

SECULARISM TODAY

Guidance note by the Secularism Monitoring Centre

1. There is greater cultural diversity in France today than in the past, which is why the country needs secularism now more than ever, for it enables all citizens, whatever their philosophical or religious beliefs, to live together, enjoying freedom of conscience, freedom to practise a religion or to choose not to, equal rights and obligations, and republican fraternity.

Secularism is not an opinion among others, but rather the freedom to have an opinion. It is not a belief, but rather the principle authorizing all beliefs, providing they respect the principles of freedom of conscience and equal rights. For this reason, it is neither pro- nor anti-religious. On this basis, adherence to a faith or philosophical belief is entirely a question of freedom of conscience for every man or woman.

2. Secularism is facing new challenges that have arisen in recent decades, in the context of a rising tide of separatist claims and the misuse of secularism to stigmatize people. Republican secularism in France must draw strength from its heritage and rise to these challenges. The Monitoring Centre, with its wide range of members, has begun to examine the situation, in order to formulate opinions and recommendations.

This text aims to give an insight into the work of the Monitoring Centre by recapping the history and the legal and philosophical principles of secularism.

I. THE HISTORICAL CONSTRUCTION OF SECULARISM

3. Secularism is the fruit of a long historical process which characterized the entire Western world, in one way or another, from the 18th century onwards. Rooted in the Middle Ages, this process converged with developments that culminated in what is known as modernity, marked by secularization, which emerged at the end of the 18th century, with the Enlightenment, empowerment of the individual, the emancipation of belief, advances in knowledge and social progress. While the monarchy and even the French Revolution, in its early days, called on religion to bolster their legitimacy, States and societies distinguished between general interest and individual beliefs and convictions.

4. This process took on specific characteristics in France. The Catholic religion was at the heart of the political conflicts that began with the French Revolution. The Constituent Assembly established a “Civil Constitution of the Clergy” in order to “nationalize” the Catholic faith. The Revolutionaries then tried to lay the foundations of a civil religion by instituting the “Cult of the Supreme Being”, on Robespierre’s initiative, without much success. A Directory decree in 1795 even established a short-lived separation between the Church and the State. The Consulate, on the contrary, wanted to make a political compromise with the “Concordat”, which guaranteed religious pluralism while requesting that the Catholic Church, “the religion of the majority of French people”, contribute to legitimizing the political and social order. The Catholic Church thus retained a considerable amount of power, which it sought to preserve and extend, when possible, throughout the 19th century. The republicans were keen to combat clericalism, that is, the Church’s influence in political life. Although they did not all share the same view on the relations that should exist between a secular State and the Churches, they all intended to establish a secular Republic.

5. After the fall of the “Moral Order” in 1877, the acts founding a secular Republic were implemented successively, over more than a quarter of a century. The national representatives’ independence from religion was symbolically affirmed by the abolition of public prayers at the start of parliamentary sessions. The authorization of divorce gave concrete expression to freedom of the individual in the face of religious dictates. The secularization of schools, with the major acts introduced by Jules Ferry (1881-1882: free education and a secular curriculum, 1886: secular staff), was, of course, a decisive step. However, the Churches and the State were not strictly separated until 1905, as the republicans had hesitated over which path to take. The vision that prevailed, promoted mainly by Aristide Briand, Jean Jaurès and Georges Clemenceau, was liberal in its inspiration and the opposite of anti-religious legislation. It is based on three principles: freedom of conscience, the separation of political and religious powers, and therefore of religious organizations and the State, and the equality of all citizens regardless of their beliefs and convictions.

6. The Act of 9 December 1905, one of compromise and balance, resulting from considerable work by the Parliament and long debates, concluded the founding period of republican secularism. It gave real meaning to the principle of citizenship. “The Republic ensures freedom of conscience. It guarantees the free exercise of all forms of worship, subject only to the restrictions enacted hereafter in the interest of public order.” (Article 1). However, it “neither recognises, subsidises, nor pays salaries linked to any form of worship” (Article 2). The property of the clergy is entrusted to religious associations, recognised by the Catholic Church in the form of diocesan associations only, following the Poincaré-Cerretti agreements of 1923-1924.

II. THE PRINCIPLE OF SECULARISM

What is secularism?

