité” at the beginning of the last century and is also connected with more recent debates on multiculturalism, on without neglecting the issue of the memories of colonial times.

Facing this situation, is it time to rethink the relationship between secular law and religious changing society?

-Are several accommodations with the new religious issues in Family Law and Labor, or in Regulation of Public Space or Public funding about to be put on the political agenda?

-Or, at the opposite, shall we assist to reinforcement of secular law refusing any evolution and taking into account the aims of religious communities?

INTRODUCTION

In the words of the historian Jean Baubérot, *"the prevailing mentality in France is not spontaneously pluralistic"* (Baubérot, 1999). Nevertheless, the religious diversity that now characterises contemporary French society (just as with other European societies!) reveals in this society, probably more than elsewhere, how much the issue of the place of religion *sui generis*, and of religious minorities in particular, remains a particularly sensitive issue; it refers to what was the struggle for secularity at the beginning of the last century and is also connected with more recent debates on multiculturalism, without neglecting the issue of the memories of colonial times.

When it comes to discussing the place of religion in France, taking into consideration emotions and controversies seems equally as crucial as adhering to the law applicable in each case.

Indeed, despite great religious controversies, head-on confrontations and the infamous war of the two 'Frances' (Poulat, 1994), the issue of the social and political status of religion does not seem to be a book that is closed for good. Far from it!

From recurrent controversies about Islam, to campaigns against the proselytising of sectarian groups within companies or statements about the "positive secularity" (laïcité positive) of Nicolas Sarkozy (Baubérot, 2008), there are many examples that show that the secular republic is still dealing with an ever more present religious phenomenon, more visible in public space, whereas the lawmaker in 1905 had wanted to keep it solely in the private sphere.

In this report, by relying as much on the regular monitoring of current religious news (punctuated by controversies and polemic), as on references to the thirty or so interviews with various religious and political leaders and experts, we will try to focus on the points of friction that seem to persist in relation to public manifestations and thereafter to the public regulation of religious plurality in the context of secularity.

According to the transverse presentation held by all the other national teams committed in this research (Bulgaria, Denmark, the United Kingdom, Netherlands, Turkey) the results of our conversations were organized into a hierarchy according to items imposed by the project RELIGARE (right of the Family, Labour Law, Public place and public Financing).

In the first part of this report we shall at the same time try to give an outline of the whole religious and institutional situation of France while presenting some of the controversies and the debates which enlighten certain problematic aspects of the social incidence of the religious pluralization.

In the second part, we shall return more in detail on the conversations realized within the framework of RELIGARE Workpackage 7.

Methodological Prolegomena

Before reaching into the body of our report and presenting the French context and the detail of the answers obtained during our interviews, it is important in this methodological foreword to briefly reconsider the objective conditions that have governed the realisation of this study.

It will in particular be necessary for us to focus on some of the difficulties with which we were directly confronted throughout our information gathering.

A) A contrasting reactivity...

It has to be said that, on the whole, answers to our mails (including the French language *RELIGARE Newsletter*) officially requesting interviews remained rather patchy.

Of the 38 interviews initially announced (Amsterdam Meeting, October 2010), 27 could finally be realised.

The first were carried out in September 2010, the majority of the others between January and December 2011.

This was only made possible through multiple reminders in various forms (e-mails, faxes and especially phone calls...), insofar as we had not received any answer, nor simple acknowledgement of reception of our first mailing (as it was in the majority of cases).

Also we had to lower our ambitions, moving from the 38 interviews announced to the 27 actually conducted.

The interviews were prepared in advance by Franck Frégosi (UMR PRISME 7012) and Deniz Kosulu (CHERPA, IEP Aix), and the majority were accomplished technically by Deniz Kosulu.

Between October and December, Franck Frégosi also carried out complementary discussions with former respondents and conducted other interviews with new contacts.

We cannot help thinking of the reasons - economic and technical, but also more profound - for the contrasting results of our multiple reminders, which could clarify this mixed response.

In our opinion, several subjective and objective reasons can be put forward to try to explain, if not to understand, the poor reactivity of our intended speakers.

We must start out by recognising that we undoubtedly under-evaluated some major difficulties.

We undoubtedly started out too confidently, rather enthusiastic about the idea of being able to propose a relatively exhaustive list of relevant people and social actors for our research (nationally and locally elected officials, religious leaders, association activists, trade unionists...).

It turned out that some people often proved to be unavailable. In such cases we were referred to other contacts, who sometimes turned out to be less appropriate than those initially contacted (less convincing declarations and rather general remarks), not to mention those who never took the trouble to respond to our various reminders.

Similarly, scheduling interviews with national political or religious leaders likely to have reasoned opinions appeared to us to be an easy task.

The reality was anything but!

In doing so, we maybe under-evaluated the difficulties of accessing the targeted terrain and each person's individual constraints.

Without exaggerating on our part, it has to be said about several of the people contacted that there were manifest omissions of a secretarial nature and related to the following-up of the mail (several contacts having confessed to not finding any trace of our mailings or to have simply mislaid them...).

Although technical errors (human error, loss of the mail...) is always possible, one cannot help thinking, like Pierre Bourdieu, that the social practices of the social actors are unwitting. Thereafter, this kind of attitude of forgetfulness or losing mail can be the symptomatic reflection of the fact that our questions did not seem to always capture the priority attention of selected speakers.

In addition, these same interviewees were not always available because of overbooked diaries, which upset our scheduling and could lead to a delay in accomplishing the interviews.

One should also consider as a major reason the very great adaptability of certain respondents who are quicker to react in the media to various news items, to interviews with journalists, than likely to take a step back and suggest a finer, argued analysis of their various points of view and answer rather precise questions falling within comparative research on a European scale and perhaps requiring a certain level of technical expertise (in law in particular).

The lack of echo generated by our project among people who play a very active role in civil society perhaps simply conveys their great perplexity, even embarrassment, with having to examine certain issues and having to take into account a certain number of developments.

We realised that certain speakers, who were in any case hardly familiar with this type of questioning, sometimes seemed embarrassed, if not surprised, by our questions.

Some of the people interviewed did not hesitate to tell us that the simple fact of publicly raising such or such an issue, already constituted a problem in itself.

Others more humbly told us how surprised they were by the complexity of our questioning and were not always able to satisfy our curiosity.

Also we had to make do with their answers, even if they were short or too one-sided when seen through expert eyes.

Nevertheless, these are their answers and they have to be regarded and respected as such.

While some were astonished by the very nature of our questions, they nevertheless played the game and made the effort to answer us.

Because of our distance from Paris (the whole of the team was based in the South of France) and of multiple activities being undertaken in parallel to RELIGARE (PhD research, teaching obligations...), our geographical mobility was not always optimal.

This could be a handicap and affect our availability, not to mention some cumbersome administrative procedures (needing to plan travel a long time in advance, sometimes unwieldy administrative system for processing missions...).

Finally, at the outset we had counted on a team of three people (a coordinator and two investigating PhDs), which with time was reduced to two people (a coordinator and an investigator only!), which undoubtedly indirectly influenced our study.

B) Returning to our panel of respondents...points of view and accounts of situated actors

The objective of this research was by no means to give the floor to a supposedly representative sample of various religious groups, political sensitivities and social forces concerned in France by the general theme of religious diversity and its interface with the secular state and its law.

The study would not have lasted long enough and, in addition, the practice of interviewing for an average duration of 90 minutes is not suited to collecting this type of information.

Also, our panel of speakers is undoubtedly not nationally representative of all the points of view on the subject, but it nevertheless illustrates in sociological terms some of the stances which are regularly heard in the national media or in official declarations.

We wanted to associate the opinions of national leaders as far as possible with specific situations and accounts of actors on the ground.

Nor do we claim to have engaged in a strict survey using opinion polls and an immutable grid of closed questions giving rise to ranges of prefabricated answers.

We resolutely favoured interviews of the open, semi-directive type, leaving the people questioned fairly free to react to certain areas of questioning, taking care, however, to ensure that the major topics announced were nevertheless researched, so that the person was able to answer about them - which is not always obvious and was not always the case.

It did happen that the actors themselves addressed an issue, before we had directly mentioned it, so, in such cases, we favoured what they said above all the rest (once one of the imposed topics was mentioned, the answer was regarded as acquired...even if it was imperfect!).

Similarly, we were sometimes led to carry out some more specialised interviews (in particular with certain religious and trade-union leaders), by further targeting our questions in order to collect not fragmented opinions, but many more specialised opinions.

Ideological shortcuts, contradictions and confusion in the answers will undoubtedly surface in the eyes of the experts, whether legal (which we are not) or in social sciences, where we recognise ourselves better.

If omissions or oversights can be identified by expert eyes, they are without any doubt down to us and ascribable to a lack of specialisation in all the items selected (impossible to surmount!) or to a lack of curiosity on our part. But some others reflect also the perception of the speakers, their degree of comprehension of the major issues raised, even also their objective lack of knowledge of certain aspects. No more, no less!

What characterises the sociological approach, is precisely allowing as a priority social actors to express themselves and only in a second instance trying to decipher their remarks.

In the development of our panel, and in agreement with all the national teams (Amsterdam Meeting of October 2010), we took on the challenge of combining national and local participants in order to better comprehend the complexity of situations and levels of perception and management of the challenges related to the religious diversification of the French landscape at national and local levels.

-With regard to its religious aspect, we solicited national and local representatives of the principal religious denominations present in France (two Roman Catholics, two Protestants, one orthodox, two Jews, five Muslims¹ and an Alevi); a Buddhist leader had also been contacted, but never responded to our request.

-As for political parties, we were able to collect the opinions of two elected Socialists (an MP and a municipal official), a Communist MP and Mayor and a right-wing MP and Mayor. Other elected officials from the Left and the Greens, as from the Right and Far Right, had also been contacted, without success.

-In respect of social bodies, we were able to gather the points of view of three trade union leaders (including two women).

-Logically enough, we included in our panel representatives and activists of lay movements and free-thinking. More concretely, we spoke with leaders of associations promoting secularity in France and Europe and an activist of free-thinking.

-Lastly, we also requested the opinions of representatives of three national masonic lodges, reflecting rather different points of view on the direction Freemasonry is taking and its concrete implications for everyday life (Dachez, 2003). This bias towards the views of Masonic representatives is justified by the fact that, unlike countries in the Anglo-Saxon and Scandinavian traditions, Freemasonry in France (in particular the one known as 'liberal') belongs to the structure of the Republican idea and has played an active part in all the debates on society (schools debate, debate on the veil, laws of bioethics...).

-Initially, we had also envisaged to include in our panel several organisations combating racism and anti-semitism (S.O.S Racism, MRAP, Licra...) and defending human rights (League for the Defence of Human Rights), including the High Council for Integration (HCI). These various organisations alas

1 We justify the over-representation of Muslim participants on our panel by our concern, which we completely assume, to want to hear from various Muslim organisational persuasions and to reflect activists' different pathways. This fact also undoubtedly reflects our proximity to, and our greater professional familiarity with, Muslim circles.

never answered our multiple requests, despite our reminders. We cannot deny they are missing, just as we can only regret not having been able to obtain an appointment with the HALDE.

As a whole, most receptive to our requests were in fact, chronologically speaking, leaders of Masonic lodges, religious leaders (all faiths combined) and political leaders (rather those from the Left). The least reactive were incontestably the representatives of anti-racism associations and some national right-wing as well as left-wing elected officials.

Despite this, we never yielded to demobilisation and we persevered until the last moment (December 2011) by seeking backup solutions and by sometimes favouring local contacts or networks from personal knowledge (local religious leaders, local elected officials...).

Where the answers and the various reminders remained unanswered, we tried most of the time to find alternative solutions. They consisted more concretely in the use of literature specialised on the subject or in asking people who were more reactive than our initial contacts (religious leaders and local, rather than national, politicians...).

Where gaps appeared during transcription of the interviews, we endeavoured as far as possible to renew contact with our respondents (with more or less success!) or by resorting to answers available on various documentary resources (internal notes, essays, studies...), likely to shed better light or by referring more simply to writings specialised in the subject (cf. bibliography).

The refusals

It is important also to briefly reconsider some explicit refusals which we encountered.

The reasons for the refusals proved just as rich in meaning as the positive answers. They only sharpened our curiosity and our will to understand the underlying logic.

The first refusal came from an MP of the UMP Party, member of the movement known as the Popular Right, supporter of sovereignty and rather Eurosceptic - Jacques Myard, MP and Mayor of Maisons-Laffitte).

His negative reply was mainly justified by rejecting in principle any request for an interview and, more specifically, from "*bodies of the European Union which name themselves only in the language from the other side of the channel*". This MP did not accept (tolerate) that in the French version of the *RELIGARE Newsletter*, some items were in English and in particular '*European commission*'.

It is true that this MP is very finicky as regards recourse to the French language and particularly vengeful in acting to strike down the governorship of the European Commission.

Beyond his reaction in a somewhat annoyingly French style, this MP usually adopts stances that are rather knife-edged, such as denouncing anti-white racism, full-on hostility to gay marriage, fighting communitarianism, not to mention a certain 'fundamentalist' defence of secularity (etc.) (Myard J, 2003). At the time of the first case of the Islamic veil, which led to the passing of the law of 15 March 2004, prohibiting the wearing of religious signs in state schools, he had, at the time, declared himself to be personally favourable to its pure and simple banishment from all public space. He also took part very actively in the parliamentary working group on the wearing of full veil during 2010. His vision of secularity is rather commonly shared by many right-wing politicians in Parliament. It tends more and more to make secularity not a simple legal mode of regulation of relations between faiths and the State, but rather a principle of identity said to be incumbent on all and a central element of the French national identity, to which all those who undertake steps of naturalisation are expected to conform.

More recently, this same MP belonged to the group of Conservative MPs who signed a petition requesting from the Ministry for National Education the withdrawal of a handbook of Life and Earth Sciences intended for high-school pupils, in which gender studies was mentioned. They consider the book, on the one hand, not to be scientifically founded and, on the other hand, likely to disturb young high-school pupils by leading them to discover that sexual orientation is not a function of biological gender, but the result of a social, psychological, cultural and more complex symbolic process.

The MP nevertheless took the trouble to declare to us in writing that for him secularity was a principle of government and nothing else and that it was his duty, as a parliamentarian, to monitor its application and the strictest respect for it.

The second explicit refusal came from *Miviludes* (*the Inter-ministerial Mission of Vigilance and Combat against Sectarian Aberrations*). One of its leaders wrote to us that, taking into account the fact that this organisation was exclusively focused on sectarian aberrations, it did not consider that the question of religious pluralism and its effect on state-religion relations was within its expertise. This standpoint tends to suggest that the sectarian phenomenon as such does not belong to the religious domain, strictly speaking. It conveys a normative vision of religion subscribed to by a number of public leaders as much on the right as on the left of the political chess-board. It consists in arguing as if it were advisable to establish the essential, implicit distinction between religious phenomena assumed to be “normal” which can develop freely within the framework of surrounding legislation and other socially controversial religious phenomena ('sects'), which would likely, according to more or less precise and arbitrary characteristics, be the subject of legislative or administrative provisions that are more restrictive.

One of those interviewed was to declare to us on this subject: “*The sects are delinquents, the sects are fundamentalists, they are people who undermine personal freedom etc. There are missions which fight against the sects so that they do not violate the Republic. It is not a danger, but it is necessary to be naturally vigilant*” (militant secular organisation).

This vision bases itself on the idea that these phenomena would convey such particular forms perceived as “deviating” from the religious, that one finishes up considering more or less as external to religion, having legitimately the right to have their voices heard in our societies. It is on the basis of this reasoning that elected officials have also suggested in the report of the fact-finding mission on the full veil that, henceforth, *Miviludes* includes in its investigations the monitoring of cases of wearing the full veil, reflecting the point of view of a sectarian Islam.

The refusal by *Miviludes* can finally be explained by its strong distrust towards the academic world.

Recent changes undergone by the Christian Federation of Jehovah's Witnesses should not fail, however, to challenge the *Miviludes* on the often rather arbitrary nature of its approaches and its claim to root out sectarian excesses by only basing itself on the opinions of anti-sectarian movements and by cultivating a degree of mistrust vis-à-vis academic circles specialised in this area and always suspected of complicity with these movements.

Interviews conducted

Conducting the various interviews, far from meaning the end of our efforts, was only one single stage. It then remained to obtain the approval of the remarks carefully re-transcribed by Deniz Kosulu.

Here too, the feedback was inconsistent.

If a minority took the trouble to approve them, the great majority remained silent, more out of negligence than by an implicit willingness to dissociate themselves from the remarks made.

Others, in all confidence, gave their tacit agreement without having to view the total or partial transcripts.

In the majority of cases, after having reminded those who had not approved the interview script within a period of two weeks to one month, and in the absence of reply on their part, we took the decision to preserve the script as it was and to use it.

In the vast majority of cases, the interviews revealed themselves to be pretty interesting and made it possible to better identify some of the great constants and to specify dividing lines between our sample of social actors; for example, in relation to their greater or lesser support for the idea of a necessary evolution of legislation on regulating relations between religions and public authorities and seeking new equilibria; or, on the contrary, their resolute opposition to any legal evolution on the matter as well as any taking into account of certain particularisms.

- In their very great majority, the interviews conducted further confirmed the main tendencies usually identified at the time of public announcements and debate on the status of religion in French society,

rather than bringing the proof of a strong willingness or a need to revolutionise mentalities and practices as regards understanding the new challenges linked to religious diversity.

One can regret this, but one should not, however, be astonished.

- In particular on the issue of the increased visibility of religion in public space, French society seems more the prey of a certain implicit conservatism which consists in not wanting either to have mentalities, nor *a fortiori* the law, evolve on the matter, than to be enthusiastic about the idea of inventing new options or transposing solutions from elsewhere.

That does not imply that things must, however, remain as they are, but that any projection or suggestion in this direction cannot ignore this situation and should favour a resolutely pragmatic approach based on local action disconnected from national political agendas.

- One can also finally wonder about the opportunity to resort to new laws which would be likely to appear primarily as laws passed in urgency and that were too directed, aimed too implicitly at certain religious groups.

I) Religion, Society and State...as seen from France

Among the many current challenges that secular democracies have to face figures prominently that of the place and future of religion in its many variations (increased visibility of religious practices in public space, renewed religious enthusiasm, militant activism by literalist religious groups, secular and political effusions of religion...).

No democracy is likely to escape this issue of the enhanced presence of religion in public space. Some authors, like Jürgen Habermas, even go as far as considering that, while defending the contours and the achievements of the secular state (principle of separation of church and state, freedom of conscience, confessional neutrality of public services...), it must at the same time be recognised that religions "generally perform functions that are significant for the stabilisation and development of a liberal political culture" (Habermas, 2008).

Does secular France escape this finding?

Although France has been constitutionally secular (*laïcité*) since 1946 and the notion of secularity (*laïcité*) there is at the same time a legal, political and philosophical reference, and although it is also omnipresent in the rhetoric of most French political parties on the left as on the right - and more recently as far as the extreme right - France is also increasingly concerned with the problem of the religious becoming public. This must be seen as enhancing the urban visibility of religion, its very broad diversification, the multiplication of connections and requests to local, as well as national, authorities (denominational squares in cemeteries, opening rooms for worship...), not to mention the propensity of public authorities to intervene in and on the field of religion (formation of the French Muslim Council (CFCM), law on mental manipulation...).

In this summary, our discussion will principally aim to provide a precise account of the current state of religious plurality at work in France. It will also touch briefly on some of the debates generated by this diversification of the religious landscape in relation to the secular regime, which are regularly at the forefront of the media and entered into the political agenda.

The religious situation in France can be summed up by these four findings:

- It must first be noted that French society is not immune to the dynamics of secularisation that is affecting all European societies (Berger, Davie, Fokas, 2010) with varying intensity depending on whether these societies were historically marked by Catholicism (Continental and Southern Europe) or one of several expressions of the Reformation (British Isles, Nordic countries, mainland Europe...). This secularisation is manifesting itself concretely in France through a steady decline in

religious affiliation and a growth in the percentage of people declaring they are without a religion or agnostic;

- Parallel to this secularisation, French society is also characterised by the diversification of its religious landscape. This religious pluralism is expressed *ad extra* in terms of a multiplicity of religious offerings (religious diversity), but also *ad intra* in terms of a diversification in the positioning of religions (pluralisation/more complex confessional groupings);

- Beyond a secularity often branded an exception in Europe and supposed to maintain an equal distance between all religions and the neutral state and treat them all equally, we have witnessed in parallel a kind of spiritualisation of public space (intensification of public statements and increased visibility of religion in public space), a very clear redeployment of state and lawmakers' actions in respect of religion. Against all evidence to the contrary, the secular state has not given up intervening in the religious sphere;

- Finally, in response to this new religious order, we must note through the recent controversies about the veil or the issue of Muslims praying in the street and, at a more peripheral level, about timetables in swimming pools adapted for Muslim women (and formerly Orthodox Jews!), that the secular activist reference has in this context drawn on renewed vitality. It has even undergone some socio-political modifications rather symptomatic of a radicalisation, sometimes with strongly xenophobic undertones (cf. media campaigns against the Islamisation of France...).

1/ France: a land of both Christian and secular tradition at a time of religious plurality

The plurality of beliefs and religious affiliations is one of the major distinguishing features of contemporary Western, secularised societies, particularly on a European level. Moreover, it is more appropriate to argue, on the one hand, in terms of the internal pluralisation of the religious domain, so as to fully focus on the dynamic aspect of this issue of the multiplication of religious offerings, without then omitting to argue in terms of the diversification of mechanisms and expressions of a religious belief which overlaps several distinct (not necessarily disjointed!) processes related to contemporary forms and modes of "believing".

The pluralisation of the religious domain primarily refers to the growing diversification of religious "offerings".

a) Religious diversification in France: a contrasting situation

As in 21st century Europe, France now has a religious profile that is original because it is contrasted, resolutely plural. Certainly, Christianity remains there, as throughout Europe, the dominant religious and cultural movement, but it refers primarily to a diversified, denominational universe, including Catholicism, forms of Protestantism and the various historical and migratory expressions of Orthodoxy; add to these Judaism - itself heterogeneous - an Islam that is no less plural, forms of Buddhism and other religious groupings.

To this first aspect of religious pluralism we should add that if Christianity in its Catholic version is as dominant as all the other religions, it is evolving in a deeply secularised society, in which the major established religions have seen their role and institutional, cultural and social influence gradually worn away. Religion is increasingly confronted by a logic of optionality, where traditionally it was part of the very definition of the social being by contributing to the socio-political integration of populations and to the legitimisation of governments.

Parallel to this loss of the structuring power of religion, which has led some to make us believe a little too quickly in the gradual disappearance of religion or in its "*eclipse*" - to use the words of the Italian sociologist Sabino Acquaviva - paradoxically, we are witnessing a profound reorganisation of

religious feeling and even its resurgence in a way that is more fragmented, individualised, emotional and affective (Hervieu Léger, 1999).

In Western Europe, this reorganisation - or more precisely, transformation - of religious sentiment is concomitant with an increasing diversification of the religious landscape. This is expressed on the one hand by the development of the phenomenon of sects and new religiosities, and on the other by the enduring presence - through the succession of migratory cycles - of religious traditions that were totally absent or at least barely integrated into the European religious landscape, such as Buddhism (and to a lesser extent Hinduism) and, to a greater extent, Islam.

This religious diversification is partly related to population movements outside Europe (decolonisation, migratory cycles from the Maghreb, sub-Saharan Africa, Turkey or South East Asia...). This applies as much to the establishment of the first nuclei of Muslim populations in Western Europe, as it does to Buddhism through the influx of Vietnamese, Cambodian or Laotian refugees.

But the religious diversification also refers to internal transformations in the composition of older settlements of denominational groups, such as the surge in forms of Evangelical Protestantism or the religious impact in the Jewish world of the arrival of Jews from the Maghreb in the years following independence, during the 1950's and 60's.

The majority of surveys conducted into religious proximity confirm several phenomena in France:

- France remains a country marked by the Catholic tradition. Between half and two thirds of French people say they are Catholic. According to recent polls, of 64 million inhabitants in France between 64% and 69% are Catholic, of whom 49% are occasionally or seasonally practising Catholics (only going to church for baptisms, communions, weddings and funerals of their loved ones), in contrast to 10% to 16% who are regular churchgoers and 10% who are non-practising. The percentage of Catholics has been in steady decline since the 60's; in 1980, 75% were Catholic.

The fact that a majority of French people still consider themselves Catholic is not a reason for these sociological Catholics to be often at odds with the religious institutions themselves.

French Cardinal Etchegaray had only too rightly evoked the subject of a "silent schism" between the nominally Catholic faithful and their church, in particular regarding the stances taken by the Roman *magisterium* on sexual morality and bioethics in general.

Today, we are often therefore confronted by a Catholicism that remains for the most part more cultural (linked to identity!) than linked to worship and which, in some of its active elements, gives the feeling of a minority that feels besieged by an environment it deems destabilising (Tillinac, 2004).

- The second affiliation sociologically present in France is Islam. The figures usually put forward indicate, at the highest estimates, more than 5 million people (Godard, Taussig, 2007) potentially or sociologically Muslim, at the lowest, between 3 and 4 million (Tribalat, 2004).

A recent study, conducted by INED and INSEE in 2008-2009 on the basis of a sample of 220,000 respondents, counted some 2.1 million Muslims in France (Simon, 2011). It also appears that 95% of these Muslims in France come from Muslim families.

Mostly they are foreigners (123 nationalities), French descendants of immigrant populations mainly from the Maghreb, Turkey, Sub-Saharan Africa, the Middle East or Asia, but also French people who converted to Islam, estimated at between 70,000 and 110,000.

Even in its lowest estimates, Islam potentially remains the second largest religion in France after Catholicism (*IFOP/La Croix* 2009).

Far from returning to a unified set of practices, behaviours and discourse, Islam in France is a heterogeneous social and religious reality encompassing the intimate Islam of simple believers, the exteriorised Islam of declared practising believers, the more "virtual" Islam of people of Muslim culture and, last but not least, Islam "denied" by those who say they have parted with this religion, while continuing to refer to it negatively.

The *IFOP* survey for the daily *La Croix* and published in July 2011 shows a significant development (in percentage terms) of trends between the different modes of belonging to Islam in France. The increase observed during several years of religiosity indices (daily prayers, prayers in the mosque, observance of fasting...) has resulted in a noticeable rise in the percentage of those practising regularly - estimated today at 41% - compared to 33% in 2007. The survey also confirms the fact that Muslims are profiled as practising more than Catholics, among whom the percentage of practising believers amounts to 16%. The rise in religiosity varies in intensity and time, depending on whether one considers daily or Friday prayers. Thus, according to the latest survey, 39% of Muslims take part in the fivefold daily prayer (which is an individualised practice not requiring a visit to the mosque) which, in a short period - between 2001 and 2007, represents a significant increase of 6 points. As for communal prayer on Fridays (at the mosque), it is currently around 25%. Unlike the daily prayer, its growth is spread over time: in about twenty years it has only increased by 9 points!

The *IFOP* study shows that if 41% of Muslims identify themselves as practising believers, 34% claim to be simple believers, 22% define themselves to be of Muslim culture or origin and, finally, 1% would have chosen a different religion and 3% would have renounced all religion. We are therefore faced with four different types of Islamic identity: a pious Islam which involves a demanding practice, an Islam that often consists of a belief disconnected from practice, a cultural Islam born of a family heritage and, finally, an Islam denied or rejected (Frégosi, 2011).

If, over the past ten years, there has been a steady increase in religiosity indicators - such as daily prayer (39%), attendance at mosques (23%) especially by young people - a practice such as the observance of fasting (on the increase) must be considered a behaviour and reflex more identity-related than the expression of a high religiosity. This is why 71% of Muslims state that they observe fasting. Those who practise regularly, non-practising believers and simply people of Muslim origin intend to comply fully or partially (fasting for a few days!). This is an opportunity to strengthen conviviality (post-fasting meal in the evening, visiting the neighbours) and solidarity (opening up to the poor) and the only time that the notion of a community united around a widespread practice appears to materialise.

As for alcohol consumption, a third of Muslims say they partake, without ceasing to regard themselves as Muslims.

Since 2002, Islam has officially had a national, centralised body - the French Council of the Muslim Faith (CFCM) and 25 regional councils (CRCM) emanating from most of the mosques and prayer halls in France.

- As the third religious denomination present in France - with some French regions being its historical bastions (Alsace, Pays de Montbéliard, Cévennes and the Nîmes region, a part of the south-west, the Centre and a few outposts in Western France...), Protestantism concerns at present almost 3% of the national population. Historically, the churches that dominate emerged directly from the Reformation (Lutheran and Reformed churches) - very avant-garde in terms of exegesis, ecumenism, participatory democracy and rather progressive on moral issues (reservations vis-à-vis gay marriage!). This historical Protestant core, which represents about 1 million people, is today directly confronted by a surge in evangelical (200,000 people in France) and pentecostal (400,000) denominations - far more dynamic, but also more conservative. These are churches of "the dissenting tradition" that emphasise individual conversion and a literal reading of the Bible. They promote a theology centred around the cross, emphasising the repentance of sins and playing fully on the emotions; some are awaiting with excitement the return of Christ and are obviously very proselyte. These churches are fiercely opposed to abortion and reject homosexuality. Most of these churches are united in the National Council of Evangelicals in France (CNEF). If Evangelicals make up only one third of Protestants, they represent three-quarters of practising Protestants. The Protestant Federation of France (FPF), official historical showcase of French Protestantism, groups together about twenty movements and churches representing most ecclesiastic elements, sensibilities and works of French Protestants; it was expanded in 2005 to include the Seventh-day Adventists.

- If France is often portrayed as the first Muslim country in Western Europe because of its 4% -5% of Muslims, it is lesser known as the first Buddhist country in Europe with almost 600,000 Buddhists.

Five out of six Buddhists are of Asian origin. The first settlements of Buddhist communities date back to the 60's with the first wave of immigration in the wake of decolonisation. And the phenomenon accelerated as and when political unrest caused, for example, an influx of refugees fleeing Vietnam. The Tibetans opted rather for Switzerland and Canada (Etienne, Liogier, 1997). Like other religious groups, Buddhism benefits from institutional representation through the Buddhist Union of France (UBF), which brings together the majority of pagodas, Buddhist temples and trends within them and has become the interlocutor with the public authorities.

- Turning to Judaism - according to the Jewish Agency, there are currently 488,000 people in France of Jewish faith, located particularly in urban areas, in large cities like Paris and the surrounding region and in Lyon, Toulouse, Marseille, Strasbourg, Nice, etc. It should be noted that Jewish communities were already present in France during the Roman Empire (*Burdigala, Massalia, Ludgunum* and in the centre of the country); they were to regularly become victims of pogroms during the Crusades and outbreaks of the Bubonic Plague, only Provence and the Papal States welcomed them over the long term. The East of the country was to experience strong Jewish settlement (Metz, Strasbourg...). Despite the acquisition of citizenship rights and a successful process of assimilation, Jews were to be the object of campaigns of anti-Semitism during the 19th century and throughout the 20th century, up to the drama of the deportation which was to cost the lives of 75,000 Jews in France (39% of the total population of Jews in France) (Winock, 2004).

Since the 60's, with the arrival of *Sephardim* Jews from the Maghreb countries that had gained independence, the ethno-linguistic and cultural composition of the Jewish community changed - to the detriment of the previously dominant Ashkenazis.

The Jews of North Africa have contributed to giving French Judaism a more pious and more emotional tone - or even a certain strictness, particularly in respect of observing dietary rules.

Over time, French Judaism has internally undergone significant changes with the development on the fringes of consistorial Judaism, close to Jewish orthodoxy, of more liberal and conservative streams (*Conservative Judaism*) that appeal to many Jews attached to a religious practice which is adapted to the modern world and open to the issue of mixed marriages (40% of mixed marriages). For several years, the development of unions with non-Jewish women has been the recurrent issue and of greater concern to community leaders than emigration to Israel!

At national level, religious Judaism has historically been mainly represented by the Central Consistory which defends a rather orthodox and traditional vision of Judaism. The liberal sensitivity is shared by several unions and movements, such as the Jewish Liberal Union of France (ULIF), the Liberal Jewish Movement of France (MJLF) and the Jewish Liberal Centre of Ile de France (CIJL), not forgetting the development of the "conservative" *Massorti* stream that oscillates between Orthodoxy and Modernism.

Judaism also has a more political, representative body - the Representative Council of Jewish Institutions in France (CRIF) - firmly committed to the fight against anti-Semitism and to unwavering support of the policies of the Jewish state.

- Then, there are other Christian denominations termed "Eastern". Firstly, there are 240,000 Orthodox (strictly speaking) affiliated with one of the different Byzantine churches of Russian, Greek, Romanian, Serbian and French expression, added to which there are more than 210,000 Pre-Chalcedonian Eastern Christians who are mostly Armenians (180,000), often associated with the 45,000 Egyptian Copts.

The vast majority of Orthodox followers belong to the Russian Archdiocese for Western Europe which depends on the Ecumenical Patriarchate (140,000); thereafter come the Greeks (42,000), Serbs (15,000) and the members of the Russian Orthodox Church outside Russia (9,000). 2-3 years ago this very traditional church joined the Moscow Patriarchate (also present in France (5,000)) as part of a reconciliation (Roberti, 1998).

It is worth recalling that the presence of Orthodox believers in France dates back historically to the early nineteenth century to around 1816, date of the opening of the first Orthodox church in Paris, which was then followed by the opening of another place of worship in Marseille. It was also in Marseille in 1845 that the first place of worship with a storefront opened. In 1859, it was the turn of

the city of Nice with the Church of St. Nicolas and St. Alexandra. It is in this same city that the largest Russian Orthodox Cathedral outside Russia has stood since 1912.

The different upheavals that occurred in various parts of the Orthodox world (Russia, Greece...) and areas of large Orthodox communities (Middle East) fed into and promoted the gradual settlement of Orthodox communities in France. These population flows linked to primarily political emigration (Bolshevik Revolution, Greco-Turkish War, conflict in Lebanon...) have continued until today with economic migrants (Romanians, Moldovans), not to mention the presence of Russian expatriates in the business world.

Meanwhile, as these emigrant populations settled, Orthodoxy came to attract people completely foreign to the Slavic or Greek worlds, for whom the Byzantine tradition could be a theological, liturgical and ecclesiastical answer that was more consistent with their expectations when faced with Western churches that were, if not in decline, at least very committed to the world of high society, and especially when faced with an environment leaving little room for the religious dimension. These Orthodox churches were therefore able to appear as shrines preserving faith and rites on which time had not taken hold.

Also, let us remember that thanks to the St. Sergius Orthodox Theological Institute in Paris, France can pride itself on a school of theology known for the quality of its work, its teachers and the development of prolific, Orthodox thinking - both intellectually and spiritually (Clément Olivier, Vladimir Losky, Pierre and Michel Evdokimov...). Paris, and moreover France, have also become strategic challenges for official Russian Orthodoxy, which is seeking to obtain control by legal means of a number of ancient religious buildings built by Russian emigrants who fled the 1917 revolution. By 2011, the Moscow Patriarchate also aims to build a huge cathedral at Quai Branly overlooking the River Seine and a seminary to train priests for Western Europe. Father Jean Gueit, current Rector of the Russian Orthodox Cathedral in Nice, himself a descendant of Russian emigrants, tells clearly, during the interview he gave us, of the dispute between the Orthodox religious association, which manages the building affiliated to the Patriarchate of Constantinople, and the Patriarchate of Moscow (actively supported by the Russian Federation!), which claims ownership of the building; this is a little-known aspect which tends to confirm that the issue of political instrumentalisation of religion is not exclusive to any one particular religion.

- Our presentation of the French religious landscape would not be totally exhaustive without mentioning the existence of a multiplicity of other religious groups labelled (more or less arbitrarily!) by the general public, media and information services, as "sects". These groups are regularly at the centre of press campaigns, controversies and various articles, sometimes (but not systematically!) leading to criminal or civil proceedings, and are subject to increased attention from militant, anti-sect movements (UNADFI, Roger Ikkor Centre...). Since 2002, they have been subject to specific, very close monitoring by a public body under the direct control of the Prime Minister, the Miviludes (Interministerial Mission of Vigilance and Combat against Sectarian Aberrations / www.miviludes.gouv.fr). This body (the successor of the Mission to Combat Sects / MILS) is chaired by a former magistrate and publishes an annual report on the state of sectarian aberrations in France. This report lists various facts about sects and their members and points out trends and practices they view as suspect, revealing the infiltration of sectarian groups into the areas of health, vocational training or education, etc. Although the official report has no legal value, it is highly publicised and often serves as a lens through which public officials comprehend the complex and fragmented world of new forms of spirituality, which are more or less socially controversial. Add to this that the Miviludes, besides its mission on information-gathering, vigilance and prevention, is also responsible for defending French policy on combating sectarian aberrations at an international level. Among these so-called sectarian groups, the Church of Scientology has been the most regularly quoted in several legal cases. According to statistics put forward by the church itself, France has 45,000 Scientologists, with the country being served by six churches and six missions.

Another movement often regarded as a sect in the pejorative sense of 'a controversial religious movement', but which settled much earlier in France, is the Christian Federation of Jehovah's Witnesses. The faith of Jehovah claims to assemble over 250,000 followers and supporters and thereby puts itself forward as the third "Christian denomination" in France. In the opinion of specialists

(Dericquebourg, 1999), this religious movement has gradually left behind its initial sectarian way of thinking (renewal of generations, blunt religious radicalism, raising the social level of recruits, relaxation of the rules on time devoted to the proclamation, regular dialogue with the government...). Although present in France since the late nineteenth century, it is only since the decades of the 1990's and 2000's that the Jehovah's Witnesses movement has gradually obtained the same tax exemptions on individual members' donations as other religious associations. In 2011, it even won the right to appoint chaplains in prisons.

Also to note, on the fringe of more traditional Buddhist trends, is the importance of a movement like the *Sōka Gakkai*, with 15,000 members (Mégevand, 2011), which has also been the subject of several attacks in the French media, including about allegations of economic espionage for the benefit of Japanese companies or infiltration near sensitive nuclear sites (Hourmant, 1999); it is also being monitored by the Miviludes.

Anxious to collect the widest range of views, for this investigation we tried to meet the Miviludes. All our approaches resulted in a polite refusal. The leaders of this organisation have justified their refusal by saying that only sectarian aberrations were within their immediate remit and, in their eyes, our approach based on the legal implications of religious pluralism did not concern them. This stance, probably also motivated by an implicit distrust on the part of Miviludes vis-à-vis university and research circles, tends to confirm that in the minds of many senior public leaders in France, the phenomenon of sects refers to a specific social expression - if not non-religious, in any case not within a conventional understanding of religion. This brings us back to postulating that there would exist *de facto* in society implicit, legitimate, normative representations of religion, a "religiously correct", which so-called sectarian movements could not claim to be. Recent developments involving the Christian Federation of Jehovah's Witnesses should not fail, however, to draw the attention of the Miviludes to the often rather arbitrary nature of its approaches, as well as its claim to root out sectarian aberrations by solely basing itself on the opinions of anti-sectarian movements and by cultivating a degree of mistrust vis-à-vis academic circles specialising in this area and always suspected of complicity with these movements.

- Finally, let us not forget to mention that between 24% and 28% of French people say that they have no religion. Within this category are those who consider themselves agnostics or non-believers, as well as those who claim to be atheist.

In fact, what appears to have progressed, is less the trend to militant atheism, but rather an agnosticism combined with a certain religious indifference, which can translate as much the feeling of discomfort or distrust towards religious institutions as a whole, as it can relate in some elements of society to a certain misunderstanding, if not ignorance, about religions. Again, we should be cautious, the French have a half-tone image of religion, which is made up of distrust and reserve, while recognising that religions can be vectors giving points of reference. Being assertive without religion does not mean that one does not believe in anything!

It should be noted that besides the venerable rationalist associations such as Rationalist Union (more intellectual) or the more militant and activist National Federation of Free Thought you can find various liberal Masonic Grand Lodges advocating absolute freedom of conscience and wanting always to be at the forefront of the defence and promotion of secularity (the Grand Orient of France, Human Right, Mixed Grand Lodge of France)

They intend at once to defend the secularity of the State and her public utilities while referring to a secular spirituality (*spiritualité laïque*) (Bauer, Boeglin, 2002).

b/ Increased visibility of religion and pervading republicanism

Most of the recent controversies and debates around religion that take centre stage in public in France most often revolve around the greater social visibility of symbols or practices related to an orthopraxic understanding of religion (wearing the veil, meals without pork, timeslots for Muslim or Jewish women in public swimming pools...) and more or less isolated incidents (full veil, Muslims praying in the street...), the importance of which tends to be overstated; they are supposedly calling into question the legal and political progress achieved by the process of secularisation on the one hand, and to highlight a disintegration of France's cultural identity on the other.

The slightest incident which could be attributed (rightly or wrongly!) a religious dimension (however small!) can, according to circumstances, be skilfully reported through sustained media coverage and, depending on a more or less precise political agenda, be propelled to the front of the public stage, becoming a national concern and triggering strong emotions.

In no particular order, there was the start of the controversy about national flags flying at half-mast after the death of John Paul II in April 2005. Upon the announcement of the death of the Pope, Jean Pierre Raffarin's government decided to lower the flags on public buildings to half-mast in accordance with the republican custom of honouring the passing of heads of state with whom France has long-standing, direct relations. At that time, Socialist politicians were offended, on the one hand, by this attitude that seemed contrary to republican secularity, and, on the other, by the instructions given to the prefects to offer condolences to bishops and participate in ceremonies in their respective *départements* commemorating the late Pope. It is not uncommon to hear, when there is talk of urban riots in the French suburbs or of cases of violence against women (gang rape), comments forthcoming that evoke the religious variable (as it happens, Islam!) in a unique explanatory matrix of what would be better put down to social unrest and a widespread degradation in relations between the sexes in a context of ghettoisation of living space, unequal access to the labour market and social fragmentation. In this case, the exposure that often accompanies the media coverage of these facts and the rise in generalisations that follows, owe nothing to chance. They often serve as distractions and can divert collective attention away from major social or economic issues.

The uniqueness of the French context lies undoubtedly in this high propensity to generate polemic and arouse controversy against a backdrop of the increased visibility of certain religious attitudes or stances seen to be excessive and more often than not revolving around the issue of the lesser status of women with the Muslim religion as the basis.

Among the many controversies, we have chosen to retain five, four of which - the most symptomatic of the media and political turmoil - have Islam as a backdrop, and the fifth is more concerned with Orthodoxy.

The fact that we have selected four cases involving Islam does not indicate here an ideological bias on our part by suggesting that only Islam is fuelling the polemic. Far from it!

We are aware, for example, that, on a regular basis, certain stances adopted by the Catholic hierarchy can occasionally provoke a lively reaction from secular circles, in particular on various issues of bioethics, such as research on embryos, screening for genetic diseases, euthanasia, not to mention abortion. The national press regularly echoes these quarrels that reflect as much the historical tensions that have always opposed the Catholic Church and the medical world in relation to control over the human body and knowledge, as vague attempts to promote a Christian anthropology underpinned by the defence of a natural order.

If secular France does not lack instances of tension between various expressions of belief and certain developments in scientific research and draft legislation, the fact remains that it is most often Islam and, to a lesser extent the sectarian issue, that arouse the most reactions; the virulence and violence of the images and stereotypes evoked does not make us think of the prevailing climate during the debate on the law of separation of church and state in the anticlerical press of the time. Then, one could recognise that the fairly virulent reactions of laypersons were a counterbalance, on the one hand, to the situation of social, religious, educational and political quasi-monopoly of a Catholic Church defiant towards the republic, and, on the other hand, to the equally aggressive ultra-catholic groups which had railed against the laws on the secularisation of state education. Nothing of the sort could be blamed on the Muslim religion *sui generis*, a minority in France, and on Muslims living in France in particular.

Focusing on the case of Islam is more directly the result of a global climate of suspicion and moral panic surrounding this religion, whose master builders (experts in terrorism, neo-conservatives, media intellectuals, populist leaders) believe that, in the terrorist attacks of 11 September 2001 and in those that have blood-stained Europe (Madrid, London), they have found proof of the anxiety-provoking, pernicious nature of Islam.

To this first explicative parameter should also be added the considerable contribution of a virulent rhetoric of republicanism (Sieffert, 2006), promoting an increasingly ethnocentric, identity-based sense of secularity at odds with its more pragmatic, legal sense.

Like Danièle Hervieu Léger (Hervieu Léger, 2001), we think that religious pluralisation should allow for the opening of public debate on a review of all the legal conditions under which the state ensures public regulation of the practice of religious activities.

But we must also recognise that the secular reference in France cannot be summed up solely by its legal description, but can also convey a strongly ideologised potential that poses as many problems as some maximalist religious expressions and undermines just as much a serene understanding of the republican pact.

B/ Back to some controversies...

Our sample - without being exhaustive - includes incidents or tensions that, if they have not all benefited from extensive media coverage and not all been recorded on the political agenda, interestingly illustrate some of the challenges arising from a diversification of the religious landscape which raise questions about several elements of French law (civil law of the family, civil liberties, employment law...).

a) The case of the annulled marriage in Lille, the imagined shadow of the sharia!

Among the various controversies enacted against the backdrop of the Muslim religion and its supposed incompatibility with secular law, the case known as the 'Lille annulled marriage' has especially captured our attention. This case has rightly served as the scenery for playing out the apparent conflict in civil law between the spirit of Islam and the spirit of secularity.

The facts are simple: on 1 April 2008 a High Court judge of the *Tribunal de Grande Instance* in Lille, in accordance with Article 180 of the Civil Code, annulled a marriage between two French Muslims, because the bride had lied about her virginity and this had been considered essential by both spouses. As soon as it became public, this ruling generated a unanimous wave of protests in intellectual and political circles. Marine Le Pen was not the only to question, ironically, "*French justice along the lines of the sharia?*" MP Jacques Myard of the UMP Party expressed his indignation and was to denounce the judicial decision as "*shocking (and) endorsing an archaic fundamentalism*". Patrick Devedijian, Secretary General of the UMP, considered that "*the Lille decision (served) to introduce religious repudiation by a spouse into law*". The Socialist Party was not outdone. Far from it! Its National Secretary for Women's Rights and Equality, Laurence Rossignol, declared in a press release that the decision referred to "*violates the constitutional principles of equality of men and women and ridicules the principles of secularity by subjecting the laws of the French Republic to customary law*". She also stressed "*the coincidence between lady-killer Fourniret's obsession with virginity and the decision by the Lille judges!*"² Meanwhile, Sihem Habchi, President of *Ni Putes ni Soumises* (Neither Prostitutes nor Submissive), viewed it as "*a fatwa against women*". Few were the commentators who did not see in this verdict one concession too many to Muslim law and a perfect example of a subversion of secular civil law by Islamic law.

The mere fact that the two spouses were of Muslim conviction sufficed therefore to privilege a necessarily religiocentric reading of this affair³, instead of seeing in the combined reaction of the two spouses the remains of a patriarchal culture that tends to reduce women to a mere commodity and the

² <http://presse.parti-socialiste.fr> (dépêche 29/05/08)

³ Selon un sondage réalisé en Juin 2008 par le politoscope *Opinion Way-Le Figaro-LCI*, 73 % des personnes interrogées disent avoir été choquées par la décision d'annulation du tribunal. Parmi elles, 54 % considèrent que « cela revient à reconnaître légaux des principes qui devraient relever de la religion des personnes. »

absence of virginity to a defect in form.

It hardly matters that there was never any question of referring to Islamic law in the judgement! From a strictly legal point of view, the judges' decision appeared indeed as a logical conclusion of the contractual view of marriage under French law. It assumes that everyone is now free to marry or not marry, to marry the person of their choice and "*the future spouse is free*", as François Terré analyses it, "*to consider essential the virginity of his wife*"⁴. This understanding of marriage has precisely imposed itself in history as a victory against all social, family and, in particular, religious pressures. Marriage is from then on a private contract based on mutual consent. Depending on contract law, a marriage can be annulled if one of the future spouses has lied about one of "his/her essential qualities".

The real problem with this ruling is that of knowing who is the most able to appreciate and thereafter to judge the essential qualities of the future spouses.

Should we leave this prerogative solely for marriage applicants? The risk is then to lead to a system of qualification *à la carte*.

Or ought magistrates to take into account the evolution of morals in society and list in a restrictive way the essential qualities admissible by law in French society? The risk would then be to reduce the gap between private morality and public morality.

The Ministry of Justice finally decided to appeal against the judgement. The Court of Appeal in Douai, in its decision of 17 November 2008, was to conclude that virginity could not be an essential quality "*in that its absence has no impact on married life*"; the annulment of the marriage was therefore invalidated. "Anyway", writes Cécile Laborde, "*the Lille case had nothing to do with any recognition of the authority of a religious law in French law; it was content to draw the consequences of the contractualisation of social relations which is the result of the long process of secularisation of the institution of marriage*" (Laborde, 2009)⁵.

The arguments used by those who challenged the original ruling were based on the implicit idea that virginity was necessarily one of the prerequisites, a condition of the validity of marriage between Muslim spouses and that the annulment on such grounds amounted to acceding to an unacceptable religious sense of identity. This attitude is symptomatic of an obsessive perception of Islam.

Islam, just like the other monotheist religions, considers sexuality to be an expression of man's innate need which finds its full realisation in marriage. The sexual act becomes an act of charity towards God (*sadaqa*). Refraining from sexual intercourse outside marriage is therefore from a classical perspective strongly recommended as an expression of self-control, a way to prevent unwanted pregnancies and combat sexually transmitted diseases. Chastity and abstinence before marriage are held up in Islam (as indeed in Catholicism!) as virtues for both man and woman. If having sex outside marriage is seen as a wrong before God, "*no text, no historical reference mentions that a woman must bleed or have an intact hymen to prove her virginity nor that this is a condition of marriage*"⁶. Most sources also warn against the uncalled-for (but real!) tendency to want to check a woman's virginity - and, if needed, proceed with a restoration of the hymen - to save face and family honour.

When this incident took place, several Muslim religious leaders, such as Imam and Mufti Tariq Oubrou, made it very clear that "*canonically speaking, virginity is not a condition of validity of marriage in Islam*"⁷. Amar Lasfar, Rector of the Lille South mosque, while accepting the fact that the court decision was only punishing the lie and not the absence of virginity, specified that eight of the Prophet's nine spouses had married even though they were no longer virgins.

A single, isolated incident (virginity raised to a canonical obligation!) was enough to unleash strong emotions. As with other cases, it was important to depict and put into context facts wrongfully attributed to Islam (virginity) and others attributed to French society (equality between men and women, the secular nature of marriage law) to substantiate the idea that Islam is threatening the

4 TERRE F, « Le libre choix du conjoint », dans *JCP, La semaine juridique*, Actualités, Libres propos, n° 26, 25 juin 2008, p 439

5 LABORDE C, « Républicanisme critique vs républicanisme conservateur : repenser les 'accommodements raisonnables' », dans *Critique internationale*, Juillet-Septembre 2009, vol 44, p 24.

6 Ligue Française de la Femme Musulmane, « Virginité : mythe et réalités », 25/03/07 in <http://www.lffm.org/modules.php?name>

7 OUBROU T, *Profession imâm*, Paris, Albin Michel, 2009, p 53.

achievements of French civil law and, secondarily, any person of Muslim culture liable to support it.

b) *The quarrel about the full veil*

Now, another controversy, this time relating to the wearing of the full veil. On the initiative of André Guérin, the Communist Deputy Mayor of Vénissieux, the National Assembly was to accept the creation of a parliamentary commission of inquiry which submitted a report at the beginning of 2010 on this delicate subject.

This so-called affair of the *burqa*, or rather of the full veil, can legitimately generate conflicting feelings, as much in relation to the incriminating article, as to the worrying political treatment it underwent.

In the absence of reliable statistical sources, it is estimated that between 500 and 2000 women sport a veil of this type in France. This problem has led some MPs and the government to consider a law banning these veils in the streets.

Muslims' wearing of clothes covering the whole body of the *jilbab* variety (large black cloak of Saudi tradition, covering the whole body, but leaving visible the contours of the face), the *niqâb* (a long piece of fabric completely veiling the face and only leaving the eyes showing) or a *sitar* (veil put over the *jilbab* hiding the contours of the face and the eyes), is clear evidence of a religious expression of Islam that is, to say the least, austere. The garment is typically imported. It resembles an imitation of customary clothing for women in the Gulf for whom it largely conditions their direct access to public space. As such, the full veil obeys a Puritan aesthetic, in other words a way to dress supposed to preserve women from what are still considered "immodest" glances of men outside the family circle.

This type of garment is also symptomatic of the influence in France, as in the rest of Europe, of contemporary Salafist prose which, circulating via the tools of modern technology (Internet, satellite television...), conveys a no less rigid and exclusivist version of Islam, rejecting any contextualised reading of scriptural sources of the faith (Qur'an, Sunna) and advocating a transnational, standardised Islam, and it recommends that Muslim women veil themselves completely.

It is also true that this vision of Muslim women is not the subject of unanimity among Muslims in France. Even among practising believers who are striving to reasonably accommodate fidelity to the dictates of their faith and respect for the rules governing society, this type of garment is disturbing.

It is clear, the full veil is no more subject to unanimity among Muslims than among non-Muslims.

But should the discomfort we may feel about it be translated into legislation prohibiting it?

The visual discomfort caused by the full veil cannot by itself constitute grounds for a law which, once again, would impose a new prohibitionist slant on social practices or stances adopted by a minority of Muslim believers.

The mere fact that a woman wants to hide her face from time to time, can it be enough to deny her from the whole of humanity, as has been suggested by several prominent figures (from Elisabeth Badinter to Manuel Valls) and to justify the adoption of a law prohibiting such practices that are judged contrary to human dignity?

This is a strange thing to do - to make human dignity a simple matter of appearance.

The law is intended to have general scope and not target one disruptive behaviour or another on the grounds that it might be a source of visual discomfort or constitute a threat to public order.

Should the Law of 15 March 2004 on religious symbols in schools not be enough to reassure the most anxious of laypersons who were seeing the French Republic besieged by a few schoolgirls in headscarves!

With the issue of wearing the full veil in public, the case took on quite another dimension.

This time it was no longer about ensuring that, as part of a public service (schools, colleges, hospitals...), users (pupils, students...) be subject to the same rules of neutrality as state officials.

The objective of parliamentarians was clearly to encourage the lawmaker to consider various means to eliminate from public space - streets, markets, in short, the everyday environment of all French people - all feminine dress of the full veil type on the pretext that the latter departs from prevailing dress codes and fuels the feeling of a congenital inferiority of Muslim women in relation to Muslim men who are supposedly all-powerful and free to dress as they please.

Can we reasonably believe that simply to ban veils from public space will be enough to combat effectively the maximalist expressions of Islam, as some MPs think? The latter are convinced of it and

did not hesitate to suggest in the official report of the working group on the full veil that, by doing so, they lend a strong hand to the CFCM in its efforts to promote a republican Islam.

Moreover, it would be a paradox to claim to respond to confinement within a veil by permanently closing access to public space for women who are completely veiled.

In wanting to reason this way, is there not a risk of eventually leading to a secularity that in turn becomes full and complete, which, from then on, would be no better than the infamous full veil which we should be combating?

It would have been more legitimate to take the time to analyse, seriously and sociologically, the root causes which may explain the use of these garments.

It is one thing to demand, as did Socialist MPs, the "*ban on the garment in public space and public services (town halls, schools, prefectures, social security) and on all public highways*"⁸; it is another to put such a measure into practice.

If it seemed totally legitimate (and duly accepted by them!) that these women turn up before public officials and services with their faces uncovered when performing all their administrative procedures, generalising a ban on this outfit in any public space might seem all the more to be totally counterproductive, maximalist thinking.

Should we then set up special police brigades specialised in cautioning fully veiled women?

What if, once cautioned, recalcitrant women still do not reveal their faces?

Should we then hold unveiling sessions in public?

Faced with confusing practices, it is always important to try to place them within the social and cultural context where they appear. We must also take account of the discourse legitimising them and the different types of public who uses them, before rushing into unfair generalisations and launching into anathemas.

Behind the development of Puritan practices like the full veil, we need to perceive a dynamic of standardisation of Islam in ultra-pietistic mode influencing certain areas of Muslim communities (socially disadvantaged young people, groups converted to Islam...), rather than the harbinger of a reconquest of Islam. Here, we are rather faced by reactions of self-defence among people who have themselves experienced various forms of failure or social disadvantage, who are taking refuge in a reading of Islam that is completely anachronistic and misaligned, including in relation to the most Orthodox approaches.

The problem here is less the "trend" of the full veil, which we, as citizens, can have a negative view of, than the fact that, once again, we are creating from scratch, on the basis of fairly isolated and localised cases, yet another "case" that will provide an opportunity for avenging spirits to blow on the smouldering embers of the systematic indictment of this Islam and thereafter of all Muslims, instead of questioning the mechanisms of exclusion upstream that persist in our societies and which form the soil on which the weeds of radicalism grow.

The shadow cast by minarets...and praying in the streets

The improvement in general conditions of the Muslim faith duly observed (Frégosi, 2001), particularly in terms of number of places of worship, and confirmed by the development of many collaborative projects between municipalities and groups of Muslims to build mosques throughout France (Duthu, 2008), could have legitimately given the impression that the building of places of Muslim worship in France had become a relatively trivial matter. It was not counting on the impact of the Swiss referendum of November 2009 (which created a ban on erecting new minarets on the soil of the Confederation!) and the polemic about praying in the streets.

While France has to date only about 20 mosques with very modest minarets (Telhine 2010), MPs of the government majority, such as Christine Boutin (former Housing Minister) or Pascal Clément (former Minister of Justice) came to question aloud the presence of hypothetical minarets disfiguring a land that was, in their eyes, exclusively Christian. Pascal Clément had even declared: "*The day when there will be as many minarets as cathedrals in France, it will no longer be France*".

No-one disputes the fact that the presence of a minaret is not essential to the religious practice of Islam, no more than, we should recall, bell-towers are essential to Christian worship! This involves

⁸ ESNOL P, FILIPETTI A, VALLS M, « Il faut bannir la burqa de l'espace public », *Libération* du 21/12/09.

architectural elements that came to dominate around the 7th and 8th centuries and which have been integrated as an element of Islamic religious architecture, without any canonical source making it an obligation or condition to possess a minaret for the prayers of the faithful to be admissible in a place of worship. Obviously, historically, the minaret does not make the mosque more than the bell-tower makes the church, the theological reality of which goes beyond the materiality of the building of worship.

The presence of minarets, without being systematic everywhere, nor demanded by churchgoers, nevertheless takes on a strong symbolism within a peaceful context. It is evidence *in fine* of a presence of Islam that is non-conquering, but normalised in the urban fabric of our cities, of a religion that benefits from adapted places of worship, visible and identifiable as such. No more, no less!

It is therefore necessary to move away from alluding to a France covered by minarets and mosques (or about to be!), even though the majority of Muslim places of worship are local places devoid of conspicuous signage. Even if some have minarets, they are resolutely silent.

This should further challenge those who make the so-called Islamisation of Europe their trading ground; it is not as much the presence of invisible minarets opposite the bell-towers as the fact that the venerable churches they overlook are no longer doing so much business or are experiencing attendance that is, to say the least, seasonal. Better to consider the risks of a weakening of the Christian identity in an area, rather than blame Islam for it; we should, however, ask ourselves about the complex social dynamics that have gradually changed this exclusive, denominational identity (urbanisation, industrialisation, rural exodus, secularisation of behaviour, religious pluralism...).

Another debate was then to focus on the praying in the street, reacting to a declaration by National Front MP Marine Le Pen. In December 2010, during an internal meeting of her party, she was to compare praying on public highways (which some Muslims are forced to do in France) with the Nazi occupation of France.

Several leaders of the UMP, like the Swiss referendum on minarets, seized on the issue of praying in the streets to try to write a new chapter of political one-upmanship on the practice of Islam in France. After the affair of the full veil, now was the time to take a step further in the political construction of a moral panic around the practice of Islam in France and to discuss the alleged incompatibilities linked to exercising the faith in a secular society (pupils' parents wearing headscarves and accompanying children on school trips, halal meals in school canteens, the full veil, praying in the street...). Behind the issue of praying in the streets looms the danger of the progressive Muslim invasion of France through the "unjustified" occupation of public space.

Rather than having to wonder about the objective reasons which lead the faithful to have to pray in the street (about twenty cases cited by the Ministry of the Interior!) and to consider suggestions made by Muslim leaders to reorganise the Friday prayers into two celebrations or to facilitate the opening of new spaces dedicated to prayer, the first reflex was to surf on the phobia fuelled by the National Front by transforming the stigmatisation of Muslim worship in the streets into a new stage of the "republican" reconquest of public space.

The time has possibly come to take action against Muslim worship in public outside of the premises provided for that purpose, and thus further reduce the social visibility of Islam in society, rather than trust those on the ground (elected officials and community leaders) to handle these altogether exceptional situations. It is in this way that the climate of suspicion against the practice of Muslim worship in France was reinforced, culminating in the announcement by the UMP of a day of debate on the practice of Islam and its suggested incompatibility with the French Republic, scheduled for 5 April 2011. Faced with a flood of criticism from within its own ranks (François Fillon, Alain Juppé, Christian Estrosi...), the party leadership turned this debate centred around Islam into a much broader one on religions and secularity, and ended up with a simple round-table discussion on secularity, limited to one afternoon.

The final blow to this initiative had been struck a few days before, on 30 March 2011, in a declaration by the Conference of Religious Leaders in France published in the *La Croix* newspaper. In it, national representatives of Catholic, Protestant, Orthodox, Jewish, Muslim and Buddhist religions announced they were in favour of a change in the legislation on freedom of religion, while recognising "*secularity as part of the common good of our society...one of the pillars of our republican pact, one of the supports of our democracy, one of the foundations of our will to coexist (...)*". But they were also careful to issue a clear warning, as follows: "*During this pre-election period, to keep serenely on*

course and avoid the risk of amalgams and stigmatisation, (...) the acceleration of political agendas may, on the eve of electoral events important to the future of our country, risk scrambling this perspective and creating confusion that can only be harmful".

The Babyloup affair and its more or less unexpected repercussions...

The latest controversy to take place against the backdrop of Islam dates back to 2008. But it was the object of heavy media coverage during the debate on the veil in the National Assembly during 2010. Initially, it related to a rather banal private law dispute. It opposed an employee of a nursery association (Babyloup) based in Chanteloup-les-Vignes (Yvelines), who wore a simple veil, and her line manager, the nursery's director.

The facts are fairly simple, even if the versions of the two parties do not always coincide: an employee (Fatima Afif) serving as deputy director of the nursery had been wearing a headscarf since 1994, that she took off from time to time (according to her!) without problem until her return from parental leave in 2008. The Director (Natalia Baléato) then asked her to remove it, arguing that the internal rules of the nursery prohibited all religious symbols. The employee refused to remove her headscarf. There followed an altercation which resulted a few days later in her dismissal for serious misconduct. The sacked employee then complained to the Employment Tribunal, in charge of disputes over employment law. She claimed 80,000 euros in damages and interest for discrimination and unfair dismissal.

The until then private case took a more public turn when the French Equal Opportunities and Anti-Discrimination Commission (HALDE), which had been called upon in this case, through its then President, Louis Schweitzer, ruled in the plaintiff's favour on 1 March 2009. The HALDE's opinion was that the aforementioned nursery was a private entity and could not dismiss an employee for simply wearing the veil without discriminating against her. The HALDE's ruling triggered a public outcry. Its decision was described as "*extraordinarily partisan*".

A new chapter began with the appointment to the Presidency of the HALDE of Jeannette Bougrab, member of the UMP, former member of the High Council for Integration (HCI). Having just moved in (not before coming under fire from Conservative politicians judging her appointment to this post inappropriate because of her origins!), she criticised the decision and announced a new stance by the body that she chaired.

Meanwhile, the case had rebounded to national level and into the media spotlight with the firm, widely-publicised stance adopted by feminist philosopher Elisabeth Badinter, sponsor of the Babyloup nursery, backed by Socialist MP Manuel Valls, one of the few socialist MPs to have approved and passed a law banning the full veil in public. Both of them intended to make a national, or even state, affair out of this dispute about employment law.

As is often the case when Islam is at the heart of the problem, tempers flare quickly and a sense of proportion is no longer *de rigueur*. Manuel Valls directly called on the government on this issue and in his blog denounced in this case of employment law another blow to secularity and "*a threat to the fundamental values of the Republic*". Elisabeth Badinter said that "*it is the future of our society that is being played out at Chanteloup*". Both appealed to lawmakers and demanded in particular that the legislator stipulates from now on that in structures for early childhood, regardless whether private or public, all religious symbols be banned outright and that neutrality be clearly *de rigueur* and binding on employees.

The Employment Tribunal eventually rejected the plaintiff's case and acknowledged the grounds for the dismissal; the employee has appealed.

This case has been protracted with the unexpected publication in September 2011 of a notice by the HCI.

In its opinion, its President, former MEP and member of the UMP, begins by recalling that among the duties of his advisory board figures "*monitoring issues related to the application of the principle of secularity in our country*" and that the HCI "*has always considered the issue of secularity to be intrinsically linked to that of the integration of people of foreign origin and more generally the integration of everyone within the French nation*". After having affirmed in front of experts and on the basis of a report from a management consulting firm, an increase in tensions in the world of

business related to religious practice, it advocates a series of measures including extending the principle of religious neutrality to the business world. To this end, it proposes to insert in the Labour Code an article making possible the inclusion in the internal rules and regulations of private companies measures relating to dress, the wearing of religious symbols, as well as to religious practices in view of imperatives relating to safety, customer contact or social peace.

It even goes as far as wishing for another article to promote religious neutrality by completely prohibiting any religious expression: *"An absence of manifestations of religious expression, whether practices or visible signs, is strongly recommended"*. This proposal goes far beyond the simplest possible limitation which could be made to the manifestation of religious expression that had been until then the rule in both the administration and beyond. Such a proposal would tend in fact to make it legal to ban any religious sign in the internal rules and regulations of a private company. Refusing any pragmatism, the ban would thus become the rule. It should be stated that we are here faced with a tendency to gradually expanding the scope of secularity to become a total, all-inclusive principle. *"Affirming that freedom of conscience, including religious freedom, of course, should not be confused with the freedom of religious expression, which, itself, cannot be absolute, the HCI insists on fully giving the principle of secularity the constitutional value that is its own. Secularity, essential foundation of our Republic, must be considered to have general value. It is not one opinion among others"*. Thus, there is a worrying shift from the legitimate reminder of secularity as a legal and political system of state organisation, since 1946 with constitutional value, and it being imposed on the whole of society and all sectors of activity.

We are right to question the philosophy that underlies such a propensity to extend indefinitely the scope of application of secularity which over time may be threatening to liberties and just as dangerous as the desire that can drive some religionists to make solely the religious norm the essential foundation of society and to consider it a general value.

It does not seem improper to wonder about the manifestations of religious freedom in the company context and note that the doctrine has never considered religious freedom as an absolute neither in the rest of the society, nor in the company. It should be noted that, if freedom in this area cannot be absolute, it is the same with the ban, which cannot be general or absolute. This supposes, as noted Dounia Bouzar⁹, a case by case examination depending on the type of mission performed by the employee in the sense given in the Labour Code: *"No-one can add to human rights and individual and collective freedoms restrictions not justified by the nature of the task to be accomplished nor proportionate to the aim pursued"* (Article L 1121-1).

No fewer than six criteria have already been set out in case law and partly taken up by the HALDE, which delineates the circumstances that may justify a limitation of religious freedom in the workplace. That we should question the veil may seem legitimate when one wonders in what context, in what circumstances and if wearing it could be such as to prevent the employee from accomplishing his/her tasks, but not postulate *a priori* that all religious symbols should therefore disappear from companies. There seems to be confusion between respecting neutrality and neutralising any manifestation of religious freedom.

In acting in such a way towards people who wear the headscarf in companies of a non-denominational nature, one indirectly risks absurdly promoting the establishment of a job market which is increasingly denominationalised or islamised and promoting the channelling of Muslim workers only to entities officially labelled as *Muslim Friendly*.

- These tensions convey a state of public opinion relayed in abundance by the media and the state of mind of certain public leaders; it is dominated by a very great sensitivity to the issue of Islam whose real influence on the behaviour of individuals of Muslim origin tends to be exaggerated and that one often learns about from rather marginal practices (wearing the full veil, lack of virginity...) or in particular circumstances (prayers in the street, conflict between employee and employer on the wearing of the veil...).

9 <http://www.saphirnews.com> « Dounia Bouzar... »

- This prevalence of Islam in the controversies which regularly occur in France is undoubtedly a sign of the superficiality of the pluralist veneer of society and the French elites which remain resistant to any social and public recognition of the fact that French society has become a multi-cultural society and, consequently, religiously plural while remaining secularised.

- These tensions also convey complex, paradoxical relationships to the law.

On the one hand, French society seems to be experiencing some reservations about abandoning systematic recourse to passing new laws in order to respond to certain challenges related to the pluralisation of its religious landscape (affairs of the veil in schools or in the street). A true “religion of the law” seems to prevail in the matter.

On the other hand, it is not rare for certain laws to enjoy such an *aura* that one cannot envisage asking for them to be modified or simply adapted to new situations, without releasing a political cataclysm (Law of 1905).

Our aim is simply to highlight this difficulty thinking about diversity and consenting to give it a reasonable place, without, however, revolutionising society, its law and history from top to bottom.

II) Points of view and actors' accounts of legal and political tensions linked to religious diversity

As an introduction to the review of the opinions and accounts given by actors, as assembled through the interviews conducted within the framework of the RELIGARE programme, it is important to briefly put in perspective the general issue of the complex relationships existing between French secular law and different internal laws of religions.

French secular law and religious law: an improbable or unholy meeting?

In spite of appearances and the dominant rhetoric surrounding secularity, the non-denominational character of French law does not, however, exclude this same state law having to encounter, explicitly and in certain circumstances, provisions or norms resulting from the internal laws of religious communities (Messner, 1997) present in France.

Such is the case, for example, of Canon Law of the Roman Catholic Church whose influence sometimes, according to circumstances, has imposed itself on state legislation.

Thus, in 1905, a legal conflict was to oppose the newly secularised Republic and the Vatican in regard to the creation of religious associations within a legal (private law) framework for practising the faith and as bodies that had been allocated the possessions of the former public establishments of worship. The Pope made the point that the legal framework proposed by the legislator was incompatible with the constitution of the Church. After several years of negotiations, an agreement was reached in 1924; the Council of State then recognised the legality of diocesan associations placed under the direct responsibility of the bishop, which seemed more conform to Canon Law. The Pope, for his part, accepted the principle of dioceses as a single legal framework adapted to the management of the material aspect of faiths, to the exclusion, however, of its spiritual dimension.

Another example - the legal status of Catholic ministers of religion, that French civil law still refuses to consider, refers back, more or less, to the norms of Canon Law. So, taking into consideration employment law, the situation of the priest in relation to his bishop has never been able to be likened to that of an employee to their employer, thereby excluding any contract of employment. The judge can inevitably be persuaded to take into account the norms and rules suitable for a religious institution. Similar considerations were also put forward to account for the particular situation of reformed pastors

in relation to employment law. Established case law considers that the spiritual purpose of their pastoral ministry, in accordance with the official definition of the Reformed Church of France, “*the preparation for the reign of God*”, excludes any contract of employment (Dole, 1987).

Another example, finally, is that of the conflicts surrounding buildings assigned to the practice of Catholic worship, generally pitting Lefebvrist against Conciliar Catholics, the former having sometimes resorted to occupying churches legally assigned for the worship of the latter. The relevant courts, as in the case of the occupation of Saint Nicolas du Chardonnet in Paris, stick strictly to the letter of Canon Law. So, they recall that the assignees of the place could only be those who subordinate themselves to the precepts of the Catholic Church, which formally is the case of the two competing groups, but also to the rules of its hierarchy and thereby remain in communion with the bishop of the place, which amounts to denying fundamentalists any legitimate use of the building insofar as they do not recognise the authority of the Archbishop of Paris. So, the courts, though secular, simply adopted the canonical rules defining membership of Catholicism and decided in their favour.

- It is often the case in the event of litigation occurring within a religious community that the relevant judge can refer in priority to the internal laws of that community.

- It therefore appears that the nature of relations between secular, state law and various internal laws of religions turns out to be a complex tangle of situations, in which pragmatism seems more often the rule than the exception.

- This cyclical pragmatism does not completely rid reality of the tensions and problems which can exist between laws that are not situated on the same level and do not obey the same purpose.

A) The Family

In a short introduction, we will detail the broad outline of French national law on the family in particular with regard to the matrimonial bond (its constitution and its dissolution) as well as new forms of union provided for by the law.

Marriage Law...

The French Civil Code does not define marriage in a detailed way (Flauss-Diem, 2010), it restricts itself to specifying that a man and a woman cannot (except by particular exemption) contract marriage before the age of 18 (Article 144 of the Civil Code) and that any marriage must be preceded by consent (Article 146).

It is the legal doctrine which presents it as the legitimate union of a man and a woman resulting from an official declaration made in front of the registrar.

The doctrine agrees to consider that marriage usually rests on two pillars:

- the difference in gender between spouses. Consequently, marriage is at the same time the social framework of relations between man and woman and the legal framework of procreation;
- it also relies on a threefold commitment by the spouses. There is initially mutual commitment by the spouses, one towards the other (fidelity, help, assistance...), then a commitment to the children who will be born from their union (to nourish, maintain, educate...) and finally the commitment of the spouses before their families and society (duty of assistance, life together...).

Since the French revolution, marriage has, in French law, been a civil contract, which has legal authenticity only if it is celebrated by an official registrar in due form. It is this person who is indeed the legal authority in front of whom the consents are received in order to found a family and to provide mutual help for the future of the couple.

The Law of 8 Germinal year XI imposed the rule that the civil wedding must precede the church wedding. The Penal Code envisages financial sanctions (7,500 Euros) and imprisonment (six months) for any minister of religion proceeding with a church wedding in the absence of a prior civil act (Article 433-21 of the Penal Code).

In spite of this rule of the civil wedding preceding any church wedding, some specific disputes (Jewish religious wedding and union in front of an Imam) has led case law to describe life together, after a marriage exclusively celebrated according to religious rites, as simple cohabitation.

In accordance with the resolutely secular character of the French State, “*religion, as such, is not sanctioned by civil, family law*”.¹⁰

The sole reference to religion is in fact to be found in the new code of civil procedure which provides that “*in the application of educational welfare, the religious or philosophical convictions of the minor and his family must be taken into account*”.

Everything concerning religion is then normally treated as fact and not as law. That thereby confers, on the one hand, a sovereign capacity of assessment to the courts dealing with the substance of a case (the same problem can be treated differently!), and forces the religious element “*to adorn the dress of a legal rule*”¹¹ to be admissible on the other hand.

Freedom to marry is a constitutional principle in French law. Everyone is completely free to marry with the person of their choice, independent of any religious consideration. Within the married couple, each spouse preserves total freedom of conscience and religion (freedom of the internal form), which implies the right to have a religion, as to not have one, and being able to practise it. It is by taking into account practices or behaviour of the spouses that the judge can assess violations of religious freedom. Civil law does not recognise any of the obstacles usually highlighted by religious groups (interfaith marriage, religious restrictions in the choice of spouse according to their religious membership or gender).

Civil courts, as Jacqueline Flauss-Diem points out, “*condemn the intrusion of a religious element which would undermine the freedom and the will of any individual to commit to matrimonial bonds*”.¹²

With regard to engagement, which can sometimes give rise to forms of religious celebrations (mass, presence of an imam), they are not covered by any specific provision. Not enjoying the status of legal acts, they are simple commitments able to be broken freely without the courts being brought in to recognise any legal consequence and without involving the civil liability of the partner causing the split.

Established case law, on the other hand, clearly condemns all clauses of legal acts envisaging the prevention of marriage (religious disparity) or prohibiting divorce as a violation of the right to marry (and to divorce), in particular within the context of work relationships. The same applies to donations between spouses.

“*In the name of matrimonial freedom, reasons of a moral or religious nature could not constitute valid grounds for opposing marriage and suspending the celebration of it*”¹³.

Certain specialists consider, however, that religious reasons could underlie marriage annulment proceedings in the light of the issue of polygamy (for a church wedding contracted according to French private international law) or an error involving the defining conditions (case of the annulled marriage of Lille), even moral violence.

The dissolution of the matrimonial bond in French law takes place either as a result of the death of one of the spouses or legally pronounced divorce (by mutual assent, acceptance of the principle of break-up of the marriage, definitive deterioration of the marital bond, for misconduct). The divorce can be pronounced on joint request or following a dispute.

10 FLAUSS-DIEM J, « Religion et famille en droit interne », in Messner F, Prélôt P H, Woehrling J M (eds.), *Traité de droit français des religions*, Paris, LITEC, 2003, p.591.

11 *Ibid.*

12 FLAUSS-DIEM J, notice « Droit Français/Mariage », in Messner F (ed.), *Droit des religions*, Paris, CNRS Editions, 2011, p 475.

13 FLAUSS DIEM J, *op cit*, p 475.

It is often at the time of disputes of this type that the civil courts come to acquire knowledge of religious elements and can be persuaded to conclude on possible injury caused to one of the parties.

...and other forms of union

The two pillars mentioned above - of the difference in gender and commitment - distinguish marriage from the other forms of union recognised in French civil law in the Law of 15 November 1999.

Apart from marriage, couples in fact have the choice between two alternative forms of life together - free cohabitation or the Civil Pact of Solidarity (PACS).

These two options are open as much to people of different gender as to those of the same sex (Articles 515-1 and 515-8 of the Civil Code).

In the opinion of specialists in family law, the issue of religion does not seem to have a role to play in these two types of union, apart from problems relating to children who may be the result of these unions (in particular by medically assisted procreation or adoption!).

In addition, it is advisable to recall that the majority of denominations present in France are historically rather reserved (with respect to cohabitation in general!), if not resolutely hostile to any form of religious recognition of forms of life together that do not create family bonds.

Although the question of the recognition of homosexual marriage is still not really on the agenda in France, certain left-wing parties (mainly!) have made it one of their priorities and included it in their programme for government. Various personalities from the Right (Dominique de Villepin, Alain Juppé, Roselyne Bachelot...) have declared themselves to be equally favourable to such an evolution in marriage law, while, at the same time, the vast majority of party officials and especially their voters seem still to have reservations on the issue. Even a section of the ruling party (the Popular Right movement) is savagely hostile to it, not to mention the Christian Democrat Party.

For religious groups, this issue - without having become central - is no longer taboo, if one considers, for example, the fact that none of the religious leaders we met dodged the question or refused to answer us. Likewise, consulting the websites of the principal religious denominations (mainly Christian) reveals that this issue, although delicate, is being discussed, in particular in Protestant Churches.

Several confessional, associative LGBT movements (*Beit Haverim, Homosexual Muslims of France...*) or not, such as the IDAHO Committee (*International Day Against Homophobia*), have joined with religious leaders for their meetings, inviting them to express themselves on homophobia and the vision of homosexuality conveyed in the sacred texts¹⁴.

Family law through the lens of polygamy?

The majority of elected officials we met found themselves in difficulty, when we questioned them on the tensions existing between French family law and the religious habits or practices of their citizens.

Neither the issue of divorce, nor sharing out the inheritance, nor custody of the children were directly mentioned by the public actors.

Should it be concluded from that no tensions exist around family law in France? It would be to demonstrate optimism or naivety.

Let us take the example of polygamy. A report by the National Advisory Commission on Human Rights estimated the number of polygamous families in 2006 to be between 16,000 and 20,000¹⁵. The practice of polygamy was however prohibited in France by the Pasqua Law in 1993, aimed at foreigners likely to acquire French nationality. According to this law, polygamy can be a reason for denaturalisation. In fact, French authorities employ a strategy of 'moving out' to reduce the number of polygamous families. Social workers help the second and third wives to move with the children into

14Cf. *HaMih'tav, Bulletin mensuel du Beit Haverim*, Numéro spécial « Le judaïsme à l'épreuve de l'homosexualité », Février 2011/Adar 5771.

15http://www.institutmontaigne.org/medias/documents/la_polygamie_en_france.pdf

separate flats. Even if, in 2005, some French political figures designated polygamy as one of the reasons for the riots in the French suburbs, no serious sociological research, nor parliamentary debate have taken place on this subject to confirm this controversial amalgam.

Let us, however, recall that the Law of 26 July 2003 has prohibited polygamous marriages among rising generations in the island *département* of Mayotte (Indian Ocean), which was until then the customary practice in this land counting 94% Muslims. The law specifies “*No one can contract a new marriage before the dissolution of the previous one(s). This article is applicable only to people reaching the necessary age to marry on 1 January 2005*”.

The last time when polygamy resurfaced in a public discussion in the media spotlight was in 2010. It was not a debate centred specifically on polygamy and the means of solving it, but it was within the context of the debate concerning the law prohibiting the wearing of the full veil. Indeed, a Frenchman of Algerian origin, accused of practising polygamy and whose fully-veiled wife had been charged by the police, had answered his critics in an ironic tone (among whom figured the Minister of the Interior, Brice Hortefeux!) that he did not have four women, but a woman and three mistresses. And he added that, if he were to lose French nationality under the pretext that he had mistresses, then many other French people were also going to lose theirs. The French Council for Muslim Worship (CFCM) reacted swiftly to this remark seen as “*offensive and insulting*” for Islam. It was to highlight in passing that it recognised only official marriages. The absence of sociological research on the subject since 2006, as well as the absence of political debate since the last and sole law on polygamy in 1993, do not enable us therefore to show an absence of correlation between this practice and a religious foundation.

The fact that our interviewees do not echo any particular tension in this area should not be interpreted as the sign of an effective absence of tension. If, instead of the political and religious leaders whom we questioned, we had been able to meet participants originating from certain suburbs of large cities, they would undoubtedly have highlighted other types of tensions relating to family law.

In absolute terms, the effect of religion on rules of civil law in a context of secularity remains negligible in French law.

Several items of litigation directly or indirectly resulting from observing religious law (sometimes confused with cultural practices!) have nevertheless, in the recent past, enabled civil judges to become aware of certain situations and to take up stances in relation to certain rules or customs defended by religious institutions.

Family Law, Law of God, Law of Men and Customs

Questioning religious leaders on concrete situations of tensions or conflicts in matrimonial matters between religious laws and French civil law generally leads to a - at the very least paradoxical - situation, which consists in our interviewees tending, on the one hand, to minimise the real instances of conflicts in the name of loyalty towards respecting common civil law, while endeavouring, at the same time, to show their constant efforts to reduce the persistence in some zones of residual tensions, which amounts to acknowledging that the situation has not completely stabilised.

These exchanges are also occasions to measure the complexity of the situations experienced by certain believers obliged to juggle between secular state law (the purpose of which is above all social), religious law (specific to each religious group combining elements of a social, relational nature) and 'extra-human' elements (religious revelation) and a law or habits which are more cultural, often inherited, that can be just as morally and socially restrictive as civil law.

Formation and dissolution of marriage

In respect of the constitution of the matrimonial bond as such, no tension or major obstacle was mentioned by Christian denominations present in France, who all state that they conform with the civil

regulations in force and in particular with those relating to the civil wedding preceding the church wedding, with the obligation for those celebrating the marriage to make sure that the future couples have already passed before the public registrar.

All the elected officials whom we questioned about possible tensions related to family law were not able to reveal any particular problems. Only one (a Communist MP) simply referred to the case of a civil wedding of two people of Muslim confession in a town hall, during which one of the guests wanted to recite a prayer, which the mayor refused.

In Christian churches

Once the rule relating to the prior nature of the civil wedding is respected, each Christian Church preserves its own customs as regards religious celebration of unions, considered a sacrament for some (Catholic and Orthodox Churches) or as a divine institution belonging to the order of creation and giving rise to a simple blessing for others (Protestant Churches).

Likewise, each Christian Church continues to attribute a more or less strong symbolic and moral dimension to marital union between two people of different gender.

For Catholics, Christian marriage - in its canonical form elevated to the rank of sacrament - is endowed with a unique and indissoluble character (Canon 1056). In accordance with Canon Law, *“only valid are marriages contracted in front of the Ordinary of the place or before the priest, or before a priest or a deacon delegated by one of them, who attends the marriage, as well as before two witnesses (...)”* (Aoun 2010).

In certain rather exceptional cases (threats to people, context of persecution!), Canon Law does however authorise the Church to proceed with marriages without referring them to the public authority.

On the other hand, the Catholic Church only recognises two canonical options as a way for spouses to separate: while maintaining the matrimonial bond (Canon 1151) and the dissolution of the matrimonial bond for a just cause (Canon 1142), but not civil divorce.

The official catechism of the Catholic Church regards divorce like adultery, as an offence to the dignity of marriage.

Civil divorce is in particular presented as *“a serious offence to natural law”* (Catechism of the Catholic Church 1992). It is denounced as a potential source of disorder in the family unit and in society¹⁶.

If, for the Catholic Church, divorce destroys the couple, it should be noted that the Catholic Church does not completely close the door on recognising failure in marriage, which is always possible, and on the need for measures particularly targeted at protecting the rights of children and of possessions. In this case, resorting to civil divorce can be tolerated without leading to moral condemnation.

*“If civil divorce remains the only manner possible to ensure certain legitimate rights, the care of the children or the defence of heritage, it can be tolerated without constituting a moral fault.”*¹⁷

Within the framework of French law, physical separation of bodies was long considered as the Catholic divorce, because in law it is equivalent to a simple relaxation of the matrimonial bond and puts an end only to the duty of cohabitation, nothing more, nothing less! The Law of 26 May 2004 abolished a separation of six years as a case for divorce and, in doing so, has led to the disappearance of the stonewalling specific to this case, which had, up to that point, allowed the Catholic spouse opposing the divorce to testify to their attachment to the survival of the matrimonial bond.

On the other hand, in the opinion of the specialist in family law, the automatic conversion of a two-year separation into divorce at the request of one spouse can place in difficulty the Catholic spouse attached to the principle of the indissolubility of the marriage by submitting it to the goodwill of the separated spouse not to resort to divorce (Flauss-Diem, 2010).

16Cf. *Catéchisme de l’Eglise catholique*, Paris, Mame /Plon, 1992, p 591.

17 *Ibid*, p 590.

The only question, an issue which remains for the Catholic Church, is that of divorcees remarrying in church, the possibility of which the Catholic Church officially refuses, just as for access to the Eucharist.

As Christian Cannuyer sees it, *“the bishops' majority stance is up to now to exclude the combination of a marriage of divorcees and a religious ceremony”* (Cannuyer, 1997)¹⁸.

The catechism of the bishops of France invites people who are separated and divorcees aware of the dissolubility of their marriage not to commit to a new union; as such, they are not excluded from the sacraments, unlike remarried divorcees, who are still members of the Church, but officially not authorised to receive the Eucharist.

*“Those who live separated and divorcees who have not remarried can receive the sacraments which they greatly need to face this testing state of life.”*¹⁹

In practice, many are the priests who endeavour to take into account expectations of these couples of divorcees by proposing, for example, options such as prayer ceremonies, blessings, even sometimes a Eucharist intervening before the civil remarriage. As for normal access to the Eucharist sacrament (Frégosi, 1997), frequenting another parish or simply tolerance by priests is often enough to circumvent the difficulty.

Orthodoxy also recognises marriage as a sacrament which is conferred only once. In the event of death, the surviving spouse can remarry and the service normally takes on a character of penitence. In the event of conflicts and of a common existence rendered impossible, the Orthodox tradition, without cancelling the marriage, can, via the local bishop assisted by a commission, recognise the civil divorce and authorise the former spouses to remarry in church (Roberti 1998).

As Rector Jean Gueit indicated during the interview that he granted to us:

“This is a simple possibility and not the recognition of any right to divorce by the Church; it simply allows former spouses to remarry in church, by prescribing a ceremony of penitence...formerly in Orthodox countries, it happened that the divorced spouses were even the subject of temporary excommunication before being able to remarry in church”. (Jean Gueit)

Our interviewee, on the other hand, insisted on the fact that, respectful of Catholic practices in relation to divorce, if two divorcees, of which one is Catholic, asked to be married according to the Orthodox rite, in principle he would refuse such a union.

“The question arises primarily on the religious, one can say ecumenical, level. The overwhelming majority of marriages are mixed, Orthodox-Catholic. A large proportion of Catholic couples are divorced, sometimes Orthodox ones too. However, as the Catholic Church does not admit divorce, unlike the Orthodox Church, the Orthodox Church respects the Catholic discipline and consequently feels reluctant to celebrate a mixed marriage in this scenario.” (Jean Gueit)

Generally, the Churches of the Reform are limited to considering that *“there is marriage when a woman and a man freely give each other their word, their confidence and their fidelity and commit to each other in the long term before society (...); the spouses then arrive at the Church or Temple already married”*.²⁰

18 CANNUYER C, *Les catholiques français*, Maredsous, Brepols, 1992, pp 202-203.

19 Cf. *Catéchisme pour adultes des évêques de France. L'Alliance de Dieu avec les hommes*, Paris, Le Livre de poche, 1991, p 415.

20 <http://www.protestants.org/index.php?id=31091>

In the Lutheran-Reformed Churches, the religious disparity between spouses is accepted. Evangelicals are, however, more reserved about the principle of denominational difference, as well as about the idea of an inter-denominational celebration.

As marriage does not have sacramental value, the majority of Protestant Churches in France accept without much difficulty divorcees remarrying (Kaltenbach 1997), according to the principle that a marriage can fail. Without supporting divorce, they do recommend clarifying the reasons of the failure and offering words of comfort and forgiveness.

In Judaism

With regard to the two other monotheistic religions, the situation presents itself a little differently, due to the greater or lesser seniority of their presence in France, to the process of institutional standardisation of their situation and of their status, and to the importance of marriage practices and customs, in which the religious dimension is mingled with more cultural elements.

In the case of Judaism, as pointed out as well by Rabbis Haïm Korsia and Nissim Sultan, the issue of the relationship between civil and religious wedding was regulated by the decisions taken by the Grand Sanhedrin (an assembly of Jewish Rabbis and Notables) in 1807 brought together by Napoleon Bonaparte (Gutman, 2000).

In Article 3, which is devoted to marriage, we can read about the decisions of the Sanhedrin in 1807:

“The Grand Sanhedrin, considering that, in the French Empire and the Kingdom of Italy, no marriage is valid unless it is preceded by a civil contract in front of the public registrar (...), that it is a religious obligation for any French Jew and Jew from the Kingdom of Italy, to view from now on, in the two States, marriages civilly contracted as bearing the civil obligation (...).”²¹

Rabbi Sultan directly returned to this historical dimension when we questioned him.

“The French case has this specificity - that these questions were settled on an institutional level a long time ago, they belong to the corpus of questions put to the Jewish Synod or Sanhedrin assembled by Napoleon at his request. The issue was then settled by the answers - to some extent diplomatic, although conform to Hebrew Law - provided by the Sanhedrin to the questions which were asked of it at the time and which led to a synthesis by integrating the obligations stated in the Civil Code with respect to the obligations of the Jewish community and that of the civil wedding preceding the religious wedding.” (Rabbi Nissim Sultan)

“No rabbi can celebrate a religious wedding of people who have not been married beforehand in front of a public registrar”. (Rabbi Haïm Korsia)

It is there, almost word for word, the formulation adopted by the Sanhedrin of 1807 which:

“As a result prohibits any Rabbi, or another person in the two States, from lending their ministry to the religious act of marriage, without having seen before them the act of the public registrar, in accordance with the law.”

The Rabbi from Aix-en-Provence, however, make the effort to clarify that, to understand the relationship between the civil wedding and its reception in Hebrew Law, it was necessary to distinguish two types of approach.

“First, there is the regime of fundamental law, which makes the civil wedding the law of the Republic and then, there is the symbolic or emotional system which refers to the religious dimension that this covers within the context of Hebrew law (...); however, it is important to note,” he explains, *“that*

21GUTMAN R (ed.), *Le document fondateur du judaïsme français :les décisions doctrinales du Grand Sanhédrin 1806-1807*, Strasbourg, PUS, 2000, p 39.

despite this difference in perspective, the civil wedding bears also in Jewish law a partial legal authenticity”. (Rabbi Nissim Sultan)

In order to confirm the taking into account in Hebrew Law of the legal value of the civil wedding, he made a point of clarifying that, if spouses of Jewish confession only undertake civil marriage, at the time of their civil divorce, the rabbinical court will deliver them a letter of *guet* all the same.