7. The principle of secularism has a strong legal basis.

The Act of 9 December 1905 proclaims and organizes freedom of conscience, freedom of worship, and the separation between the Churches and the State. Article 1 of the Act defines secularism as a principle underpinning a form of citizen freedom which takes account of citizens' rights but also their duties with regard to “general interest” and “public order”. In this respect, secularism has an educational dimension. It helps people to recognise that freedom is the ethically and politically regulated right to do anything that does not harm other people or prejudice human dignity, public security or social harmony. It helps to promote a shared culture of respect, dialogue, mutual acceptance and treating all others as equals with the same dignity and rights.

Another consequence of secularism is the separation of the State and religious organizations. This means that religious ministry is no longer considered a public service. The State does not recognise, subsidise or pay salaries linked to any form of worship and, consequently, does not interfere with the way that Churches operate. It does not play a part in their organization, operation or financing.

The provisions of the Act of 9 December 1905 must today be considered in the light of texts that rank more highly in the legal hierarchy, namely the French Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

It should be noted that the Act of 9 December 1905 does not apply in the two departments of Alsace and the department of Moselle, where the *Concordat* regime remains in place. The Constitutional Council has ruled that this situation does not conflict with the French Constitution. The Act does not apply in certain overseas territories either.

8. Article 1 of the French Constitution of 4 October 1958 stipulates that “France is a secular Republic”, as previously declared in Article 1 of the Constitution of 27 October 1946. “It shall ensure the equality of all citizens before the law, regardless of origin, race or religion. It shall respect all beliefs.” This affirms the freedom of conscience and the principle that citizens cannot be discriminated against on the basis of their religion, or lack thereof. The Declaration of the Rights of Man and of the Citizen of 1789, which is referred to in the Preamble of the 1958 Constitution, proclaims that “everyone has the right to hold opinions without interference, even those of a religious nature, provided their demonstration does not disturb the public order established by law” (Article 10).

9. The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome on 4 November 1950 and applies in all signatory States, including France; these States are free to decide how they wish to implement the Convention, so long as its principles are upheld. Article 9 of the Convention stipulates as follows: “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. / 2. Freedom to manifest one's religion or

beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” Article 14 prohibits, for the enjoyment of the rights and freedoms set forth in the Convention, any discrimination, including on religious grounds.

10. French law recognises as components of freedom of conscience, under various names including “freedom of worship”¹, “freedom of religion”² and “religious freedom”³, the freedom to believe and to adhere to or practise a religion, as well as the freedom to have no religion, to be atheist, agnostic, or a follower of humanist philosophies, or to change religion.⁴

However, it is important to distinguish between freedom to believe and freedom to express beliefs. Freedom to believe cannot be limited in any way. Freedom of conscience is founded on freedom of thought, which includes freedom to criticize any idea, opinion or belief, subject only to legal restrictions on freedom of expression.

Freedom to express religious beliefs, on the other hand, may be limited under conditions established by law, as in the case of students and teachers in State schools, or public officials, for example.

However, freedom must remain the principle and limitations an exception, and legal restrictions must be compatible with the Constitution and relevant conventions.

11. The separation of the Churches and the State implies neutrality on the part of the State, local governments and public services. France, as a secular Republic, “*shall ensure the equality of all citizens before the law, regardless of origin, race or religion*”. It therefore ensures the equality of all citizens with regard to public services, whatever their beliefs or convictions. Public services must not give preferential treatment to certain users or discriminate against them on the grounds of a real or presumed religious belief or lack thereof. The State, local governments and public services must not make decisions on a discriminatory basis. Public officials are prohibited not only from doing so but also from giving the impression of doing so, for example by displaying religious symbols in their office or at their counter, or by wearing such symbols.

This neutrality applies to public service officials and not to users of these services, with the exception of students in public primary and secondary education, users of the public education service, who are subject to restrictions on wearing symbols or clothing that demonstrate a religious belief, under the Act of 15 March 2004. The principle of neutrality does not apply in private establishments.

12. The principle of secularism, which is one of freedom, cannot be reduced to these legal aspects.

Secularism brings freedom on two levels.

¹ The Act of 9 December 1905 refers to “free exercise of all forms of worship”.

² European Convention for the Protection of Human Rights and Fundamental Freedoms.