The only violation of the rule of the civil wedding preceding the church wedding which was cited to us, is that of a Jewish religious wedding celebrated in the absence of a civil wedding by a rabbi in all urgency in the hall of a hospital, with request for exemption addressed to the Head of the State. It concerned the case of a father in his last moments who wished to see his daughter married before closing his eyes. An exceptional situation was delivered an exceptional answer.

The only point of tension or conflict which can persist between civil law and Hebrew law relates to civil divorce and religious dissolution of the marriage concluded according to rules of Jewish law. Before being able to carry out the ritual dissolution of the marriage, a formal decision by the Grand Sanhedrin, dated 2 March 1807, explicitly states the obligation to arrange the civil divorce beforehand.

“This is why,” the text specifies, *“in accordance with the authority vested in it, the Grand Sanhedrin rules and orders, on religion: that henceforth no repudiation or divorce can take place according to the forms established by the Law of Moses, unless the marriage has been declared dissolved by the relevant courts and according to the forms desired by the Civil Code.”*²²

Jewish Law envisages on the one hand that the spouses' separation is of strictly conventional nature and, on the other hand, recognises the husband's exclusive prerogative to initiate the procedure of ritual dissolution in the shape of a letter of repudiation (*guet*) given to his ex-wife and viewed by the rabbi. However, in spite of that, it happens that husbands do not deliver the letter of *guet*. In the absence of such a document, the woman cannot contract another union. Faced with the detrimental refusal to deliver such a document, the ex-wives often have no other support nowadays than to resort to civil courts, as the rabbinical courts are not able to make up for the husbands' omission. The relevant civil courts can then order the allocation of damages and interest to the aggrieved ex-wife, without however, being able to go as far as obliging the husband to deliver the *guet*, as was confirmed by the Court of Cassation in November 1990, citing the husband's freedom of conscience.

The problem, as explained to us by one of the rabbis we met, lies in the fact that:

“Just as civil marriage does not have religious value, if it is not followed by a church wedding, in accordance with Jewish law, (drawing up and signing a marriage contract or 'ketouba' in front of witnesses and in the presence of the rabbi), for the civil divorce to have effect on the religious level and in particular to allow the wife to remarry in church, it must be followed up by a parallel procedure of religious dissolution of the marriage according to Jewish law before the rabbinical court with the handing-over of a letter releasing the wife from her matrimonial bonds.” (Rabbi Nissim Sultan)

As case law shows, some husbands, once the civil divorce is pronounced, consider themselves free from the law, forgetting the religious aspect of their new situation, which places the ex-wife in a delicate situation of always being officially married in the eyes of Jewish law, although divorced in the eyes of the civil law of the French State.

This lapse of memory can be also explained by the cumbersome procedure envisaged in Jewish law and the fact that the relations between the former spouses, divorced in civil law, but still married in Jewish Law, have become so tense that such a procedure is experienced in apprehension.

²²GUTMAN, *op cit*, p 37.

Such a situation prejudices a Jewish woman's religious right to remarry and thereby forces rabbinical authorities to be more vigilant and to insist - and even be forceful - so that any civil divorce is followed within a reasonable delay by religious dissolution.

Rabbi Sultan stated to us to have known of particular situations where the dissolution of the religious marriage even preceded the civil divorce, which is a real exception.

The only divergent note that we should highlight is the opinion given by one of the great figures of the liberal Jewish movement in France, Rabbi Daniel Farhi.

In a book which is his personal account,²³ he did not hesitate to denounce blackmail linked to the custody of the children which sometimes surround (in his view) the granting of the letter of *guet*. Also, he has distanced himself from the practice, judged humiliating for women, to have to claim this letter, and considers too timid the attitude of the consistorial courts with respect to husbands reticent to deliver the letter of *guet*.

“Regarding divorce, we have simply removed the humiliation of the woman that her repudiation represents. If the man makes things difficult, because it may be that he appears recalcitrant, we try, using all means of persuasion, to make him deliver the act of divorce, and if, sometimes even after several months, he has not complied or even condescended to answer (...), we notify him that we will take his place by convening a rabbinical court which will pronounce the divorce in his absence and return freedom to his wife.”²⁴

In Islam

Turning to Islam now, answers were direct, mentioning persistent points of tension between Islamic law and civil law of marriage or divorce and were rather lucid compared to the confusion often brought about by Muslims themselves between respect of the letter of Islamic law and practices more related to identity than truly canonical.

The President of the French Council of the Musulman Faith (CFCM), Mohammed Moussaoui, started by recognising that the body which he chairs had no knowledge of particular problems as regards family law concerning Muslims of French nationality.

“French Muslims integrate into their daily practices the relevant rules of French law; the religious ceremony is not absolutely essential in the light of the fact that Islamic Law intervenes after the civil marriage. It is more often about an informal ceremony which takes place in the home of the parents of the couple to be married, with or without the presence of the imam, and which generally does not have a written trace.” (Mohammed Moussaoui, CFCM)

It is indeed rather rare for this type of religious wedding to be followed by the handing-over of a marriage certificate mentioning the amount of the agreed dowry and complete with the signatures of spouses and witnesses. In the course of former research, we had been able to observe only one document of this type. It concerned a single sheet of paper, mentioning that it was a certificate of Muslim marriage, the names of the spouses with their respective signatures, that of the celebrating imam and those of the witnesses. This document was delivered by the so-called Strasbourg mosque at the end of the religious ceremony and after having ensured that the spouses had indeed been joined together in the presence of the marriage registrar.

Questioned on the obligatory mention of the amount of the dowry for the Maliki School at the time of the religious celebration of marriage, the answer was that the imam generally restricted himself to asking whether the parties had found an agreement, without enquiring about its precise amount, as families usually wished to remain discrete on this subject.

Being from abroad and dual nationality Franco-Moroccans, the President of the CFCM made a point of specifying that some people wishing to have a Moroccan family record book, went after the civil

²³FARHI D, *Profession rabbin. De la communauté à l'universel*, Paris, Albin Michel, 2006.

²⁴*Ibid*, pp 169-170.

wedding to the consulate and that the relevant department was only able to transcribe the civil act carried out in front of the French state registrar, while taking care to ensure that the two witnesses at the civil wedding were Muslim. If necessary, a new ceremony could take place at the Consulate with this time Muslim witnesses.

A president of a Muslim association described a similar situation by, however, highlighting details which, in his opinion, result in Islamic Law (as well as other religious laws!) not being understood, nor being located on the same level as civil law. In fact, for him these are two parallel laws.

“Shari’a is not a law in the Western sense of the term, it is a law for this world and the other (al akhira) (...); civil law has a purpose that is above all social, and each person will endeavour to conform to it depending on their individual interest, if it means playing with the law or going along with it”. (D Gril)

That leads him to think that, consequently, practising Muslim believers aware of this reality should not lose sight of the fact that their behaviour on this side conditions their future on the other side.

“The fact of referring to the world beyond is actually a way of speaking of interiority, of one’s way of relating to God; Islamic law combines social dimension, link to transcendence and the dimension of eschatology.” (D Gril)

That said, this interviewee made a point of specifying that, according to him, the most obvious tension in his eyes between Islamic law and civil law, as regards family law, was the issue of the apparent inequality between men and women as regards dissolution of the matrimonial bond via repudiation, which is reserved for men in Islamic law, while underlining at the same time that this inequality was altogether relative.

“The only most obvious tension, the most visible, is the question of the rather relative inequality between man and woman as regards dissolution of the matrimonial bond via repudiation (at talâq), which is unilaterally granted to the husband”. (D Gril)

This right or 'privilege' granted to the man to be able to take the initiative to break the union, does not therefore mean, he recalled, that the wife is deprived of any room for manoeuvre, nor deprived of taking advantage of her rights and, if necessary, proceeding to a dissolution of the union by divorce (*al khul'*).

“In the same manner that the woman remains free to accept marriage or not, in Islamic law, the woman can resort to a 'qadi' to have herself heard and obtain, if necessary, the divorce”. (D Gril)

On the issue of possible main points of tension existing between Islamic rules, as regards personal status, and French civil law, Tariq Oubrou, for his part, gave the following reasoned answer, which amounts to considering that the great flexibility of *shari’a* in terms of personal status does not enter into major contradiction with French civil law. According to him, resorting to civil law in matrimonial matters by Muslims living in France is conform to the purposes of Islamic law.

“Theoretically, there is no head-on opposition, since in Islam there are several legal options relating to personal status, and this has been the case since the birth of Islamic law. The points of tensions exist only in the minds of some who do not master French substantive law and its complexity on the one hand, and ignorance about the plasticity of shari’a and of its multiple options on the other hand. Indeed, Muslim law is plural for two principal reasons. One concerns the often ambivalent semantic nature of the Texts. It is what generated a plurality in the methodology of normative hermeneutics of the scriptural Texts. The second reason is that the context in general plays an important part in the relation to the normative texts generally, in particular as regards family law, which is more fluid than that of dogmas (beliefs) and worship (five canonical prayers, fasting during the month of Ramadan...).

This means that, theoretically, this aspect of Islam is more flexible and more adaptable to various sociological, cultural and political realities, where a Muslim person or community is situated.” (Tareq Oubrou)

For Tareq Oubrou, Islamic law in matrimonial matters is essentially completely soluble in French civil law, the latter remaining the law of Muslims.

“Muslim law is French law, and it is within its framework that their ethical options are formed and expressed, since shari’a is reduced to worship and individual ethics. It is what I have called the ‘ethicisation’ of the shari’a. For example, polygamy is not obligatory in Islam and, if French law bans it, that is not opposed at all to Islam.” (Tareq Oubrou)

The other ‘contradictions’ raised by some of our Muslim interviewees relate to issues of heritage and custody of the children, to which Islam brings answers undoubtedly different from those in civil law, which, in the eyes of our interviewee, would not imply side-lining state law, as within Islamic law there are rather broad margins or room for interpretation of these issues.

“There is the question of the heritage, which civilly will undoubtedly have to be regulated in accordance with the French law for nationals; it then remains for Muslims to refer to the rules stated in the shari’a, if they consider it necessary from a practical point of view (...); as for custody of the children, it is usually expected that the child remains with the mother until the age of seven years, then the child will be able to make their own choice; there still are issues that remain pretty open in Islamic law; we are in the area of agreement between the two parties, many subjects can find answers that are not very different between the two laws, the Islamic and the French one.” (D Gril)

During the interview with Denis Gril, we also tackled the question of the religious forms of celebrating marriage (civil wedding preceding religious, religious celebration, role of the imam...).

That gave him the opportunity to react to a tendency which one often finds uttered by community leaders, in particular certain imams, which considers that just the civil wedding should be enough, and that no celebration of the religious type is required by Islam.

Such is the viewpoint defended by Imam Tareq Oubrou (Tareq Oubrou, 2009).

“One can indeed identify that imams possess this concordist reflex which consists in only arguing for or only regarding as essential the civil form of the union, but it should be recalled that the Qur’an attaches a very great importance to marriage and the question of the dowry, which refers to the concept of ‘mithaq’ - pact, alliance - like that made between God and His people on Mount Sinai; this means, if marriage in Islam also obeys a certain sacredness, it does so in the name of God. It is a contract certainly, but any contract is sacred.” (D Gril)

That logically led us to evoke the role of imams in this case and the reasons which lead them to be sometimes more or less reserved about requests for blessing unions between two Muslims.

“You know that imams can be persuaded after all to consecrate a union which exists de facto, but is neither in conformity with common law, nor even with Islamic law, marriage is a serious act...serious, which must be in conformity with the sacred law. So imams often refer to civil law in order to protect themselves, to guard themselves from civil authorities, but when they refuse to celebrate unions, in fact it is also to protect themselves, to dissociate themselves from the thoughtlessness of many Muslims”. (D Gril)

Here we touch on the more or less central role which is often given to imams on this matter within Muslim communities in France²⁵. Certain local studies, for example, clearly showed that it is often via matrimonial issues that imams are transformed into private legal actors²⁶.

It appeared during the interviews we carried out that their role was not limited to celebrating unions afterwards and sometimes (officially, more rarely!) before civil marriages. They could also be people to turn to when conflict is eroding away at a couple. At this point in time, their role as mediators emerges, as conciliators just like other religious leaders. Their direct intervention or at the request of a third party or families often aims at trying to reconcile the spouses, in order to avoid resorting to divorce, which is presented as a source of disorder. Certain imams do not hesitate to warn the faithful against this easy solution, using shock formulae of the type: *“God hates divorce, but Satan likes it a lot.”*²⁷

“The imam must play his role of reconciler; as soon as a problem occurs in a couple he can be called upon, if the problems persist as far as calling into question the religious practices of the two spouses, divorce is then preferable to marriage.” (D Gril)

Returning to the question of contradictions between Islamic and civil law, our interviewee directly mentioned the controversy cited above in our report surrounding the marriage in Lille between two Muslims that was annulled due to missing virginity.

“The occasions of conflict depend on the people and the situations and, when people are going to resort to secular courts to put forward arguments relating more or less to their own religion, as in the Lille case of the annulled marriage (...), it puts across the inability of the people to comprehend the difference between civil legislation and legislation based on a revelation and a prophetic tradition; but this case in itself also conveys the ignorance by these citizens of the very meaning of law in Islam, which is that when an error is discovered, one must hide it and not expose it in public and make a big deal of it. If there was really love between these two spouses, they should have agreed together not to make it into a scandal. The approach selected is in profound contradiction with Muslim law.” (D Gril)

Such is also the opinion defended by the Mufti and legal expert, Tareq Oubrou.

*“Even in the event of fault, one should not reveal what God has hidden, the moralists say, referring on this subject to a hadith of the Prophet (...) Neither the man nor the woman have to reveal their sentimental and sexual past, because it is morally disapproved of on the one hand, and, on the other hand, to preserve the unity of the couple, especially in a culture where jealousy is blinding (...); I consider it really unacceptable for a man to go before a court to say that his wife was not a virgin, it's shameful!”*²⁸

On this case of annulled marriage, several Muslim religious personalities have voiced their opinions. In their declarations, they wanted to react to the beginning of the controversy which broke out in France, to point out the rules of Islam on the matter and to give their opinion on the case.

They were to recall that Islam, just like the other monotheist religions, considers sexuality to be an expression of an innate need of man which finds its full realisation in marriage. The sexual act then becomes an act of charity towards God (*sadaqa*). Refraining from sexual intercourse outside marriage is therefore, from a classical perspective, strongly recommended as an expression of self-control, a way to prevent unwanted pregnancies and combat sexually transmitted diseases. Chastity and abstinence before marriage are in Islam (as indeed in Catholicism!) hailed as virtues for both men and

25 MONDOT J F, *Imams de France*, Paris, Stock, 2009.

26 BARIKI S, « Les imams marseillais, acteurs juridiques privés », in *Islam de France*, 2000, n° 8, pp 85-106.

27 MONDOT J F, *Imams...op cit*, p 334.

28 OUBROU T, *Profession imâm*, Paris, Albin Michel, 2009, pp 54-55.

women. If having sex outside marriage is seen as a wrong done to God, “no text, no historical reference mentions that a woman must bleed or have an intact hymen to prove her virginity or that this is a condition for marriage”²⁹. Most sources also warn against the uncalled-for (but real!) tendency to want to check the virginity of a woman and, if needed, to proceed with a restoration of the hymen to save face and family honour.

Amar Lasfar, Rector of the Lille South Mosque, while accepting the fact that the court decision was only punishing the lie and not the lack of virginity, explained that eight of the nine wives of the Prophet had been married, they were no longer virgins (as they had been married previously), which would tend to prove that a woman's virginity or absence of it is not a prerequisite in Islam for contracting a union.

Tariq Oubrou, made it very clear that “*canonically speaking, virginity is not a condition of validity of marriage in Islam*”³⁰.

For this imam, this case of the annulled marriage is nevertheless a perfect illustration of misunderstandings and incomprehension connected with the *shari’a*, whose victims are initially Muslims themselves.

“*Here is an example which perfectly illustrates this misunderstanding of shari’a. No scholar of Islam has mentioned a woman's virginity as a condition of validity of a marriage. The nullity of marriage (al-faskh) takes place according to objective rules, when there is an obvious and proven rupture. This is what French law perfectly allows for. It is the terms of the moral and legal contract and the clauses put forward by one or other of the two parties which are decisive in this kind of conflict. The intervention of the judge in this kind of conflict is provided for, but not a 'Muslim qadi' who would put the marriage and the divorce into a religious context, who would marry the people and divorce them in the name of God. Consent is a founding principle of this type of contract.*” (Tareq Oubrou)

As Denis Gril, President of a Muslim association, also identified, this case of annulled marriage fully illustrates the complexity of the legal situation as experienced by many Muslims.

“*Here we are faced not with a problem of opposition between two types of law, but rather a situation of triangulation between civil law, Islamic law and customs, but very often customs have greater weight than religious law among non-practising Muslims.*” (D Gril)

Among all our Muslim interviewees, Tareq Oubrou, is by far the one that has provided the most precise and undoubtedly the most audacious answers to our questions.

His answers convey as much a thorough knowledge of the sources of the faith and law in Islam, as an experience of a committed imam confronted daily with questions from the faithful and practices which have led him to express his reservations about some of them considered to be based more on culture than religion.

They also reflect his legal orientation and theological commitment. This imam endeavours, on the one hand, to revisit the *shari’a*, starting from the daily experiences of Muslims in France (as in the rest of Western Europe!), to reflect using the concept of the minority *shari’a* on an emancipation of the Islamic norm of any political system *a priori* (Caliphate, Islamic State...). This also enables him to return to Islam its original religious dimension and to define contours of a '*minimal orthodoxy*', below which a Muslim could not descend without taking the risk of somehow leaving Islam.

For him, the *shari’a* must deal with reality, starting from a certain number of values, which leads him to preach an '*ethicisation of the shari’a*', reducing outside the faith to moral and individual questions that refer each believer to their own conscience.

29Ligue Française de la Femme Musulmane, « Virginité : mythe et réalités », 25/03/07 in <http://www.lffm.org/modules.php?name>

30OUBROU T, *Profession imâm*, Paris, Albin Michel, 2009, p 53.

In the Western context, the *shari'a* is thus reducing according to him “to only dimensions of worship and personal ethics expressed within the framework of French substantive law in force.”³¹

For him, the *shari'a* “does not seek to dominate, but to deal with reality, starting from a certain number of values whose expression is conditioned by an objective interpretation of what is real.”³²

Precisely concerning marriage, Tareq Oubrou considers that if Islam urges people to marry (as do other religions!), it does not make of it, in his opinion, a categorical religious requirement, in the sense that marriage does not, strictly speaking, belong to the obligations of worship and that the presence of an imam or attendance at the mosque are not essential.

“The majority of Muslims believe that marriage arises from the rite, from worship, and that it must be carried out in a mosque to be consecrated and blessed by an imam. The paradox is that, when they want to divorce, they do not come any more to see the imam and separate under conditions which sometimes respect neither ethic nor legal rules. However, marriage in Islam is classified in the register of law relating to contracts and obligations and not in the category of rites (such as prayer, fasting...). So, several methods of marriage (*zawāj*) are proposed in the traditional works of canonism (...). None stipulate that it must take place in front of a imam, nor in a mosque.”³³

In addition, he insists, several legal forms of marriage can thus exist in Islam according to whether one refers to the Qur'an, the rule of consensus (*al ijma*), to that of the analogy (*al qiyas*) or to the principle of utility (*al maslaha*).

In the Qur'an, the idea of marriage is usually rendered by the term '*nikāh*', which is repeated there five times (18 times in its verbal form *nakaha!*), the other term sometimes given as the equivalent of marriage is that of '*zawāj*', it indicates in fact the couple *sui generis* (Benkheira, 2007).

If one follows the Qur'an literally, it recognises in fact three possible forms of union (marriage strictly speaking, cohabitation and temporary union³⁴). Within the context of this study, solely marriage was addressed whose contractual purpose is the durable sexual union between a man and a woman, resulting in procreation.

Tareq Oubrou regularly recalls, in all his writings, that the existence of provisions in the major scriptural sources of Islam (Qur'an, Sunna) does not therefore exempt canonists from interpreting these laws by identifying problems with them through their re-reading in the light of a precise methodology which can also be based on other legal sources.

“Approached in such a way, the texts are no longer received solely as direct sources of the law, but consequently propose even a methodology, by referring to other intellectual sources and parameters.”³⁵

“(…) the principle of reality not only conditions the interpretation of the source Texts, but often inspires jurists or canonists integrating into their fatwa: *al'urf* (traditions and customs), utility or interest (*al-maslaha*), necessity (*ad-darūra*) and need (*al-hāja*) which make law, (...); it is not enough to apply a Qur'anic verse, a hadith of the Prophet or a law established by former Muslim jurists,

31OUBROU T, notice Mariage, Droits internes des religions « Mariage islam », in MESSNER F (ed.), *Droit des religions*, Paris, CNRS Editions, 2010, p 484.

32OUBROU T, *Profession imām...op cit*, p 44.

33Ibid, p 47.

34The option of temporary marriage (*mut'a*), although envisaged by the Qur'an (4, 24), had probably been declared illicit by the Caliph Umar Ibn Al Khattab, but remains lawful for the Twelve Shiites.

35OUBROU T, notice Mariage...op cit, p 484.

leaving aside the reality where the Muslim is located, for this to be in conformity with shari'a." (Tareq Oubrou)

The same can be done with marriage, which would result from the famous *hadith*, stipulating that *"marriage is valid only in the presence of two witnesses"*. This text would thus authorise marriage to be kept confidential. It is often relied on by certain imams to celebrate the union of a man and a woman in the absence of any declaration or public celebration beforehand or afterwards (Maliki understanding).

On the other hand, we find the understanding that publicising the marriage is the exclusive criterion for its validity (Hanafi understanding).

According to the principle of utility, marriage - which is in Islam above all a contract - must also be able to guarantee the interests of the two parties and each one can add particular clauses to it. From this perspective, a PACS (limited, however, to two people of different gender!) could even, according to Tareq Oubrou, be admissible in Islam (Oubrou, 2010).

*"(...) the PACS is also a conceivable framework of union."*³⁶

Engaged in his as much theoretical as practical reflection on the way of leading Muslims to not have to choose between practising their faith and French citizenship, he continues by recommending resorting to the civil wedding as an acceptable form of union in Islam between a man and a woman, denouncing in passing the practice, considered by him to be clandestine, of solely the church wedding, the so-called *'halal marriage'*.

"The civil wedding, which is not an obligation in French law for any form of union, can however guarantee certain rights, and I strongly advise it. (...) This perception of marriage is not that of certain Muslims who want to be satisfied only with a 'religious wedding' or 'to do halal', as they say, a union without responsibility and therefore without legal consequences. This type of 'ethical marriage' could be considered in certain cases to be a clandestine marriage. (...) consecrated by an imam who himself could be a clandestine imam, i.e. without a mosque (...); here, we are speaking about an informal group ritual. Here, we can really speak about a bid'a, a condemnable innovation, heteropraxis, which introduces into the rite an act which does not arise from it".³⁷

On this question of resorting in priority to the civil form of marriage (like the validity of the civil divorce!), other orthodox Muslim authorities in the world, as in Europe, have largely followed in the footsteps of Tareq Oubrou!

So, the *Al Azhar* Commission has, in the course of 2007, recognised the total validity of civil weddings contracted by Muslims in France with full effect. The only restriction is that these unions have to have been celebrated in the presence of two Muslim witnesses and with a dowry fixed and allotted to the wife (Borrmans, 2010).

The Imam of Bordeaux even puts forward the idea that Muslims should not have to formulate particular requests as regards marriage or divorce, because they should comply with the law of the state, initially in the name of loyalty and civic support for the Republican way.

"Muslims of France should not claim specific marriage or divorce provisions for themselves. That would call into question the universalism of the French political system and make its break-up a possibility. The multiplication of demands for specific details is not conform to our Rousseauesque, universalist model." (Tareq Oubrou)

If the Muslims of France must comply with the law of the state for their matrimonial affairs, from marriage to divorce, it is also because, according to him, the very spirit of Islam pleads in its favour. The imam will go as far as considering that the simple fact that marriage legally belongs in Islamic

36OUBROU T, *Profession...op cit*, p 50.

37Ibid, p 49.

law to the regime of contracts, this removes it from the rigours and the more restrictive register which prevails as regards worship or dogma. For him, the area of personal status is a relatively open space, in which a broad room for interpretation remains, unlike worship and dogma, where the room for reform is much more restricted, even impossible (Oubrou, 2004).

“Marriage and divorce in Islam is one of most modern in its spirit, because it does not form part of the category of worship, but of the inter-personal, that of contracts. The theory of marriage contract for the Hanbalites, contrary to what people think, appears to me the best adapted to our world today. Neither religious ceremony nor intervention of a religious official is provided for in case of marriage, nor is a sentence pronounced to declare separation. It is the couple which decides on it or else the intervention of a judge. Muslim law is in this respect a little secular. The various provisions of French law broadly respond to the conditions of marriage and divorce in Islam.” (Tareq Oubrou)

Challenged by his audacity, we nevertheless asked him what he thought of the possibility of using courses specialising in Islamic law to solve matrimonial problems encountered by certain Muslims. His answer was firm and definitive:

“I am against denominational courts for two essential reasons.

The first: the religious chaos of the Muslims and the intellectual and theological-canonical immaturity of many religious leaders.

The second: it is that marriage and divorce can be carried out completely within French law currently in force, after a simple consultation - if the person concerned wishes it - with a well-advised and informed Mufti, familiar with French law, on the various options for marriage and divorce in Islam. There are always points of intersection, except for people who have a monolithic and rigid vision of Islamic law. We need neither qadis nor ecclesiastical judges. One part of the community would not only desert these courts, but the community - not to say Islam - when I think of these women who must undergo the Maliki or Shafi'i rite...not to mention a certain mentality from the Middle Ages among people who would be these future qadis. I am therefore against this type of legal communitarianism.” (Tareq Oubrou)

Behind this indictment of any form of Islamic courts or justice in Europe, one can read between the lines one of the major reasons of the educational action and theoretical reflection accomplished by Tareq Oubrou, which consists in promoting the figure and function of the mufti in a non-Muslim context - a mufti who is able to move between the various Islamic law schools and their practical answers, in order to retain only the one best adapted to the context experienced by Muslims; but a mufti who is able also to know about (French) national law just like European law, in order to work on the progressive integration of Islam into European normative space.

For Tareq Oubrou, once the union has been made official in the town hall, Muslims are then free, if they wish, to surround this union by religious gestures and symbolism.

*“(…) passing before the imam and attendance at the mosque is not obligatory, unless for symbolic or emotional, but not canonical reasons. It must be carried out, if it is so desired, after passing before the mayor, as required by French law, and not before.”*³⁸

His insistence in pointing out the rule of the civil wedding preceding any religious celebration conveys as much his profound sense of legalism, his desire *“to integrate the laws of the Republic into the metabolism of shari’a”*, as his experience as imam in the mosque often confronted with requests from the faithful, seeking to use Islam to sort out behaviour considered irresponsible.

38OUBROU T, *Profession...op cit*, p 50.

*“But it is true that the concept of 'marriage' in Islam can give a very liberal aspect to this religion, not to say libertine and irresponsible. (...) We know cases which come very close to sexual vagrancy, but which are 'covered' in Islam.”*³⁹

Finally, about the dowry (*sadaq*), the legal expert thinks that it must be given, if the woman demands it, without necessarily considering this material aspect as one of the pillars of the marriage contract.

*“In France, in the West, the dowry does not form any more part of the culture: consequently, if the woman does not demand it, the subject does not need to be raised or revived.”*⁴⁰

If one follows Tareq Oubrou in his declarations as in his writings, contractual marriage in Islam in the light of the situation experienced by Muslims in France would rest on four major pillars.

There is initially mutual consent (refusal of forced or arranged marriage).

“Consent is a founding principle of this type of contract.” (Tareq Oubrou)

Then comes love or affection (*mawaadda*), *“necessary for the constitution and the maintenance of the couple”*.

If consent is an essential canonical condition, it does not exclude love.

“Of course, it does not exclude love and other moral and spiritual factors essential to maintaining this type of relation which the Qur'an describes as a 'strong pact' (mîthâqan ghalîdhan) whose basic intention is to maintain the couple and safeguard the family.” (Tareq Oubrou)

One rather logically finds fidelity not only in the sexual sense, but also respect for commitments made by the spouses in their marriage contract, and finally the public declaration with at least two witnesses (Oubrou, 2011).

The other rules often evoked, like the presence of a tutor (*al walî*) or the dowry not achieving unanimity among canonists, are *a priori* put to one side.

The same applies with regard to the presence of an imam which is not canonically obligatory, because *“marriage is not an act of worship”*.⁴¹

As to the virginity of the woman, it is in no way *“a condition of validity nor a reason for annulling a marriage”*.⁴²

With regard to the dissolution of marriage, after intervention by a mediator (who can be the imam!), if disagreements persist between the spouses living in Europe, the divorce can be necessary, although hateful in the eyes of God, according to a famous hadith of the Prophet.

*“(...) The divorce pronounced by the judge is respected by shari'a, because the law of Muslims is that of the Republic.”*⁴³

Such is also the opinion of the very orthodox European Council of Jurisprudence and the Fatwa. The latter recognises the validity of divorces pronounced by the civil courts; it is up to the Islamic centres

39*Ibid*, p 49.

40*ibid*, p 48.

41OUBROU T, notice Mariage...*op cit*, p487.

42*Ibid*.

43*Ibid*.

informed of the divorces to find the appropriate answers in Islam by taking account of national legislation.

“R2-17 the divorce pronounced by a non-Muslim authority must be recognised as valid, if people married in accordance with the laws of this country (for it is presumed that the contracting parties have made representation to the civil authorities of the country). (...) One recognises the legitimacy of Islamic centres and the like in pronouncing the repudiation/divorce of Muslim wives, about which people resort to them or to those who have to examine the divorce obtained by them from non-Islamic courts. It is, however, advisable to take account of the laws which regulate the contracts in their home country, in order to guarantee all their rights.”⁴⁴

Marrying two people of the same sex: an improbable and unthinkable union for the majority of religious followers!

The majority of the answers on this subject given by religious leaders all converge towards more or less resolute opposition to a form of marital union, even matrimonial bond, perceived as unthinkable and contrary to the vision of the religious institution of marriage. This leads religious leaders concretely to refuse any religious ceremony.

Only Protestants from Lutheran-Reformed churches do not totally set aside this prospect, unlike Evangelicals, who are savagely opposed to it.

The majority of religious leaders whom we could question took, however, care to make a very clear distinction between condemnatory judgement which is theirs, when it comes to giving their agreement to such a union and especially endowing it with religious forms equivalent to those of a heterosexual marriage and the fact of stigmatising homosexuals, ostracising them in communities or, worse, supporting denunciation campaigns, even calls for divine punishment.

Some of our speakers, like Rabbis Haïm Korsia or Nissim Sultan, as well as Imam Tareq Oubrou, had the opportunity to discuss this publicly with homosexual movements⁴⁵ or are engaged in reflection in this area from inside their traditions and aimed at their respective communities.

Their approach essentially aims at ensuring that, directly or indirectly, people whose sexual orientation is of a homosexual kind, can find their place within their respective religious communities.

Several French religious leaders (all religions combined!) recently signed the Declaration against Homophobic Violence, presented on 17 May 2011 to representatives of various religions by the IDAHO (*International Day Against Homophobia*) committee.

In Christian churches

As for Christian Churches, the answers were as a whole pretty convergent, not recognising in this union a religious dimension, except for the Protestant churches who were less categorical on the subject.

So, Orthodox Rector Jean Gueit was to start by establishing a distinction between homosexuality, which concerns all societies and is therefore also found in Orthodox societies, and the fact of granting this union a religious form.

“But the question to date has not arisen at the sacramental level. Theologically speaking, the principle of homosexual marriage makes no sense. According to the book of Genesis, the creation of mankind is considered in the otherness and complementarity of masculine and feminine, ish and isha, “Man and

44BORRMANS M, « La famille musulmane à travers les fatwâ-s », in Younes M (ed.), *La fatwâ en Europe.*

Droit de minorité et enjeux d'intégration, Lyon, Profac/CECR, 2010, n° 105, pp 119-120.

45Cf. HOUMAIRI S, *Islam et homosexualité de France : regards et perspectives croisées*, Mémoire Institut d'études politiques d'Aix-en-Provence, Université Paul Cézanne/Aix Marseille III, 2010-2011.

Woman, He created them (or, He created him). Marrying in front of the Lord, such as He blessed at the wedding at Cana, can, by definition, only relate to heterosexual union.” (Jean Guéit).

To his knowledge, to date, except undoubtedly in the United States, no canonical orthodox denomination has directly looked into this issue.

As to Protestants, except for the Protestant Churches of Northern Europe (Lutheran), it is difficult to obtain a single, authorised opinion. Each Church remains sovereign on the matter.

In addition, if the Protestant Federation of France is the central authority which represents the majority of churches claiming to be Reformed, on this question it has not issued an official opinion. Besides, its official website is limited to referring to the various analyses and stances adopted by historical churches affiliated to it.

Such is the case, for example, with the Lutheran-Reformed Permanent Council (CPLR) which, in February 2004, wrote a text entitled *“Church and homosexual people”*⁴⁶. In this text, this consultative body recommended unconditionally welcoming homosexual people as full members of the Church, while appearing more reserved with respect to accepting a homosexual pastor in a local church and by objecting to any blessing of a homosexual couple, which would risk being likened to that of a heterosexual couple. This opinion, considered moderate, was nevertheless criticised by the Union of Reformed Evangelical Churches (EREI), which upholds confessing reformed theology and disapproved of the idea of the unconditional reception of homosexual people within the Church, referring to *“the Evangelical call to change life and give up practices that the Bible rejects”*.⁴⁷

This question was to continue to feed the reflection by the historical Protestant churches.

Then, in its turn, the Couple-Family-Society Commission of the Reformed Church of France (ERF) dealt with this sensitive subject. It decided to welcome a homosexual person as pastor, considering that it was not a problem from a theological, exegetic and ethical point of view⁴⁸. With regard to the case of a homosexual couple wishing to receive a blessing, it was recognised that it was not going to be possible without raising questions of a practical nature, just like any request for a blessing in general, and with greater acuteness in the case of a union of people of the same sex.

“Thus to bless, is not to give a value judgement or moral approval of how people live, but it is to say: “God is not excluded from what you are living, He accompanies you (...) But, at the same time, to bless is complicated, because: whom to bless? Everyone, like Sunday morning, at the end of the service? And in the area which concerns us: all couples? (...) Let us point out that blessing a heterosexual couple is not obvious either! The certificate of marriage delivered by the civil authority does not give a “right” for a couple to be blessed, it makes things more conceivable. Thus, when spouses ask for their marriage to be blessed (...), they are invited by the pastor to enter into a spiritual journey (...), this spiritual journey is also that of a homosexual couple. But what is it about the blessing of a homosexual couple that can cause problems?”

The problem lies in the risk of likening the blessing of a homosexual couple to the blessing of a heterosexual couple. The risk will be heightened, if the blessing is the occasion to name the characteristics of a homosexual couple and to declare its particularity.” (Couple-Family-Society Commission of the French Reformed Church, point 3).

Also, without in any way challenging such an opportunity, this body of the Reformed Church of France formally recommends taking into account the request for blessing homosexual couples in the same way as that of heterosexual couples, while specifying that the blessing given should not be similar, nor equivalent, to that given at the time of marriage between people of different sex.

“The request to bless a homosexual couple must be received, listened to, worked on, with as much gravity as is a request from a heterosexual couple (...); there will be the same responsibility for the

46<http://www.protestants.org/index.php?id=33015>

47<http://www.protestants.org/index.php?id=31273>

48Cf. <http://www.protestants.org/index.php?id=31268>

Church to say the blessing clearly, but also to say the particularity of recognising this couple: this blessing will not be a blessing of 'marriage' (...). For a blessing of a same-sex couple (homoïoi), we could speak of 'blessing of union'." (Couple-Family-Society Commission of the French Reformed Church, point 3)

In order to be as precise as possible on this question, it is historically advisable to mention the creation in the 1970's of the Centre of Christ the Liberator (CCL), founded by a former Baptist Pastor (excommunicated and assassinated). In this ecumenical centre open to all people from the sexual minorities (homosexual, transsexuals, sadomasochists...), Pastor Doucé and his successors celebrated the unions of people of the same sex in church.

Today, these people of Christian sensitivity can address themselves to the Maison Verte, Fraternity belonging to the Paris Evangelical Popular Mission⁴⁹, historical member of the Protestant Federation of France (FPF). It is both an association and a Protestant parish. Chaired by reformed Pasteur, Stephan Lavignotte, this community practises an inclusive Christianity and welcomes without exclusion all people irrespective of origin, culture, or sexual orientation. This Protestant group plays an active part in the reflection of the Protestant Churches in the search for new rites to unite homosexual couples. The Evangelical Popular Mission has, since January 2009, authorised the practice of liturgical gestures and prayer intended to welcome a homosexual couple.⁵⁰

In other French towns (Montpellier, Lille, Toulouse), other 'ecumenical' churches also exist, affiliated to the Federation of Metropolitan Christian Churches, which celebrate same-sex unions in church.

In respect of Evangelicals, opinions show resolute reticence towards officialising the union of people of the same sex. Reacting to a draft law rejected by the French National Assembly aimed at legalising same-sex marriage, the French National Council of Evangelicals (CNEF), created in 2003 and federating the majority of Evangelical churches in France, was to welcome this rejection in a press release and explained its attitude, opposing any opening-up of marriage to people of the same sex.

"The CNEF is opposed to homophobia and anxious to fight against all forms of discrimination. But it recalls that marriage - the family - is a single and divine institution, which structures the very whole of society and guarantees its future. For the CNEF, marriage exclusively consecrates the union of a man and a woman. The value and the function of marriage exceed personal fashions and plans (...); it is worried by all the voices already announcing that homosexual union will open the way to homosexual parenthood." (CNEF Press release, June 2011)

For Catholics, the same is officially true.

Before even being able to consider the case for legalising same-sex marriage, the Catholic hierarchy in France, in tune with that in Rome, considers that, if homosexual people are to be welcomed within the Church, homosexuality as such remains *"an objectively serious deviation"*⁵¹. The role of the Church must be limited to supporting homosexual people, in order to *"help them overcome their deviation and to bear the suffering of it"*⁵².

Homosexual people are thus invited to practise chastity.

The General Secretary of the Conference of Bishops of France was to declare to us, when we questioned him on the possible attitude of this Catholic body to a law legalising same-sex marriage, that this could only be negative.

49Cf. <http://blog.lamaisonverte.org>

50BILLON Marie, « A la recherche de nouveaux rites pour unir les couples homos », in *Têtu*, 23/11/2009.

51*Catéchisme des évêques de France...op cit*, p 418.

52*Ibid.*

“(...) the Catholic Church can only repeat its firm opposition to such a plan. It would be likely to weaken the social structure of marriage and the family. If the State legislates on marriage as an institution, it is not to approve one form of emotional preference or another (which on this point remains a private matter), but is to do so for the sake of the social role of the family in generating and educating children.” (Mgr Herouard)

For this Catholic leader, this position could not be likened to any form of discrimination towards homosexual people. This categorical judgement should not prevent the search for other solutions (of a contractual type!) likely to answer the legitimate, practical questions which this type of coexistence raises.

“To affirm that, is not, I believe, discriminatory with regard to homosexual people and does not prevent us, in solving concrete problems linked to coexistence, defining forms of contracts between people - of the PACS type, possibly to be improved.” (Mgr Herouard)

In Judaism

As the rabbi of the community of Aix-en-Provence was to declare to us:

“We must welcome into our communities homosexual people in the same way that our communities count among their members people who do not eat kosher.” (Rabbi Nissim Sultan)

To our question on the likely attitude of Jewish consistorial authorities faced with the possibility of legalising marriage between people of the same sex in France, Rabbi Korsia, Chaplain General of the Armies, gave this clear answer:

“Clear opposition from Judaism (...), which should not however be likened, as some homosexual movements wrongly claim, to an attitude rejecting a priori homosexuals and their sexual orientation or approving discourse and practices stigmatising homosexuals from within the Jewish community or elsewhere.” (Haïm Korsia)

We were able to gather the same opinion from the rabbi of Aix-en-Provence, for whom such a prospect can only receive *“an unfavourable judgement on the part of Jewish law”*, while wondering, on a purely personal basis, how such a civil union could be enacted by the community, in the absence of a religious ceremony recognising it.

The Chief Rabbi of France, Gilles Bernheim, seized the opportunity in one of his books to specify a little more the attitude which it is advisable to adopt with respect to the issue of the homosexuality from a Jewish point of view, without ever, however, directly mentioning the issue of same-sex union.

“There is no doubt that homosexuality is fundamentally prohibited in the biblical texts,” declares the Chief Rabbi. *“However, to make exclusive use of biblical texts on this issue and to overlook the Talmudic commentaries, for the purpose of avoiding discussion, would be to distract from the Torah. Anyone approaching the Talmudic commentaries will realise without any difficulty that only male homosexuality appears there.”*⁵³

For him, it is important not to seek to substitute the judgement of God by the judgement of man, especially in areas where divine judgement is not explicitly matched to a precise punishment.

*“Because, if for certain forms of homosexual practices, the Talmud determines that God alone can be the judge, it does not always reveal the nature or the range of possible punishment (...); when God judges, it is because man does not have one or cannot do it. Either because man does not have the means or because he himself was led astray.”*⁵⁴

53BERNHEÏM G, *Un rabbin dans la cité*, Paris, Calmann Lévy, 1997, p 82.

54Ibid, p 84.

Like his colleague, Haïm Korsia, he deduces from it a firm defiance, in relation to all those who would be inclined to call upon divine law to condemn homosexuals in the name of a radical, moral reprobation, with contempt for the rules and precautions which surround the Talmudic commentaries. With the same force of conviction, he cannot, however, go in the same direction as those who would like to confer on homosexuals social status within the Jewish community.

*“The problem remains as a whole, when it concerns homosexual groups claiming a 'status' in the Jewish community. Such a request, I have said, has often left me perplexed. Because if it hides a willingness to see the Law negotiated, my answer can only be negative. I do not have the least reason to pass judgement on homosexuals, but the Law remains the Law.”*⁵⁵

In Islam

As regards Muslim representatives, the tone is similar, but with some nuances linked to the interviewees' profiles, their institutional positions and the different analysis used.

So, the President of the French Council of the Muslim Faith, Mohammed Moussaoui, started by stating that if parliament suddenly passed such a law, his reaction would be simply legalistic and would consist in acknowledging the new law and recognising this new form of marital union, nothing more, nothing less.

“If a law legalising homosexual marriage was passed, as leader of the official representative body of the Muslim faith, my first reaction would be limited to acknowledging this development and the existence of new forms of union, similar to those already in existence - the PACS or free union.” (Mohammed Moussaoui CFCM)

Pressing him further before the interview, and questioning him this time on his reaction as a Muslim, in the light of Muslim doctrine, his answer was more nuanced.

“Certainly, I will take account of this development, because I cannot ignore that French society is plural and that different points of view are expressed, all of which are not founded on religion...while clarifying that this development is not conform to Muslim doctrine and that no imam could support it.” (Mohammed Moussaoui, CFCM)

Answering the same question, another leader of a Muslim association in the South of France declared that legalising homosexual marriage is pretty unthinkable, from an Islamic point of view.

“It's really quite unthinkable for Islam. It would certainly relate to a sexual union, but not to marriage. Marriage in Islam is supposed to fulfil two purposes: on the one hand, to satisfy the need for the other - in other words to meet a physical need - sexual pleasure is important on a religious level - but marriage was also envisaged for the purpose of procreation, it is a model of life together which presupposes the complementarity between two principles or two distinct beings. In the case of a union between two people of the same sex, one would certainly have the expression of sexual pleasure, but not the prospect of procreation.” (D Gril)

Continuing our interview along these lines, our interviewee made the point that wanting to legalise the union of people of the same sex, in Islam, would amount to wanting to unite what the law prohibited.

“We cannot marry people whose very union is in principle prohibited, it would be a little like wanting to marry people who are already married, it's not possible.” (D Gril)

⁵⁵*Ibid*, p 85.

Should ever such a law be passed by parliament, according to Tareq Oubrou, no-one could force Muslims and their religious leaders to comply with it. In the same way that Catholics, as a jurist had us notice, are not obliged to divorce, although the law envisages divorce:

“And if one day homosexual marriage was passed, nothing would oblige Muslims to practise it.”
(Tareq Oubrou)

According to him, it is up to Muslims as citizens, to make themselves understood via their ballot papers and to ensure that their sensitivities are taken into account.

“But Muslims as citizens vote for and elect their MPs, who are legislators and can consequently express their opinions on these various issues, as citizens with their own sensitivities, through multiple democratic modes of expression. This vision reinforces the values and the unity of the Republic without giving up its particularities and its identity.” (Tareq Oubrou)

- The issue of family law, and in particular that of marriage, remains a sensitive one, a source of passing tensions between various religious or common laws and state law. It is an area on which religious groups intend to keep a watchful eye.

- This constant attention which family law receives is initially reflected in the clear concern to recognise that the civil wedding precedes any religious celebration of the union of a man and a woman, and in the care taken, more or less formally, to comply with this legal provision. But this recognition does not, however, have to result in tarnishing the religious meaning which surrounds marriage; this is in any case what emerges from the interviews conducted with the religious leaders.

Although officially, in state law, only the civil wedding has legal value, it is not any less the case that the religious form attributed to it by each religious tradition counts as much for believers as the resulting rights and obligations.

- Marriage is conceived as the sacred space where two complementary wills and desires meet, the place to realise a project of common life and the privileged space for the education of children and transmitting religious values. In a context of generalised secularisation of social practices on the one hand, and in a regime of secularity on the other, it is often, if not the last area, at least the unique area, over which religious groups intend to exercise increased vigilance and a watchful eye.

- In any case, our interviews confirmed the fact that, if conflicts could occasionally emerge, they were largely under control and meant additional efforts by religious groups concerned to educate and increase awareness among their faithful.

- There remains the question of the possibility of legalising homosexual marriage, which would definitely constitute a real, major point of friction between religious groups and public authorities. The very great reserve expressed by the majority of religious leaders about any plans to legalise same-sex marriage is a perfect illustration of the fact that, if this question is politically no longer a taboo subject, on the other hand it does attract the greatest reserve and more or less head-on opposition from various denominations towards an evolution in marriage law (already implemented by other European States!) which would require reconsidering in-depth the very meaning of the matrimonial bond and which would cause knock-on effects, in particular on issues of exercising parental authority, custody of children in the event of divorce (etc...).

But here again, it is advisable to be prudent. As several of our speakers told us, if indeed the passing of such a law would only collide with beliefs and upset the systems of values of several religious groups, it would not necessarily create a new constraint for these same religious groups. This new law would in no way violate their religious freedom, since no religious authority could oblige this union to be blessed, if it did not think it had any value on a religious level.

In return, everyone will be able freely to position themselves in relation to this new form of married life, according to their own traditions and profound convictions. This is undoubtedly also a way of separating political and religious affairs.

What civil law states is not always meant to coincide with the religious beliefs of individuals.

B) Workplace

In France, the question of interactions between freedom of religion (freedom to believe and of religious manifestation) and employment law had until today hardly been the subject of debate or particularly virulent controversy.

Moreover, it has to be said that court decisions relating to the respect of employees' religious convictions are rather rare. It seemed obvious that employees' religious convictions supposedly belonged exclusively within the domain of their extra-professional lives and were therefore not relevant to fulfilling a contract of employment. From a maximalist standpoint, some have come to consider that religious convictions and their manifestations ought seemingly to be expressed only outside the workplace.

However, it does appear, as Judge Henri Gleize notes, that “*if as a whole companies remain rather closed to religious issues (...), the issue of respecting the religious convictions of employees within the contractual framework is raised anyway in a certain number of cases.*”⁵⁶ (Messner, 2003).

Also, employees' religious freedom must initially be able to be evaluated in-house within the context and place of work, as it must sometimes also be understood through extreme situations, such as discrimination relating to opinions or real or supposed religious affiliation.

It is then completely exaggerated to continue to reason as if companies were untrodden territory, on which religious questions would not have the right to be mentioned or, on the contrary, should not know any boundary.

Before coming to specific accounts given by our interviewees, we should specify the general legal framework prevailing in France, as regards freedom of conscience and freedom of manifestation of religion in general, in the light of employment law.

As Isabelle Riassetto very rightly states: “*The employee who enters the company does not leave his religion at the front door.*”⁵⁷ This applies as much to so-called 'ideologically-oriented' companies, in which religion constitutes the frame of reference, as to other 'ordinary' companies.

As often in law, the principle of freedom of conviction and religious manifestation can come up against certain boundaries which reflect the particularities of companies, the activities performed there, as well as more general rules.

Freedom of religion and conviction is a principle enshrined both in the introduction to the Constitution of 27 October 1946 (repeated in the Constitution of 1958) and in Article 9 of the European Convention of Human Rights. It consists concretely of freedom of conscience (the right to believe or not believe) and the right to express one's religious beliefs in public or private.

Religion and 'ordinary' companies

We should distinguish taking into account employees' religion from the possible limits applied to it within the large majority of so-called 'ordinary' companies.

⁵⁶ GLEIZE H, « Religion et travail », in MESSNER F, PRELOT P H, WOEHLING J M (eds.), *Traité de droit français des religions*, Paris, Litec, 2003, p 707.

⁵⁷ RIASSETTO I, « notice Droit français/Droit du travail », in MESSNER F (ed.), *Dictionnaire Droit des religions, ... op cit*, p 213.

On the basis of Article L. 1132-1 of the Labour Code, employees can at no time during their recruitment, training, remuneration until their possible reclassification, be the subject of discriminatory treatment as a result of their origin, sex, lifestyle, age or sexual orientation, *“of their membership or non-membership, true or supposed, of an ethnic group, (...) or of their religious convictions (...).”*

In addition, the Penal Code in Article 225-1 precisely sanctions discriminating against any person or entity, involving *“a distinction made as a result of their origin, sex (...), their membership or non-membership, true or supposed of an ethnic group, nation, race or given religion”*. The punishment incurred is three years' imprisonment and 45,000 Euros fine and is targeted as much at discrimination at the time of recruitment, when requesting a work placement or selling goods, as at obstructing economic activity.

Employees' manifestation of their freedom of religion is tightly squeezed between the principle of non-discrimination (Article L. 122-45 of the Labour Code) and the need to take account of the company's interest (Article L. 120-2 of the Labour Code).

The Law of 16 November 2001 (modifying Article L. 122-45) further specified that employees' remuneration, training, reclassification, status, classification and career cannot be affected by their religious convictions. They must remain completely irrelevant to the development of the professional situation of the employee, in other words neither do disservice to it nor promote it.

In theory, employees therefore have the right to express their religious convictions within companies, according to various conditions ranging from clothing and private conversations to the observance of religious obligations, such as prayer and wearing a religious sign. When it comes to respecting bans on certain foods, the issue can arise in companies in which employees have their meals on the premises and where a canteen exists for this. The legal texts do not impose, however, any obligation to adapt the meals. If employees are not obliged to eat on the premises, they cannot demand meals taking into account religious obligations and the lack of adaptation cannot be classified as discrimination.

In return, the employer should not, in principle, prohibit any expression of religious freedom in a general way in the internal regulations. This is in any case what Article L. 1321-3 of the Labour Code states: *“The rules and regulations cannot contain: (...) restrictions on the rights of individuals and individual and collective freedoms not justified by the nature of the task to be accomplished, nor proportionate to the aim pursued; nor measures discriminating against employees in their job or work, possessing the same skills, and based on their origin, sex, lifestyle (...), religious convictions (...).”*

It can, on the other hand, be fully envisaged, as it is often the case in the majority of companies, to find arrangements on a collective level which make it possible, even facilitate, religious practice by employees via the internal rules and regulations.

If employees wish for other arrangements than those envisaged, these must be directly negotiated in an individual way with their employer and appear explicitly in the contract of employment; if they are not, the risk is that the employees can be challenged in court for flatly refusing instructions.

With regard to one-off absences related to religious festivals, these are negotiated with the employer, who is not required to grant them, if the department is disrupted by the absence.

Besides the Labour Code, hardly anything addresses the question of the place of religion in companies; various legal texts, French case law and European regulations (European Convention on Human Rights) have nevertheless made it possible to identify in a detailed way the boundaries which can provide the framework for the expression of religious convictions and practices in companies.

These consist essentially in rules relating to safety, hygiene and respect of law and order. On this basis and this basis only, employers are completely within their rights to limit religious freedom among employees by imposing a particular work garment (blouse, suit...) or by prohibiting the wearing of certain religious symbols, such as the veil, or having a beard. The refusal to comply could then constitute a reason for dismissal.

In addition to boundaries which have duly codified limitations, the texts also provide that other limitations on the freedom of religious conviction and manifestation can also be set with regard to the nature of the task to be accomplished by the employee within the company.

Article L. 121-1 of the Labour Code specifies: “No-one can add restrictions to human rights and to individual and collective freedoms, that are not justified by the nature of the task to be accomplished, nor proportionate to the aim pursued.”

Specialists in employment law point out, however, that case law tends rather to highlight the reference to the “*interest of the company*”, than to the “*nature of the task*”.

So, wearing a veil covering all of a saleswoman's body in a fashionable clothing store, conveying the image of a liberated woman, was adjudged to be contrary to the company's interest (Court of Appeal of St Denis de la Réunion, 09/09/97). Elsewhere, judges have recognised the employer's right to ban the veil or to impose a more discrete version.

Likewise, an employee cannot cite his religion in refusing to complete a task, except if invoking a conscience clause of legal origin or in relying on an explicit stipulation in the contract of employment (Court of Cassation, Social Chamber, 24 March 1998). Consequently, an employee (of Muslim confession), who had been working for two years in a food shop selling pork, then sent to work in the butcher's department, requested to change position as his religion forbade any contact with pork meat. The Court of Cassation, referring to the contractual obligations of the parties and the fact that the plaintiff had accepted this post without ever having mentioned any conscience clause that, due to his religious convictions, exempted him from treating pork, pointed out that, except for explicit clauses, employees' religious convictions have nothing to do with the contract of employment.

One must also mention that the HALDE (The French Equal Opportunities and Anti-Discrimination Commission), in several of its opinions (Deliberations n° 2008-32 of 03/03/08, and n° 2009-117 of 06/04/09), has contributed to classifying and clarifying the criteria likely to be highlighted by employers in order to manage the free manifestation of religion in the world of work.

In this way, there would be reason to distinguish the criteria related to the protection of individuals and those related to the good running of the company.

The ban on proselytism and the respect of the freedom of others relate to the first criteria. What is aimed at is not strictly speaking the wearing of a badge or religious clothing, but the behaviour of the individual or the way in which this sign is worn. It is also aimed at a type of religious zeal like transforming one's office into a place of prayer. That also combines with the obligation on any employer to protect employees against abuse or acts of pressure or aggression.

The health and safety rules already mentioned form part of these criteria. In terms of security, stresses Dounia Bouzar (founder of a consulting practice specialised in management of religious and cultural diversity in companies), “*checking if the religious practice is not incompatible with compulsory protective equipment or does not involve an increase in risks*”⁵⁸. In terms of health or hygiene, “*evaluate if the religious practice does not involve a lack of necessary conditions of hygiene.*”⁵⁹

As for the criteria related to the good running of the company, they simply raise the question of compatibility between religious practice and the skills and organisation necessary to accomplish the employee's tasks, to which could be added the business requirements of the company itself.

Religion and ideologically-oriented companies

The particularity of these companies lies precisely in the fact that the religious dimension constitutes the very heart of the company or, at least, that religion governs the performance of its activity. This relates to a broad spectrum of bodies, which range from denominational teaching establishments, to traders in religious objects, via the sector of the confessional press. It should be noted that the very denomination of an ideologically-oriented company is for the time being absent from the French Labour Code. Although this is a simple transposition or loan from German law (*Tendenzbetrieb*), the

58 BOUZAR D, L, *Allah a-t-il sa place dans l'entreprise ?*, Paris, Albin Michel, 2009, p 133.

59 *Ibid.*

acceptance of this formulation in French law is, however, current at the time of the transposition of the 2000/78/CE Directive of 27 November 2000.

This Directive in fact provides for Member States to maintain or create in their laws provisions *“pursuant to which, in the case of occupational activities within churches and other public or private organisations, the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos (...); churches and other organisations (...) can require individuals working for them to act in good faith and with loyalty to the organisation's ethos.(...)”*

French case law, without always being systematically coherent, had already been confronted with these types of issues.

For instance, the Court of Cassation, on 18 May 1978 and 20 May 1986, admitted that, for a female teacher in a Catholic institute, the fact of being divorced and having remarried could be considered contrary to the ethics of the institution and justify her dismissal. This tended to subordinate an employee's private life to the religious ethics of the company in which he or she carried on her activity. This judgement was severely commented on by the doctrine and judged a little excessive.

On the other hand, another just as famous decision of the so-called homosexual sexton of Nicolas Saint du Chardonnet (Court of Cassation 17/04/911, n° 90-42.636) rather defended the contrary. The fraternity of St Pius X (a fundamentalist, Catholic movement) had employed an assistant sexton; then, the priest, having learned of the man's homosexuality, took the view that he could not be kept any more in his functions, because of his sexual orientation which was condemned by the Catholic Church, and so he proceeded to dismiss him. The Court of Appeal confirmed the dismissal in its verdict, because of the deliberate ignorance by the employee of the former condemnation of homosexuality by the Catholic Church. The Court of Cassation was to overturn this decision, considering that the Court of Appeal had questioned the lifestyle of the employee, without having recorded any wrongdoing likely to create disorder within the association.

In general, in these companies, employers can choose their employees by taking into account the individual, they can perfectly well question candidates on their religious convictions and practices, insofar as this practical information will enable them to determine the candidates' ability to occupy the post concerned, or on their professional skills in connection with the proposed position.

In return, these same religious precepts can be enforced on the employer by the employee.

The only limits fixed on the constraints which employers can impose on employees are to safeguard freedom of conscience on the one hand - in other words only external manifestations can be restricted - and to consider the nature of their duties within the company.

So, one cannot impose on non-teaching personnel, such as maintenance personnel in a confessional teaching establishment, the same constraints as on the teachers. *“Not all employees bear the ideological orientation”*⁶⁰.

According to whether employees are evolving in an 'ordinary' or 'ideologically-oriented' company, how their freedom of religion and manifestation in public is taken into account can vary: specific, if not exceptional, in one and rigorous in the other.

“God” in the company, an old issue which has become increasingly sensitive

The recent history of French society and its ethnic, cultural and religious diversification has broadly contributed to give rise to new questioning on the interaction between religious practice and enterprise on issues of discrimination.

60RIASSETTO I, *op cit*, p 216.

Since the 1950's, via various migratory cycles, various populations, originating from the Mediterranean basin and from mainly Muslim countries, gradually settled in France. During the 1970's and 80's they were to formulate new religious requests, including opening prayer rooms within factories, more particularly in the automotive industry. This opening of prayer spaces was also actively encouraged by the public authorities of the time and supported by the companies themselves (Kepel, 1987).

For the government, via the secretariat for immigrant workers, this support given to the creation of prayer rooms in the workplace - combined with the adjustment of work schedules during the month of Ramadan and taking into account Islamic rules in the factory canteens - fell within an immigration policy aimed at promoting the cultural identity of the immigrant populations, whose more or less stated ambition was to return to the country they had emigrated from. In terms of the companies themselves, these openings demanded by groups of believers fitted perfectly within a dual policy of social control of the populations through religion and of increasing productivity within the company. The companies concerned (Renault, Talbot, Citroën...) saw in the development of these places of worship on production sites an opportunity to combine Islam and productivity: *"Everything is done so that time for Islam and industrial time are in harmony here."*⁶¹

Religion appeared at the time as a factor of social peace in the company - a solid, spiritual stimulant for work and, undoubtedly, also a means of putting into perspective the influence of trade unions.

The 1980's, marked by sudden jolts in the Muslim world (Iranian Revolution, assassination of Sadat, rise of Islamist movements...) was to give rise to more contrasted feelings. Religion could also appear a catalyst to dispute order, but without lastingly calling into question religious expression in the company.

Throughout history, aside from the immigration question, the issue of religion within the world of work had not seemed destined to become a major issue.

Directly mentioning the place of religion within the company and, more broadly, within the world of work, obviously did not happen by itself.

Initially, this did not happen by itself, because of the profound secularisation of French society and especially the world of work.

This did not happen by itself, in view of the fact that the issue of religious freedom within the world of work did not seem to have been made a priority by social partners (the trade unions), no more than did it appear as a major point in the struggles and social negotiations in companies.

As the last report by the High Council for Integration (HCI) rightly notes, *"no agreement by social partners, in particular through collective agreements, has to date tackled the question of religious expression in the company"*⁶².

It is only in a very occasional way that trade unions could give their support to requests for prayer rooms in the car industry in the name of people's dignity. Such was the case in 1982, at the time of the CGT congress, where, for the first (and only!) time in its history, this famous trade union close to the Communist Party, mentioned in its action plan for immigrant workers *"the right and means of practising the faith of their choice."* (Kepel, 1987). Thereafter, this claim was no longer made, neither by this trade union, nor by the other trade union federations with secular profiles.

It is not by chance if, today, among the trade unions known as 'representative', the only trade union with denominational (Christian) references in the French landscape, the French Confederation of Christian Workers (CFTC), which explicitly claims to follow the morality and social doctrines of the Church, obtained only 8.94% of employee votes at the time of the last elections for the employment tribunals in 2008, far behind the 34% obtained by the General Confederation of Labour (CGT) and

⁶¹KEPEL G, *Les banlieues de l'islam*, Paris, Seuil, 1987, p 150

⁶²Haut Conseil à l'Intégration, *Expression religieuse et laïcité dans l'entreprise*, Paris, Septembre 2011, p 11.

21.8% by the Democratic French Confederation of Labour (CFDT)⁶³, and 15.81% by the Workers' Force (FO).

Following the changes in methods of belonging to Islam and the process of increasing visibility of Islam in society in general, against the backdrop of the climate of security after 11 September 2001, the situation was to change little by little.

The development during the 1990's of cases of wearing veils fuelled various public debates about the veil in state schools, then in public, but also some litigation concerning the world of private enterprise and some mishaps linked to the climate of the fight against terrorism and suspicion towards Muslims⁶⁴ have largely contributed to alter the way people view the presence of religion in the world of work, in the public as in the private sector.

The increased visibility of religious symbols is increasingly likened - if not to a cause of disorder - at least to creating debate.

It causes as much concern for employees who are non-believers as for believers (Bouzar, 2009). This has led certain public actors to speak out, as had been the case with the wearing of the veil by pupils in state schools, about making private enterprise into 'sanctuaries' by imposing little by little a regime of secular neutrality.

The last case of litigation, which occurred in a private crèche following the dismissal of an employee for wearing the veil, as already mentioned above, is a perfect illustration of this. It is in this context that the High Council for Integration (HCI) in September 2011 handed a report to the Prime Minister, entitled "*Religious Expression and Secularity in Companies*", combining precise proposals aimed at reinforcing the management of religious freedom in the world of work; it went as far as prohibiting any religious manifestation in companies. This new item grabbed our attention and logically led us to refocus as a priority our gathering of information from religious, political and social actors around these specific issues of religion in the world of the private company, to the detriment undoubtedly of the sector of ideologically-oriented companies, in which the religious dimension is a central element of the company ethos, able to justify a difference in treatment based on religion and convictions.

In fine, it is the ethnic and demographic diversification of the French population which has led certain sectors of the economy to become aware of how much the religious dimension proves to be inescapable, as much for employees making religious claims as for non-believers being bothered by them!

Also, let us note that certain economic or political decision makers with business connections to the companies in which religion occupies the centre stage (Muslim world) have also gradually integrated the religious dimension into their marketing strategy⁶⁵. But the last decade was also marked in France, as in other Western societies, by the emergence of a feeling that was diffuse at the outset, then more and more explicit, of distrust towards Islam, which was rather quickly heading towards Islamophobia (Geisser, 2003). This forthright discourse on Islamophobia was able to benefit from being relayed by political parties and certain associations claiming to be secular (*Riposte laïque*). This climate of Islamophobia also concerned the world of scholars (Orcel, 2011).

Contrasted reactions from trade union leaders

In the law section of the RELIGARE project, we logically favoured collecting the views of foreground actors - trade union representatives from three French trade unions: the General Confederation of

63The result of a split in the CFTC in 1964.

64Cf. between 2005 and 2006, the case of the Muslim baggage handlers at Roissy Airport, whose access badge to their place of work had been withdrawn, following rumours implying possible links (not proven!) to radical Islamic movements. See « Nouvelles révélations dans l'affaire des bagagistes de Roissy », in <http://www.saphirnews.com>

65 The recent wish to see the development in France of financial activities conform to Islamic ethics, draws directly on this diffuse presence of religion in the economic world.

Labour (CGT), Workers' Force (FO) and the National Union of Autonomous Trade Unions (UNSA). The French Confederation of Christian Workers had also been contacted, but without success. Answers were obtained either by direct interview or in writing.

It is first of all advisable to specify that these three trade unions reflect diverse sensitivities and ideological currents, as well as different methods of action and strategies of social action.

If the CGT was historically rather marked by its institutional links with the Communist Party (less publicised nowadays!) and incarnates a trade unionism of the "protesting" kind, the FO (split from the CGT in 1948) has a pluralist, ideological profile (affirmed political independence, strong presence of Trotskyite, Lambertist, Libertarian, Gaullist...activists) and intends to distance itself from any state as well as any marketplace.

UNSA claims to belong to a reformist trade unionism, linking action and negotiation with a very pronounced defence of the driving and regulating role of the state.

We initially chose to question them on their understanding of secularity, before mentioning the question of real or supposed religious discrimination, about which, as trade unionists, they could have been called upon to act.

We then questioned them on the various laws relating to the wearing of the simple or full veil, and on the recent proposals of the High Council for Integration for managing religious manifestations in private companies. The interview finally turned to the issue of the rise of demands based on religion and to the manner in which it was advisable to manage these new demands within the company or outside it.

An equal, more or less militant, attachment to secularity

If all the trade union representatives questioned declare their equal attachment to secularity as a principle of political organisation of society and guarantor of the freedom of conscience and worship, some nuances did appear which hark back to the history of each of these movements and to more or less militant understandings of secularity.

They will inevitably determine their contrasted reactions in the face of the development of religious requests in companies, as these will even more profoundly influence their stance on the proposal put forward by the High Council for Integration (HCI) for reinforced management of religious manifestations through a modification to the Labour Code.

For Jean Philippe Revel, CGT national leader for local branches, secularity refers initially to the Law of 1905.

“The trade unionist I am, daily refers to (confronts himself with) the legal and constitutional texts and other parliamentary reports...That is part of my trade union activity, keeping a watch over what is being thought about, being written, being legislated in parliamentary assemblies.

My answer will be naturally (it is also my way to militate) etched by legislative, regulatory or statutory references. That's why, when it comes to secularity, I think immediately of the Law of 1905 relating to the separation of the Church and the State (...). This law, which seems today to be the subject of some questioning, (...) simply says in its first article that the State guarantees freedom of worship and, finally, respect for all religions, when they do not disrupt public order. Its second article confirms this freedom, while stipulating that the State does not subsidise any faith, i.e. does not favour one for the benefit of another.” (Revel J P, CGT)

He then refers us, and this is important, to the very statutes of his own trade union, which, according to him, are consistent with the rules and principles of the Law of 1905.

“Additionally, as a trade unionist, referring to the CGT statutes appears essential to me,” he quotes in particular the introduction, which stipulates, “The CGT, attached to the founding principles of confederated and inter-professional trade unionism, works to gather all employees in their diversity, to unite in the national, European and international trade union movement. The principles of equality, solidarity, listening, tolerance and blossoming of diversities for which it strives, drive the democratic life at its heart.” (Revel J P, CGT)

He then provides his explanation of the introduction to us.

“What I retain from the introduction, is that the CGT is initially a trade union which aims to gather (mobilise, therefore, in my opinion) employees following the principles, inter alia, of tolerance and equality. Here I find the two aspects of the Law of 1905: tolerance, which implies that all opinions and ideas are respected. And equality, which means that all employees, all ideas, all opinions are admissible on the same basis”. (Revel J P, CGT)

He continues by presenting and commenting on some extracts from the articles of the CGT's statutes, in which religion is mentioned.

“Article 1 (...) ‘The CGT is open to all employees, women and men, in or out of work or retired, whatever their social and professional status, their nationality, their political, philosophical and religious opinions.’ Article 6 of the CGT statutes states: ‘The CGT is founded on the independence of the organisation with regard to employers, public authorities, governments, political, philosophical, religious and other organisations.’

In this Article 1, the reference to religion clearly appears. The CGT is open to employees, whatever their religious opinions. Finally, in Article 6, the CGT marks its independence from religious organisations. Open to employees whatever their religious view, but independent of religious organisations. There we find still an emanation of the Law of 1905.” (Revel J P, CGT)

His comment is completed by recalling the Labour Code and its articles on total freedom of trade union engagement, before reconsidering the sense that secularity carries in his daily work as a trade unionist.

“Any employee, whatever their sex, age, nationality, religion or convictions, handicap, sexual orientation, membership, true or supposed, of an ethnic group or a race, can freely join the trade union of their choice. (Article L. 2141-1)

The fact of a director or an administrator of a trade union or a union of trade unions being opposed to the free membership of an employee for a reason related to gender, age, nationality, religion or convictions, handicap, sexual orientation, membership, true or supposed, of an ethnic group or race, disregarding the provisions of Article L. 2141-1, is punishable by a fine for a class 5 violation.

Similarly punished is opposing the membership or the continuing membership of a person who has ceased their professional activity, disregarding the provisions of Article L. 2141-2. (Article R. 2146-5)

The Labour Code, while recalling that all employees can join a trade union, whatever their religious (inter alia) views, envisages sanctions in the event of a trade union refusing membership.

Secularity means, in my trade union activity, respect for all the opinions of trade unionists and employees.” (Revel J P, CGT)

In the French trade union arena, the FO is without any doubt the trade union which has the most militant profile in respect of defending the ideal of secularity. Its former General Secretary, Marc Blondel, is currently chair of the National Federation for Free-thinking; as for the current General

Secretary of the FO, Jean Claude Mailly, he regularly reminds us that his trade union is characterised by “*this visceral attachment to Republican principles and values, in particular on the question of secularity*” and a fight against ‘*communitarian aberrations*’.

Let us refer to the statement made by the trade union leader who agreed to answer our questions:

“Secularity is first of all the base of our republican currency: Liberty, Equality, Fraternity.

It constitutes a constitutional principle, which regulates the problems between the State and religions, but secularity also concerns the inalienable rights and freedoms of the individual, prohibiting any (community, religious) pressure imposing lifestyle choices on him or her.

*Thus, secularity guarantees freedom to believe but also not to believe.*⁶⁶

For this reason, the neutrality of the public sphere is essential. In the same way, religious freedom must be guaranteed in the private sphere. Secularity is thus a means of having individuals who have different convictions peacefully coexist; it thereby ensures what one usually calls republican ‘coexistence’. (Lopez Rivoire V, FO)

“Secularity is, for me, freedom, equality, respect and coexistence to ensure social peace, peace in short. She echoes the text of the Constitution which guarantees us freedom of thought, freedom of conscience and religious practice, which belong to the private sphere. It is not for the State to interfere in religious affairs and in all that concerns our inmost convictions and it is not for religion to interfere in affairs of public life. Things in common must be kept far away from religions, the beliefs of each one of us must be respected.” (Mambert M, UNSA)

Moreover, questioning this trade union leader on the problems which arise today in French society around the question of secularity, she was initially to denounce the behaviour of certain political leaders, before even mentioning the assertion of ostensible religious practices.

“The major problem comes from the attitude and behaviour of our politicians, at the highest level of the State, and of their posturing. Look, the Head of the State is going to see the Pope in the Vatican, he receives him at the Elysée (...) there are conflicts between the law of separation and the expression of a reluctance towards state neutrality (...) the media are quasi defending the World Youth Days, you would think that religion is the essential social bond which will bring us out of the crisis. As it's secular, we naively believed that secularity was an asset once and for all, just as with social rights! But it is like democracy, it's always necessary to go back and work on it and to remain vigilant.” (Mambert M, UNSA)

On several occasions, this activist gave us the example of one elected politician in the ruling party, who, during the election campaign, openly wore a jewel cross while canvassing people's votes. This defence of secularity is found in the resolution of the 5th UNSA congress of November 2009.

“We are secular, attached to the concept of separation of the Church and the State, in a society witnessing a resurgence of religious fundamentalisms and communitarian movements. Because we reject the standardisation of individuals as well as a state designed like a simple juxtaposition of communities, UNSA reaffirms that only secularity - constitutional characteristic of our citizenship – can truly guarantee freedom of conscience, equality and fraternity. This rational approach values in our democratic functioning free debate, tolerance, respect for different ideas within our Union and gives sense to the “together free”. (Resolution 1-3, Congress of Pau, 26/11/09)

⁶⁶ “*It is an essential difference,*” the leader of the FO explains, “*compared to other countries like the United Kingdom (which has a state religion) or the United States (where, if you don't have a religion, you are not really a man).*”

The nature of religious tensions in companies

In relation to their respective experiences of concrete problems linked to religious practices in the world of work, some of their answers were precise, others more overarching.

The UNSA trade union leader, a former care manager, was to refer to her experience in a hospital environment and gave us three examples relating to wearing religious symbols (one carer wearing a cross, one a veil and a doctor wearing a cross).

“I intervened with three employees, not as a trade unionist, but as a citizen, it was during the affair of the veil in state schools in 2004. My intervention concerned on the one hand a female doctor who used to wear a cross very visibly; there was a problem, because this doctor represented the hierarchy. The second individual was a carer who wore a cross that was not very discrete, and the third wore a veil. I intervened publicly and I was successful in the cases of the carer who wore a cross and the one who wore the veil. The doctor continued to wear his cross. I had explained to them that in the world of work, one could not make religious or political distinctions (that is, by contrast, more difficult, she reckoned!) in particular with respect to the patients.” (Mambert M, UNSA)

Then, mentioning the world of the patients, the care manager stated only to have been confronted with problems ten years before, in particular regarding patients in their forties (choice of doctor, praying in the room...). She was to insist on the fact that she perceived in these requests a logic of social revenge for the fate which had been that of the parents and the elders, sometimes those whom the system had failed.

“In these requests there was maybe a logic of social revenge compared to what older people sometimes went through, who were more discrete and sought sometimes to be forgotten, and who could be victims of maltreatment. Then the problem also came up in the way in which public discussions tackled these questions, stirring up this type of more "protesting" behaviour. Today, we have discourse that wants us to completely take into account all religious requests at the workplace or place of care, which is problematic.” (Mambert M, UNSA)

The representative from the CGT was more explicit on the matter. He presented many examples of specific, isolated tensions related to practising religion in companies, going as far as explicitly evoking cases of discrimination related to religious practice combined with trade union involvement.

In response to a first question relating to the existence of particular tensions in private companies as regards religious expression (wearing of the veil or religious symbols in the workplace, working hours vs times of worship...), his answer was very precise.

“This question always returns, in my point of view, to that of tolerance of some towards others. Am I inconvenienced when my colleagues do Ramadan? Personally, not. Am I inconvenienced if a colleague asks for a day off on the day of Eid, the celebration of sacrifice? No. You can see that, naturally, the examples given target Islam. That does not shock me at all. If the Labour Code incorporates public holidays related to “Christian” Festivals, is it normal that it does not incorporate public holidays linked to Muslim festivals? There again, we can guess that the interest of companies is to remove public holidays overall. It is what occurred with the suppression of Whit Monday in France, which is a day people do not work, but is paid for by employees.” (Revel J P, CGT)

On this subject, one can recall that the Stasi Commission had already mentioned this issue of the public holidays in its famous report of December 2003, suggesting that two additional festivals (one Jewish and one Muslim) be, for example, incorporated as days off in schools and also highlight the situation in the world of enterprise.

“It's not about calling into question the calendar designed mainly around the Catholic festivals, (...) but it is advisable to take into account that the French spiritual landscape has changed in one century. The Republic would thus be honoured by recognising the most sacred days of the two other great monotheistic religions present in France, (...) so at school, all the pupils would not work on the days of Yom Kippur and Eid al-Adha. These two additional public holidays should be compensated for. (...) In the business world, Yom Kippur, Eid al-Adha, Orthodox or Eastern Christian Christmas would be recognised as public holidays. They could be substituted for another public holiday at the discretion of the employee. This proposal would be defined after dialogue with social partners and by taking account of the particularities of small and medium-sized companies. This practice of the credit of the public holiday is already current in certain countries or international organisations, like the United Nations.” (Commission of Reflection on the Application of Secularity in the Republic, December 2003, p.65)

Logically enough, our interviewee from the CGT made a point of reformulating the question himself, by recalling that practical and specific solutions make it possible to intelligently answer certain requests and in particular that of performing prayer.

“The true question is as follows:

An employee at his workstation must carry out the task for which he or she is paid. It is obvious that, if the employee stops working for some reason, whatever it is, he or she could be sanctioned. Why still stigmatise religion in general and, automatically as a result, Islam in particular. If an employee prays during his break, is this problematic for the operation of the company (Labour Code)? No.

If an employee carries out his prayers during his break, do his colleagues have the right to express their disapproval? Not in my opinion.

The issue is to know if the employee in question is carrying out his prayers within sight of everyone or not?” (Revel J P, CGT)

Jean Philippe Revel took the trouble to give a precise example directly related to his trade union activity with people of Muslim confession.

“In my trade union activity, I am also responsible (General Secretary) for a local trade union in Paris' 11th district. I know one CGT member well, a union rep., who practises her religion (prayer) during her breaktimes. She spoke to me about her religious practice, it appeared natural enough to me, and yet I had been educated in a rather anti-clerical tradition.

For the anecdote, this employee is Muslim and the MD is of Jewish origin...

Within context of this CGT Branch Union, I noted that we have many Muslim members, who speak to us naturally about their religion without being ostentatious, that does not shock me. The real question rather concerns respecting the Law of 1905, which conveys tolerance, respect and equality. For my part, I have never felt any intolerance within the CGT.

Lastly, and that relates to my occupation, I am adviser for local branches. I receive 16-25 year olds within the context of accompanying them towards their socio-professional insertion. Personally, I do not pay (more) attention to the fact that certain young women wear the veil. Some of them refuse to shake my hand, that does not pose more problem to me than that.” (Revel J P, CGT)

In support of this remark, we must add that administrative managers also use the same type of arguments, for example, to advise using the break (cigarette break!) in order to allow employees to discreetly perform their prayers, if they wish to, at their place of work.

To what extent should we manage religious practices in private companies?

Pretty quickly we steered our various interviewees to come to a conclusion about the various proposals emanating from the High Council for Integration, as stated in its report of September 2011.

Here, divergences very quickly appeared on the subject of making private companies a space of total religious neutrality (along the model of public services), in which religious freedom would tend to reduce itself to only freedom to believe (or to not believe). The need to safeguard social peace in the world of work leads certain trade unions to consider that there are grounds for forcing the free public manifestation of one's religious affiliation.

The CGT representative was the most reticent about the proposals of the High Council for Integration (HCI).

“Reading this report, it seems to me that both its contents and what led to its publication, are contrary to the principle of secularity. Indeed, it seems to me that one religion, Islam, is particularly concerned (targeted) by this report. However, it emanates from the HCI. What integration is it talking about here? Does a religion have to be integrated? Is this report not aiming to exclude? To recommend an introduction into the Labour Code of a reference to religious practices appears incongruous to me. The Labour Code is initially the 'code of the company', the employee is subjected to the constraints of the employer and, once his or her attitude goes against the operation of the company, he or she will be sanctioned, whatever the reason. To write down prohibitions specifically related to religious practices appears to me contrary to the principle of secularity.

I fear that this report has therefore other purposes than those openly acknowledged: to stigmatise Muslim company employees.” (Revel J P, CGT)

For him, the proposals of reinforced management of religious practices in private companies, aimed implicitly at Islam, are, on the one hand, considered to be discriminatory and then contrary to the principle of equal treatment of the faiths and therefore secularity itself.

“If secularity implies at the same time respect, tolerance and neutrality with respect to all religions, it appears obvious to me that if these secular rules are specifically introduced into companies, they will stigmatise religion in companies and Islam in particular. That would no longer be conform to secular rules. The Labour Code provides for individuals to be respected and well-treated, whatever their trade union, religious, political opinions.... Establishing rules relating to practices, therefore to religious views, is dangerous and non-secular.” (Revel J P, CGT)

From the FO, the answer was less categorical. The trade union leader we questioned seemed less troubled than his CGT counterpart at seeing the principle of neutrality transposed from the public to the private sector, with all employees necessarily receiving equal treatment and non-believers not being disadvantaged or discriminated against compared to believers, in order to respect their religious freedom.

Here one finds one of the constants of the French debate around freedom of religion, which is often interpreted in a more or less exclusive way as total and whole recognition of freedom of conscience (freedom to believe and to not believe), the free manifestation of which is also accepted, though considered to be less essential.

“Is it necessary to extend the principle of neutrality to private enterprise? What of “external religious symbols”?”

It is advisable to take as a basis for reflection both constitutional principles and Article 9 of the European Convention of Human Rights.

'France is an indivisible Republic, secular, democratic and social. It ensures equality before the law for all citizens without distinction of origin, race or religion.' (Introduction to the 1946 Constitution, repeated in the 1958 Constitution).

Belief is thus protected in the same way as non-belief. This principle is guaranteed in public services. It is equally clear that in private enterprise, each must have the right to work within a context that is neutral with regard to religion, for, if religious freedom and freedom to express one's religious conviction are stated in the ECHR, this same religious freedom includes freedom not to believe and therefore not to have manifestations of religious expression imposed. Article 9-2 of the European Convention of Human Rights allows for legitimate restrictions on the right to express one's convictions or opinions.

So, requirements of safety, hygiene and health, or the very nature of the employee's work⁶⁷ can constitute legitimate restrictions. This was also the sense of the HALDE's recommendations.

In the same way, the ostentatious wearing of religious symbols can be banned due to contact with customers. It is not the simple 'contact with customers' which constitutes in itself a reason for this restriction, but, much more profoundly, the respect of freedom to believe (and therefore not to believe and thereby not to have religious symbols imposed on oneself) of any individuals making up customers (respect of others)." (Lopez Rivoire V, FO)

For this trade union, only respect for the freedom of each person should prevail, as well as the right to evolve in a workplace free from any pressure, which assumes a certain form of neutrality.

While recognising that the report by the High Council for Integration (HCI) is based on the request for a framework for religious manifestations in companies, the trade union leader legally challenges the argument of social peace and prefers to refer to the legitimate boundaries on the full manifestation of freedom of religion listed in Article 9 of the ECHR.

"Private sector employees are currently not subject to the same requirements of strict, secular neutrality as are public servants. Nevertheless, the workplace must be a space of mutual respect of the convictions (to believe, to not believe) and, therefore more broadly, of freedom of conscience of any individual.

If freedom of conscience must be absolute, freedom of religious expression itself cannot be absolute.

Until now the principle of proportionality established by Article L. 1121-1⁶⁸ of the Labour Code has allowed a certain number of conflicts to be solved.

The HCI proposes to insert in the Labour Code an article making possible the inclusion in the internal rules of private companies measures relating to dress, the wearing of religious symbols and religious practices in view of safety requirements, customer contact, but also 'internal social peace'.

On the legal level, it is doubtful that the courts will accept 'internal social peace' as a reason for restricting religious freedom from appearing in the internal rules!

For the FO, it would be better to base oneself on Article 9 of the ECHR, which envisages legitimate reasons for restrictions linked only to public safety, maintaining order, health or public morality, but also to the protection of the rights and freedoms of others.

⁶⁷The story of the butcher of Mayotte who suddenly refused, 2 years after his recruitment, to touch pork (cf. Cass. soc. 24 March 1998).

⁶⁸"No-one can add restrictions to human rights and individual and collective freedoms that are not justified...nor proportionate."

For the FO, it is this latter reason which must constitute the base of a legal text which would guarantee the principle of secularity in companies.” (Lopez Rivoire V, FO)

This trade union leader also reported on the increasing number of employees who seem to be complaining about the fact that certain forms of religious expression can in turn damage their own freedom. According to her, what matters above all, is as much the respect of freedom of conscience of each employee, as the fact of not being systematically confronted at one's place of work, whether private or *a fortiori* public, with religious manifestations considered to be ostentatious.

“Some employees do not want to have ostentatious manifestations of religious affiliation imposed on them, because they see there a form of attack on their own freedom of conscience, itself protected by Article 9 of the ECHR.

We have a habit of hearing: 'The freedom of some stops where that of the others begins'.

The protection of the rights and freedoms of others has a value that is just as important as the consecration of the principle of religious freedom and its expression.

So, children - no more than old or sick people - should not have to be confronted with ostentatious demonstrations of religious affiliation. In this respect, the legal nature of the employer's establishment and its financing matter little. It is on the level of the “protection of the rights and freedoms of others” that it is advisable to take up position.

In his speech on state education at Castres, Jaurès declared: 'Childhood has the right to be educated according to the same principles which will ensure later the freedom of man...’ (Castres speech of 30 July 1904).

The same applies to situations of keeping elderly people at home.

More broadly, employees describe a wish for equal treatment and a refusal of particular rules related to religious practice.” (Lopez Rivoire V, FO)

In passing, she points out the risk of a breakdown of the principle of equality between all employees.

“In reality, certain compromises accepted in the name of religion generate rifts in equality of treatment for the others. As the HCI report of September 2011 (p.10) indicates: 'If some are exempted from working Fridays or Saturdays, does this mean that others must replace them on those days? If some have adjusted working schedules, why then refuse this to others whose reasons would not be religious, but family-related, for example?’” (Lopez Rivoire V, FO)

Once at the end of our questions, this trade unionist explained to us:

“By way of conclusion - provisionally, because the subject is far from being exhausted, it is possible to quote François GAUDU⁶⁹: 'Religious freedom does have to be respected. But the jurists should not play the sorcerer's apprentices by pushing to absurdity the reasoning which supports religious individualism, to the detriment of collective interests which employment law is accountable for'”. (Lopez Rivoire V, FO)

Her counterpart at the CGT spoke to us more spontaneously about situations in which it is the Muslim employees who have reported discrimination. They complained of not being authorised to be absent

69Agrégé des facultés de droit. Professeur à l'école de droit de la Sorbonne (Paris 1), « La religion dans l'entreprise » Droit social n°1, janvier 2010.

for religious festivals. According to this trade union leader, this point can lead to strong tensions between the employer and Muslim employees, especially if they are also union members.

“The tensions are directed at CGT Muslim trade unionists who have been refused holidays (Muslim Festivals). They find themselves in fact doubly discriminated against: because they are trade unionists (what's more, CGT) and Muslims. This really makes me think that it is Islam which is being particularly targeted. Then, everything depends on the working environment and on colleagues.

I will be interested to know if an employer prefers to have a CGT trade unionist in his company or Muslim employees who are, let's say, 'more conciliatory and more weak-willed'. The CGT initially takes care of gathering employees together.” (Revel J P, CGT)

Although in favour of a better framework for religious practice in companies, the FO trade union leader recognises that, taking into account the evolution of the French cultural and denominational landscape, adjustments are also necessary in the interest of the whole of the community at workplace level, within the framework of collective bargaining with trade unions and employers' representatives, like elsewhere in the rest of society.

“However, it does not seem to us to be contrary to the rules of 'coexistence' only to accept certain reasonable compromises via, in particular, collective bargaining.

Indeed, with the effect of growing religious and cultural pluralism, certain companies must face requests of a religious nature (days off for religious festivals, places for prayer...); either compromises are regulated by company agreement or the compromises are reviewed on a case-by-case basis.

From a legal point of view, these compromises must be treated in good faith by the employer, i.e. with sincerity and seriously (good faith has to govern the execution of the contract of employment, according to Article L. 1222-1 of the Labour Code); but with religious practices having an impact on the organisation of work and the working environment, employers' decisions can be based on the interest of third parties.” (Lopez Rivoire V, FO)

Compared to the direction taken by the HCI, the position of the UNSA trade unionist is more clear-cut. Indeed, she considers that enterprise, if private, must be a space in which secularity plays its full part, insofar as coexistence is concerned.

“The idea of coexistence in the world of work assumes an absence of conflicts related to ideological or religious differences. We must certainly guarantee freedom of thought and belief for everyone in companies, but without publicly manifesting these differences, which belong to our private, intimate sphere. Consequently, it is normal for there to be no religious manifestation in companies. This is different, if you take a company which makes, for example, religious objects; here the religious manifestation does not disturb me. The employee must know what is being imposed.” (Mambert M, UNSA)

On possible discrimination relating to the practice of a religion, she revealed her extreme caution when duly establishing the reality of these.

Her caution is initially dictated by the fact that, within the framework of her responsibilities as branch secretary providing support for employees, she has not been confronted with similar cases, but rather with cases of moral harassment or discrimination as a result of trade union activities. In preparing our interview, she did, however, take the precaution of asking other trade unionists she knew about this, but in vain.

She was to then add that the problem could nevertheless come from the fact that one tended sometimes to focus on only one religion and that there could reside a risk of discrimination.

“In fact, this issue can be challenging. Because you have people who, within the company, do not manifest any religious practice. Why don't they do it? Is it for fear of discrimination or quite simply because they know that they live in a secular state? So, the problem can arise sometimes from what the employee assumes is religious discrimination, while it is in fact a matter of applying secularity, as in the question of the veil (...) where there is no proven discrimination.” (Mambert M, UNSA)

To better explain her point of view, this trade unionist was to mention the issue of praying in the streets as expressing real discrimination, owing to the fact that Muslims pray in the public streets, because they do not have sufficient numbers of places of worship.

Faced with such a situation, the State should intervene to remedy this by authorising the construction of new places of worship, if not by funding them.

“People who pray in the street, it is because they do not have places of worship; here we are faced with a true situation of discrimination, it is not egalitarian. To pray in the street is certainly a public order problem, but inseparable from the lack of places of worship.” (Mambert M, UNSA)

Returning to the issue of discrimination in companies

The issues multiply, while at the same time employment law seems dominated by *“the theme of eclipsing at work the consequences of belonging to a religion”*⁷⁰.

The same applies to the issue of discrimination, which was only officially named in a 1998 report by the High Council for Integration. It led thereafter to the creation of various institutions, of which the HALDE is the latest, aimed at drawing up not only one precise inventory of discrimination, but also at collecting people's complaints and giving opinions which could be used before the courts.

If real progress has been achieved as regards combating all forms of discrimination, which people claiming to be victims of religious discrimination can benefit from, with this being understood as *“difference in treatment between individuals (or entities) as a result of their religious convictions or their affiliation or non-affiliation to a religion”*⁷¹, all religious discrimination is not prohibited. As we've seen above, French law distinguishes discrimination to be sanctioned and justified discrimination. So, employment law prohibits two types of religious discrimination, on the one hand that already stated in the Penal Code in Article 225-2, part 3 (refusal to recruit, job offers subject to conditions, non-renewal of a fixed term contract, dismissal for religious reasons) and all those envisaged by Article L. 1131-1 *et seq.* of the Labour Code, which corresponds to a field of application vaster than that of the criminal law.

The offence of discrimination requires that its author is willingly intent on discrimination, and that no justification can legitimise it.

If in criminal cases, the plaintiff has to provide the proof, employment law (Article L. 1134-1) does not, however, require the employee to prove discrimination, but simply to highlight facts likely to allow the existence of discrimination to be assumed, with the onus on the employer to recognise this discrimination and to justify it.

Lawmakers also provided for the HALDE to offer the author of discrimination a transaction aimed at ending civil action brought against them (L. 2004-1486, article 11-1).

70BELORGEY J M, « Exigences professionnelles et Religion », Trèves, Octobre 2005, in www.era-comm.eu/oldoku/Adiskri/05/.../2005-Belorgey_FR.pdf

71RIASSETTO I, notice « Droit français / Discrimination religieuse », in MESSNER F (ed.), *Dictionnaire Droit des religions*, Paris, Editions du CNRS, 2011, p 188

Rare were the religious leaders questioned on the existence of religious discrimination in the world of work to share with us precise examples which they may have been directly confronted with. One has the right to wonder whether it is the reflection of reality or rather a refusal or a playing down of discrimination, such as Dounia and Lyliya Bouzar identified in their pilot survey carried out in several companies (*Oréal, Randstad, Vinci, PPR, FNAC, EDF, France Telecom, RATP, IBM...*), covering various sectors of industry (luxury products, energy, transport, construction, retail...) and several employment areas (Ile de France, Rhône-Alps, PACA)⁷².