³ Certain decisions of the Constitutional Council (Decision no. 2010-613 DC of 7 October 2010) and the *Conseil d'Etat*.

⁴ Subject only to legal restrictions on the grounds of public order.

Firstly, it frees the State from all religious supervision. Secularism is based on the same principle as democracy, as both challenge the notion that the supernatural could or must be called upon to legitimate the political order in France, which is founded solely on the sovereignty of the citizen population.

Secondly, it frees religion from all State supervision. It guarantees believers and non-believers the same freedom to express their convictions. It ensures that people have the right to change religion or to adhere to one if they were previously without. It guarantees believers not only the freedom to choose their religion but also freedom with respect to religion: no believer may be obliged by law to respect religious dogmas or dictates.

Secularism separates politics from religion, bringing together all members of society, with the guarantee that they share the same rights. Believers have no fewer rights than non-believers. Non-believers have the same rights of expression as believers. Beliefs cannot be cited as grounds for evading the law.

13. The principle of secularism is equally conducive to individual freedom and collective equality and fraternity.

Secularism is not the enemy of religion, any more than it is an ideology or opinion rivalling others: it is the political principle that enables all existential beliefs to co-exist harmoniously, on the basis of the shared conviction that every individual possesses the same right of expression.

According to the model of the secular Republic, differences are recognised, but on the basis of shared principles and values, in such a way that specific adherences and individualism can never prevail over the possibility of living together harmoniously.

Secularism is both a democratic and republican principle: it takes into account as much the multiplicity of individual aspirations as the need for social unity based on the principles and values of the Republic. It renders personal freedom compatible with social cohesion.

III. APPLYING THE PRINCIPLE OF SECULARISM TODAY

14. One of the Monitoring Centre's tasks is to put forward solutions for applying the principle of secularism, which is in itself intangible, to new situations.

In the first year after it was set up, the Monitoring Centre examined several different topics. It published a "reminder of the law" on the principles of secularism and several guides on putting secularism into practice, including "Secularism and management of religion in socio-educational structures", "Management of religion in private companies" and "Secularism and local governments".

Although secularism is based on the principle of free expression of religious beliefs, the Constitution, international conventions and the law impose a number of restrictions, in order to preserve public order. Disturbance to public order is not simply a question of behaviour that causes inconvenience, but it can occur in a range of situations and these should be clearly identified.

The practising of religion

15. Places of worship are spaces that are dedicated to the practice of a religion. In such places, people have total freedom to practise their religion, providing that, in doing so, they do not break the law.

Religious activities outside places of worship may be authorized on the condition that they do not disturb public order.

Dictates and behaviour

16. All people may dress as they wish, on the condition that they avoid exposing themselves unlawfully and that they respect rules on work clothing. It should be highlighted that regulations and social codes determining what is permitted, tolerated or prohibited in this regard vary depending on the place and the era.

However, dictates concerning physical appearance or clothing that are based on religion, or declared to be, can arouse hostility or distrust. They are presented as symbols of a shared faith, showing respect or modesty. In some cases, their religious nature is asserted but remains disputable. These symbols can concern both sexes. In practice, reservations are mainly expressed with regard to clothing which hides all or some of a woman's head, face or body.

Hostility or reservations are linked to a feeling that a symbolic attack is being committed through religious expression perceived as proselytism in the public space. Where women's clothing is concerned, the rejected symbol is deemed to jeopardise women's freedom, their right to equality, or even their dignity, and to contradict the principle of gender equality.

Prohibiting all religious symbols in the social space would be an infringement of religious freedom, in as far as it would involve banning a religious practice that does not limit the freedom of others. It is therefore necessary to distinguish carefully between objective disturbance to public order which constitutes a legal limit on religious practices and subjective perceptions which cannot, as such,

justify restricting this freedom.

17. The Act of 15 March 2004 on religious symbols or clothing in public primary and secondary schools, which bans wearing visible religious symbols such as Islamic headscarfs, large crucifixes, kippahs and Sikh turbans, was justified by the desire to guarantee neutrality in schools, the need to protect children from pressure they may be under to wear a particular symbol, and the wish to avoid conflicts at school between those wearing a symbol and those not wearing it and to prevent the proselytism that could result from expressing religious beliefs in this way.