“The denial of discrimination,” warn Dounia and Lydia Bouzar, “induces a denial of the experience undergone and consequently destroys the very possibility of a complaint and a claim which reinforces the system of subjection of people likely to be discriminated against.”⁷³

Only one Muslim leader insisted on telling us that discrimination of this type was certainly and mainly aimed at Muslims of Maghreb origin (amalgam between ethnic origin and religion!), but equally often (he insisted on this) Europeans who had converted to Islam. The latter were often constrained to have to conceal their affiliation to Islam (not putting forward their Muslim first name for example!) in order to avoid indirectly receiving a “refusal” or being “put to one side” for a job, in particular in the public sector.

The case known as the Muslim baggage handlers of Roissy Airport, brought in 2005-2006, shows that the courts' acknowledgement of discrimination based on religious affiliation is not among the most obvious.

It related to 72 employees of Muslim confession (in a private company), from whom the management of the Parisian airport had withdrawn their access badges to sensitive zones of the airport, which amounted to preventing them from working; the reason for this was that an investigation by an anti-terrorism body had revealed that certain baggage handlers had had a stay in Pakistan (some were affiliated to the *Tabligh!*) or had provided lodging to Islamists. Armed with these allegations, the management had assessed that the presence of these people within the airport thus presented a dangerous risk for the airport.

In fine, the administrative court was to cancel the majority of the decisions by the *Préfet*, which it considered insufficiently justified. Seven employees were to file lawsuits for discrimination based on their Muslim confession. During their questioning, they had been asked about religious subjects (their practising of Islam, frequenting the mosques, the wearing of the beard, pilgrimage, Salafism...). The public prosecutor however decided to take no further action, considering that *“the withdrawal of the badges was not founded on the Muslim confession of the baggage handlers, but on examination of their behaviour.”*

In a context dominated by escalating security measures against a backdrop of Islamic fundamentalism, a more intense practice of Islam religion (or the simple wearing of a beard provided!) can often wrongly be likened to a radical aberration and serve as a pretext for a logic of suspicion seemingly founded on possible threats for public safety.

As regards the Jewish community, in spite of our questions, no case of apparent discrimination was cited to us. Is this too a case of playing down or denial?

It was not possible for us to learn more.

It should however be specified that, in the world of work and in parallel to the public organisations responsible for gathering job offers and managing the accompaniment of job applicants, the Jewish community can call upon the *Shabbat Office*. This community organisation connects, more specifically, Jewish applicants for work to the companies likely to guarantee them the respect of the *Shabbat* and days off for Jewish festivals.

⁷²BOUZAR D, L, *Allah a-t-il sa place dans l'entreprise ?*, Paris, Albin Michel, 2009.

⁷³*Ibid*, p 48.

As its official website⁷⁴ indicates, “*The primary objective of the Shabbat Office is to bring together job offers and requests from fellow Jews eager to keep Shabbat and the Jewish festivals.*”

Their charter explicitly states that: “*The positions proposed must be free of working during Shabbat and Jewish festivals. In Winter, they take account of Shabbat beginning on Friday afternoons. In the case of adjustments to schedules, the hours can be made up.*”

This body was created in 1963. It is approved by the National Agency for Employment (ANPE), transformed today into *Pôle Emploi*, and runs with three voluntary workers and two representatives from the *Pôle*. It describes itself as a free service, proposing both job offers (online) in various sectors of industry in the private sector (secretariat, accountancy, IT, fabric of the community...), and an accompaniment to finding a job (drawing up a career plan, skills assessment, writing a CV, advice...). In 1983, the management of the *Shabbat Office* was entrusted to the Casip-Cojasor Foundation. The main part of its financing comes from donations and subsidies provided by the Unified Jewish Social Fund (FSJU). According to their website, it is the only organisation finding work for the European Jewish community.

To our knowledge, such an organisation does not exist in any other religious community present in France, which by no means signifies a total absence of relations between religious proximity and job offers in the other communities!

It seems evident that this issue of religious affiliation and, more precisely, that of religious practice within private companies, is destined to become a major subject over the coming years.

Public leaders have started to perceive it following some high profile cases, where some managers sought to find pragmatic and negotiated solutions with their employees.

What also appeared, is that questions and fears we have identified, systematically reflect the issue of the presence of Islam in companies.

In a context marked by suspicion and tensions towards Islam, the development of requests and religious practices related to this religion on the one hand, and of more or less fluctuating management of these on the other, have largely contributed to make this issue of religion a sensitive one within the world of work and its law.

In such a context, it is advisable to be vigilant, to take support from existing law and to show pedagogy and pragmatism.

*“Companies are not a world apart, but the reflection of society. On several levels, they can even constitute a kind of general thermometer. To be interested in the plurality of employees' religious references does not stem from humanism, but simple pragmatism. Because diversity does not need to be promoted: it is already there.”*⁷⁵

One might simply wonder whether the tensions expressed in certain companies relating to religious requests (often linked to Islam) are not finally also the reflection of the weight of representations made by people in favour of their own religion or absence of religion, with a stronger inclination to judge or quickly size up others' religions purely according to their external symbols.

If the fact of believing (in one's heart of hearts), but also practising (in society), should not be considered as a permanent state opening up the right to privileges, this state should not be considered a handicap either, a failing which can lead to denial of citizenship.

*“There will be equal treatment the day when, faced with Hamid, who refuses to touch bottles of alcohol, 'because it is Ramadan', the reaction will be the same, if it were Jean Pierre refusing to touch meat, 'because it is Lent' (...). But equal treatment also requires us to stop taking Hamid for an Islamic fundamentalist as soon as he refuses to drink. It is not necessary to drink alcohol to be regarded as a republican among others.”*⁷⁶

⁷⁴<http://www.bureauduchabbath.org>

⁷⁵BOUZAR D, L *op cit*, p 181.

⁷⁶*Ibid*, p 187.

- Today, the increased visibility of religion therefore concerns all sectors of society and the world of work does not escape either. Far from it!

- It is by far Islam which seems to crystallise concerns, fears or questions in the world of private enterprise.

- In view of recent events, and even in the opinion of the social actors we interviewed, it is undoubtedly in this sector of French society (after the issue of public space), where tensions are the most alive and where a need for information, clarification, requests to regulate or manage religious manifestations are to be felt.

Where opinions diverge, is on the *modus operandi* of this framework (should we refer to the in-house rules of each firm, or consequently amend the Labour Code?) and on its intrinsic logic (negotiated exercise of religious freedom or totally eclipsing it?).

D) Public Space

With the diversification of its religious landscape and an increased urban visibility of religious symbols, the concept of public space seems in France to give rise to unprecedented one-upmanship between public leaders, jurists, sociologists and religious leaders.

General normative framework

Let us start by recalling that this concept is not *a priori* a legal concept, even if jurists can be led to question its meaning.

In the French context, it is more usual to refer to the dichotomy between the public sphere of existence and the private sphere.

The public sphere covers the various public and institutional places where political decisions of general interest are made, where laws are drawn up, as well as public services and all the domains in which public servants intervene, all in all, everywhere the administration is in direct contact with the population. In this sphere, rules provide the framework and limit total manifestation of religious freedom, as much for public servants bound to strict neutrality in their activities, as for users of some of these services, as did the Law of 15 March 2004 by prohibiting the wearing of the veil by pupils in state schools.

In the private sphere, generally limited to the home space, the individual is free in his opinions and manifestations and the State could not penetrate there without taking the risk of setting itself up as master and judge of consciences, bodies and individual religious practices.

Jurists nevertheless suggest distinguishing public space from private space, as common, shared space which does not belong to any one person, therefore distinct from private space belonging to each individual (Hearing with Anne Levade, Wednesday 18 November 2010, Parliamentary fact-finding mission on the full veil)⁷⁷. In this case, public space is likened to a space of freedom (cf. Article 4 of the Declaration of Human Rights and the Citizen of 1789), in which each can act as one wishes within solely the limits guaranteeing others the same rights.

If the law allows each of us to enjoy the same freedoms, that does not exclude the existence of particular rules, like those relating to security governing the public space of free circulation, or those relating to public services and, by extension, to any public space assigned to a public service. One might then think both of the Law of 15 March 2004 on state education, of diverse case law on public hospitals, as well as the ban on civil and public servants from manifesting their religious convictions within the context of the performance of their duties. In accordance with this spirit, even a Charter of

⁷⁷Rapport d'information, « *Au nom de la mission d'information sur la pratique du port du voile intégral sur le territoire national* », Assemblée nationale, 26/01/2010, n° 2262, pp 518-528.

Secularity in Public Services was published, dated 13 April 2007. It recapitulates the main principles and rules governing public services, as much from the point of view of its agents (duty of neutrality, non-manifestation of religious convictions, freedom of conscience and authorisation to be absent for religious festivals...), as of users of its services (equal treatment, freedom of expression of religious convictions within the limits respecting the neutrality of the public service, not objecting to public servants or requests to adapt the operation of the public service to take account of the convictions of the user, abstaining from all proselytism, conforming with the rules as regards checking identity, respect for beliefs and the practice of worship in medical-social, hospital or penitentiary establishments).

Behind this issue of the necessary distinction to make between these notions, in France the question today is clearly to know if the rules of neutrality, arising from the principle of secularity, apply or not to public space, or if other principles or rules can be invoked to benefit or counter any religious manifestation (public order, respect for human dignity...).

On private denominational teaching establishments

It is advisable to recall that, in French law, education is obligatory, but not going to school.

Consequently, the latter can be provided outside of the school framework in families by parents or any person whom they have chosen, as within the state or private school framework.

If the distinction between state and "free" private school is a very old one (Boussinesq, 1993), it was the 3rd Republic, with the Ferry Laws of 16 June 1881 and 28 March 1882, which made state schools free, by removing payments to schools and making education compulsory until the age of 14, then 16 years nowadays.

In French law, exclusively private denominational teaching draws its *raison d'être* from the principle of freedom of teaching, which was written into the Constitution in 1977 (Prélot, 2010). This freedom includes the right for private individuals to found private schools.

The public financing of these establishments is on the other hand not a constitutional obligation, it is up to lawmakers to decide on it and specify the conditions, according to how much they contribute to the costs of the public service.

Essentially, private teaching in France is Catholic; there are four Muslim establishments, with half under contract with the State, six Protestant (under contract) and 250 Jewish schools. Private, confessional, agricultural schools provide education for the large majority of pupils in this stream (107,000 out of 170,000). The opening of any private school is subject to declaration to the relevant authorities (mayors, public prosecutor, academic authority, prefect), who can oppose the opening, but without being able to use its confessional character as a reason to oppose it. In Alsace-Moselle, there is a preliminary authorisation arrangement in place, the creation of a private school and the recruitment of a teacher are subordinated to state authorisation (Local Law of 17 February 1873). There are two types of denominational private establishments - those which have signed a contract with the State (simple or in association) and those without a contract.

Choosing the contract with the State is above all motivated by financial reasons. The Marie and Barangé Laws of September 1951 are the first laws to have granted the first public subsidies to Catholic private establishments, by offering their pupils scholarships.

The Debré Law of 31 December 1959 made it possible for private establishments - primary, secondary or technical - to sign a contract with the State, this provision being further extended to agricultural schools (Rocard Law 31/12/84), but not yet totally to private higher education.

The establishments not under contract function rather freely, even if their curricula must normally conform to those defined by the ministry. These establishments can opt to recruit from a single confession and their mode of organisation, like the whole life of the establishment, reflects "*a religious environment*" (Messner, Prélot, Woerhling, 2003).

Establishments under contract, while preserving their own identity (denominational or not!) must, on the other hand, conform to the rules of organisation and operation of the state-owned establishments as regards teaching and respect for total freedom of conscience among pupils (the teaching of religion is

optional in private schools!). They must accommodate all pupils without distinctions of origin, opinions or beliefs, whereas those not under contract are free to recruit their pupils as they wish. The very nature of the establishment which is imposed on teachers is likened more and more to a simple duty to show reserve and is not to be translated as the demand for the total loyalty of the employees in these establishments, whether within the framework of their duties or in private.

There exist two types of contract, the simple one (primary education) and the association (primary, secondary and technical). Two decrees of 22 April 1960 specify the technical conditions and requirements relating to the various contracts.

The association option is strongly aligned to the public service and the education code requires that the establishment respond to a “recognised school need”. Since 1985, all new contracts can be concluded only within the limits of funds - in other words of the annual public budget assigned to the private sector. In the establishments under contract, teaching is modelled on that of state education, the principal is an employee and assumes responsibility for the establishment and school life. The regime of the simple contract provides for teachers employed by the establishment to be paid by the State, and that is the only contribution by the State.

The regime of the association provides that teaching is either given by teachers from the public sector or by those linked to the State by contract and having the status of public servants. It is the *Académie* which deals with candidates' applications and the school principal has a right of veto on appointments. The Germeur Law of November 1977 guarantees the specific character of private, denominational establishments and provides for public funds to train private school teachers. For these establishments, the law also provides that administrative expenditure (materials) must be borne by the *communes*, under the same conditions as public establishments. The Decree of 8 March 1978 lists in detail the method of calculation used for this expenditure per pupil, which must correspond in fact with the average cost of expenditure granted to a state school pupil in a comparable class (communal fixed price). In the case of primary education, expenditure is from now on the responsibility of the *commune* of residence of the children (Article 89 of the Law of 13 August 2004). While many *communes* dispute these provisions, case law decided on their automatic application. These *communes* are also required to contribute to the funding schooling for children carrying out their studies in a local private school outside the *commune* of residence of the children, to the great displeasure of left-wing politicians who have multiplied their appeals against the implementing circular.

A new, so-called Carle, law was passed in 2009, which sets some limits to this assumption of responsibility, which is still disputed by parties on the Left.

With regard to other establishments, public support takes the form of fixed-rate grants, calculated by reference to those intended for the state, and the costs are distributed between the State, the *départements* (secondary schools for 11-15 year olds) and the regions (high schools for 15-18 year olds).

Capital expenditure is excluded from public funding for primary education, it is authorised for agricultural schools (which have the role of a public service!), technical and higher education, and is strictly limited to one tenth of the annual expenditure for the secondary sector (Article 69 of the Falloux Law of 15 March 1850).

Private secondary schools are subject to inspection by the inspector of the *Académie*, primary schools by that of the mayor of the *commune* where the establishment is located. This inspection usually relates mainly to arrangements for learning on the premises and health and safety. A law dated 18 December 1998 does, however, provide for an annual inspection, also intended to make sure that the teaching is conform to the minimal standards of expertise required.

In practice, only the establishments under contract are really inspected, the majority of the establishments not under contract escape this.

On clothing of a religious nature and concealing one's face in public

Although dress obligations based on religion formally belong to freedom of religion, as a (more or less extensive) manifestation of religious practice, their wearing can be combined in law with certain limits or restrictions related to requirements such as safeguarding safety, maintaining order, public health or morality or the protection of freedoms and rights of others (Article 9 of the European Convention for Human Rights). It is notably the case in French law for public servants who enjoy freedom of conscience (prohibition of discrimination in access to their duties and their career path), but who cannot, within the context of performing their duties, manifest their religious convictions by wearing symbols, or they risk failing to fulfil their obligations. Consistently, case law specifies that the sanction applied must be duly justified and evaluated in accordance with the degree of ostentatiousness of the symbol concerned, the nature of the duties of the agent and the privileges of public power or the role of representation performed (Rambaud, 2010).

With regard to the wearing of the veil in state schools, following the work of the Stasi Commission of 2003, created to conduct reflection on the application of the principle of secularity in the Republic, the Law of 15 March 2004 made a ban on any symbol or dress ostensibly manifesting religious affiliation the rule in state schools (the law does not apply to private schools!). Whereas, until then, the duty of neutrality was required solely for public servants, from now on, users - the pupils in primary and secondary schools - are also bound by this principle.

Not concerned by this law for the time being are: mothers, who can keep their veils inside schools and accompany children during school trips as voluntary public service collaborators.

With the issue of wearing the full veil in public, the issue took on quite a different dimension. This time, there arose the issue of managing to delimit the more or less shifting contours of what it is advisable to understand by 'public space' in contrast to that of 'public sphere', itself distinct from the concept of private sphere, in order to see on which basis to construct a framework for this practice.

On the heels of the "Como" declaration by the European RELIGARE consortium, dated April 2011, would one not then have to then make a distinction between common space and public space. Common space designates physically the various sectors and places which any person may frequent, in order to satisfy needs as elementary as trade, freedom of movement, work or leisure etc. This space should be made as accessible as possible and could not thus give rise to particular restrictions relating to the manifestation of religious freedom.

At the other extreme would be public space, which would include institutional spaces, buildings in which public services and administrative personnel are deployed, both governed by the rule of secularity and the private sphere of existence, which is meant to escape this provision.

At the time of the debate on the full veil, the majority of publicists heard by the parliamentary information gathering committee expressed severe reservations about passing a general ban on the full veil, challenging its backing for secularity, personal dignity and public order. Others considered it possible, like Guy Carcassonne. He defends the view that the ban on concealing the face was to be part of a law based on public order and safety. He justifies this by mentioning the existence within public space of '*social codes*' relating to "*elements of our body which one hides, others which one shows*" (Hearing with Guy Carcassonne, Wednesday 25 November 2009)⁷⁸. In his view, the fact of concealing one's face is likened to nuisance inflicted on someone else.

Lawmakers finally concluded that a law with a strict ban on the concealment of the face in public space was justified, because practices such as the full veil can constitute a danger to public safety, ignoring the minimal requirements of life in society, and finally that women concealing their faces, voluntarily or not, are placed in a situation of exclusion and inferiority obviously incompatible with the constitutional principles of freedom and equality.

The text of the Law of 11 October 2010 determines the sense which the legislator intends to give to public space. The Law states in Article 2 that: "*Public space consists of public rights of way, as well as places open to the public or assigned to a public service.*" Its implementing circular of April 2011

78Rapport d'information, « *Au nom de la mission d'information sur la pratique du port du voile intégral sur le territoire national* », Assemblée nationale, 26/01/2010, n° 2262, p 556.

came to specify even more the extent of public space in these terms: “(...) *By public space, one understands the public highways, public transportation, trade and shopping centres, school establishments, post offices, hospital, courts, administration...*”.

The law provides for sanctions against any person refusing to comply with the ban on concealing one's face - 2nd class fines of up to 150 euros, being able to be combined with the obligation to follow a training course in citizenship. Any adult having imposed on another the wearing of such dress is liable to one year's imprisonment and a fine of 30,000 Euros (the amount is doubled if the person forced is a minor).

On burial grounds

Secularity in France does not stop at the door of the cemeteries (Frégosi, 2006). Funeral and burial in a communal cemetery are a communal public service directly placed under the authority and special police powers of the mayor (Fornerod/Messner, 2010).

Since the Decree of 23 Prairial year XII, the *communes* have the monopoly on burials. Faced by the multiplication of civil burials at the beginning of the 19th century, and in order to cut short the controversies surrounding the burial of non-baptised or free thinkers, the Law of 14 November 1881 was finally adopted. It extends respecting denominational neutrality to communal cemeteries.

Like other public services, that of funerals and burials is legally governed by the principle of neutrality. The power of the mayor is limited to the communal parts of the cemeteries, which must be bare of distinctive religious signs; he or she must also take care that “*any person deceased is buried decently without distinction of faith nor belief*” (CGCT Art. L. 2213-7). The mayor's policing powers extend to the means of transporting the deceased, to maintaining order, decency and to the rules of burial and exhumation, without it being possible for him to establish distinctions and to take into account religious characteristics or the circumstances relating to death.

The communal cemeteries in France (except for Alsace-Moselle) cannot then include any material, physical separation between the faiths; the creation and extension of confessional cemeteries is no longer authorised. It is forbidden to raise or affix any religious symbols or emblem in the communal parts of the cemeteries.

There remain only, by way of derogation, some Protestant and Jewish private cemeteries which came into existence prior to the Decree of 23 Prairial year XII. These are simple relics from the past and not transposable solutions. One could also mention the old franco-muslim cemetery in Bobigny, created in 1934. Since 1999, this burial ground has become the Muslim division of an inter-communal cemetery for *communes* in the north of Paris (Bobigny, La Courneuve, Aubervilliers and Drancy).

The other notable exception relates to the ability, subject to authorisation by the Prefect, to be buried on one's own property away from centres of population, as envisaged by Article 14 of the Prairial decree. It is on the basis of this provision that private cemeteries of religious communities continued to exist - even inside convents and monasteries.

Other laws came to supplement the Law of 1881, in particular that of 15 November 1887, which establishes freedom of funeral proceedings and extends the benefit of funeral honours to any person, without taking account of their philosophical, political or religious views. It introduces freedom of funeral proceedings and also grants the freedom to give them a religious character or not.

Faced with the strict impossibility of allowing the new creation of burial spaces dedicated to religious groups, public authorities have until today managed the problem by way of circulars and interpreted the letter of the law in a more pragmatic way.

A circular dated 19 February 2008, responding to problems encountered by Muslim families, recalled that by “preoccupation with integration”, the mayors were to favour the burial on French territory of people not having the means of financing the repatriation of their late relatives to their countries of origin. This circular specifies that the mayor has the possibility of gathering together graves of people of the same confession in communal cemeteries, while taking care to respect the neutrality of the public sections and freedom of choice of burial of the families.

One deduces from this text that these spaces or squares reserved for Muslims (or for other religions!) do not have to be isolated from the remainder of the cemetery by a physical separation. Most frequently, what is envisaged is a space laid out in such a way that the tombs can be pointed in a given direction which corresponds to topographic expectations in Islam.

The adopted solution thus results in *de facto* groupings. Where consistorial cemeteries do not exist, the same practice has also been adopted for Jews or other confessions. In practice, burial agreements involving Muslims have been established between local authorities and Muslim associations, contributing to satisfy the main needs in this area. One must, however, recognise, notably with Islam, that most Muslims of foreign nationality in France have resorted massively, like the Turks, to repatriating bodies and thereby favouring burial in the country of origin.

Burial in France takes on a greater acuteness for all other Muslims of French nationality and for all those settled more permanently with their close relations in France, for whom returning to the country of emigration is no longer a priority.

Of all the solutions considered, the legal perpetuation of denominational groupings in cemeteries seems the most effective and meets with the approval of all the leaders we met.

On buildings of worship

As elsewhere in Europe, the right to construct buildings of worship in France results from the principle of freedom to practise worship, which is one of the components of freedom of religion (Messner, 2010), which is itself one of the manifestations of freedom of conscience guaranteed by the first article of the Law of 9 December 1905, enacting the separation of faiths and the State.

In French law, freedom of worship is a fundamental freedom. It includes the right to express one's religious convictions, while respecting public order, as well as the free use of items necessary to practise worship (buildings of worship, religious assets...). Heterogeneity is set in French law in terms of statutes and regimes for buildings of worship (Flores Lonjou, 2010).

The situation in France is translated, from a strictly legal point of view, by a dual differentiation - legal and territorial. Shortly after the adoption of the Law of 1905, the former recognised faiths (Reformed, Lutheran, Jewish), newly constituted as associations of faith, obtained, under the terms of Article 13, free use of buildings that were property of the *communes* and the *départements* and full ownership of religious buildings included in the cultural heritage of former public establishments of worship. Although the Catholic faith did not agree to merge into the regime of faith associations (it would adopt in 1923 that of the dioceses!), it was nevertheless to also receive free use of places of worship formerly assigned to this faith before 1905, for its faithful and ministers of religion. All the buildings of worship built subsequent to the Law of 1905 are exclusive property of the (faith, diocesan, cultural) associations managing the practice of worship.

The second difference is territorial, it refers to the existence of various regimes of the faiths on the mainland and overseas. Such is the case in Alsace-Moselle, where Catholic, Protestant (Reformed and Lutheran) and Jewish faiths are public services of the faith and whose buildings are public establishments of worship.

Elsewhere, and in particular in Guyana, only the Catholic faith is recognised (by Royal Decree of 27 August 1828). The other faiths (Mandel Decrees of January-December 1939) are governed by private law and the regime of mission councils, which leaves them at liberty to acquire buildings of worship on a free or paid-for basis and to receive public subsidies (Saint Pierre and Miquelon, French Polynesia, Wallis and Futuna, New Caledonia, Mayotte...).

Not less than four systems of ownership are in force in France in respect of buildings of worship governed by the Law of 1905 (system of public ownership with buildings exclusively assigned to worship, system of private ownership, status of private law with assignment to worship for buildings attributed in 1905 to faiths, private law status for buildings of the former non-recognised faiths and for those built after 1905).

A circular dated 21 April 2008 recalls that, if the buildings of worship traditionally reserved for the public exercise of worship nowadays have other uses than worship (tourist and cultural interest), any other activity within them remains subject to prior agreement from the officiating priest, under the control of the judge.

The key parts of these provisions were compiled, while the French religious landscape remained faintly pluralist; its progressive diversification and the settling of religions like Islam or Buddhism thereafter largely contributed to make the issue of opening or constructing new buildings of worship a permanent challenge within a system of relations between the faiths and the State, which relies on an absence of public funding for the faiths. In practice, various legislative measures and administrative practices have allowed certain forms of indirect support for faiths to be maintained (emphyteutic leases, loan guarantees, tax exemptions...), even directly via an association formed according to the Law of 1901.

With regard to opening places of worship to the public outside religious celebrations, the situation varies according to the types of buildings, their architectural interest, their importance and historical notoriety and their localisation.

So, opening Catholic places of worship to the public in general does not pose any particular problem in large cities. Such is not always the case in the villages (and sometimes in certain towns!) due to caretakers, reception of visitors and surveillance of the premises. In the absence of volunteers to ensure staffing, buildings of worship remain closed. Apart from worship or concerts, heritage days or holiday periods are often the only moments to access and visit them. With regard to other places of worship, the situation varies. Rare are the visitors to push open the doors of Protestant temples (apart from some historical buildings in Alsace-Moselle and in the Cevennes!), which besides are open only at times of worship or ceremonies of marriage or burial. The same applies to synagogues (except for some in Alsace and in Comtat Venaissin!); as for Muslim places of worship, leaving aside the Grand Mosque in Paris and some famous Islamic centres, the majority of these spaces of worship are open only during prayer.

It should be noted that, with regard to, for example, minority places of worships, such as those of Islam, these spaces of worship encompass a quite heterogeneous reality.

They cover a rather broad spectrum, ranging from the modest prayer room in an immigrant workers' hostel, or at the foot of a high-rise block, to large Islamic mosques or centres that have sprung up in the suburbs or on the edge of large agglomerations, like the mosque of Bondy (93), the Grand Mosque on boulevard Pinel in Lyon, the Hassan II Mosque in Évry-Courcouronnes, which stands almost opposite Évry cathedral, not to mention the venerable Grand Mosque of Paris in Hispano-Moorish style, a vestige of colonial times and a historical monument. To complete the picture, add the prayer rooms which are to be found in town centres, as is the case in Marseilles, Mulhouse or Paris, some suburban mosques in the Paris area and several plans for mosques in Marseilles or Strasbourg. The rare minarets, with which some are endowed, are purely symbolic and are never used for the call to prayer, like that of the Grand Mosque in Paris; no such requests have been put forward to date.

As we had already explained in the first part of this report, if the construction of rooms of Muslim prayer does not seem any more to be a major problem, in any case on a legal level, recent controversies about praying in the streets and some local situations (administrative or political blockading!) show that this issue continues to remain a sensitive one.

- Nowadays, much more than the issue of public funding for religions, one of the most sensitive issues in France is undoubtedly that of the increasing visibility of certain religious practices or attitudes in public.

- Several major tensions were mentioned by our interviewees during our conversations.

Three of them tally to some extent with the main items of *Workpackage 5*, dedicated to public space. On the one hand, there is the issue of private schools (denominational in majority) receiving public funds, which especially remains a political point of friction between the parties on the Left (shoulder-to-shoulder with militant secular movements) and those from the ruling Right, and less a subject of controversy between religious groups, even if all do not yet have full access to this possibility. Then comes the issue of the full veil, which led to the passing of a law in October 2010, and the issue of praying in the streets, which is directly linked to the issues of constructing buildings of worship.

Another tension related to public space also appeared during the interviews and relates to specific requests for collective catering in state schools and those relating to the management of timeslots reserved for women in public swimming pools.

We also chose the option to present a dispute (certainly localised, but rather revealing of interference between religious and political expression!) relating to the ownership of a building of worship, which has practical consequences in terms of free access to it.

The issue of the relations between the State and confessional private schools

The issue of the development of denominational private schools receiving public subsidies incontestably remains an initial point of friction between left-wing and right-wing parties and then one of the recurring topics that mobilises associative secular movements.

Private schools funded to the detriment of state schools

Jean Glavany, MP, responsible for secularity in the Socialist party, is by far the most explicit on the matter.

For him, the question of funding denominational private schools, encouraged by the Marie and Barangé Laws under the 4th Republic, remains an open breach in the development of the legal corpus of secularity. This breach is held to some extent responsible for the current crisis in state schools.

The weakening of state schools is also, in his opinion, largely caused by the policy initiated by Nicolas Sarkozy of abolishing teaching positions in state schools. Questioning the achievements of the secularisation of teaching would not have ceased, according to this Socialist MP, to increase under the 5th Republic and would currently be continuing.

His criticism is aimed initially at the Debré Law of 1959, Germeur Law of 1977 and finally the Carle Law of 2009.

“With the Germeur Law, then much later, in 2009 the Carle Law, state financial assistance for two competing systems is recognised, with this competition being increasingly unfavourable to state education. Thus school dualism was born which, no matter what one says about it, is conveying a form of communitarianism.” (Glavany, 2011)

For the sake of the history, it should be clarified that the indirect paternity of the Carle Law refers paradoxically, to an initiative by a resolutely atheist and anti-clerical Socialist Senator, Michel Charasse, who, during the discussions on the laws of decentralisation in 2004, had written a parliamentary amendment (Article 89 of Law n° 2004-809 relating to local freedoms and responsibilities) intended to force pupils' *communes* of residence to contribute to the running costs of private schools situated in another *commune*, but attended by pupils resident outside this *commune*.

“It was surely a key problem,” said Jean Glavany, *“...but the provision was going to turn against him. Catholic teaching jumped on the occasion and started to present invoices to communes, whose national bill was announced to be phenomenal!”* (Glavany, 2011)

In fact, the position defended by this Socialist MP does not consist in disputing the right to existence of private schools subsidised by the State, but rather to better specify the legal boundaries between obligatory and optional expenditure.

According to him, what is regarded as obligatory are:

“(...) Material expenditure connected exclusively with teaching hours: the maintenance of the teaching premises, the recreation areas, sports, cultural and administrative buildings, the cost of transporting pupils; the expenditure of hiring (and not of acquiring!) computer equipment; expenditure on school stationery, provided that it is free for state schools.”⁷⁹

As optional are, however, considered:

“(...) Expenditure related to nursery classes in general, and in particular, connected with the ATSEM (Specialised Territorial Agents in Nursery Schools) or extra-curricular activities (canteens, crèches, studies).”⁸⁰

The dispute also relates to considering that for classes not under contract and any complementary funding for classes under contract, *“assuming the running costs is a simple possibility”⁸¹*.

This clearly targets the Law of 15 March 1850 (Falloux Law), which makes it possible for local authorities (*communes, départements, régions*, the State) to grant a subsidy to a private, general secondary education establishments up to the limit of one tenth of the annual expenditure of the establishment; this possibility assumes prior notification by the academic council of the Education Department.

According to Jean Glavany, *“It is an option for local authorities and not a legal obligation. (...) All the optional aid, additional to that imposed by legal provisions, reflect a political choice that one can interpret as a despoliation of state education.”⁸²*

Freedom is also the rule for private, technical education.

The Socialist Party has put online on its official website a short text entitled: *“Putting an end to the privatisation of school”* in which it denounces the generosity of the State towards private teaching and reaffirms that its priority remains state schooling, guarantor of secularity and equal opportunity. In passing, it denounces the Carle Law (which has already been mentioned in our report) presented as *“a veritable cheque for private education”* and deplores a policy which, while not imposing on private the same constraints as on state schools (only 20% of the posts abolished were in the private sector!), leads in practice, in the party's view, to directly favouring private education to the detriment of state education. Here is to be found one of the great constants in the quarrel between public and private.

The Socialist Party's document also points out that the *Hope for the Suburbs* plan (government measure drawn up in 2008, giving five priorities for the suburbs of large cities: jobs, education, opening-up, security and local urban management) would favour the establishment of denominational private establishments in underprivileged zones. This document denounces also the recognition of the public utility of organisations considered (by the Socialist Party) close to fundamental Catholic circles or entrusted with collecting donations for properties used for Catholic teaching⁸³.

⁷⁹GLAVANY J, *La laïcité. Un combat pour la paix*, Paris, Editions Eloïse d'Ormesson, Essai, 2011, pp 256-257.

⁸⁰*Ibid*, p 256.

⁸¹*Ibid*, p 258.

⁸²GLAVANY J, *op cit*, pp 258-259.

⁸³Cf. <http://www.parti-socialiste.fr>, article:«Mettre fin à la privatisation de l'Ecole».

Mentioning more or less conservative religious orientations and the content of remarks possibly made by certain pupils and especially teachers often appears as an additional argument in the discourse of parties on the Left who consider that private denominational establishments (under contract or not) should be subject to closer inspection by the National Education Department.

Such is the opinion of Jean Glavany, who directly refers to various items of news that are rather isolated, yet real! So he mentions the case of a denominational establishment not under contract (related to the traditionalist Catholic movements assembled in Rome⁸⁴), which has since been closed down following revelations obtained using a hidden camera by a journalist reporting on racist, anti-semitic remarks made by young pupils and remarks by a history teacher comparing *Waffen SS* with an elite army and glorifying Marshal Pétain. He also quotes other (in particular *Lubavitch*) establishments, suspected in his eyes of resorting willy-nilly to methods of “*stuffing the brain and formatting consciences*”, of not being totally mixed⁸⁵, of granting too many hours to religious subjects or of imposing dress codes on girls (ban on trousers and obligation to wear stockings, even in Summer, the MP highlights!). Turning to Muslims, the MP will not be outdone, since he quotes a secondary school under contract with the State (*Ibn Rochd* College in Lille) which would have the failing, in his opinion, of claiming to belong to Muslim Orthodoxy and being connected to one of the great Muslim federations of France, considered conservative and historically close to the Muslim Brothers, the Union of Islamic Organisations in France (UOIF).

“These are some examples of real or supposed fundamentalism which are at work in educational establishments in France. If they are not establishments 'of' the Republic, they are,” continues the MP, *“'in' the Republic and subject to its laws. So who inspects them? It is the role of National Education Department via its school inspectorates for all establishments in general and establishments under contract in particular.”*⁸⁶

One can find more or less the same types of arguments in other left-wing political parties.

On a purely comparative basis, one can refer to the positions of the party known as the Left (created by a dissident of the Socialist Party and allied with the Communist Party).

*“To justify the 'financing' of the two systems - state schools and private schools - under contract (one can read on the party's website), it is often alleged that both fulfil public service missions. False. Only the state school fulfils this mission. Only the state school is secular, contrary to the private one which - with the Debré Law - has been guaranteed, even when it is under contract of association, maintenance of its “own character”. Private teaching insists on this often undervalued “guarantee”, because it is what enables it not to fulfil any of the obligations which are imposed on state schools: in private schools, exclusion takes place without the obligation to provide education for the pupil in another establishment. Certain pupils at school in the private sector - and considered to be less good - are registered for examinations as independent candidates in order not to cause a drop in the performance statistics in the league tables. The secular school welcomes everyone without condition of belief, resources or academic level. That's what makes it a true public service.”*⁸⁷

The fact it is not free of charge is also pointed out as proof of selection by money.

“Should state and private education be funded in 'equal' parts? What appears logical first of all, is much less so, if one applies this reasoning to transport. Imagine that, in the same way as the employer contributes to the financing of transport costs, someone wishing to take a taxi to avoid the suburban trains at peak hours would be refunded for half of their trip! Superb windfall effect. And continuing along these lines, the funding allocated to paying for the taxis - taken only by those who have the

84Institut du Bon Pasteur

85GLAVANY J, *op cit*, pp 96-97.

86*Ibid*, pp 97-98.

87Cf <http://www.lepartidegauche.fr> , rubrique :« Les lycées privés financés au-delà de la loi. »

means to do so - will cut down the budget for public transport. Nobody would accept that. And yet, that is what is occurring in high schools!"⁸⁸

For this party, the situation which prevails in certain regions is definitely favourable to private establishments.

*"The facts are without appeal. Our elected officials have demonstrated this in the Île-de-France region. Their calculations show that this region, like so many others, gives more money to private high schools under contract than what the law imposes. Of the 57.445 million Euros received in 2010 by private high schools under contract, 19.537 million correspond to optional subsidies, that is to say 37%."*⁸⁹

For this party, behind the question of financing private establishments, it is the state school which is apparently the target of a combined attack from the world of private enterprise and religious interests and, on that basis, it is secularity itself which is under threat.

*"How to accept such subsidies, while state schools today are stripped and disparaged, all the more as their weakening opens the way to an increased commodification of knowledge? Secularity is attacked, because it is a weapon against the domination of particular commercial or religious interests. Its topicality has widened because the fight against religious intrusion must henceforth be carried out simultaneously with that against the assault of advertising in schools, completely incompatible with the ideals of autonomy and critical spirit on which they are founded. The battle for consciences has joined that for profits: churches and brands are allied in extracting young minds from the emancipating, secular teachings of state school. Because, as Condorcet summarised it, the goal of the latter is to train 'citizens who do not let themselves be told stories, but who hear that people are accountable to them'. Its purposes are to train critical minds and argumentative reason, intellectual autonomy, skills for work, the emancipation of the person, training in citizenship, self-knowledge and knowledge of others. All things which are opposed as much to revealing truths, therefore indisputable, as to consumerist alienation."*⁹⁰

The same note is struck by Communist MP André Gérin, who was at the origin of the parliamentary fact-finding mission on the full veil. For him, the question of the existence of public subsidies for denominational establishments under contract remains a major problem.

"That, too, is a real issue. But we would have to go back in time (...); in 1984 the Left and President Mitterrand had tabled a law which appeared revolutionary to me, i.e. unifying secular, free National Education. I think that, here too, we have a real problem, where, roughly speaking, to speak crudely, we have our bums between two chairs. You have to know what you want." (André Gérin, PCF).

This MP's position has been conform to that of his party since the question of the status of private education came to the fore during the Liberation of France (Latreille, 2011).

Although the question always remained very sensitive between republican circles and the Church, just before the Second World War, the concern to preserve national unity and a softening of anti-clericalism had people assume that appeasement was required. Everything was to change with the policy deliberated by Marshal Pétain and implemented from September 1940 to February 1941 of dismantling secular school legislation. Teacher training schools were abolished and introduced into school curricula were "duties towards God". Authorisation was granted to priests to practise catechism (with assistance remaining optional) in school buildings, as well as free admission to scholarships for private pupils. Lastly, the ability was retained for *communes* to subsidise private schools. The Law of

88*Ibid.*

89*Ibid.*

90*Ibid.*

2 November 1941 reconsidered the provisions relating to duties to God and on free access to the state schools of the priests, but recognised the possibility for private elementary schools in activity to receive state subsidies (and no longer from the *communes*) paid by the Ministry of the Interior via the diocesan bishop, with, in exchange, an inspection by administrative authorities. These provisions, though considered insufficient by the episcopate, allowed the sector of Catholic teaching to continue increasing its manpower.

At the Liberation, the Vichy legislation was condemned in its entirety. The Consultative Assembly of Algiers was minded to remove public subsidies for the private sector. The provisional government, more measured, chose to maintain the subsidies temporarily, without modifying the number, and announced the creation of a commission entrusted with reworking the school system.

The Communist Party appeared (at the sides of a majority of members of the Socialist Party) as the defender of the monopoly of state education, the one most opposed to any public subsidies for the private school sector, with as its plan, complete unification by nationalising private schools.

The commission, chaired however by a Socialist (priority to school peace, common teacher-training, revision of the school map for the benefit of the state, communal subsidies for private schools and public subsidies for youth movements...) did not have its rather moderate plans approved and the Assembly decided to end public subsidies for private, elementary school establishments.

It was only in 1959 with the Debré Laws that a new reform saw the light in order to provide a legal framework for state subsidies to private schools.

On the other hand, the reference to 1984 and the Savary plan for a vast, unified, secular, state education service remains alive in the memories of all left-wing politicians as a missed attempt at putting an end to school dualism.

Popular mobilisation and demonstrations organised jointly by Catholic schools and Conservative parties were right about this reform.

In their turn, right-wing parties tried in 1993 to amend the Falloux Law in order to abolish the one tenth of capital expenditure given by local authorities to denominational establishments, but in vain.

“The regret,” declares Jean Glavany, “is that of 1984 (...); the Left before 1981 had worked on plans for a grand, unified, public, secular, state education service and to put an end to the school dualism, public and private, by reinforcing public service constraints in the private sector (...). Pity, a missed opportunity, which will not come around again so soon.”⁹¹

The MP also expressed his remorse about the signing in 1993 by the left-wing government of the time of the agreements known as Lang Cloupet, which established the public-private parity for personnel.

“My remorse is due to the fact that I was a member of this government (...), I was Secretary of State for technical teaching (...) and that I shamelessly had to swallow my own saliva and to affix my signature to those texts, considered by laypersons as treason.”⁹²

This discourse of re-evaluation of the centrality of the state school as school of the Republic is systematically coupled with that of the promotion of secular morality, for plans both to emancipate pupils from their groups of belonging (religious, ethnic...) and to integrate within citizenship and French society.

“The school of the Republic”, according to Jean Glavany, “has the role of supporting the training of pupils in autonomy and, by referring to secular morality, to enable them to interiorise common norms and values (...); it is not one of the lesser objectives of the secular school than to allow the emancipation of individuals from their group of origin, with a view to their full integration in French society.”⁹³

91GLAVANY *op cit*, p 122.

92*Ibid*, pp 122-123.

93*Ibid*, p 104.

To favour emancipation and integration in society are therefore the two key words of the state school and are supposed to be also at the centre of the ideal of secularity (perceived as universal!), while the private school is assumed to be too communitarian.

“School, crucible of the values of the Republic and vector of emancipation of the individual, is at the very foundation of the secular republican model (...),” according to Jean Glavany. “Favouring the private school to the detriment of the state school is to give up on the emancipation of consciences in relation to their place of origin. That amounts to accentuating the inequalities of wealth and building a two-speed system, having two Frances grow separately, one beside the other, by ruining national cohesion and the unity of the 'laos' already undermined by social inequalities.”⁹⁴

All the trade union leaders we met made it their slogan: *“Public funds for state schools, private funds for private schools”*.

For them, the fact of guaranteeing public funding for private schools is compared to an attempt at destabilising state schools.

“It belongs to 'breaking the public service of education' and tends to make one think that 'because it is religious, it is better' - while the reality lies elsewhere. This financing of private schools favours school avoidance and the creation of ghettos.” (Revel J P, CGT)

From her point of view, the UNSA trade unionist stated:

“I am completely opposed to the public financing of private schools, because we have the state school, which is free and compulsory and which accommodates all the children coming from all horizons; we are free to refuse what society provides us with, but in this case we do not have to pay for it.” (Mambert M, UNSA)

The UMP MP we questioned on this issue adopted a resolutely different point of view.

He did, however, start by telling us how much he had personally been marked by and attached to the republican school - secular, free and compulsory - coming from a family of *'Black Republican Hussars'* and he greeted the secular apostolate of teachers.

However, that did not prevent him from considering that it was necessary to maintain public funding of private denominational schools in the name of a principle of competition between the two schools, even of legitimate rivalry.

“I am favourable to the public funding of private schools, even if that contradicts the idea that we have of secular schools, for which I have the greatest respect for family reasons (as a son of secondary school teachers), and the work of teachers, which is not simple nowadays, but at the same time, I favour competition reigning between the two systems. There are sectors or zones in which the private system obtains better results than the state system, elsewhere the result can be the opposite. No one system is superior to the other.” (Guibal J C, UMP)

Behind the argument of the necessary competition between the two schools, we could also identify the argument of the respective sizes of the establishments. State schools are famous for being often very (too) big in comparison to smaller, private establishments, therefore supposedly better adapted to the situation of each individual.

Lastly, the ultimate argument used is that private establishments are supposed to convey a more educational project, while the mass logic in the state sector would place transmission of values in the background.

⁹⁴*Ibid*, p 106.

“(...)The evolution of society, the demographic weight and multiple constraints result in the state school no longer being capable of dealing with this educational part of the transmission of values, which is in addition to its public service mission, while this is often better assured by private schools.” (Guibal J C, UMP)

We restart the interview with the issue of access to the private educational system under contract for other religious groups.

In his answer there prevailed a strong feeling of hesitation, which he completely assumed.

“It can appear hypocritical or opportunist, I think that, if on a theoretical level we observe from the moment when we allow certain religious communities to carry out educational projects and to manage private establishments under contract, that others cannot do so (...), but in practice, the issue of integration, of sharing civic, secular values despite religious differences arises beforehand.” (Guibal J C, UMP)

Even if Islam is never explicitly mentioned, this reference to the primacy of integration and sharing civic values and the national project remains a constant which is often highlighted by public actors, in order to suggest a lack of integration of populations of Muslim origin.

“I was never shocked by the concept of assimilation, which does not relate to religious faiths, but to individuals and those covered by the principle of sharing a common life, the national project which means that the Bretons, Basques or Alsations are also contributors to the project of the French Nation (...), even if it is less and less true nowadays. The Republic, the Nation, for me, is Michelet and Renan, we were born the product of a history which justifies coexistence (...) however today, our education system is suffering from many dysfunctions; before imagining other forms of organisation, we have to consider sharing a common collective project, and this project has to be properly understood by those who will attend these schools, and in conformity with the values of our society.” (Guibal J C, UMP)

Subsidised confessional schools... for children of the Republic

In the absolute, observations on the ground generally confirm the fact that, with the notable exception of schools not under contract (Catholic traditionalist) with a strong religious tone, and Jewish schools, which seem to enjoy a certain success with Jewish families for reasons of reasserting their identity and a surrounding impression (real or supposed) of suspicion towards the Jewish community against the backdrop of the conflicts in the Middle East, the principal reasons for parents registering their children in the system of private denominational establishments are less and less related to denominational considerations.

The search for a religious environment weighs indeed less in the choice of the private school system than more concrete concerns such as the search for a reinforced supervision of pupils, of more individualised monitoring, as well as taking distance from a social mix subjectively perceived as destabilising and generating tensions within state establishments located in priority education zones (ZEP).

As for the religious leaders, all approved both of the principle of public subsidies for denominational establishments under contract and the fact that all religious communities should be able to have access to them.

Only the President of the Federation of the Unions of Alevis in France (FUAF), Durak Arslan, decided against the public financing of private, denominational schools, while admitting that each community should be free to create its schools if so wished, but from its own funds.

While we had not yet tackled the issue of public funding of denominational private schools and, more broadly, the very principle of their existence within a secular framework, one of our very first Muslim interviewees, responsible for a mosque in the South of France, had brandished the argument for opening Muslim schools as a last resort to express how fed up he felt with the different controversies over the Islamic veil.

In his mind, the fact that Muslims one day have to request the opening of such schools for themselves, expresses less a reasoned choice, than the confession that their reception and self-fulfilment within the state school framework had failed.

“Of course, we can put our children in private schools, we can develop Muslim private schools, but then we will marginalise our children even more, we’re being pushed into isolation. We are currently fighting for educational orientation. Even if our children have good results at school, they are often oriented towards courses in hairdressing, as medical auxiliaries...That’s not normal. Can’t these children aspire to becoming engineers, lawyers, doctors? So we are fighting, so that they are better oriented. If these children fail in school, they will then fail in society. However, the Muslim community of tomorrow will be more numerous than that of today. I have the impression that the authorities are unaware of this reality.” (Leader of a mosque in the South of France)

This point of view is not an isolated one. We had already observed it before, within the framework of a previous study carried out in Alsace on requests for lessons on Islam in local state schools (Messner, Vierling, 1998). One of the Maghreb association leaders had then clearly told us that he preferred by far making himself heard in state schools and thereby militating so that lessons on Islam are offered there, rather than to have to put together a project for private schools.

This point of view was not shared by Turkish leaders we met, who had all said they were considering in the long term, more or less, implementing plans for Muslim private schools. If such projects still remain alive, the communities concerned, despite the passing of the Law of 15 March 2004 on the banning of the veil in state schools, have not been able as yet to make them widespread.

It remains the case that several projects for Muslim schools, or more exactly secondary schools of Islamic character, started to appear in France in recent years with or without state recognition.

The first establishment belongs to the contractual system, it is the *Ibn Rochd* School in Lille, which welcomes a hundred pupils from the region.

The second establishment, *Al Kindi* de Décimes School, located in the Lyon area, is not under contract.

A third establishment also opened its doors in Marseille in 2009; the *Ibn Khaldun* School is currently in the three year phase of autonomous operation, before being able to obtain a contract with the State.

As regards the Jewish community, Rabbi Haïm Korsia announced his satisfaction with the principle of public support for denominational schools under contract (only one Jewish school not under contract!) in strong terms.

“General satisfaction with public funding of private denominational schools; Jewish children are also the children of the Republic.” (Rabbi Haïm Korsia)

He did, however, express the wish (shared by others!) for a possible *“desired and desirable”* evolution of the Falloux Law, aimed at reducing the upper limit of public support in terms of investment. Questioned on the problem, often raised by politicians, of the single-sex character of certain Jewish establishments, he seemed to be comfortable enough to answer us, just as he did not seem embarrassed justifying the fact that these establishments receive *de facto* exclusively children of Jewish confession.

“You know, in connection with this question of mixed classes, it has to be said that today certain studies wonder about the positive impact of the rule of co-education in schools, so the debate is open on the matter.” (Rabbi Haïm Korsia)

“With regard to the question of the reception of pupils from only Jewish families, that refers to the unique character of our establishments and to the need for a certain coherence between the transmission of education and practices (respect of the Kashrut) taught to children in the schools and their extension and the relay assured by parents at home. It’s difficult to see a young person or a non-

Jewish teenager attend a Jewish school, return home and ask his parents to eat kosher!" (Rabbi Haïm Korsia)

At the end of our interview, he made the point that the control of the state via school inspectorates is not only completely legitimate, but essential.

"The more the State intervenes, the better that will be for us all..." (Rabbi Haïm Korsia)⁹⁵

Such is also the opinion of the representative of the episcopate, who takes on board the arguments put forward by those defending the principle of maintaining funding intended for denominational educational establishments under contract.

"Without entering into too many technical details (...) we can reaffirm the basis of the general principle of state payment of the wages of private school teachers under contract (whether confessional or not). Thereafter, one can understand that certain expenses related to the individual character of the establishment (in particular, everything relating to religious teaching) or to specific teaching projects are the responsibility of the families." (Mgr Herouard)

Like his Jewish counterpart, Mgr Herouard recognised at the same time that a certain flexibility in assuming a part of the capital expenditure would be welcome.

"Concerning the buildings which are paid for by the establishments, and therefore in fine by the families, an easing of the legislation would not be, in principle, necessarily scandalous (the issue of its political timeliness is quite a different debate...). After all, the parents of private schools contribute in their taxes as citizens to the maintenance of buildings of state education..." (Mgr Herouard)

In spite of clear-cut positions, situations on the ground, in small towns and certain regions can seem less tense, because of the personalities of elected officials and the will to preserve a peaceful climate between the two schools and the families which attend them.

So we have been able to directly witness strong, symbolic local initiatives. For example, in a *commune* managed by a coalition of left-wing parties (Socialists, Ecologists...), we were able to attend a joint distribution of school materials (French-English dictionaries) to all the children enrolled in private as in state schools, in the presence of the mayor with the assistance of teachers from both schools and even on the premises of the state school.

This is certainly an isolated example, but it testifies to what, on the ground, pragmatic solutions and symbolic gestures can broadly contribute to appease minds.

Similarly, the general invitation to join together all the pupils and teachers, from state as from private schools, for the commemorations related to the Armistice of 11 November 1918, forms part of a logic of unity which serves to put into perspective occasions of tensions, without necessarily making them disappear.

- The question of the relationship between public and private sectors of education remains in France a delicate and relatively sensitive dossier, which, without permanently occupying the media spotlight, nevertheless remains a political bone of contention between the parties of both Left and Right as well as one of the topics mobilising the secular associative movement.

⁹⁵He even mentioned a problem of an epidemic of a strain of gastroenteritis in a Jewish school that the DDASS had identified, but did not dare to treat publicly (directly approaching school management!) for fear of causing protests. This service contacted him and the Chief Rabbi of France wrote a text bound for the establishment, specifying that compliance with the religious rules of washing the hands was the surest means of preventing this type of situation.

- Behind the legal arguments exchanged by the two opposing parties, there remains the prevailing feeling that, in a situation of profound crisis in schooling (difficult adaptation to the contemporary world, significant abolition of teacher and supervisor posts...), public subsidies intended for denominational schools, if legal, are considered to be all the more illegitimate, as the same constraints do not weigh on both education systems and efforts are not equitably distributed.

- The development of private denominational schools to the benefit of other religious groups than just Catholics undoubtedly remains for certain communities a real objective, if not an ideal to be reached more or less in the long term. This remains, however, largely conditioned by the capacity of these groups to obtain sufficient financial means, enabling them to show the authorities the viability of their projects within the time envisaged by the regulations, before obtaining the contract with the State.

Wearing the full veil in public

It seems that the only recent legislative development approved of by most secular and political leaders (Left and Right combined) whom we met, was the passing of the recent law banning concealment of the face and thereafter the full veil in public. The religious leaders we met seemed much more reserved with few exceptions.

Agreeing with the ban on concealment of the face in public

If everyone (politicians, Freemasons, association leaders...) seems to agree with the strict ban on this dress, each has their own arguments to justify it, not necessarily referring to secularity.

For Guy Arcizet of the Grand Orient de France, the ban on the full veil is legitimised by the need to construct oneself in the eyes of others and by the fact that the garment reduces a woman to a forbidden object, a sexual object between the hands of her husband.

“I think,” he said, “that we are only shaped in the eyes of others. We need the look and the physical presence of the other. We need to see each other to understand each other. And from the moment we hide ourselves, we disappear from the social game. (...) Now that a woman wants to hide it for reasons that are personal to her, I do not mind, because after all, it's perhaps an individual choice, but to what extent, I would like someone to tell me, is the choice of the veil, and especially the niqab, something personal, a philosophical choice. Most times it's something that is imposed, or results from a process of proselytism which is linked to the issue of communitarianism we were just speaking about, (...) it's an obstacle to communication between human beings. And then, in addition, it establishes women as forbidden objects. It keeps the woman in her meaning as a forbidden sexual object, reserved for the husband. It is something which is very significant. So me, philosophically, I'm opposed to that. I think women should be recognised as free. (...) The veil therefore belongs to this very special approach which, for me, is not solely a religious one. It is a process of marginalisation of women, of denial of the fact that the woman is a man like any other, so to speak.” (Guy Arcizet GODF)

In this regard, the reaction of Socialist MP Jean Glavany is among the most interesting. He, on the one hand, wanted to return to the work of the parliamentary fact-finding mission on wearing the full veil of which he was a member and, on the other hand, to reject any link between the passing of this law banning the full veil and secularity.

“There are MPs who are clearly for defending Christian values in France against the Muslim threat,” he said, “others, who are in a form of simplistic anti-Islamism, and others who are truly secular and do not try to impose on Islam what one does not impose on other religions. I left with mixed feelings about that law. I would have preferred,” he added, “that the law be expressed in a different way, rather than saying that wearing the full veil is banned in public spaces in such a brutal manner and impose a ban, I would have preferred to say that the notion of brotherhood in the Republic is about

living with uncovered faces. (...) Or to say that wearing the full veil was an act of violence against women and to do so in the context of a law on violence against women. I would have found that more educational and more dignified.” (Jean Glavany PS)

For him, the ban was in fact motivated solely by the unanimous desire of MPs to combat a practice described as sectarian and political and not by the desire to limit the public exercise of the Muslim faith in public.

“I do not think we can use secularity to justify the ban on wearing the full veil. Everyone was careful not to do so, and nobody raised the issue of secularity, because officials of the French Council of the Muslim Faith, whom we met with for a long time, explained to us that this practice was not at all required by the Qur'an. (...) we discovered that extremist, fundamentalist - and therefore very political - practices were at the origins of the wearing of the full veil. There were two, the practice of the Taliban in Afghanistan and then the Wahabi Salafis in Saudi Arabia. And therefore, these are two origins that have nothing to do with the Qur'an, and thereby Islam, and which are minority, extremist, sectarian and highly political practices. So it is on that level that we are fighting against them, just as we fight other ideologies, and not in the name of secularity.” (Jean Glavany PS)

As the parliamentary committee in charge of the case did, the Socialist MP in charge of secularity within his party will even go as far as drawing on the opinion of the French Muslim Council, which had held that this practice was not required by the Qur'an itself, to assess that therefore the choice of MPs was in no way targeted at Islam as a religion, but at a deviant expression of it.

We are there at the heart of the French paradox leading French MPs to refer to, or support an exegesis of the Qur'anic text in order indirectly to legitimise their legislative action banning the wearing of a piece of clothing by women of Muslim confession.

During the fact-finding committee's hearings on the full veil, MP Glavany had even publicly questioned the appropriateness for the Republic to officially fight head-on certain exclusivist Islamic streams in the same way as for racism and Nazism.

“Our Republic,” he said, *“has always been famed for the fight against all ideologies. It combats racism, anti-Semitism, Nazism. Why would it not fight Salafism or Talibanism?”* (Information Report No. 2262, National Assembly, January 2010, p 369).

The person who originally referred to parliament the wearing of the full veil in public, Communist MP André Gérin, does not hesitate to consider that the report by MPs and the law which was passed, were aimed above all at reaffirming the primacy of republican values in the face of those referring to *sharī'a*. According to him, the passing of this law was therefore intended to put a stop to a process of more or less explicit Islamisation of the territory.

“For me, this report is very important to see the current state of influence over certain territories of our country, and it is valid on a European level, where there is more or less Republic and more or less sharī'a in public. So this diagnosis is very important.” (André Gérin, PCF)

For this MP, this law was also an operation intended to release women from the grips of men's law.

“The law is very important, because it aims at releasing these women. For me, it is a law of liberation. The fine is symbolic. And moreover, we don't have a law which interferes in the question of dress codes insofar as we considered in the mission on the full veil that to have one's face covered cannot be seen as clothing. Therefore, one cannot accept covering the face insofar as the identity of the individual and the person is concentrated there.” (André Gérin, PCF)

Lastly, the law also envisaged tough sanctions for those who used the wearing of the veil as a constraint.

“And there is a second part of the law, which is pitiless with respect to gurus, insofar as the law says that if a person is recognised as having coerced someone to wear the full veil, they are liable to a fine and imprisonment. So, that's very, very important. In applying the law, we would need to find the article of ten days ago on the Rhône, where there was a very positive assessment, where only one conflict was noted, in Vaulx-in-Vellum. What I believe, is that, apart from the media aspects, it especially liberated young women of less than 18 years old. All these teenagers, minors, who find themselves on territories, subjects as important as love, relationships, sexuality, clothing, it is hellish! And the law, from this point of view, releases them.” (André Gérin, PCF)

Jean Claude Guibal MP (UMP) shares this same feeling.

He told us that he voted for the law prohibiting the simple veil in state schools, as well as that prohibiting the full veil in public for similar reasons.

“We always have to take into account the importance of the context, and the fact that the meaning attached to certain behaviour can vary according to the situation. Talking of the veil in this case, it seemed to me that its wearing related more to a form of provocation, a willingness for full-on assertion, rather than peaceful expression of a religious practice, which justified the passing of this law.” (Jean Claude Guibal, UMP)

The politician was to add, like other elected officials of all political persuasions combined, that:

“Without being a specialist of the Qur'an, there is no sura which makes wearing the simple veil or the burqâ an obligation (...) or at least, there are several interpretations”. (Jean Claude Guibal, UMP)

Within the International Observatory of Secularity, there was the same total adherence to the law banning the wearing of the veil. For its representatives, the full veil should be banned in the name of a conception of secularity that requires us to combat any threat to the integrity of body and mind, in the name of the republican principles of fighting against all political and totalitarian fundamentalisms, of which the full veil is a manifestation and, finally, the fight against all forms of freedom-destroying communitarianism.

One of the leaders of the Grande Loge de France calls for the need to guarantee a certain neutrality in public space and therefore the removal of any religious insignia within it.

“The neutrality of public space means not having religious symbols in public. Religious beliefs remain in the privacy of the conscience, it does not seem necessary to me to have an ostentatious sign of one's own religion (...) it is just as natural for those who are members of a religion to not show their religion in public. Private space is private space, the place of worship is the place of worship, and public space is the space of everyone; the Republic is not the space of a few, but is the space of everyone.” (Alain Noël Dubart, GLDF)

Reservations and nuances of the religious...how far to go to limit the expression of religion in public?

In all, religious leaders were more reserved about this issue of limiting religious symbols in public. For them, this measure can be used as a pretext for progressively disqualifying any religious expression or discourse in public.

The ban on the full veil is, for most of them, a confession of failure of dialogue.

For this reason, Pastor Baty, President of the Protestant Federation of France, regrets that, faced with the issue of the veil, the parliament and the government resolutely, but wrongly, favoured the legislative route and punishment at the expense of education and dialogue.

“Instead of a law banning the veil,” he says, “we must do prevention and pedagogy. Of course, (...) we cannot accept people to be veiled and concealed, but then to make a law and put it into words, we can see that it is difficult to apply. If in difficult districts a police officer stops a woman, it can create a riot; if it is Place Vendôme, if they are the wives of Emirs, I do not see how they will intervene to prevent them from entering shops. So, it's not very reasonable. That is why, moreover, the law does not speak of the veil, but of the concealment of the face. We were pretty much in agreement with Muslims that it is not that what has to be done, even if we agree that one should not hide one's face. There must be pedagogical discussion work, meetings with people, rather than saying that the law says that.” (Pasteur Claude Baty, FPF)

Mgr Herouard of the Bishops' Conference of France shares the same analysis. This Catholic leader rejects the philosophy of the full veil, while wondering about the method used to combat it and its perverse effects.

“We are obviously not in favour of the full veil or of clothing of this type. Besides, the issue is to know whether there is a genuinely religious dimension or is it more a cultural means to dominate women. (...) Was a law necessary for this, one might ask. What I sometimes see, are perverse effects of the law.” (Mgr Herouard)

The Catholic leader points out one of the effects of this law, as of that of 15 March 2004, which had prohibited the wearing of the headscarf in state schools, which is to wonder initially about the real objective pursued by lawmakers in prohibiting these minority practices: to banish the incriminating clothing or the people?

“Because we ban some slightly extreme situations, we will suddenly ban situations experienced peacefully and without provocation for much more minor aspects. Because the problem is where will you put the cursor, how far we will go. The law on the veil in schools has also led to some girls requesting to be educated in Catholic schools, because they are not subject to the law. Is that the desired goal?” (Mgr Herouard)

The other reservation expressed is to wonder how far to extend the ban without taking the risk of abusive generalisations (granting too much importance to marginal practices!) and wanting to banish any religious expression from public space.

“Next, what is the definition of ostentatious symbols, because that concerns all religions. I also sometimes see signs of intolerance in state education, if a pupil wears a small cross or religious medal. This is not normal. People shelter behind the law, but they sometimes make a maximalist reading of it. The concern we have is to say that we can understand that to have a balanced society we combat certain stances, whether they are provocative or extremist in their manifestation. But again, it must not come to denying all religious expression in the functioning of society. You cannot just be religious in religious places or at home. Then, there is of course the issue of equilibrium and living together, respect for each other, non-provocation, but which relates more, I think, to meeting the other person, by mutual understanding through education rather than by laws, because the laws that prohibit sometimes cause frustration for people who will be in the fraction of those acting in good faith, there are not only those who are provocative.” (Mgr Herouard)

On this issue of the wearing of the simple or full veil in public, Rabbi Haïm Korsia and the President of the National Federation of Unions of Alevis (FUAF) categorically stand out from other community leaders, in their total adherence to various laws restricting the wearing of headscarves in schools as in the street.

In their opinion, it is a duty to ban certain practices or religious attitudes considered unsuited to contemporary society and conveying a deplorable image of the female condition.

Called to comment about the last law of October 2010, Rabbi Haïm Korsia believes that it was made necessary in the name of common values (dignity of women, equality, face of the other) and to put a stop to an attitude that he said bordered on 'confinement'.

“In fact, both the simple veil and the full veil left the religious field quite some time ago to enter the field of politics, if only as a protest. (...) But at some point we must assume the values we preach,” insists Rabbi Korsia, *“and the values we are advocating are women's dignity, fairness, the face of the other person. The face is what unites us, which makes us different. The full veil is something that is not part of our culture. If people wish to wear it in countries where it does not bother anyone, where it's the culture, let them wear it, no problem. But in the French public space, there is something that ranks similar to confinement and that is more serious than communitarianism. I think it's a good law, because it was necessary to put an end to it and the argument that it concerned very few women is ridiculous. It's at the start that things have to be done”.* (Rabbi Haïm Korsia)

For Durak Arslan, President of the Federation of the Unions of Alevis in France, it was vital to prevent the development of this practice at all costs.

“It is a good decision (...), this law takes away the right to hide in public, (...) this decision does not threaten individual liberty, it is justified.” (Durak Arslan, FUAF)

Praying in the streets

At a time when the street has imposed itself as one of the main places for stating policies and disputes, at the moment when crowds are hurrying to Catholic pilgrimages and where many are the faithful to join the cortège and religious processions which, little by little, are being reformed after decades of slackening in towns, the renewal of controversies linked to Muslims praying in the streets may seem surprising, if it were not at the same time revealing and symptomatic of a certain state of social restlessness as regards the visibility of religion in public.

Only an uninformed observer of the French situation, of “the Islamic obsession” which this society is encountering, or a mind that is a little too Cartesian or positivist, for whom these are only isolated facts and hardly significant (which have often been going on for twenty years!), could claim that this tension is not one and that it would not need to be mentioned in this part of our study.

The fact that very few towns are concerned by this issue does not remove anything from the forceful images projected on this occasion and from the violence of remarks made by certain political actors. Some saw there a formidable opportunity to put on trial an Islam said to be invasive and a secularity considered to be too soft and obliging. Secularity is considered unable to hold away from public space a religious presence also considered to be "imported" and supposedly usually confined to the domestic sphere and to places of worship.

The fact that faithful Muslims pray in the streets and in all weathers forms part of both the long history of this religion progressively taking root in France (Kepel, 1987), and its contemporary interest. During the 1980's, periodicals never missed a chance to illustrate their files on Islam in France by reproducing *ad infinitum* those photographs of faithful Muslims spreading out their prayer mats on the pavements of some street in Marseille or Paris on Friday at midday, the time of communal prayer. At the time, it was already to point out the cramped nature of certain rooms of prayer, the insufficient number of Muslim places of worship and the injustice which there could be in leaving believers to perform their devotions in the street between vehicles, on the public highway. Today, although the insufficient numbers of places of worship are still mainly responsible for this religious presence on the public highway, without forgetting the success of some imams preaching in those places, the political

impact of this issue by far exceeds its legal substance and clearly justifies its inclusion as an expression of strong tension relating to religious expression in public.

While some in Switzerland brought the issue of minarets onto the political agenda (Haenni, Lathion, 2009), others in France sought in turn to monopolise the attention of the greatest number of people to praying in the street, obliging them to find pragmatic, provisional or perennial answers to a problem which, until then, had not really mobilised energies to find solutions.

This issue of praying in the street, which has been skilfully highlighted by the National Front, has led to a lively debate from the outset between the opposition and the government majority, less on the conditions of exercising the Muslim faith in public than on the instrumentalisation of this affair and the political one-upmanship it has generated between the republican Right and Far Right, after the debate on national identity and before announcing another just as controversial debate on Islam and secularity for April 2011.

- All public actors agreed that this, at the least exceptional, situation (15 places of worship concerned in three big cities) brought up all over again the issue of building or opening new places of Muslim worship in France, so as to satisfy the religious demand. Most of our interviewees pointed to both the lack of Muslim places of worship, the exceptional and unacceptable character of praying in the street and the need to find long term answers. All have been careful not to criticise Islam and its "difficult" acclimatisation to secularity and to distance themselves from events orchestrated by small islamophobic and xenophobic groups openly laying claim to secularity and who made denouncing the excessive visibility of Islam in public their major topic to mobilise the defence of secularity.

- Some believed at the same time to have to denounce in the street prayers the influence of fundamentalist networks undoubtedly seeking to test the reactivity of French society, by occupying public space in an inconvenient way and by challenging modern values.

Places of worship rather than the street!

To counter those who would still consider that this issue is simply a background one, we can refer to what Communist MP André Gérin said to us.

“First, it is necessary to move away from hypocrisy, to stop making fun of people and discovering hot water. That’s been going on for years, nobody cares about it. We manage it by finding provisional, stand-by solutions. But there is no reason for religion to occur in public. Except for a particular event, an authorised festival or procession, obviously. But that it becomes a daily practice, well, regular as regards Fridays, the issue of Fridays, I think it’s FOR-BID-DEN. But (...) seeing the precarious situation of many French people of Muslim confession, well, we need to find solutions.” (André Gérin, PCF)

For this Rhône MP, the only solution lies in the construction of new places of worship where the need is felt, to prevent the faithful praying in the streets and the fundamentalists exploiting this situation for their own benefit.

“So we must,” he says, *“make plans for mosques, obviously. And then, in the meantime, we can find premises, a hangar, a disused factory, but one cannot accept this lack of dignity. And especially, beyond unworthiness, fundamentalists and integrists often use these situations for other objectives than religious ones.”* (André Gérin, PCF)

This is a view shared by others we interviewed.

“I think that Islam is naturally and perfectly compatible with the Republic. However,” warns a former Grand Master of a Masonic Lodge currently in charge of an association defending secularity, *“it is not acceptable in public that there are people praying in the street, whether in Marseille or Paris. And*

those people who pray in the street are themselves being manipulated by Muslim fundamentalists. (...) So there is a political will on behalf of Muslim fundamentalists to question our society based on the values of the enlightenment. So it's not acceptable. People who pray in the street must be found a place of worship and they have places of worship available to them."

The President of the French Council of Muslim Faith (CFCM), more moderate and precise on this subject, took time to put this issue in context, while putting forward a number of areas of reflection to remedy it.

Mohamed Moussaoui stated: *"I myself asked (...) for the creation of a joint commission between the prefecture and the mayors concerned, namely Paris and Marseille, because it is in two or three cities that the problem arises. In two or three towns, all towns combined, it does not total 15 places of worship. I think that creating the Joint Committee between the prefecture, the mayor and the CFCM, even the regional council of the Muslim faith at local level, and discussing together the solutions that we could apply..."* (Mohamed Moussaoui, CFCM)

Conscious that this question cannot be summed up in a few short answers in the short term, this Muslim leader also mentioned longer-term solutions, like the construction of new places of worship already indicated above.

"We must facilitate the construction of places of worship, because, in some areas, mayors still highlight considerations that are not related to urban planning to prevent the construction of places of worship. Construction should no longer be a problem for an association. We should therefore improve the granting of administrative authorisations to build places of worship and also find means of funding places of worship." (Mohamed Moussaoui, CFCM)

In the medium term, there remains the solution of making available rooms that could accommodate the faithful.

"The medium-term solution (...), one could imagine that municipalities can make available to Muslims rooms with a hire in return, of course, to stay within the framework of non-financing of worship, a rented room for prayer time. It's feasible especially when we have a limited number, there are three places of worship in Paris, so we have to find three rooms in Paris for Fridays. It's a timeslot of up to two hours, or one hour or so, so it is feasible." (Mohamed Moussaoui, CFCM)

Another type of more structural response would consist in organising two community prayers, one after the other, instead of a single one.

"While waiting to find rooms, Muslims themselves can help find an immediate solution, but which should be temporary. This solution consists in providing two services in the same place of worship. One can imagine that one group does Friday prayers for example at 1pm and ends at 1.30pm or 1.40pm and another group comes to pray with another imam at the same place of worship. We can offer such solutions, but only temporarily, as they pose constraints, we must shorten the sermon on Friday to allow for two sermons. We must also manage when the faithful exit. So Muslims can make the effort to say, until they find suitable rooms, let's make the effort, but let it be a temporary solution." (Mohamed Moussaoui, CFCM)

It should, however, be recognised that, in certain circumstances, when confronted by systematic stonewalling by municipalities who refuse to consider the opening of suitable places of worship, the fact for believers of performing their devotions in the street can also be brandished as a means of making oneself heard and to denounce *de facto*, if not *de jure*, discrimination.

So, in August 1989, in Isère, after what was described as an error - the town's mosque had been razed to the ground by a bulldozer - Muslims reacted by organising collective prayer in front of the town hall

to protest against the decision by the mayor to put the opening of a new place of worship to a local referendum.

In 1991, the Turkish Muslims of Strasbourg organised the Eid prayer on Place Broglie in the heart of the city, opposite the town hall, in order to draw attention to the fact that they did not have a place of worship large enough.

One of the people interviewed, in charge of a mosque located in Aix-en-Provence, directly mentioned this option to denounce the lack of goodwill of the municipality which clearly never desired to tackle this question of constructing a larger place of Muslim worship than the current premises or when, at the time of the festivals, they were only offered rooms that were too small, even equipped with fixed seats.

“We should not lose heart as a result. If the sports halls, kindly placed at our disposal for the celebrations of the two main annual festivals of the Eid are no longer adequate, we will find ourselves having to perform our prayers on public highways. The square by the town hall appears to be adequate - and interesting symbolically...” (President of the Southern Mosque of France)

Pastor Baty insisted that this issue of praying in the streets has nothing to do with the rule of secularity, but with that of public order. As a believer, he feels that access to public space is open to all and that believers should not be excluded from it.

“Here it touches another sensitive spot,” he warns, *“the issue of public space, because the religious should be excluded from public space, well no, that's not secularity. Because some laypersons would like us to be rational in public space, in a way that citizens have no religious scent or convictions. (...) So, public space is made for everyone. It is obvious that, if we agreed to Catholic processions in the streets, I don't understand why they would not accept a priori that Muslims pray in the streets. Provided that it doesn't interfere with traffic. I also imagine, (...) I know that Muslims pray in the streets because they have no room in the mosques. So you have to facilitate the construction of mosques and ask them to offer more services. Among Protestants, it is always done like this, when there is not enough room, we offer several services, so there are adjustments made.”* (Pastor Claude Baty, FPF)

The suggested parallel between Muslim street prayers (rejected) and Catholic processions which are accepted and clearly protected by the law, since they are of a traditional character with a long history, illustrates a rather largely shared feeling that many legal measures tend to consolidate the balance of power between religious groups to the benefit of just the historically dominant groups.

These situations are often bad experiences for minority groups which encounter more difficulties in taking advantage of their rights than majority groups. Here we initially find the reflection of an obvious historical shift, which explains why certain legal texts were adopted, while the religious landscape was even less diversified than it is currently. But this historical disparity is more difficult to bear, when taking into consideration practical obstacles, more administrative than legal, with which minority religious groups are sometimes confronted.

Although Socialist MP Jean Glavany challenges *a priori* the idea that in a secular state there can be equality between the faiths due to the fact that the Republic does not recognise faiths any more (end of the system of recognised faiths), he also puts forward the fact that secularity is synonymous with rights and duties for all faiths.

“Some would like to add that secularity ensures equality between faiths, which would be fundamental when new religions appear, which must be treated on a basis of equal rights and duties like the other, older ones. Admittedly, in a secular state, there is no official religion, no privilege granted to one religion compared to another. It is an issue which we encounter here - how a religion such as Islam, now the second religion in France, can feel legitimately frustrated at not being treated like the others,

in particular with regard to the existence of an insufficient number of places of worship.” (Glavany, 2011)

Political takeover of Russian Orthodoxy and its religious heritage?

Outside this issue, related to the conditions of public exercise of the Muslim faith, one must mention another scenario, involving an Orthodox community in the South of France.

It was directly exposed to us by one of the people we met in the context of the RELIGARE programme, as it happens, the Orthodox Rector Jean Gueit.

It is not about a problem of public streets temporarily being occupied by the faithful, but the decision to close to the public (visitors) a religious building, a historical monument, taken by a religious association following a dispute with the Federation of Russia and relating to ownership of the building.

The case is a new kind of tension surrounding the Russian-speaking diaspora in Western Europe and in France in particular. It should be recalled that the vast majority of French Orthodox belong to the Russian Archdiocese for Western Europe which depends on the Ecumenical Patriarchate (140,000 faithful). Then follow those depending on the Russian Orthodox Church Outside Russia (9000), with which most communities have officially returned to communion as part of a reconciliation in 2007 with the Moscow Patriarchate. The latter is also represented in France by the Archdiocese of Chersonese (5000 persons) (Roberti, 1998).

The case relates to a dispute on ownership of the land, on which the Saint Nicolas and St. Alexandra Russian Orthodox Cathedral of Nice stands, a monument listed in the general inventory of French historical monuments.

The Russian Orthodox Cathedral in Nice had been built in the early 20th century by the last Tsar Nicolas II, on land from which the first plots had been acquired in 1865 by his ancestor Alexander II to build a mausoleum in memory of his eldest son who died in Nice. This dispute opposes the Russian Orthodox religious association (ACOR), which has managed the faith since 1923 and is under the authority of the Russian Exarchate of the Ecumenical Patriarchate in Russia, and the Russian Federation.

The facts are as follows: in 2006, the Russian Federation seized the High Court in Nice to launch an action to claim ownership of said cathedral. It turns out that the emphyteutic lease signed eighty years ago giving usufruct of the cathedral to the religious association was due to expire in 2008. The association believed it should be considered as the rightful owner of the building, in addition one of the most visited in France and enjoying a comfortable financial position. An initial judgement was delivered by the court on 20 June 2010, recognising the rights of the Russian Federation to ownership of the building based on a historical continuity between the Russian Empire, the Soviet regime and the Federation. The opposition defends the idea that it concerns an asset, private property of the Romanov family, and not state assets. The decision by the High Court in Nice was based on the nature of emphyteutic lease under which the association occupied the premises, arguing that the lease did not give it the right to "adverse possession", that is to say, to acquire any property rights through lasting occupation of the property. The French justice system has therefore given the Russian state full ownership of the building, the land and all the works of art and other assets located in the cathedral. This includes many valuable assets, which are also listed, including a superb iconostasis and some 300 religious icons. The religious association has appealed against the ruling. A new decision of the Court of Appeal of Aix dated 30 March 2011 has confirmed the previous ruling. The association, which has been repeatedly approached by Russian officials (diplomats) accompanied by religious officials linked to the Moscow Patriarchate, has not given up and has announced that it would file an appeal. Its lawyer is challenging the ruling, arguing that the Bolshevik regime had officially renounced on all obligations of the Empire, so there should be no question in their minds of any continuity between the empire of the Romanovs, the Soviet regime and the Russian Federation which succeeded it.

During the summer, incidents have multiplied. The Russian Archdiocese of Chersonese (Moscow) announced it had formally appointed a new rector, while the Russian Federation, as recognised owner of the premises, used a bailiff to serve on the religious association the suspension of its access rights (3

euros per visitor)⁹⁶; it responded in September by announcing the closure of the building to tourists. This example illustrates quite well how the management and daily exercise of a faith with ancient roots in France is not immune to one-upmanship and can equally serve as a sounding board for more political issues that go beyond simply a national level.

So as to better understand what was at stake in this conflict and the nature of it, it is important to clarify the socio-religious and political context in which it took root.

Let us listen to the account given by Rector Jean Gueit on this subject:

“Basically, the question had not arisen because there was a quasi break-up between those who arrived here and the 'mother' churches which remained under the authority of, or in allegiance with, Communist regimes. Except for some sporadic cases here and there, basically there was no possibility for mother churches to act on their parishes. The consulates and embassies tried a little, but that did not have much effect. It was with the end of Communism, here implying the liberation of the churches, that not only did this bring about new immigration, which was this time economic, and not political, but it was also undeniably accompanied by the desire of religious authorities in the place of origin - therefore Russia, Ukraine, Serbia - to exert a kind of control over orthodoxies here. This is one of the causes of tension for the Russians, between those who do not want to agree to be subject to the Patriarchate of Moscow, for historical reasons, and those who do. And it is undoubtedly, unfortunately, the greatest area of tension currently in the Orthodox world”. (Father Jean Gueit)

Russia today is marked both by a state that, despite the formal separation of Church and State, relies more and more on the Orthodox Church (Moscow Patriarchate), a useful assistant for moralising Russian society and a vehicle of patriotism. For its part, the patriarchy is trying gradually to recover its property assets confiscated during the Revolution, while increasing its influence on society. Supported by civil authorities, it also intends to recover to its advantage religious buildings built by the Orthodox diaspora outside Russia.

This consists concretely - where historically Orthodox communities exist, composed of descendants of Russians who fled the Bolshevik revolution and the Soviet system, and sometimes drawing on support from new Russians who emigrated for economic reasons - in firstly providing direct support to parishes remaining under its authority, in undertaking construction projects of imposing buildings (Paris, Strasbourg) and in taking care of the theological training of Russian priests on site (Russian Seminary in Paris). For the other Russian communities not under the authority of the Patriarchate of Moscow and, in particular, those under the authority of the Ecumenical Patriarchate, a trial of strength has begun to gradually recover their churches. According to our information, the method used is often to cause splits in religious associations managing buildings of worship in order to then appeal to the justice system and claim ownership of said places of worship. If necessary, an appeal may also be made directly to the French courts for restitution for the exclusive benefit of the Russian State. This is what happened successfully in Nice.

“By contrast,” Rector Gueit explained, *“everything to do with religion and church, which has in reality escaped from Russia and the Patriarchate of Moscow, has become the object of covetousness and a resource recovery challenge. There are some in the United States, in the Middle East, in Europe, in Rome and in France. Then in France, there was Lyon and Grenoble and there is especially Biarritz and Nice. So, according to the situation, Russia has acted either via the State or the Church. In Biarritz, the operation consisted in creating a religious organisation parallel to that which already existed, it was a kind of internal putsch, but which did not work. And here, French justice reacted correctly, because it was demonstrable, legally demonstrable, it went to appeal, but here I'm speaking about Biarritz. It was a conflict officially between two religious associations, but behind which, there were authorities, either our historical authorities here, or Russian authorities.”* (Rector Jean Gueit)

A trivial problem, of law opposing a foreign state to a religious association in French law for a building of worship, lays bare the political utilisation that can be made of a religious tradition by a

⁹⁶ The Russian orthodox religious association of Nice would have the annual 500 000-euro budget, the fruit of the personal gifts (donations) and the received rights of access.

seemingly secular state, and the persistent links between this state, officially governed by a regime of separation, and a religious authority.

“(...) it is obvious that everything indicates that the Russian Federation has made it an absolutely phenomenal point of honour to recover this cathedral and that it is an affair of state. It is an affair of state in the sense that Nice Cathedral is without doubt the object of a set, of a collection of agreements which may be signed now, or negotiations, signatures which can currently be passing between France and Russia, such as, the famous Mistral ships, helicopter carriers or the purchase by Russia of a very important plot of land on Quai Branly. Saint Nicolas' Cathedral, Nice has a very particular status, (...) the State itself decided to recover all the heritage abroad ten years ago, I forget the exact date, the Duma voted on a document, I do not know if we can call it a law, but passed, let's say, a law establishing a list of all the buildings to be recovered, all the heritage to be recovered in the world, and Nice Cathedral is at the top of this list.” (Rector Jean Gueit)

In these latest developments, this affair also reveals that, in certain circumstances, a religious community organised within the framework of secular law (Law of 1905), while recognising the legality of a ruling by the courts responsible for applying state law in a civil dispute, may also want to uphold its own laws and traditions and adhere to them to withstand the practical implications of said decision by secular justice in terms of religious policing. This brings us back to recognising that, if secular law as it stands is fully able and entitled to uphold the legality of ownership rights of one party (of a state!), the problem hasn't changed, however, with respect to the religious, canonical repercussions of the case and which after all no longer fall within the competence of civil justice.

From a canonical point of view, the Ecumenical Patriarchate (to which the building in question belongs) has therefore been called upon in this matter and the Russian Orthodox community of Nice was hanging on its response and visitors were have to be satisfied with photographing the exterior of the building !

Finally on 15/12/11 the keys of the church were put handed to a priest of the patriarchy of Moscow.

As is, the state law was stronger than the canonical law !

Although not relating directly to the dispute around the Russian Orthodox Cathedral in Nice, we owe it to ourselves to include a remark made to us by the General Secretary of the Archbishopric of Strasbourg in connection with the issue of the construction of new places of Orthodox worship in France. It happens that the City of Strasbourg has just delivered a building permit for a Russian Orthodox Cathedral linked to the Patriarchate of Moscow, which will be entirely self-financing.

The essence of his remark identifies a certain asymmetry between the way in which one often tackles the question of the construction of mosques in France and construction plans for Orthodox Churches related to various patriarchates, relays of foreign states.

On the one hand, in the case of Islam we are very fussy about capital contributions from abroad, about the requirement to have Muslim communities unite around a sole mosque project, or about the risks of placing Muslim places of worship linked to international organisations under ideological supervision.

On the other hand, we seem to put up with the development of Orthodox churches whose links to foreign states are as obvious as those visible in the Islamic domain, but without that arousing condemnation.

“At this point, one could ask the question about the famous Orthodox church, which raises other questions, because Orthodoxy in Strasbourg is unfortunately divided along ethnic criteria. You need to know that each Orthodox national church has moved its national chapel to Strasbourg. Then, we have the Romanians to whom we are rather close, we have the Greeks, we have the Serbs, we have the Russians. Among the Russians, there are some who go back to the period after 1917, therefore people who were driven out and who continue to pray in Slavonic. There are some who came later and who pray in Russian. There are some from second or third generations and who pray in French. And it is true that one could wonder why it is that only one part of Orthodoxy is favoured and, as if by chance, the part that depends directly on the Patriarchate of Moscow, which has a slightly aggressive policy of visibility. And, as if by chance, this church will be built not far from the European institutions. I find

that it would have been nicer to build a large Orthodox church, to welcome the whole of these communities at the time of certain festivals. However, this is not for the moment. And it is true that the Republic, and this is rather curious, often employs this sort of language with Muslims: 'but let them stop dividing into Moroccans, Tunisians, Algerians. But, what the heck are they waiting for to all unite together?' and, in parallel, we do not say the same thing about Russians, Greeks and Serbs. This is curious." (Xibaut, Archbishopric of Strasbourg)

- Nowadays, the argument of historical precedence is often rightly or wrongly perceived as a pretext to consolidate privileges and to not to take into account social or property disparities between religious groups and not to positively intervene to reduce inequalities in terms of access to places of worship.

- The reference to the secular ideal is then often highlighted as a requirement, not only for equality between citizens whatever their convictions (religious or not) and their other differences (ethnic, generation, sexual orientation...), but also as a requirement for equal treatment between faiths.

Mass catering and timeslots in swimming pools

Alongside requests for places of worship, the pluralisation of the French religious landscape has also occasionally resulted in the emergence of particular religious requests, such as the issue of pork-free meals in public schools, more recently, halal meals, as well as, more occasionally, reserved timeslots made available for women in swimming pools at the request of Muslim associations.

To these various recent questions, the people whom we interviewed gave both concrete answers (negative or positive) and sometimes more general ones, which led them to come to a conclusion about the type of solutions that a secularised society and a secular state are able to provide to unusual requests relating to public space.

The Ministry of the Interior, as a result of different events, acted by specifying in a circular, dated 16 August 2011, "*the applicable legal status as regards mass catering in public services*". (Secularity and religious freedom. Compilation of texts and case law, 2011)

In this text, the Minister of the Interior reminds us that, because of the neutrality of public services with regard to any belief or religious practice arising from the rule of the secularity of the State, "*particular requests, based on religious reasons, cannot therefore justify an adaptation of the public service (...); however, the service endeavours to take into account the convictions of users in the respect to which it is subject and in its sound operation. These rules also apply to mass catering provided to users in such public services as educational establishments or hospitals.*"⁹⁷

So, in state education, under the Law of 13 August 2004 relating to local freedoms and responsibilities, which transferred responsibility for school meals to local communities, the canteen is "an optional public service". In the absence of national regulation, it depends on each competent authority (town council for primary education, General Council (*Conseil général*) for secondary schools, the regional council (*Conseil régional*) for high schools for 15-18 year olds) to decide on the rules in the matter.

So, local communities have, for example, (Circular of 10 September 2004) the freedom to vary pricing according to the service provided (organic food, specific meals for particular diets, diets conform to the requirements of the various religions included!).

⁹⁷Ministère de l'Intérieur, de l'outre mer, des collectivités territoriales, et de l'immigration, *Laïcité et liberté religieuse. Recueil de textes et de jurisprudence*, Paris, Les éditions des journaux officiels, 2011, p 44.

What's more, the Circular of August 2011 specifies that *“the very great freedom in establishing menus and the fact of planning menus around confessional practices constitutes neither a right for users nor an obligation for communities”*.⁹⁸

Equally, parents who provide packed lunches must be examined on a case-by-case basis, without *“the religious beliefs of the pupils and their families being used to justify provision of a packed lunch.”*⁹⁹

As for hospitals, the Circular recalls that *“patients can have the possibility of obtaining meals complying with their dietary regimes in coordination with the chaplain of their faith.”*¹⁰⁰

Lastly, the circular specifies *“that in practice the majority of canteens have been proposing substitutes for pork for a long time, and serve fish on Fridays, thereby allowing for certain regulations or religious recommendations to be respected”*.¹⁰¹

- It has to be stated that we are here faced with issues which, on the ground, give rise to pretty contrasted situations due to a lack of national regulation, but also because of disparate (more or less comfortable) social and financial conditions between local authorities. The very fact of suggesting that regulations can be drawn up nationally and allow widespread respect for dietary requirements would not however suffice to make this principle effective, in the absence of matching financial provisions.

Our recent participation in a departmental conference on religious freedom nevertheless reassured us of the sound basis for this questioning, having heard various accounts from administrative managers, describing issues, if not problems, relating to requests to take into account dietary rules in state education and the hospital system.

The contrasting, pragmatic views of religious leaders

The views of religious leaders were overall quite contrasted. Some point out (as did the national leader of the Muslim faith) the rather marginal character of certain religious claims, whereas others (the leader of the Jewish faith) point to an aberration and the risk of wanting to impose one's lifestyle or religious rules on the entire community.

“Also the fact of demanding separate swimming pools, timeslots in pools, of asking for halal meat in canteens,” said Mohamed Moussaoui, *“all these requests remain marginal, very marginal and the fact of highlighting them in relation to the lives of Muslims in society seems to me an aberration, an aberration that we should correct immediately. All religious traditions without exception are crossed by marginal and radical religious practice and it is focusing on those that are attached in a way or another to Islam that seems to me a mistake, a way of stigmatising Muslim religious practice and this does not do a service to life in society and coexistence that each of us wants to construct.”* (Mohamed Moussaoui, CFCM)

The fact remains that the recurring question of mass catering and difficulties of finding solutions everywhere to Muslim children not eating pork is often perceived by Muslim leaders as the expression of discrimination, often doubled up by social injustice, due to the simple fact that parents pay the same price as other families, while their children do not eat meat.

“Our children cannot consume pork nor non-halal meat. We have not demanded that halal meat be served, but that at least, they can have substitutes (fish, eggs, cheese etc.), so that their meal is balanced. (...) Since my children have been at school, I pay each quarter the same tariff as all the

⁹⁸*Ibid*, p 45.

⁹⁹*Ibid*, p 45.

¹⁰⁰*Ibid*, p 46.

¹⁰¹*Ibid*, p 45.

other families and yet, the meals served to my children cost necessarily less, as they never include meat.” (President of a mosque in the South of France)

This same community leader (butcher by profession) insists on the fact that by doing so, in the long term, his own children end up consuming solely desserts for lunch.