In private establishments, wearing a religious symbol is a question of individual freedom, but at a collective level, may cause operational problems within the establishment, on an objective level (working conditions) or a subjective one (risk of tensions). Solutions can be reached via contractual agreements, at industry or company level, to set limits on this freedom, providing that these agreements are legal. If, in future, the Government feels that it is necessary to establish a legal framework in compliance with the applicable higher legislation, the Monitoring Centre recommends not using the law to resolve individual cases. In the case of private utilities, it is up to the State and local governments to ensure the close presence of a public service in which the principle of neutrality applies. The Monitoring Centre issued an opinion along these lines regarding the situation of the Baby Loup crèche, concluding, at this stage, pending the definitive ruling of the French Court of Cassation in particular, that solutions existed already and there was no need for new legislation.

In public spaces (excluding public services), for example in the street, people are free to wear religious symbols, as far as the principle of secularism is concerned. The Act of 11 October 2010 banning people from concealing their face in public spaces is a law of public order rather than secularism.

18. Dictates concerning diet are present in most religions. These may involve a permanent ban on particular foods, an obligation to eat foods prepared in accordance with certain religious rules, or an obligation to fast during certain periods. This can raise questions relating to the principle of secularism when users of public services wish to comply with these dictates, which, in practical terms, places financial and organization constraints on the establishments concerned.

In practice, public service catering does not attempt to meet these dietary requirements, but may offer a range of menus, for example dishes with or without meat.

However, when applying the principle of secularism in enclosed premises, it is important to take into account the fact that these people are unable to practise their religion elsewhere.

According to the principle of secularism, the expression of religious beliefs through dietary requirements must not be allowed to disrupt the operation of the public service or to exert pressure on members of the group who do not wish to respect these requirements.

19. Religious beliefs may dictate a range of **personal choices**. An example is refusal to work, take an exam or compete on a particular day of the week. With regard to exams, under administrative case law, there is no infringement of religious freedom if it is impossible to cater for this choice. Conversely, catering for this choice does not contravene the principle of secularism.

Other such choices include refusing to shake hands with people of the opposite sex, to be in their presence in certain public places (such as the swimming pool), to work with them or to undergo a medical examination by them.

There are no legal rules imposing specific politeness rituals, such as shaking hands. Practices in this area are continually evolving and depend on the country, the era, age and social background. However, behaviour which is damaging to a person's dignity is unacceptable and could be qualified as harassment or discrimination.

20. Religious **proselytism** consists of seeking to convince others to adhere to a particular religion. Freedom of worship includes freedom to inform others about one's faith. In the same way, freedom of belief, in terms of philosophy or politics, includes the right to inform others of one's beliefs to encourage others to share them. However, religious proselytism is banned in public services, on the grounds of their neutrality. It is also banned, like other acts of communication in public places or companies, if it disturbs public order or hinders a company's operations due to the methods used or the message communicated. It is also banned when community pressure effectively forces individuals (pupils in the school canteen, patients in public hospitals, colleagues in companies, etc.) to adopt practices that are religious or presented as such, even though they have not personally expressed the wish to do so.

21. Religious groups, like all social groups, are **free to express themselves on societal, ethical, political or social issues.**

Those who adhere to a religion or a philosophy have a specific world view which shapes their opinions on key issues concerning life in society. They therefore have the right to participate in public debate, like any social organization or individual citizen.

22. Any citizen or organization may, by legal means, express their opposition towards a bill or even a law that has been passed, if they feel that it runs counter to their philosophical, religious or other beliefs. Once the law has been promulgated, they must observe it and not obstruct its implementation. However, nobody is obliged to exercise a freedom granted by law.

The expression of religious beliefs cannot, without jeopardizing secularism and democratic principles, go so far as to challenge the legitimacy of decisions made by democratic authorities, on the basis of higher principles.

23. Although the principle of secularism distinguishes between the Churches and the Republic by separating them, it does not prevent public authorities from consulting representatives of faiths or major philosophical schools of thought in order to inform their decisions. Such consultations must be carried out in accordance with the principle of separation.

24. The Monitoring Centre has noted the new challenges arising from societal change and religious or separatist claims expressed, for example, in the context of certain social services, prisons, or sport. These significant issues, which should lead to clarification of the rules on applying the principle of secularism in certain situations, will be added to the Monitoring Centre's agenda.