“One of my children,” he says, “told me recently that he could not consume meals without meat any more, because they were served in plates with the same kitchen utensils as those used for meat (including pork). Sometimes he finds in his pasta mince “that has fallen” from the dish next door. All these small miseries mean that in the end, my children leave the school canteen with empty bellies or almost. They sometimes arrange to exchange dishes and desserts with sympathetic classmates, my children consuming only desserts as their meal.” (President of a mosque in the South of France)

With regard to this question of mass catering and requests for *halal* meals, the point of view of the President of the French Council of Muslim Worship (CFCM) is resolutely pragmatic. He starts by recalling that these requests are rather exceptional and puts forward the idea that the best answer would consist in planning meals without meat. In his opinion, this option presents the immense advantage of being able to satisfy a wide range of people of different faiths or philosophies, without being necessarily related to directly religious considerations.

“First, the act of asking for meals with halal meat, is very rare. Requests are often made for the introduction of meals without meat. These are two different things. I think that the fact of allowing a meal without meat meets the expectations of many, because there are not just Muslims, there are vegetarians, Buddhists, Jews. So, much of society today tends to have a relationship to animals that is different. I think that allowing a choice of this type, a meal with meat and one without, seems a solution that has no religious connotations, since the consumer can choose to have a meal without meat. I think we should focus around this solution. Because the creation of halal or kosher etc. meals, might completely disrupt the service of the canteen and it is not necessarily an objective demand. However, the fact of creating a meal without meat seems an obvious solution, easy to implement and is a solution that allows for more vegetables instead of the meat. It seems to me perfectly feasible, if we set aside any ideology, any ideological will preventing citizens from enjoying freedom of choice in terms of religious or other convictions.” (Mohamed Moussaoui CFCM).

His Jewish counterpart, Rabbi Haïm Korsia, is both firmer in his refusal to generalise dietary obligations of some at the expense of coexistence, while appearing resolutely pragmatic in the search for solutions.

“I cannot, just because I eat kosher,” he says, “force everyone to eat kosher. However, I can make sure I can eat kosher without disrupting the system, yes. So, there is a difference between setting up my freedom of religious practice on the one hand, and disrupting the system for it to comply with my wishes on the other. Surely not.” (Rabbi Haïm Korsia)

Rabbi Korsia takes as another example the issue of fasting at Yom Kippur.

“Here, I’ll give you a very clear example. I’m not allowed to work on the day of Yom Kippur. But I never wanted, never ever wanted, the whole of France to stop working on Yom Kippur. What we ask is to be able not to work, and not be penalised by this religious practice. But France must continue to work, because it is alive. And that is symptomatic of a practice, canteen and catering, broadly speaking if the question was about halal, I think there are many ways to eat while respecting one’s faith, without imposing on others a change in anything.” (Rabbi Haïm Korsia)

Mgr Herouard of the Bishops' Conference of France shares the same position.

He thinks that the rules of the public catering service do not have to take into consideration dietary restrictions or religious principles of all confessional groups, whether they are Christian or not.

“If you're in a public setting, the public setting works for everyone.” For this Catholic leader, “We will not adapt canteens to such and such a demand from such and such a community. In the Catholic Church, we say that on Fridays, at least during Lent, the period before Easter, it is asked of us to eat fish instead of meat. And that, in a Catholic school, we allow the canteen to serve fish that day. I would not ask the canteen of the state school to do so. We don't function the same way.” (Mgr Herouard)

A similar opinion was put forward by the Secretary of the Archbishopric of Strasbourg, who put into practical perspective several possible answers to this request.

“In Concordat logic, just as the State and communities take care to satisfy the sporting needs of citizens, to satisfy their requirements for green spaces, well, it does not shock me that the State takes care to satisfy religious needs. As regards claims which are category-specific, we should be more careful (he hesitates), for example, dietary requests. Some of our fellow citizens of two very important religions cannot consume pork. So three solutions: we say 'here this is France, people eat pork, they only have to act like everyone else or let them eat vegetables'. Or then we say that we will arrange for canteens to offer alternatives. Or else, we say that we will remove pork from canteens. Looking at this third proposal, it means that a demand by a particular faith applies to all the others.” (Xibaut, Archbishopric of Strasbourg)

And we asked our interviewee to specify his preferred solution.

“Which can cause problems anyway? If you're in the first row, pork or nothing, we do not respect one thing which is important for one section of the population. It would undoubtedly be necessary to find a solution in which one allows a choice, but it is not always possible.” (Xibaut, Archbishopric of Strasbourg)

Secular leaders and politicians - more reserved...although pragmatic

Among lay leaders, some, such as Socialist MP Jean Glavany, have reported on collective reflection taking place at the moment within the party on these issues of specific religious claims, concerning as much burials and mass catering as single-sex swimming pools. The MP even talks about reasonable compromises.

“There is,” he says, “a problem accommodating secular principles with a number of practical problems on the ground, e.g. cemeteries, canteens. And then there are compromises that are reasonable and others that are unreasonable. I consider that a compromise is unreasonable,” the Socialist MP continues, “when, for example, we reserve a public service which should normally be open to all, when we reserve timeslots for women of one religion to be alone. It is unreasonable, because it is contrary to public service. Or take another unreasonable compromise, when a woman wants to give birth and she does not wish to be touched by a man. It is unreasonable, because it's the right to health and the free practice of medicine and matters of life and death.” (Jean Glavany, PS)

Although he categorically refuses the principle of having meals proposed in public canteens that comply with Jewish or Muslim religious rules on food, he does not recognise any less the need to find solutions adapted to certain situations.

“In canteens, it is unacceptable to say 'We must have halal meals, kosher meals'. But why not have in canteens a choice of menus, i.e. self-service, including for vegetarians? There are kids who are vegetarian or on a salt-free diet. We can make an effort, without a genuine halal or a real kosher menu, but there is self-service that offers meals without us being forced to eat pork. And this is not a provocation like 'Ah ah, if you do not eat pork because of your religion, you'll have nothing to eat,'

that to me does not seem reasonable. So, I think there may be forms of reasonable compromise in canteens by using self-service or à la carte meals.” (Jean Glavany PS).

This analysis perfectly reflects that developed by a former leader of a federation for parents of children in state schools.

“In principle, I am rather not in favour of making differences in the meals intended for children, but, at the same time, as delegate of a parents' federation, I could ascertain that, for certain children, having lunch in the canteen is often the only meal of the day (...); so, I think with regard to this question of food, we shouldn't dig our heels in (...); by sometimes wanting to go too far in secularity, we become less good in humanism (...). We should therefore be vigilant and provide as far as possible for children to receive complete meals and, if they do not eat pork, envisage a substitute like fish or another meat.” (Michèle Mambert, UNSA/FPCE)

She notes, however, that it is mainly a problem for small *communes*, i.e. where a single menu exists. Also, the most adapted solution would be to generalise the option of self-service, going as far as envisaging meals without pork or vegetarian, even vegan.

The leader of the Grande Loge de France seems more reserved on these issues. He fears that, by accepting certain requests, we are yielding to the more 'integrist' religious interests in their way to live out their religion.

“For there to be sufficient choice in canteens so that everyone can roughly choose, in relation to the big taboo items of food present in all religions, this doesn't pose a problem, but for everything to apply, this is not possible. The Republic,” he says, *“cannot allow it; if there are really religious integrists, they can just eat at home. (...) There are different degrees in dietary restrictions, there are those that have an important symbolic meaning for the religious and others which have no symbolic meaning, this is where integrism can find its niche.”* (Alain Noël Dubart, GLDF)

Communist MP, André Gérin, wants to be just as categorical, by clearly refusing any idea of accepting religious rules on food in the services of mass catering.

“There is no reason to grant religious requests in schools. For me, that is the answer. So, there is no reason for Islam to intervene in the life of the school.” (André Gérin, PCF)

Despite his very firm tone, this MP considers, however, that it is necessary to work in parallel on explaining to parents so as to play down the situation.

“On the other hand, dialogue must take place with the parents. (...) I think that compromises should not be made. I will take another example, because the example of halal is always used. Why would it be forbidden for a child to eat meat within the context of public space? Because the question should be reversed. On which grounds should a religion intervene in the principles of the Republic? Because here, we are no longer in the religious or spiritual, but the political field. We have to get to the bottom of the question.” (André Gérin, PCF)

On the UMP side, the MP and mayor whom we questioned on this issue, started by saying that he had on several occasions been called upon by parents of schoolchildren to provide halal meals.

He then introduced the way in which the issue of the presence of pork is resolved in school canteens in his *commune*.

“To date we agreed in the contractual specifications with the company making the meals, to always envisage taking into account certain diets for medical reasons and to plan substitutes for dishes with pork and we are sticking to that.” (Jean Claude Guibal, UMP).

An elected Socialist from Strasbourg told us of a local experience that has for many years consisted in offering a variety of adapted meals and respecting various food regimes in all the school canteens in the city. For him, this broad range of meals - halal and vegetarian - allows all children to be able to share the moment of the meal together, just as they share study time.

“So, for years (...) in Strasbourg there have been regular meals in school canteens, halal meals and vegetarian meals. (...) I think it's a good thing. The idea is still to allow all children to attend the school of the Republic without at some point coming up against a restriction, let's say, of a personal nature. So going to school and what goes along with it. Because school today is not only school time. It is also the time of the canteen, that allows children to stay with their buddies, a socialisation that occurs within the school of the Republic. And that is why we must now encourage and enable by adapting canteen menus to the requirements of each person. The goal is not to leave everyone in their bubble, it is precisely the goal - and that's what the Republic is for me - to ensure that all children can just, whatever their beliefs or their parents, live together and share together all the times during the day.” (Bitz, City of Strasbourg)

This Socialist official is incontestably the boldest we could have met. He endeavours to reflect on and suggest solutions which can assure, within one department and for the benefit of the school public, the reception of all children, without them being ordered to give up their specific diets and without having to delegate management to their respective communities or families.

“(...) If it is not possible, what does that mean concretely? It means we actually send home children with these requirements, whether the Jewish community or the Muslim community, we send them home either to their families, which can cause problems especially for the professional integration of women, (...) or we have childcare outside of school hours, inspired by true communitarian principles. And finally, they are returned to the community. Basically, this is how we get to manage different identities in a broader, more global system. And I think it's best that everyone lives with all their differences, whether kids or people, we can generalise about swimming hours, living together with their differences rather than separately.” (Bitz, City of Strasbourg)

Here we are unquestionably talking about an alternative way to publicly manage religious diversity, which directly echoes the audacious and pioneering policies practised by different, successive Socialist councils running the City of Strasbourg on matters of local management of religious diversity, under the system of recognised faiths and local law in the Alsace-Moselle region.

Some of our interviewees did not hesitate to resort to the concept originating from Quebec of *“reasonable compromises”*. Already mentioned by Jean Glavany, the statements by Pastor Baty of the Protestant Federation of France (FPF) on the question of times adapted for women in swimming pools refer explicitly to this.

“It should be left to local people to take charge of things. The mayor,” said the President of the Protestant Federation of France (FPF), *“must be able to meet people and they must be able to agree. From my point of view, it is not normal for a small group to impose its law on everyone, but if we can find an arrangement so that everyone can live the way they want to live, there is no reason to refuse it. We must reject a secular ideology that wants everyone to do the same thing and there is no difference. So, you need flexibility, I'm quite supportive of what Canadians call reasonable compromise.”* (Pastor Claude Baty, FPF)

- On the issue of requests for pork-free meals, most of our interlocutors have provided precise answers which in the majority show a willingness to partially take into account, from time to time, certain details with regard to food, but without ever resulting in providing specifically halal meals.

- On the issue of swimming pools, the refusal was overwhelming, although some religious decision-makers and a local politician regretted that such requests were not handled on a case by case basis with

a view to educating rather than prohibiting. We find the same type of argumentation developed by those who criticised the vote on the law prohibiting the full veil in public.

D) Public funding

In this introductory section, our remarks will be limited to presenting in succession the principles governing the subsidising of faiths in general law and in local law in Alsace-Moselle.

Unlike most European states, secular France is distinguished by a plurality of asymmetrical regimes of the faiths, which each have specific methods for funding religious activities and institutions (Messner, 2011).

If direct public subsidies for faiths are strictly prohibited in general law, where the Law of 9 December 1905 prevails (Article 2), it is, on the other hand, required in Guyanese and Alsace-Moselle local law. In a famous decision of 16 March 2005, the Council of State stated: *“The constitutional principle of secularity, which implies neutrality of the State and local authorities in the Republic and equal treatment of the different faiths, does not, in itself, forbid granting in the public interest and under the conditions defined by law, certain subsidies for activities or equipment required by the faiths.”*

In general law

Article 2 of the Law of 9 December 1905 has legislative force, but no constitutional bearing. Only secularity has had constitutional value since 1946.

As Francis Messner identifies, *“The French system of financing religions is (...) built on exceptions.”*¹⁰²

The Law of 1905 with its separation of faiths and the State provides in the very letter of Article 2 for the principle of not (directly) subsidising faiths (*“The Republic does not recognise, does not pay nor subsidise any faith.”*) as well as several exemptions from this principle (*“Expenses relating to running chaplaincies and intended to ensure the free exercise of worship in public establishments such as high schools, primary schools, retirement homes, asylums and prisons could, however, be incorporated into said budgets.”*)

The ban on all public subsidies for faiths is clearly subordinated to the principles of freedom of conscience and worship. It is the duty of the State to monitor the rules guaranteeing the public practice of worship, as the first article of 9 December 1905 states: *“The Republic ensures freedom of conscience. It guarantees the free exercise of the faiths subject to only the restrictions published hereafter in the interest of public order”*.

Moreover, the Law of 13 April 1908 completed Article 13 of the Law of 1905 by specifying that: *“The State, the départements, the communes and the public establishments for inter-communal co-operation will be able to undertake expenditure for the maintenance and conservation of buildings, the ownership of which is recognised by the present law.”*

The Law of 25 December 1942, modifying Article 19 of the Law of 1905, authorises public subsidies for work completed on buildings of worship belonging to religious associations, whether or not they are classified as historical monuments.

Apart from cases linked to the repair of buildings of worship, French legislation also provides for a procedure, which goes back to 1928, consisting in local authorities renting to religious associations at an advantageous price a plot of building land intended to accommodate the establishment of a future place of worship for a maximum duration of 99 years. At the end of the lease, the land and the construction on it become the property of the local authority. This technique of the emphyteutic lease has made it possible to reserve land in the new agglomerations for the construction of churches.

¹⁰²MESSNER F, notice « Droit français /Financement des cultes », in MESSNER F (ed.), *Droit des religions*, Paris, CNRS Editions, 2011, p 343.

Another procedure of indirect assistance consists under the terms of the rectified finance law of 29 July 1961 (Article L. 236-1 of the Code of the *communes*) in providing for the possibility of guaranteeing loans intended to finance the construction of buildings of a religious nature, meeting the needs of local or faith groups. *Départements* as well as *communes* and the State (via the Ministry of Finance) can therefore act as guarantor for said loans.

Other provisions and texts open up various ways for the *communes* to take on certain expenditure for worship (remuneration of ministers of religion for taking care of the buildings owned by the *communes*, residences rented at modest prices to ministers of the former recognised faiths), not to mention the contribution by the general regime of social security which is intended to cover the deficit of the pension and disability fund for ministers of religion (CAVIMAC).

In Alsace-Moselle local law

One of the particularities of Alsace-Moselle local law is on the one hand the duty imposed on the State to pay ministers of the four so-called recognised religions (Catholic, Lutheran, Reformed, Jewish), on the other hand the obligation for *communes* to ensure the balancing of the budgets of local, public institutions of the faith.

Insofar as the provisions of the Law of 1905 do not apply to the three *départements* of the East of France (Upper Rhine, Lower Rhine, Moselle), local communities, even the State, can also provide faiths with economic support independently of their respective status (recognised or not), whether they are organised within the framework of public law (recognised faiths) or of private law (non-recognised faiths).

The Ministry of the Interior pays ministers of the faith and employees of the secretariats of higher religious authorities. As for the Ministry of Education, it assumes responsibility for paying temporary teachers of religion in primary schools, permanent and temporary teachers of religion in secondary schools, as well as academics teaching in Faculties of Catholic and Protestant Theology in Strasbourg and teachers of religion in university teacher-training institutes.

Although the principle of self-financing of public establishments of the faith is the rule, the *communes* also have to include in the communal budget precise expenditure on religion, such as housing allowances due to the recognised ministers of religion when no buildings have been assigned to house them, and to make up for public, religious establishments with insufficient revenues.

...and some other forms of public support

State support for faiths can be also measured by the place for religious expression made available within the framework of the public service of audio-visual communication. So, at the end of Article 56 of the amended Law of 30 September 1986, *France Télévisions* (a public broadcaster) is obliged to schedule programmes of a religious nature on Sunday mornings, reflecting the principal faiths exercised in France.

These programmes are placed under the responsibility of the representatives of the faiths and the production costs are directly paid for by *France Télévisions*, up to a ceiling whose amount is fixed each year in the contract specifications.

To date, the programmes shown cover the Catholic, Protestant, Orthodox, Eastern Christian faiths, Judaism, Islam as well as Buddhism. The Council of State had the opportunity to specify in one of its decisions that groups calling themselves atheists could not claim access to this provision, as the conviction which motivates them is not comparable to a faith.

With regard to public radio (Radio France), the Decree of 13 November 1987 lists provisions similar to those in force on public TV channels. On the waves of France Culture, various faiths can express themselves every Sunday, like various movements claiming to be free-thinking and Freemasonry via the Sunday programme *Diverse aspects of contemporary thought* (Riassetto, 2010).

Tackling head-on the issue of public funding of religion in the French context and particularly among some public figures (leaders of political parties!) or secular associations may seem nonsensical, such is

the idea anchored in minds that a secular republic has absolute no role to play in granting public funding for religious associations whose primary occupation is religion.

In our interviews, we also wanted to link questions on the state financing of religions to those on religious worship, including proposals to amend the 1905 Law to make possible direct public funding for building places of worship.

We also questioned our interviewees on the particular issue of the system in Alsace-Moselle for regulating the faiths, which is itself based on a legal principle of explicit guaranteed support for certain recognised faiths (Catholicism, Protestantism, Judaism) and optionally for the others.

By cross-referencing these two issues, our objective was to gather the views of the interviewees on a possible reform of both systems (modifying or maintaining the Law of 1905, extending the system of recognised faiths to other faiths or abandoning it!).

Finally, we also questioned the majority of the people on the option supported by the current government to set up training courses of the civic type, intended for different religious leaders and more particularly those from Islam.

More or less contrasting divisions between religious and secular representatives on public funding for faiths

In a first series of questions designed to suggest advancing in unison with the current state of legislation in the light of the religious pluralism of French society and new demands that may arise, our partners were led to give clear-cut answers.

The dividing line appears initially rather accentuated between religious and non-religious leaders.

“The State has no claim over the fact that faiths and churches express their views on problems in society. It is perfectly normal, why do we prevent a church, a priest, a rabbi, an imam from expressing their views? But if there are specific claims for particular laws and statutes, particularly for State aid, the answer is no. Churches, mosques must be built from private funds.” (Leader of a militant secular organisation, former Grand Master of the GODF)

And the same person continued:

“I am against subsidising religious associations just as I’m against associations of atheists. The State does not subsidise personal convictions.” (Leader of a militant secular organisation, former Grand Master of the GODF)

This leader even considers that the first two articles of the 1905 Law establishing that the Republic provide for both freedom of conscience while ensuring freedom of worship in the interest of public order on the one hand, and prohibiting direct subsidies for religion on the other hand, should have constitutional status, to prevent any attempt to rewrite them.

“I think,” he declares, *“that Articles 1 and 2 are inviolable principles of the Republic and should be written into the constitution.”*

For him, the laity should move from a defensive stance to a more aggressive one and “return to republicanism and republican secularity”. (Leader of a militant secular organisation, former Grand Master of the GODF)

Same response (less lyrical!) from the Socialist MP in charge of secularity, Jean Glavany.

“The Socialist Party is completely opposed to this idea of changing the 1905 Law in order to finance places of worship. Why? Because it is not necessary. Do you know that today we build each year dozens of mosques in France? We inaugurate them every week, and they are not state-funded, we do

not need them! It makes people believe that it is a problem of funding, when it is a political problem.”
(Jean Glavany, PS)

If, in his view, mosques are missing from certain Muslim communities, it is not, however, a reason to reconsider the direct ban on subsidising places.
It is about above all a political problem, an absence of political goodwill and not a funding problem.

“It is to make mosques where politicians wish for it to happen. It does not happen, not because of problems of funding, but because politicians do not want that to happen. There are elected officials who cherish their electorate, saying 'I will never let a mosque be built in your neighbourhood,' for political, not financial reasons.” (Jean Glavany, PS)

To raise the question of public funding so as to prevent funds coming from abroad does not find favour in his eyes.

“As for this idea of saying (that public funding is necessary) so that funding should not come from abroad, why should funding not come from abroad? Because if it comes from abroad, would it be suspicious in itself? And does the Catholic Church have no funding from abroad, from the Vatican? I do not see how funding from abroad would in itself be reprehensible. If funding comes from fundamentalist and terrorist groups, there is no need...intelligence services, espionage, customs, tax departments all have the means of knowing where it comes from. But being from overseas is in itself not a bad thing! And it does not shock me at all! And if it shocked me, it would shock me for all religions. Do you believe that there are no funds coming from Israel to finance Lubavitch schools?”
(Jean Glavany, PS)

In his mind, the slightest opening-up to favouring public subsidies for the construction of places of worship would constitute in fact a breath of fresh air and a godsend for the other faiths.

“(…) If we wish to play around with the 1905 Law, the list of demands is as long as your arm, and not only from Muslims, but from Protestants and those who have not benefited as much as they would like from 1905, and Protestants in particular, who have significant demands. And so if we begin to open this Pandora's box, it will never end and we will destroy the 1905 Law.” (Jean Glavany, PS)

Further analysis of the responses shows that, nevertheless, possible lines of convergence exist between seemingly opposing positions in terms of indirect forms of public aid to religion as to the rental of land, the loan of community halls, or by facilitating the construction of places of worship through loan guarantees or simplified administrative procedures or even financing the civic education of religious leaders.

The *a priori* categorical refusal to see legislative change in the sense of the public assumption of religious needs (financing the construction of places of worship!) does not therefore always mean a rejection of any form of state aid.

So the Grand Master of the Grande Loge de France started by declaring that the Law of 1905 should not be touched at all:

“Our position is very clear, the law imposes itself on us all. It is not to be rewritten or modified. It has ensured the Republic for a century and it is the government which must make the law apply. There is no need to make grand commentaries on what the law is (...) unless we can show that it is no longer sufficiently modern”. (Alain Noël Dubart, GLDF).

Then, questioned on whether, as a consequence, it was necessary to abolish all the other systems of regulation of relations between faiths and the State in force throughout the Republic, his answer was less clear-cut.

“I think that we must be pragmatic. That the 1905 Law must impose itself everywhere, that seems obvious to me, that it must impose itself everywhere immediately, that does not appear obvious to me, on the other hand. We cannot transform in one go a society which does not have... I'm speaking about Mayotte for example, which has a very marked Muslim tradition, you will not transform it in one go, from one day to the next, into a society which is attached to traditions and principles in a secular society. That takes two generations, there is a process. There is also a minimum of respect for local cultures. The culture of the Republic was made in..., from 1789 to 1905, that makes 116 years in any case. We cannot require either that a society like Mayotte passes brutally from a culture that is, I was going to say traditionally religious, to a secular culture from one day to the next. It would take several generations. On the other hand, the goal is very clear, we cannot accept in the long run, for shari'a law to persist over the long term. You have to adapt progressively, it's a question of education.” (Alain Noël Dubart, GLDF)

Likewise, he recognised that the rule of the exclusively private financing of places of worship could be adapted.

“Places of worship by definition are financed by followers of the religions in question. Anyway, it needs changing,” declared the Grand Master of the Grande Loge de France (Alain Noël Dubart, GLDF).

For him, the following question should be asked: *“Are the followers of the religion in question able to finance their place of worship? If they are not from socio-cultural milieux sufficiently developed to have the money to do it, then I guess that especially for Islam, the place of worship is often funded from the outside and (...) those who teach religion are also funded from the outside, by bodies or by countries that have a different notion of secularity to the Republic. That poses a problem. Should we fund the place of worship, I don't think so. Should we help, fund in a way those who will teach religion, it is not impossible. The German system is perhaps not so bad. In the sense that there is funding through taxes, not of places of worship, but of the teaching of religion.”* (Alain Noël Dubart, GLDF).

Another (GLNF) Freemason leader adopted a rather similar point of view. He did not hesitate to recognise that the Republic should probably give a boost to Muslims to help them have places of worship adapted to their religious practice.

This is a view similar to that already advanced in the 1990's by Jean Pierre Chevènement, former Minister of the Interior, who felt that we should consider a one-time exception to the rule of non-public subsidies for religion to allow some minority religious groups to have places of worship in sufficient numbers with state aid.

“Moreover,” in the words of François Stifani, *“Protestants have places of worship and are organised; the Jews are too, despite an erratic history in relation to the Republic, and likewise Catholics. But there aren't any Muslims and the Muslim faith did not exist at that time. It was to appear in the nineteenth and twentieth centuries, but let's be clear, it has not been treated as an equal and today the problem it poses is that Muslims are numerous and they have clear demands, in particular, to have places of worship. So I think it's a question that must be addressed, and maybe treated with a boost from the republic, considering that there is no equality between citizens in their access to places of worship. If the Republic and the states are not aware of this inequality, there is a risk of transversality.”* (François Stifani, GLNF)

To a new question on the possibility of imagining public funding by local authorities, his answer was even more direct:

“(...) Yes, I think it would be fair enough for aid to be arranged. You know, I am very comfortable talking about that, because the French National Grand Lodge, which has only been around for one

hundred years, which could be similar to the Muslim faith in its material necessities, has never received a single penny from public funds. (...) I think we should take into account the actual capacity of funding members of the French National Grand Lodge and the Muslim faith, as we could still say that they are not from the most privileged layers of our society. So without mentioning use of public funds, because then it would trigger a large controversy where people will say that 'the state has not to interfere with religion' (...). I think that the Muslims' claim is not to belong to a foreign state (...). I think that it's about finding one's roots through a faith they do not know, while wanting to be French. I think that's a paradox and that's why we had better clarify the debate on secularity and know what we are talking about.” (François Stifani, GLNF)

The current Grand Master of the Grand Orient de France, Guy Arcizet, formally opposed to any change in the Law of 1905 and therefore any public funding of religion, said, however:

“Religion in one place and the state in another, this principle is fine. But (...) the 1905 Law did not take account of a very special factor,” he immediately clarifies, “the changing society, the changing social mix, which manifests itself now in religious diversity, in ethnic mixing, which is taking place in Western countries. The Muslim religion in France became a very important religion, just as Judaism, as well as Catholicism and Protestantism, and we realise that there are gaps in the 1905 Law, insofar as it is true that we do not subsidise any faith and do not build any place of worship.” (Guy Arcizet, GODF)

If this shift can be explained by historical reasons, in particular the seniority of the presence of Christianity in France and of the relative novelty of the Muslim presence, that should not lead to not recognising that society has changed and that new political prospects are to be envisaged.

“But there are differences that are related to France's past, which are related to the culture, I don't mean the roots, to Christian culture in France, which is not the same as the roots. France is of Christian culture, which manifests itself in the landscape as there are many churches, and there is no doubt that these churches are part of the heritage, they are maintained by the state and local governments. On the other hand, buildings belonging to other religions, be they synagogues or mosques, are not. There is something missing somewhere. When you're in a town where there is a church that is being repaired and you see a large sign where you see that it's the state, commune, département or region, which is contributing money, and you are a Muslim or Jew in this town, to which you pay your taxes used for this purpose, and you read that's it for a church, there is a issue here. And we need to ask this question on a political level in Western societies, and this responds in particular to the question you asked you on a secularity that will be forced to evolve relative to societies. It is a political principle that must remain, but must remain in harmony in the society in which it is evolving.” (Guy Arcizet GODF)

Examining these statements, it can be concluded that if the 1905 Law responded to a historical necessity, not to think about rewriting it, but its better adaptation to a society that has itself evolved is not prohibited nevertheless.

At another point during our interview, Guy Arcizet insisted on further clarifying his thinking on public support for faiths in these terms:

“Public funds, by definition, are destined for the community, and not to any particular religion, with the reservations I have spoken to you about regarding the repair of churches. And then, (another) possibility is donations. These are funding opportunities by collecting donations that are, however, very limited. I myself believe that public funds should not be used directly, but that we should be able lend money to religious communities who wish to equip themselves with monuments, at special rates, with payment terms. We should make things easier, but not fund them directly, no.” (Guy Arcizet, GODF)

The only secular leader we met to have clearly opted for opening up a debate on the public funding of religion - and particularly of minority religions, is an elected Socialist from Alsace.

“So, we know that on the French national territory solely money from the faithful is not sufficient to bring Islam to where it needs to be, that is, allowing everyone to practise their religion in conditions of dignity and security, I mean concrete security...that necessarily poses serious problems in terms of public safety. So what do we do? We can open the way for public money, why not, (...) So, I say yes, there may be public contributions and there may be foreign contributions that can be perfectly well managed. Transpose this a little with the parallel of the language of worship, which is still a big issue; only Islam is subjected to that trial and a section of public opinion (political leaders) would require that prayers or preaching takes place in French. Here, we would never have thought of asking this of a Vietnamese community. And that's what's a little disturbing in general, I find, in the relationship with Islam, it's that it is always tinged with suspicion, mistrust, which is not very pleasant. Here, there are still Protestant services that take place in the German language, and it never occurs to anyone to ask for this worship to be delivered in French. Whether it's about the funding, or the question of the language, I think that we should have simple principles, notably equality.” (Bitz, City of Strasbourg)

Except for this Alsatian Socialist official, rare are the politicians from the Left to agree to publicly announce a systematisation of direct public subsidies, in order to support the construction of new places of worship. Honesty obliges us to recognise that there is essentially only Manuel Valls, MP and Mayor of Evry, who, within the Socialist party apart from any reference to Alsace-Moselle, has stated to be in favour of financial participation of the State in the organisation of Islam, whether at the level of the planned construction of places of worship or of training imams (Valls, 2005/2006).

“(...) Secularity is experienced,” he says, *“as a pretext to weaken the confessions of the latest newcomers, a subtle system to selectively help religions. A feeling of religious discrimination was thus born (...) the Law of 1905 must then evolve. It can be amended without being distorted (...) I am favourable for my part, to a responsible, public evolution to allow the Republic to send a strong sign (...) the modification would consist in authorising public funds for construction via foundations (...). That would make it possible to avoid, on the one hand, too strong a structuring of the community, an undesired effect, but quite real effect of our incapacity to understand the limits of our model and, on the other hand, to avoid the effects of financing from abroad that are significant in various ways.”*¹⁰³

Unlike the Foundation for the Islam of France, set up by Dominique de Villepin and which is intended to receive under state control funds from abroad intended for Muslim communities in France and to ensure their transparency, Manuel Valls suggests a Foundation in which the State and local authorities would be present and participate directly in the financing of construction of the places of worship.

*“To refuse foreign funding and want to establish a certain balance between faiths requires the State to call for it.”*¹⁰⁴

As regards the UMP majority party, the only opinion that we could gather was that of an MP and mayor broadly engaged in relations with the Arab world.

His position is full of nuances (favourable to an evolution of the legislation, but not in the current context!) and conveys rather well a feeling rather broadly shared by many political leaders on the Right, according to whom the letter of the Law of 1905 no longer corresponds either to the religious reality of today or to the practice of public actors.

That said, they also consider that, to begin such a debate, in particular in a period of elections, could be politically risky. With time, one must also say that this excess of prudence is without doubt also dictated by the spectacular failure of the attempt at launching a debate in April 2011 on Islam and secularity within the party. Since then, all audacity has been contained.

103VALLS M, *Les habits neufs de la gauche*, Paris, Robert Laffont, 2006, pp 84-85.

104VALLS M, *La laïcité en face*, Paris, Desclée de Brouwer, 2005, p 116.

“Secularity is the Law of 1905 of separation of the Church and the State; the State does not interfere with religion, but it allows free exercising of the faiths without taking side with any of them. But, since 1905, it's obvious that the practice of secularity has evolved today (...). Also it would be necessary in theory to revisit the text of the Law of 1905 to have it correspond better to practice today and to the situation which we know in particular with the presence of Islam. But, at the same time, let sleeping dogs lie. If the problem doesn't arise, why make it? Except that there are questions which concretely arise in relation to Article 2 of the Law of 1905.” (Jean Claude Guibal, UMP)

Although this MP admits to not being particularly shocked by the principle of prohibition of direct public financing for faiths, he affirms at the same time *“that we should let communities assume their responsibilities”*. That presupposes that room for manoeuvre should be able to be granted to them in relation to the contexts and situations encountered, which all are not similar. Raising at the same time the situation which is often that of Muslim communities, this official wonders openly about the various options open to him as an official, but without clearly opting to resort to public support.

“If there is a community made up of a sufficient number of sincere faithful eager to have a place of worship, we need to ask ourselves who is able to finance it; is it then preferable for that to be done by capital from afar with all the risks of ideological supervision and objectives other than religious ones, or should we not call upon public funds with all the guarantees of transparency which are essential (...) I am not answering this, but it's in any case a question which one must raise. We should be able to clearly ask it, without stirring up a hornet's nest.” (Jean Claude Guibal, UMP)

In his opinion, this desired evolution of the practice of secularity, but postponed for reasons of prudence and political opportunism (election context!), responds to a prior evolution in societies characterised both by secular materialism running out of steam and by the return to, or the call for, a need for spirituality or religion which should surprise politicians.

In a context marked by *“a reaffirmation of religious identities”*, as regards places of worship, *“local authorities could be led to make choices contradicting the traditional definition of secularity”*. (Jean Claude Guibal, UMP)

This politician took the trouble to illustrate his remarks with some problematic cases, which led him concretely, as a matter of urgency, to proceed with the shutting down of what are known as “unauthorised” places of worship, attended, he thinks, by Salafists; in doing so, he resorted to the town planning code and to regulations applicable to places open to the public.

In another case, the official had been directly approached by registered letter with a request concerning provision of a communal room to carry out prayer there, but the request was not followed up as it was perceived as a summons.

Listening to the examples given, this elected official came to consider that for him the major problem lies in the *modus operandi*. For him, any request to open places of worship should follow a prior procedure, making contact with officials, in order to avoid the *de facto* creation of places of worship. His reaction is also mainly dictated by the fear of seeing places of worship of Salafist affiliation develop.

Religious leaders' opinions are both critical of the Law of 1905, while remaining very pragmatic on forms of public support.

If most leaders of major religious denominations present in France seem to agree in raising anew the issue of the 1905 Law, opinions are in fact more nuanced with respect to openly demanding public subsidies.

“However, since 1905,” said Pastor Baty, *“society has evolved a lot and of course a number of issues that were evident in 1905 are no longer current and new questions have arisen. If I take the example of radio and television: Today the churches that support a Christian radio station - is it part of religious worship or not? So there are a number of things like that that are not well-established and*

lead to discussion. The 1905 Law is a law that is dated too. (...) And it hasn't been touched, because, for some, the Law of 1905 is untouchable. Although it has been changed more than a dozen times. So, Protestants, who are the religious group most involved in the Law of 1905 and in religious associations, because it is the Protestants who have most of them, as the Catholics refused them in 1905 and came to an agreement with Diocesan associations in 1923. Muslims have rather those of 1901 and not 1905. Which means that the Protestants, good students who have followed this law, are penalised in some way, because the 1905 Law is very restrictive. I'll give you another simple example: that a religious association, conducting worship, cannot engage in diagonal or humanitarian action, which is at the heart of the work of churches in general. This means that a religious association must be accompanied by a second 1901 association. There must be two boards, there must be two funds etc. This is very complicated and furthermore contrary to the exception granted to the Catholic Church and is not possible for a religious association or even for another association, e.g. sending money abroad from collections for humanitarian work. It is prohibited, because as revenue from worship allow fiscal receipts to be issued to the donor, it must benefit the people of the country and not those abroad. Therefore, there are a number of questions like that to be sorted out and it would appear legitimate for the derogations granted to the Catholic Church under the auspices of an international treaty to be granted to others to provide equality between the faiths. And you see, these are not issues that are generally internal matters, but to the extent that the churches want to make a diagonal, humanitarian work etc., there are many complications.” (Pastor Claude Baty, FPF)

Such is how Pastor Baty, who chairs the Protestant Federation of France (FPF), is content to seek a change in the law and without, strictly speaking, requesting new public funding for religions.

“It should be noted that neither the Evangelists nor the Muslims are asking for that. What some are asking for, however, is when there is a wish to build a temple, a mosque or a synagogue, that the municipality just doesn't immediately exert its pre-emptive right on the premises or on the land to prevent the construction. So what is required is that the municipality has an open mind on this and not that it provides financing.” (Pastor Claude Baty, FPF)

According to him, insofar as the *communes* do not systematically oppose plans for acquiring or constructing new places of worship, the religious communities concerned will be able to resort to all the legal measures available to benefit from indirect aid.

“Likewise, communes can use the arsenal of the law to help faiths if they so wish, make available land using emphyteutic leases, that's been going on for a long while; also provide loan guarantees. There are a number of simple things like that to facilitate construction and financing and which is not public funding for places of worship.” (Pastor Claude Baty, FPF)

The President of the French Council of Muslim Faith (CFCM), Mohamed Moussaoui, takes a somewhat similar view.

“(...) The Law of 1905,” he says, “had exceptions in its history. And I think, from our point of view, the use of emphyteutic leases should be encouraged and other ways found to move from an emphyteutic lease to ownership, a lease that would be accompanied by means to become an owner; because the difficulty with the emphyteutic lease is the fact that there is an investment in heavy construction on land not owned by the association managing the place of worship; a few years later, the State becomes the owner of both land and buildings, which is detrimental to the association that built the place of worship. So, I think it's important to review this measure, for this measure to evolve.” (Mohamed Moussaoui, CFCM)

As does the representative of the Protestant faith, the leader of the Muslim faith also points to the historical difference in the property situation and the importance of public aid granted to the Catholic faith.

“(…) The Catholic faith, the bulk of its property was built before 1905, so it benefits from being maintained by local authorities, by the State. This will also be the case for Muslim places of worship that were built thirty or forty years ago, which will need to be renovated and maintained. So the fact of leaving it for Muslims to take charge of the construction and maintenance makes it practically mission impossible, especially when it requires them not to accept funding from overseas and when public authorities cannot finance them.” (Mohamed Moussaoui, CFCM)

Although Mohammed Moussaoui is very careful not to call directly for a reworking of the Law of 1905, he nevertheless accepts the idea of a desirable evolution of the reading of it.

“Regarding the 1905 Law, we should look in terms of applying the law in its spirit already, apply already what can help provide solutions, but why not go further in the reading of the text, avoiding of course the creation of passionate debates that are not in the interest of our society today.” (Mohamed Moussaoui, CFCM)

For the Muslim leader, first the question has to be asked why religious activity is subject to special treatment and why, in its current state, it cannot result in direct public support, in the same way as cultural and artistic events. He then goes on to suggest that this particular treatment of religious activity is similar to true discrimination.

“(…) When we know that in other activities in society, the state subsidises artistic events, concerts and the funding of other human activities, the fact that worship is not considered an activity among others seems to me a way which is unable to find a rational explanation. Why consider all activities of worship to be an activity which does not belong to the activities that a citizen may have. There is a perception that there is discrimination somewhere when we consider the activity of worship as an activity unlike any other. (...) Why always view it as something apart? It has no right to a grant, no help from the state. I think that it's a reflection beyond a focus on a balance that has been found at some point in circumstances of conflict. Today, we are now a hundred years from this context and we should actually ask the question of the role of religions. This is no longer the role before 1905, we have to ask ourselves what is the role of religions in society and the needs they have to fulfil this role.” (Mohamed Moussaoui, CFCM)

The Secretary of the Conference of Catholic Bishops of France, Mgr Herouard, while acknowledging that the secularity which imposed itself in France was at first, in his own words, *“a conflictual secularity”*, nevertheless considers that in practice this system shows *“positive aspects”* in its running that make the Catholic Church in France now a stakeholder in the system which it intends to preserve in its main principles.

“Even if we are aware that historically this secularity is a conflictual secularity. All through the period of the late 19th century and early 20th century, even if a closer reading of the law and parliamentary debates of the time can show that Aristide Briand's concern as rapporteur of the law,” states Mgr Herouard, “was rather to determine a law of pacification, of appeasement in relation to the conflicts that were tough. But we do not forget that the Church has also suffered from this context. (...) we do not think it necessary to change the equilibria in the 1905 Law. We do not favour a change, because it is also clear that behind this law there are elements that are quite fragile, it is a pivot balancing French society. Because otherwise we will be bidding in two directions at once and we'll lose control.” (Mgr Herouard)

Also, he believes that we should maintain the rule of non-public subsidies for religion.

“I think,” he said, “that we must try to maintain the general principle which is that there is no direct public funding for places of worship.” (Mgr Herouard)

This stance - firm in appearance (refusal to go back on non-public funding for faiths) does not prevent him considering that the 1905 Law should be groomed and adapted to the current period.

“That said,” he continues, “this does not mean that the law does not need, on some very technical points, elements of grooming. Because it was made at a given time, circumstances have changed, they no longer correspond to us. But this is not the same thing as changing its architecture and its basic principles. In fact, if you look back in history, we must not make the 1905 Law an absolute myth. It has been amended many times since 1905 and again recently. There are a number of items that deserve some grooming, because they are completely obsolete. Or also because one can think that there were also some measures that were in financial terms precautionary measures, state monitoring of faiths initially; we may think today that they are a little discriminatory compared to common law.” (Mgr Herouard)

During the interview, the tone of his remarks changed appreciably and he ends up acknowledging that the Church was able to benefit from certain assets resulting from the Law of 1905, as regards public assumption of maintenance costs for some of these buildings, and that the situation has changed today and new needs have come to light, which the Catholic Church cannot totally assume any more.

“We can say at the same time,” declares Mgr Herouard, “that the 1905 Law has finally solidified the position of the churches a little. So all churches built before 1905 belong to the communes or to the State, if they are cathedrals. The commune and the State are required, insofar as these are assigned for worship, to maintain these buildings of worship. At the same time, the evolution of society and demography has meant that places of worship are not always adapted. It is clear that there are small churches in rural areas which are little used, because there are few inhabitants in the villages concerned and that, by contrast, we had to build a not insignificant number of churches in the peripheral districts of the cities and in the suburbs. It's clear that there are still gaps at this level. There are some dioceses, for example, the dioceses on the outskirts of Paris, which possess and often assume the maintenance and refurbishment costs of the majority of churches. But on the general principle, I think that the existing balance should not be modified, afterwards we should also apply it intelligently.” (Mgr Herouard)

As for the Archbishopric of Strasbourg, their point of view is, quite logically, appreciably different. Our interviewee on site did not hesitate to point the finger not only at the ideological taboo surrounding the Law of 1905, but also at the weakness of the Catholic hierarchy itself, which has become so used to the Law of 1905, that it refuses to see it evolve.

“The problem is ideological, namely that inside France, there is such an ideological attachment to the Law of 1905 by certain political factions, and curiously, by Catholic bishops as a whole, because they considered that, all in all, they had put up well with this system. The 1905 Law has become a taboo law. Mr. Sarkozy had said 'How is it that one can modify the Constitution every two years, whereas one cannot touch a law which is older than 100 years?' Well, that's how it is. And if now, somebody happened to say 'We will reform the Law of 1905', there would be such a general outcry that no leader would dare to get involved.” (Xibaut, Archbishopric of Strasbourg).

With the benefit of local experience from Alsace-Moselle, he goes as far as suggesting some areas for re-reading the Law of 1905.

“It seems to me that the Law of 1905 must be read again in a context which was a context of confrontation between the Republic and Catholicism, which had a share of hegemony in France. And the 1905 Law is a law of separation of Church and State, which laterally separates the Republic from Jews and Protestants, but which was initially aimed at separating the Republic from Catholics. Then, at the same time, we added this famous Article 2, which says that the Republic does not pay for any faith. And we apply that in a very rigorous way each time a statute, we spoke about this statute lately, each time one public cent is allocated to a Church, scandal, etc. I regard it as a little out of date, this story, because that's what was desired in 1905, that the Republic cease subsidising a particular faith,

namely the Catholic faith. And it seems to me that we are moving to a healthy secularity when the Republic subsidises all representative faiths. This is the reason why the Concordat, as experienced in Alsace, has nothing to do with the Concordat as experienced in Brittany. Because in Brittany, there were only priests, you see. Whereas here, there were priests, pastors, rabbis. For us, the Concordat was always a system which allowed equality between religions.” (Xibaut, Archbishopric of Strasbourg)

With some other officials or representatives of religious communities, the tone is less conciliatory. Some went as far as declaring their fierce opposition to any public funding for the faiths.

So, Rabbi Korsia, Jewish Chaplain General to the Armed Forces, was opposed to any rewriting of the 1905 Law and does not claim any direct public financial support.

“(…) No, I don't agree at all. Former President, Jacques Chirac, had uttered a great sentence: 'The 1905 Law is one of the pillars of France, one of the pillars of our society, and this pillar we do not touch.'” (Rabbi Haïm Korsia)

As for the Rector of the Orthodox Cathedral in Nice, he confesses honestly:

“I have no categorical opinion on the issue, we always did without subsidies in Orthodoxy. We had some, but in our case, they were not government subsidies that sustained communities.” (Rector Jean Gueit)

The same applies to the President of the Federation of the Unions of Alevis in France, for whom each religious community should pay for itself and not depend on public subsidies.

The future of public funding for faiths in Alsace-Moselle?

There remains the specific question of the system of recognised religions applied in three Eastern *départements* of France, creating a system of public funding of faiths.

Should we consider having other faiths benefit from the status of faiths in force in Alsace-Moselle, whose only happy beneficiaries are the Catholic, Protestant and Jewish faiths, or even should we abandon this system?

Extending it, as well as abandoning it, do not seem to win more enthusiasm than grooming the 1905 Law at national level!

As regards the Alsace-Moselle system of so-called recognised faiths, opinions were also sharply contrasted. The leaders of both national and local faiths involved were mostly inclined to refer to a historical legacy and to the efficiency of said system to reject any idea of abandoning it.

The most enthusiastic defenders of the system of public funding for faiths in Alsace-Moselle are obviously the representatives of the so-called recognised faiths, the main beneficiaries of this provision.

Such is the case of the General Secretary of the Archbishopric of Strasbourg, who showed he had the most to say on the matter.

“I can tell you that I am one of the practitioners, since every day mails are exchanged between the bishop and the authorities, but as it happens, in this particular domain, I ensure the representation and the office of the faith. And I must say, this is done in a very open, very natural way. (…) It has a

favourable image, i.e. when someone comes with, for example, approvals for priests, there is a small investigation which takes place, but it is quite rare - it never happened to me anyway - for the person to be rejected. Really, for approval to be refused, the person concerned has to have been called upon to place bombs on Place Kléber, or something like that.” (Xibaut, Archbishopric)

For Father Xibaut, in contrast to the views held by a section of the political class and especially left-wing parties and some specialists in secularity like Jean Baubérot, maintaining the system of public financing of faiths in Alsace-Moselle is, nothing more and nothing less than another form of possible expression of an active secularity, in which the State remains neutral towards religion, while maintaining a certain form of equality between faiths, at least between certain faiths!

“So, we say in Alsace, and it has finally been recognised by many bodies, by European bodies in particular, recently by the Constitutional Council, that what we are living is secularity in the sense that the State, once again, professes no particular religion. We do not have a Head of State appointed by divine right who is Catholic or Muslim, or I don't know what. And the State, once again, does not interfere in religious affairs, no faith has direct power over public affairs. And the State is happy to subsidise certain faiths, while trying to maintain a certain equality between them, according also to what they represent in terms of numbers. From then on, we think that no great secular principle is being contravened. Even if you have a strict understanding of secularity from 1905, you will say that, and this is what one hears from what is called secularism, from the moment when the State gives one cent to a faith, the Republic and secularity are in danger. Then we say 'but wait, the State subsidises political parties, the State subsidises sports associations or those of fishermen. Then why should the State not subsidise all religions, from the moment that they have a certain representativeness?’” (Xibaut, Archbishopric of Strasbourg)

On having other faiths benefit from this, and first of all Islam, he is more careful, but without putting aside such a prospect for the future. His proposal is limited to referring to the responsibility and political goodwill of the State.

“The question is currently being asked. But the answer to this question will not come from the faiths themselves. They do not have any power over it. It will come from the State. One can consider things in the following way. The logic of the Concordat system is that which aims at recognising faiths from the moment when they are really representative. So, it's true that one can seriously ask the question for Islam insofar as it is today more heavily represented than other recognised faiths, like Judaism, for example. But we also add in the logic of recognition, which means that the faith must be perfectly identifiable by its leaders, that one can say that such-and-such a faith, has such a leader. The Catholic faith is the bishop and people who are with the bishop, the Protestant faith is the President and the people who are with the President. And on the other hand, that the faith be respectful of the main principles of the Republic. And well, thereafter, it's up to the State to check before recognising any other faith. For Islam, to check that the CRCM is really representative, that all are recognised, or the majority in any case, and then to check that certain rules are being complied with, in particular everything that relates to women's rights, and then to check that the leaders are in line with the key rules of the Republic. Then afterwards, it is for the State to decide, it is not for us of course.” (Xibaut, Archbishopric of Strasbourg)

Geoffroy Goetz, President of the Synodal Council of the Reformed Protestant Church of Alsace and Lorraine (EPRAL), shared the same observation on the effectiveness of the system of recognised faiths.

“I find that it is a good system. Well, concretely, there are sometimes administrative complications, sometimes it is complicated, that's how the administration works, it is not the root of the problem, but I find it is a good system, which takes into account the existence of various religious communities - except Muslims, because when the law was set up, there were almost none. So, we take into account the existence of different religious communities and at the same time do not make them into 'official religious communities', even if they are recognised.” (Geoffroy Goetz, EPRAL)

Without dismissing *a priori* the idea of widening the system to other faiths, including Islam, he wonders about the feasibility of such an approach.

“In principle, why not? That would suppose that the Muslim faith really gets itself organised, that there is theological training for imams and that the imams speak French, well, everything which is not inevitably the case today.” (Geoffroy Goetz, EPRAL)

By contrast, the President of the CFCM himself considers that the case of extending the system to Islam is not really very topical. For him, the simple application of associative local law could largely meet the expectations and religious needs of local Muslims. He believes that, although imams are not employees of the Ministry of the Interior, as are Catholic priests, Lutheran and Reformed pastors and rabbis, Muslims find it easier in Alsace and Moselle to build their places of worship with the aid of local authorities.

“In these départements, even the Muslim faith,” declares Mohamed Moussaoui, *“which is not a recognised faith in this département, benefits from these provisions. It should provide 10% of the construction for a place of worship.”* (Mohamed Moussaoui, CFCM)

Only the regional leader of *Millî Görüs* regretted that the benefits provided for other faiths are not extended to Islam.

“I think it actually needs to be revised, because, as Millî Görüs, we do not really need help, any help really, from those places. We hear that organisation A or organisation B has so much help, but there is no approach by the municipality to grant the same assistance to the community of Millî Görüs.” (Eyup Sahin, Millî Görüs Est).

This Turkish Muslim organisation, which, until then, had always limited its requests for building permits and had always put a point of honour on never requesting public subsidies, now intends in turn to benefit from the public generosity of the City of Strasbourg. Like other Muslim associations in the City, its plan to completely rebuild the *Eyyup Sultan* mosque should include a public contribution by the city to a total of 10% of the total cost of construction.

In respect of the UMP, while specifying that it was not concerned by this provision, being elected in a *département* governed by common law since 1905, the MP we met nevertheless took the trouble of stating to us his inclination to not wanting to upset local practices.

“We have to take into account the individual history of each territory, if not to favour them, respect them and respect the identity of the territories (...), if one asks the question (of extending the system to other faiths!) in a very theoretical and passionate way, without taking into account the weight of history, we are likely to be confronted rather quickly with questions such as: where is the reciprocity (targeted at Muslim countries)?” (Jean Claude Guibal, UMP)

This type of argument on the reciprocity between Western societies, considered modern and tolerant as regards freedom of worship, and Muslim societies considered to be more conservative and more withdrawn as regards freedom of worship and non-Muslim faiths, is rather common, in particular among right-wing groups. It is obviously a stratagem, a rhetorical argument to justify not being completely able to meet all the expectations of the Muslim faithful, or worse, setting up a system of religious freedom conditioned by reciprocity or internal religious reforms.

This is in any case what this national UMP official attempted to say to us, when he declared:

“This is not only a question of respect of religions, it is more complicated, it is the whole question of the distance which does not always exist between the sacred and the profane, politics and religion, which one finds in some practices of Islam”. (Jean Claude Guibal, UMP)

As for laypersons (left-wing parties, Freemasons, secular associations...), a broad consensus is taking shape that considers that the system of faiths in Alsace-Moselle region is not only discriminatory - because it benefits only some faiths - but is also not conform to a vision of secularity relying on non-public financing of faiths.

The most determined to break with this system on principle was Communist MP André Gérin.

When asked: *“Is it then necessary to think of the system in force in the three départements of the East, is it necessary to reform this Alsace-Moselle context or can it be a model?”* his answer was unequivocal.

“In my opinion, to follow the logic, in the continuation of the process of 1905, gradually one should abolish the Concordat. After, you have to be patient, measured, reasonable, but perhaps nevertheless think to yourself that, after several decades, you can give a unitary aspect to the Republic. So, for me, I think that it would gradually be necessary to call into question the Concordat. It is complicated from a historical and political point of view, but you cannot have one discourse here and another elsewhere.” (André Gérin, PCF)

Questioned on the effectiveness of such a system, his answer was even clearer:

“It's all about knowing if the Republic must continue to pay the priests, if the Republic must pay for the equipment. So it is not a question of if it works well, but: is the Republic one and indivisible or it is divisible?” (André Gérin PCF)

Such is also the official position defended by the Left Front and its candidate for the presidential election, Jean Luc Mélenchon.

In the programme put forward by this coalition of political parties (Communist Party, Unitarian Left, Left Party, Convergences and Alternatives, Federation for a Social and Ecological Alternative, Republic and Socialism), we read:

*“We reaffirm the cogency and the topicality of the Law of 1905 on secularity. All the later modifications of the Law of 1905 affecting these principles will be repealed. For us, this fundamental law of our Republic has authority to apply throughout the national territory.”*¹⁰⁵

Many voices recognise nevertheless that abolishing such a system that guarantees among other things compulsory subsidies for older established faiths and making possible voluntary forms of public support for other religions is not on the agenda given the commitment of local people to this provision.

This is in any case the opinion defended by Guy Arcizet, Grand Master of the Grand Orient de France.

“It is a very difficult problem,” he points out, *“(…). And I don't know what is good. I'm not for rushing things. I know that if there was a referendum, in Alsace (...) on the question of the Concordat, there would be a huge majority in favour of keeping it. (...). These are local particularisms, which prove, and this may be my conclusion, that we should not try to impose secularity (...). Secularity is not an obvious panacea. Secularity is a system that should prove, little by little, its effectiveness in achieving public peace.”* (Guy Arcizet GODF)

105MELENCHON J L, *L'Humain d'abord. Le programme du Front de Gauche*, Paris, Libro, 2011, p 55.

His counterpart at the Grande Loge de France also came across as not very enthusiastic about the idea of criticising the system in Alsace-Moselle, due to its seniority, its effectiveness, not seeing any objective reason to remove it or extend it to other faiths.

“There is a Concordat which I don't know all the details about,” he explains, “but which functions well at the local level. Why change something which is working well? (...) It is one of its temptations (of the UMP party) to ensure that the Concordat system is widened. It is not because there is an exception which is working well somewhere that we have to transfer the exception to the remainder of the territory where secularity is working just as well. We accept that the Concordat is working well, let's leave it as it is.” (Alain Noël Dubart, GLDF).

Note that Socialist MP Jean Glavany, equally pragmatic, believes that this system responds primarily to historical considerations, accommodating many Socialist MPs who do not consider its repeal their top priority (let's remember in passing that following the non-enforcement of the law of separation in Alsace, the Socialist mayor of Strasbourg passed the granting of public subsidies for the construction of mosques!). He suggests, however, that mandatory religious instruction in state schools be abolished.

“So, from a pure, perfect viewpoint, we can dream of repealing the Concordat of Alsace and Moselle; from a practical standpoint, it will be very complicated to do. Maybe what we could do is go back on at least one of these principles, that is to say, education. Because in state schools religious education is compulsory, and parents may request their children to be exempt, we could, according to Republican principles, reverse this burden of the proof to make the lessons optional. That way, there would be no exemption to apply. It would be a marginal measure, but symbolically very strong.” (Jean Glavany PS)

One of our lay interviewees, elected official of the Socialist Party and in charge of faiths in the City of Strasbourg, defended a more original position. It consists in providing the means to respond realistically to the needs of local religious communities, with no real distinction between those that fall under the category of recognised religions and others.

“(...) In terms of municipal powers in the Concordat system of today, it's true that the issue is always to ask where to place limits. It's true that we have working relationships that are clearly historical. Recognised religions, we are in something extremely structured. So as soon as you leave this framework, it can sometimes actually raise questions. Even outside the Concordat framework, (...) we have been supporting over the last two years, for example, liberal Jews who are not within the Jewish Consistory, who therefore fall outside the Concordat system as such, but it was decided to address the sociological reality more than legal heritage. Do not translate this into something more pejorative or negative, but we cannot just have a legal approach when it comes to managing the human community, it is not possible.” (Bitz, City of Strasbourg)

This official clearly claims a pragmatic method for publicly supporting religious organisations in order to ensure equal treatment for all.

“So, the choice we made was the choice of a pragmatic approach. We have moral and political obligations that mean dealing with everyone equally. So our development of the Concordat system, the dynamics of Concordat law, it is applied without there being regulatory and legislative changes. Extending it to Islam and other religions, the Concordat does not require it, but does not prevent us either, it allows us to do so. The Concordat system opened up the possibility of support for communities, for religions which were recognised. So, we make the Concordat system evolve in practice, in reality, without taking the risk of calling it more comprehensively into question (...).” (Bitz, City of Strasbourg)

Most of the social actors we were able to interview during our study, while acknowledging that the religious landscape of France had definitely changed since 1905, did not draw definitive conclusions about the need to generalise direct public support destined for religions.

It seems that all would much rather resort to one-off indirect support provided by the law, rather than having to really think about a system of generalised public subsidies.

On this point, they seem to agree, including some leaders of secular organisations such as the one who declared: *“We can make emphyteutic leases, but that's it, we will not go further, it does not mean we will change anything about the Law of 1905.”* (Observatory of Secularity)

With regard to summarising the various views represented in relation to any desirable changes to the legislation, in line with transformations in the French religious landscape, it is clear that the situation is quite mixed depending on whether we evoke the law of 9 December 1905, establishing the regime of separation between State and religions, and removing direct funding for religion or the regime of so-called recognised religions in force in Alsace-Moselle that maintains it. Here we are faced with a situation in reverse.

Ideally, those who generally support a change in national legislation on the faiths are rather reluctant to equally change that applied in Alsace-Moselle.

Those on the side of activist secular organisations and political parties on the Left are resolutely opposed to any reform of the 1905 Law, but are conversely more favourable to a gradual evolution in the relevant legislation in Alsace-Moselle in order to bring together the principles of general law on religious affairs.

On public training for religious leaders, contrasting views

As a whole, religious leaders that we questioned appeared rather favourable to such an initiative intended in practice especially for Muslim leaders, without putting aside *a priori* the fact of being able to resort to it for their own foreign religious leaders.

Such was in any case the reaction of the General Secretary of the Archbishopric of Strasbourg:

“It seems important to me that Islam, which is the last great religion to arrive in France, can benefit from this training. That's why the imams are concerned in the first instance. And at the same time, that there not be only imams, because it would once again be a chance to say that 'the Islamic religion is separate, it is more dangerous than the others'. As a result, we received these leaflets, with the intention of giving them to Vietnamese priests who had just arrived in France and who can have the same kind of difficulty to adapt, also to African priests, or who knows who else. This means that there again, one cannot reproach, for example, Islam for engaging only imams who speak just Arabic, and for tolerating us bringing Polish priests who speak only Polish, or Tamil priests - we have some - who only speak Tamil. It is nevertheless a little bit contradictory.” (Xibaut Archbishopric of Strasbourg)

Our interviewee took advantage of this to evoke the need for all religious leaders trained abroad to familiarise themselves with the society in which they will exercise their ministry.

“On the other hand, it appears more interesting for the ministers of religion who disembark, if I may say, to use a strong word, from other planets, where culturally there is something radically different; I think that it is interesting to offer them a course in adapting and acculturation.” (Xibaut, Archbishopric of Strasbourg)

If Pastor Goetz also welcomes this initiative, he does not fail to regret that the old project of creation of a Faculty of Muslim Theology suggested by Etienne Trocmé, could not see the light of day, which

could have made it possible to directly approach the theological part of training Muslim religious leaders.

“I believe that it is legitimate and that it is a good thing. It's a very good thing. I believe that it is fundamental. (...) I believe that Etienne Trocmé's project, which provided for the creation of a Muslim theological faculty in Strasbourg, was also a good project. It would have allowed the training of imams in France, in the French context. And I regret that the University was afraid, by saying perhaps that it would have taken jobs from Protestants, Catholics, it would have taken three posts from each, while there were 21 positions in the two universities, it was just a few.” (Geoffroy Goetz, EPRAL)

From politicians, the opinions are more mixed, sometimes within the same party.

The Socialist Deputy Leader, responsible for the faiths in the City of Strasbourg, is rather favourable, even going as far as to mention the plans for a Faculty of Muslim Theology.

“I think that actually, to build this Islam in France, there is need to act with any urgency on this question of the training of imams. So I don't know what may be the way. Although, yes, in Strasbourg, we do have a slight idea about how to create a Faculty of Muslim Theology just like the Faculty of Catholic Theology and the Faculty of Protestant Theology. I think that public authorities must engage on these issues.” (Bitz, City of Strasbourg)

For Socialist MP Jean Glavany, it's all very different. For him, if such a project were to become widespread, it should not be reserved for religious leaders only, to avoid the risk of appearing to provide public support for faiths.

“Let the State finance training on institutions and the laws of the Republic, it is the least of things.” But for everyone, for everyone. For the religious, as for the non-religious. If it does so for everyone, if in the student public there are believers, this doesn't trouble me. It is the principle of the equality of citizens. What bothers me is when one provides training only for the religious. We are then no longer in free access and equality of access. It is a central issue.” (Jean Glavany, PS)

In fact, behind this project of public training for religious leaders, the Socialist MP perceives the temptation of a instrumentalisation of religion by public authorities.

“I would add that if we do that, we run a second risk - that it is not for the State to get involved in religion. That's what people do not understand. It is that the separation of Church and State was not only done so that religion had no more influence over politics, was no longer to be an instrument for lobbying on the exercise of political power, but also that politicians get involved in religion! Why is it that the State should undertake the training of imams? Is it responsible for the training of Catholic priests? No, so no training for everyone. If a Catholic priest, a Protestant pastor, an imam wants to go to university, whether private or public, and have the same training as any French citizen or foreigner, there's no problem. But providing specific training courses, this is not the role of the State. The State is not to get involved in that. So you always have to keep a kind of distance when faced with these matters.” (Jean Glavany, PS)

Certain religious leaders have an opinion that is equally nuanced on the subject, like Pastor Baty of the Protestant Federation of France. He uses the opportunity to underline the paradoxes or the inconsistencies of a secular State that wishes for an Islam 'of France', while secretly supporting movements or federations close to foreign states and by organising the elections of representatives of the Muslim faith.

“It is very complicated because the Muslims are very divided. The CFCM is a little like an empty shell. It would be for them, logically, to undertake this kind of thing, which it cannot do, but is not for the State to do it either. So we are in a complicated situation, we would simply need a little patience,

because Muslims in France have not been there for a very long time in any numbers and I imagine that we'll need a further generation for things to settle. Training imams is a complicated question, but the State is not very coherent either from my point of view, because it wishes to have - as it said - an Islam of France. However, the Islam of France, it is primarily, we could say it is the UOIF, but the UOIF is independent and that is not appropriate either for the capacity. They prefer, actually, the Grand Mosque of Paris, the Moroccans, because the French State immediately has a means of pressurising these associations. (...) we see clearly how the State is in a slightly paradoxical situation, it wants an interlocutor, it's having difficulty finding one and is imposing things which are not within its competence. The Protestants would never accept what the Muslims accept of the State. There can be other explanations, but it is not logical that it is the State that organises the elections for the Muslims (...) it is not separation, that.” (Pastor Claude Baty, FPF)

On the part of training for religious leaders in general, the President of the Protestant Federation of France thinks that the specificities of each faith should be taken into account as regards understanding of the religious framework, without being unaware of the fact that with regard to imams, a large part of them are trained abroad.

The situation is therefore sufficiently complex and does not have to be treated in a hurry.

“Yes, it should be realised that each religion has its specificities. The imams are not comparable to the priests. What is indeed most problematic is when imams are paid directly by a foreign country and are trained elsewhere, and when they do not speak the language of the country. That poses a certain number of problems, but at the same time I do not see how one could legislate and intervene in a strong and fast way insofar as in our country there are nevertheless a certain number of people who do not speak the language of the country. In a synagogue, people speak a lot in Hebrew, so far as I know, which is not the French language. So it's the same for Arabic, when you think that the Qur'an must be read in Arabic, I do not see how you can prohibit something like that. So the situation is complicated. We probably need to encourage the CFCM to take charge of this training and manage to create a local body of imams in some way, but that cannot happen from one day to the next, therefore we will still need a little patience and education.” (Pastor Claude Baty, FPF)

- In France, a certain conservatism seems to prevail in people's minds in matters of public funding for faiths. It is expressed by an almost sacred respect for the Law of 1905 (and its second article which excludes in theory all public support), which we are struggling to reform. Pastor Baty does not hesitate to talk about the quasi-religious reading made of this law by some proponents of secularity, who perceive in its passing the expression of an almost extraordinary combination.

- A conservatism or a very broad pragmatism is also evident among religious leaders themselves.

In fact, most religious leaders, who are actually in favour of opening debate on new ways of applying the letter of the Law of 1905 to take into account the fact that emerging communities can exercise freedom of worship legally and without discrimination, are not claiming a change in the rules on subsidies for faiths. They are more receptive to possible changes in relevant legislation in order to fulfil, not an obscure desire for revenge and reclaiming lost social space, but to better respond to concrete situations of disparity that burden the free exercise of religion.

Their pragmatism can also be explained by their lucidity.

- No political majority is ready to open up the debate on a softening of the rules on publicly financing religions, and certainly not before the next elections. We must recall that, when Nicolas Sarkozy was Interior Minister, he had set up the Machelon commission in 2005, which put forward some ideas for repositioning the State on the issue of funding of religion. Its proposals were not followed up! After becoming president, Nicolas Sarkozy would not reopen the case. The issue was tentatively suggested by one of the components of the majority party (Club 89) only to be quickly suppressed by the announcement of the debate on Islam and secularity proposed by the UMP in April 2011.

Conservatism also characterises the position of some non-religious actors. Such is also the position of Socialist MP Jean Glavany and to a certain extent also that of the lay leaders of the Observatory of Secularity, for whom it would be better to resort to the various existing arrangements of indirect support to religion, rather than consider a reform of the Law of 1905, the symbolic power of which is clearly greater than its practical effectiveness.

Conclusion

- It can seem hazardous to present final conclusions on a first, original attempt aimed at gathering accounts and points of view from personalities from various horizons - philosophical, religious, political, cultural and social - in relation to the challenges with which certain parts of French law are confronted (family law, employment law, religious expression in public space and the issue of public funding for faiths) in a society that is, religiously speaking, diversified.

The accounts which we present can seem either too one-sided or not all representative of entire, legitimate analyses carried out on the subject to be able to give them authority or an aura that they anyway do not claim to have.

They do not, however, any less reflect some of the constants and trends of public opinion which are currently sweeping through French society, which is confronted with a diversity that is as much destabilising, as rich in opportunities to make things evolve - mindsets, social and legal practices and political attitudes.

- It has to be said that the dominant tendency of the majority of those we met does not consist in denying the existence of conflicts or tensions between French law and certain religious practices or customs, but in playing down their importance and their impact on society. This a current enough reflex, which conveys initially the will of religious leaders to promote a fairly legalistic vision of the experiences of each religious community, as regards the law of the State, while testifying to the total loyalty of religious groups to the ideal of secularity (laïcité).

It is also a way for religious leaders to assert their own authority and to indicate that their presence is the best guarantee for ensuring the continuity of the system. It is also a way of guaranteeing the support of public authorities anxious to preserve social peace, if not religious peace, while the religious domain is being traversed by contradictory dynamics.

At the other extreme, public leaders would likely tend to sometimes overstate certain marginal practices, in order to legitimate, if not systematically resorting to the law, at least reaffirming the centrality of the idea of secularity (laïcité) by seeking with more or less success to extend its field of application.

- It also emerges from this report that French society is lucid on some of the challenges with which it is directly confronted and which partly relate to the issue of the new place of religion within it, without, however, being reduced to it.

Today, there is a great tendency to want to relate everything back to the issue of religion and to seek to dilute in religion any social, economic or ethnic issues¹⁰⁶ and to do as if it were enough to give a single, uniform answer, which undoubtedly requires more pragmatism, flexibility and, not necessarily, new laws or narrow national debates (Islam vis-a-vis secularity, language of the sermon, minarets...).

- Obviously, questions arise relating to family law and the continuing tensions arising from non-statutory practices which convey the willingness to live with common law, without always accepting to give up certain religious specificities.

It is just as obvious that certain religious actors, in the face of these realities, profoundly endeavour to make the social practices concerned evolve, by clearly highlighting the question of their necessary reappraisal or by re-reading the fundamentals of the faith, and no longer of their simple passive reproduction in the name of cultural considerations and reflexes. The resolution of the tensions (not always directly perceptible with the naked eye and by public actors!) also involves internal work by

106 Cf. BOBINEAU O, COUTEL C, PORTIER Ph, LATHION S, MABILLE Fr, POULAT E, WILLAIME J P, « Il ne faut pas confondre problème social et question religieuse », *Le Monde* du 02/04/11.

the communities concerned, to reformulate or reinterpret the sources and the norms of religious laws. Everything cannot come from the top, and surely not from the solely secular law of the State.

- The same applies with issues of public space. As regards issues of menus in state school canteens (respecting dietary obligations), pragmatic solutions can be implemented without it being necessary to start a new conflict in institutions like state schools which have already had a rough ride.

This call for pragmatic or local solutions seems (it should be underlined!) to meet with the relatively unanimous agreement of the majority of public, religious, associative actors we met; it is a question of finding reasonable compromises on basic issues, but not on all the practices or demands made (timeslots reserved for Muslim women in public swimming pools).

As an example, the multiplication at local level of initiatives, such as the Extra-municipal Council for Secularity and Living in Tourcoing (permanent liaison and working group, made up of elected officials, representatives of the various religious persuasions and laypersons with responsibility for examining the tensions or religious requests relating to public space) appears to us to be a solution to be retained.

The local level remains indeed the main space for interfacing between religious groups and public authorities (Frégosi, Willaime, 2001) and the option of mediation through dialogue between actors on the ground an option to be made more widespread.

- That does not mean however that regulation by the law should be abandoned. Far from it!

France remains a country of statute law, always inhabited by a passion for resorting to the law as the main mode for resolving conflicts, and mainly when it is about raising the issue of the religious in the public sphere (for public servants and users of public services, public funding for faiths, public financing of private schools).

The only problem that we ought to identify is that there seems to prevail in the matter a rather conservative reflex, as much with public actors as religious, which consists in considering (undoubtedly correctly) that in its broad outline, the tools of French law make it possible to respond to the majority of challenges and specific tensions which can occur.

The passing of new laws in the various sectors targeted by our investigation does not seem to be always considered necessary.

Better would be to be happy applying those laws already in force than to open new construction sites likely to generate or reignite old conflicts (that between state school and subsidised private school or that of liberalising the public funding of faiths).

In this spirit, it is advisable to follow with interest the dual initiative by the Ministry of the Interior to publish (and to update regularly) a collection of the entirety of legal texts applying to religious issues (Secularity and religious freedom. Collection of texts and case law, 2011), called a 'Bible of secularity'¹⁰⁷ by one journalist and setting-up conferences on religious freedom in all French *départements* (Circular of 21/08/11). These conferences are made up of local officials, representatives of public services, representatives of faiths and qualified people (researchers, academics...) and will have the role *"of highlighting issues relating to construction, maintenance and use of places of worship, those of chaplaincies in public services and any issue of local interest"*

- Further along this path, we have been able to state that a part of the underlined tensions clearly raises the question - not of gaps in the law and its incapacity to take directly and fully into account new

107 Cf. GUENOIS J M, « L'Etat publie une 'bible' de la laïcité, *Le Figaro* du 23/10/11.

situations and practices - but that of a perception that is often too partial and too impartial of the religious issues raised. That raises first the question of the keys to understanding used to unlock certain situations.

One of the major proposals that we should not lose sight of is to measure the social and political impact that the influence of more or less demeaning representations can have during the development process of the laws - representations of religion in general and often of the minority religion whose urban and social visibility is systematically likened to a denial addressed to the Republic, to a wish to keep its distance from common law and coexistence.

More concretely, we should not, as some are tempted to suggest today, spread the idea that public space, for example, must be subject to rules of neutrality similar to those which are legitimately in force in the public sphere.

The same applies as regards employment law in particular in private companies, which one would like to exempt from any religious manifestation, even reduce to a continuation of public services, whereas they do not have the same obligations, nor the same central purpose, namely to serve the general interest general of the entire community.

- We were also able to note (in particular with regard to the question of the places of worship and their construction!) that still it is not so much the law which is being blamed (even if the Law of 1905 contributed to solidifying certain historical situations and reinforcing the hegemonic positions of majority religious groups), but often a lack of political goodwill by elected officials who balk at having to find lasting answers to situations which, while exceptional (praying in the street), have not become less chronic. These disparities, likened to favours or too much complacency, give rise to dangerous political one-upmanship.

- Finally, it must be noted that the tensions or conflicts underlined in this report are of different types and do not necessarily call for legal, nor uniform, answers.

There are initially obvious conflicts (in particular relating to family law), which are directly the reflection of the coexistence of state, secular law and normative systems of the religious sort, whose presupposed theories and rules are not directly admissible in and by secular law, for reasons that are historical as well as legal. This situation is not specific to France and raises the question of the absolute primacy of common state law (not to mention European law) over any other system of norms on which religious groups can optionally lean internally (to settle the questions of organising their worship, to specify the status of members of the communities and possibly to manage matrimonial issues), but while respecting primacy and common law.

It also should be recognised that, in comparison with the French situation, the majority of religious communities have already (with greater or less success) undertaken to re-read their respective traditions in the light of common law, and conflicts have become relatively localised and fairly rare.

There are then conflicts of the political-legal type which can arise from the adoption of laws perceived, rightly or wrongly, as stigmatising (quarrels on the prohibition of the veil in state schools and the full veil in public space) or as too obliging (laws on the public financing of denominational schools!). These conflicts are dependent above all on an economic situation, on political agendas, where one cannot claim to intervene except by recalling that national lawmakers cannot ignore international texts and the European Convention of Human Rights, when it comes to setting up new laws aimed *a fortiori* at managing certain fundamental freedoms.

Then conflicts arise which raise both the issue of ignorance of existing law, but also sometimes the lack of political goodwill to ensure its strict application.

One could observe during our investigation that that is undoubtedly one of the major causes of tension. This situation applies as much to public operators as to private operators, and as much to secular actors as to religious actors.

This initially concerns the fact that elected officials on the ground (a minority) often try very hard, when it comes to the construction of new places of minority worship or of refitting those already in existence, either to limit any contact with the religious communities concerned or to impose excessive constraints on them (language of the sermon, ban on the veil...). Simply recalling the legislation in force should be enough to reduce such stonewalling.

It is not rare either to be confronted by believers called upon by their religious leaders and invited to distinguish between canonical religious instructions and customs and secondary practices more related to reflexes of cultural identification than reasoned respect of the faith. Here it is advisable to let them act themselves, without summoning these communities to undertake reforms which one would seek to impose on them from the outside and as a matter of urgency.

- Besides the cases previously mentioned, many other questions remain, as well as old (or latent) problems, which, although not arising directly from the topics imposed by the RELIGARE programme, are no less real and can be considerable sources of tension.

Such is the case of issues related to abortion (strong and constant opposition by the Catholic Church and Orthodox Churches, tolerated by Lutheran-Reformed Protestantism, but reticence from Evangelicals and reservations from a section of Judaism!), active euthanasia (more or less head-on opposition by all the religious groups!), or laws of bioethics in general.

Suffice to say that these sensitive subjects convey different, and often divergent, understandings of life (from its beginning to its end), which we must keep in mind and which would deserve more thorough study.

- It is finally advisable to be attentive so that a “two-speed secularity”¹⁰⁸ (*laïcité à deux vitesses*) does not set itself up in France.

On the one hand, there would be a secularity termed 'positive', which would be listening to and attentive to dialogue with the historical religions present in France and which would maintain privileged relations with some of them.

On the other hand, we would have a 'restrictive secularity', which would be aimed only at faiths of more recent establishment and which would call for specific solutions and laws of strict prohibition.

These are some of the areas of reflection which have arisen from our collection of information and which confirm that, if one can speak about a French model as regards regulating the complex relations between religions and the State, its exceptional nature lies incontestably in the fact of being linked to the history of this society and to the establishment of a republican regime. Its specificity also lies in the difficulty of thinking in a renewed way about the place and the social role of religions and about the many social customs which they give rise to. The other aspect of the proclaimed exceptional nature of the 'French model' lies in the fact that those who lay claim to it and seek to preserve it, while recognising that it is important to take account of other European experiences on the matter, and that the French system does not have anything to fear from the current, political Europe, consider nevertheless that the path followed by France, its “model” of secularity should, however, be able to inspire other European States.

108 Cf. Le BARS S, « La ‘laïcité positive’ face aux risques de la’ laïcité restrictive’ », *Le Monde* du 16/04/11.

“(...) From a precise legal point of view, and therefore, from a political point of view, the draft (European) treaty was by no means a retreat of secularity (...); this debate is now behind us;” declares MP Jean Glavany, “It remains, starting from historical and legal accomplishments, to have Europe progress along the road to secularity.”¹⁰⁹

- Finally, under the pretext of submitting a lucid report on the real or supposed conflicts which cut across French society, and which can affect the reception of its law and its capacity to evolve in a society that has become more complex, we should not imagine ourselves in return being able to manage to give birth to a society completely deprived of tensions or conflicts. It would be not only illusory, but rather perilous.

What is better can, under such conditions, become the enemy of the good.

Tensions and conflicts form integral parts of life in any society and are often opportunities to be grasped in order to have mentalities and practices evolve, without, however, imagining we are able to live in a society that is completely pacified...sanitised.

The time has come to reflect on an ethic of dissension, which is another manner of raising the issue of coexistence and accepting to live with differences and divergences.

109 GLAVANY J, *op cit*, p 203.

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ANNEX I

France Respondent List:

NAME	AFFILIATION	TITLE
Mohammed <i>Moussaoui</i>	The French Council of the Muslim Faith (CFCM)	<i>President</i>
Eyup <i>Sahin</i>	<i>Millî Gorus France</i>	<i>Président Millî Görüs East</i>
Kamel <i>Saidi</i>	Aix-en-Provence Mosque's Association	President
Durak <i>Arslan</i>	Federation of Alevi Unions of France (FUAF)	President
Claude <i>Baty</i>	Protestant Federation of France	Pastor, President
Geoffroy <i>Goetz</i>	Federation of Reformed Church and Augsburg's Faith of Alsace	Pastor, Vice President
Bernard <i>Xibaut</i>	Archbishop of Strasbourg	Priest, Chancellor
Antoine <i>Hérouard</i>	Bishops' Conference of France	Priest, General Secretary
Jean <i>Gueit</i>	Russain/French Orthodoxy	Priest, rector of the russian orthodox cathedral of Nice (Constantinople Patriarcate)
Haim <i>Korsia</i>	Jewish / French Army	Chief Jewish chaplain fo the French Army
Guy <i>Arcizet</i>	Grand Orient of France	Grand Master
Alain-Noël <i>Dubart</i>	Grand Lodge of France	Grand Master
François <i>Stifani</i>	National Grand Lodge of France	Grand Master
Jean-Michel <i>Quillardet</i>	International Observatory of Laïcité and against communitarian deviance	President
Michel <i>Gillet</i>	Observatory of Laïcité of Pays d'Aix	President
Jean <i>Glavany</i>	French National Assembly	Member of Parliament, PS, member of the <i>parliamentary commission for the law banning the niqab</i>
Olivier <i>Bitz</i>	Strasbourg Municipality	Assistant Mayor, PS, responsible of relations with religious communities
André <i>Gerin</i>	French National Assembly	Member of Parliament, PCF, Mayor of Venissieux, member of the <i>parliamentary commission for the law banning the niqab</i>
Jean Claude Guibal	French National Assembly	Member of Parliament, UMP, Mayor of Menton
Jean Philippe Revel	CGT, The General Confederation of Labor	The national responsible of <i>Missions Locales</i>
Véronique Lopez Rivoire	FO, Workers' Force	The legal department manager
Michèle Mambert	UNSA, The National Union of Autonomous Unions	Local responsible (former National responsible) of social and health workers in public and private sectors
Henri <i>Huille</i>	<i>Libre Pensée</i>	Secular and atheistic activist

Pierre Langeron	Science Po Aix-en-Provence	Juriste, specialist in Religion
Nissim Sultan	Rabbin of Aix-en-Provence	Rabbin of Aix-en-Provence
Tariq Oubrou	President of the federation of Imams of France	Imam and Mufti of Bordeaux
Denis Gril	AREI Research association of Islamic Studies	President

ANNEX II

TOPIC LIST USED

Basic Tensions of Governance of Religious Diversity - By Professor Veit Bader (WP7 Team Leader)

General Tensions/conflicts between Basic Rights - Item-list for the socio-legal research.

The focus on basic tensions or conflicts between basic rights may be easily misunderstood. Tensions or conflicts between rights are, indeed, normative tensions but not of the kind of ‘normativity’ characteristic for moral philosophy. Quite to the contrary, these are tensions inherent in empirical norms (i.e. norms claiming legal validity) both in International Covenants of Civic and Political Rights or the ECHR as well as in (Constitutional) Law of Member States, whether we call these constitutions ‘liberal democratic’ or ‘constitutional democracy’ or not. In this ‘socio-legal’ part of RELIGARE, we are interested in the empirical way in which Courts and Equal Treatment Commissions deal with them practically, how they argue for – often widely diverging – balancing and weighing up when judging cases in specific contexts and circumstances – and whether and, if so how, these processes are influenced by deeper, implicit cultural biases. In addition, we are interested in how our respondents (preferably also judges and chairpersons of Commissions amongst them) perceive these tensions and deal with them. Last but not least, we are also interested in conflicts that do not end up before the courts (‘non-cases’) and in divergent non-jurisprudential practices and resolutions of (potential) conflicts. We present the items (in all thematic work packages WP3 – 6) in the following order: (i) (empirical) practices (of case law and conflicts or good practices that do not appear in case law); (ii) (normative) what, if anything, should be changed?

1. Tensions between individual and collective autonomy. In terms of religious freedoms: tensions between individual or internal religious freedom (freedom of conscience) and collective or external religious freedoms (religious practices and associational freedoms of (organised) religions).

2. Tensions between collective religious freedoms and other basic human rights (ICCP Art. 9,2: “protection of the rights and freedoms of others”), such as: freedoms of speech/expression and anti-discrimination (both with regard to ‘religious speech’ and ‘secularist speech’); protection of essential basic rights of individuals and religious minorities (particularly minors, dissenters, women, ethnic and gender minorities (vulnerable minorities)) within religious minorities and within religious majorities and their organisations.

3. Tensions between religious freedoms and ‘public order’ and ‘security’ (ICCP Art. 9,2: “public safety, public order, health or morals”), particularly in an age in which security-issues get ever more prominent.

4. Tensions between (formal) equal treatment (of religions and non-religions) **before and in the law and more substantive equal treatment (if any)** (commonly phrased in terms of ‘negative freedoms of religion’ versus ‘positive freedoms’)

Family Law (WP 3)

1. Basic Tensions in cases in which rules and practices of (minority or majority) religious family and divorce laws and customs are at odds with basic principles of international family and divorce law and general civil or state marriage and divorce law: equality between the sexes and favor divortii (marriage, divorce, custody (and inheritance, excluded in WP 3) [It has already been decided in the RELIGARE project proposal that we do not research cases of conflicts with rules and practices of modern criminal law such as wife beating, child beating, genital mutilation, honour killing]. Because of the increasing importance which the ‘legal regulation of intimate relations’ has recently gained with issues of same-sex marriage and adoption, we include issues of polygamy and same-sex marriage and the respective challenges and defences of the ‘norm’ of monogamy and nuclear family.

Domains: (i) International Private Law (IPL); (ii) domestic religious law(s) versus state law; (iii) Alternative Dispute Resolution (ADR) (e.g. Islamic Arbitration Tribunals)

Items:

(i) International Private Law (IPL):

(1) In case of difference between citizenship and residence of the persons involved should the legal order of the former or the latter should prevail (or should there be the option of choice)?

(2) If traditional practice and customary marriage- and divorce- and adoption law of religious communities (e.g. in India) is not legally recognised by ‘modern’ (e.g. English) IPL law, how do judges deal with such cases?

(ii) Domestic religious law(s) versus state law:

(1) is there/should there be ‘one civic marriage and divorce law and courts only’ for all citizens/residents and, if so, why?

(2) Is there/should there be the option of religious marriage and divorce law and courts parallel to or as a replacement for civil marriage and divorce law? If parallel, under what conditions and limitations? If religious marriage and divorce laws and courts only, under what conditions and limitations? (Include: voluntariness vs. marriage under duress; freedom of exit (favor divortii); rough equality amongst the spouses (in all types of possible ‘marriages’: monogamous, polygamous, same-sex, PACS (pacte civil de solidarité); minimal responsibilities for childrearing)

(iii) Alternative Dispute Resolution (ADR):

(1) Is there/should there be separate religious dispute resolution and, if so, why?

(2) Is there/ should there be state recognition of religious courts? Of religious arbitration tribunals? Of religious arbitrators? Of arbitral awards? Under what conditions and limitations?

Labour Law (WP4)

Basic Tensions: Religious interests of employees versus interests of other interested parties (employer, co-workers, customers, general public) and other liberal values such as secularism, non-discrimination (sex and gender equality) (the individual religious freedom cluster). Collective autonomy (practices of majority or minority religious organisations and associations that are protected by collective religious freedoms) versus labour law principles of non-discrimination on the basis of religion, gender, sexual orientation (and possibly race) (the collective religious freedom cluster).

Domains: (i) ‘non-religious’ or not ‘faith-based’ workplaces (including private, semi-private and public employers) (ii) (organised) religions (including the whole variety of religious core-organisations as employers, not only ‘churches’) (iii) ‘Faith-based’ organisations as employers (including not only ‘religion’-based ‘ethos’ employers but all non-religious ‘ethos’ employers)

Items with regard to legal/legitimate exemptions from general labour law rules and standards:

(1) Is there/should there be a special (non-) employment status of church staff (ranging from pastors of cult to lay cleaning and gardening staff) and what is/should be the role of existing/ developing (member-state and European) law and jurisprudence?

(2) What is/should be the role of labour union advocacy in this regard?

(3) How are claims for the accommodation of religious exemptions in the workplace (dress codes, food-prescriptions, prayer-facilities, time schedules etc.) and for equal access and inclusion in the labour market perceived and dealt with and what is/should be the role of existing/developing law and jurisprudence in this regard?

Public Space (WP5)

Basic Tension: Basic principles of liberal democratic constitutionalism (such as ‘state neutrality (as ‘strict’ or ‘formal’ versus ‘benevolent’ or ‘relational neutrality’; as ‘neutrality by subtraction’ or ‘by addition’) and fairness (as ‘hands-off’ or as ‘even-handedness’) versus traditional historical ethno-religious ‘national (majority) culture’ (and quite often highly questionable assumptions regarding ‘necessary social cohesion’ and ‘political unity’). The reluctance to or rejection of reasonable accommodation is based on (i) intrinsic problems of all forms of pragmatic, administrative accommodation (working out practices by way of talking and negotiating) and (ii) on more or less deeply entrenched cultural majority-bias opposed to public symbolic recognition. Both reasons work out very differently in countries and ‘national jurisdictions’. The core conflict is how ‘neutrality and fairness’ are interpreted and how much weight is given to legitimate claims to protect/develop

‘national culture’. The core normative issue is – given all this (legitimate) variety – to defend and implement accommodation that is minimally required in countries characterised by wide and deep religious diversity.

Domains: (i) religiously oriented private schools; (ii) dress codes; (iii) building/maintaining places of worship

Items:

(i) Non-governmental religious schools: (1) Does/Can the state forbid or limit the existence of non-governmental schools? Which is/should be the justification of the limitations or conditions that the State impose on the existence or management of this type of schools? Does the State treat differently governmental and non-governmental schools and if so, why? (2) What is/could be their contribution to plurality in education? (3) to learning and practicing minimal civic virtues and liberal-democratic virtues?(4)Do they threaten minimal social cohesion and national unity and, if so, why? How can/should the state ensure that they do not threaten minimal social cohesion and national unity?

(ii) Dress codes: (1) Are there/should there be any legal prescriptions against wearing religiously prescribed dress codes in public spaces and, if so, which dress and in which spaces, and why (again: social cohesion, national identity and, in addition: equality and security)? What is/should be the role of member-states and EU courts in balancing individual and collective religious freedoms with other basic rights and with ‘national values’?

(iii) Building and maintenance of places of worship:

(1) Should every religious community have the right to build a place of worship? On what conditions? (2) Should the government consult the citizens of the area where the place of worship is planned to be built? (3) Should the government cover the costs for maintenance when a place of worship is a monument? (4) Should the place of worship then be open to the public? (5) Do you consider a place of worship in general as a public place? (6) Is the use of a building that is abandoned as a place of worship open to the choice of the seller, or should the former religious use be respected in some way?

State Support (WP6).

Basic Tensions: (i) ‘strict neutrality’ = **no financing and recognition** (obviously only in an imaginable world, not in any existing regime of religious governance) versus **relational neutrality and equality as fairness:** (ii) if any public money, then ‘**equality before the law**’ instead of privileging the entrenched majority religion(s) and/or ‘**substantive equality**’ minimally requires to take history into account (e.g. in cases of very recent ‘disestablishments’ or the many hidden forms of financing churches via ‘cultural heritage’). (iii) For religious and religion related organisations: (a) autonomy dilemma: trade-off between autonomy and privileges. Less or no scrutiny and control by the state, on the one hand, and money and other privileges (connected to public/political scrutiny and control) and political influence, on the other; (b) organisation and mobilization dilemma (see Bader (2007), p. 228f).(iv) Basic tensions for liberal-democratic states (p. 229-31).

Domains: (i) religious core organisations; (ii) FBOs (such as religious schools, media)

Items

1. Should there be a public funding of religions and FBOs? Why?
2. Do you feel that all religions and FBOs are entitled to public funding?
3. What kind of public funding for religions and FBOs is available in your country? What type of funding can it be compared to? Which would be the best way for the State to finance religions and FBOs? (Suggested Typology for (organised) religions): (i) subventions to the sustained religions (ii) subventions granted according to precise projects (iii) tax deduction granted to religious institutions (iv) church tax according to the religious affiliation (iv) possibility of granting part of the income tax to religious denominations
4. Is there control over the use of the public support? Is there a demand of transparency / accountability? If so, how do religious bodies deal with it?

These are some of the basic tensions of governance of religious diversity that are characterizing all modes of governance in states with liberal-democratic constitutions.

For this reason, they should form the common core of the items to be included in the list.

The changing ways in which they are perceived, articulated and, most importantly, dealt with and 'resolved' depends on a huge variety of historical and contextual aspects. Thematic WP's and country teams should, in a first, fairly preliminary step, give a rough indication of how this is done in the six countries (a rough 'country profile'). On this basis we can then proceed to specify the items in such a way (e.g. by selecting either landmark-cases or contested cases that received much public attention) that the respondents in the six countries do not find it difficult to understand what we want to talk about during the interviews.