State and Religion in France – Part 1[*]

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ABSTRACT**:** *French law governing the relations between the State and religious bodies is complex. In many ways it is misrepresented both inside and outside France, as it is believed to base its treatment towards religions on principles of absolute separation and indifference. But the reality of French law is actually quite different. Part I presents author's attempts to give an overview of French religious law, by successively presenting some sociological data, the constitutional texts, the general characteristics of the system, and the principles governing the organization of religious institutions.*

1. Sociological Data

Sociologically, France is often described as a deeply secularized country. But it is also a fact that France is still permeated with Catholic culture and traditions. This Catholic dimension is sometimes visible at the level of political institutions, for instance when great religious ceremonies are organized at Notre Dame Cathedral in Paris for the funerals of deceased heads of state.

According to a survey by the polling institute CSA in 2004, 64% of French people declare themselves as being Catholic, 27% as being atheist, agnostic or indifferent, and 9% say that they belong to religious minorities. Out of those 9%, half are Muslim, 22% are Protestant and 7% are Jewish. Buddhists may amount to 1% of the French population[1]. Religious practice is not very strong. Only 10% of French

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people attend religious services every week, while 60.4% of French people say that they never attend religious services or ceremonies at all[2].

2. Constitutional Texts

Unlike other countries in the European Union, France has only a few constitutional texts dealing with religion. These texts are the 1958 Constitution itself and what has been included in it from former documents (for example the Preamble to the 1946 Constitution), and the "Fundamental principles recognized by the laws of the Republic" ("Principes fondamentaux reconnus par les lois de la République", hereafter PFRLR). There are also subsidiary texts, but these have not received jurisprudential confirmation. They are often referred to with the aim of backing the case for philosophical "laïcité".

The undisputed foundational texts of French constitutional law on religion are:

- The first article of the Constitution of 4 October 1958: "France is an indivisible, secular, democratic and social republic, securing equality before the law for all its citizens without distinction of origin, race or religion".

- Article 10 of the Declaration of the rights of man and of the citizen: "Nobody is to be held accountable for his /her opinions, even religious ones, provided that their manifestation does not upset the order established by law".

- The Preamble to the Constitution of 3 October 1946: "... Nobody is to be discriminated against in his/her work or employment on the basis of his/her origin, opinions and beliefs... The organization of a free and secular public education system at all levels is a duty of the State."

Moreover, the Constitutional Council has the responsibility of defining some PFRLR which have constitutional value. These principles are the result of a homogeneous juridical tradition and have to be already mentioned in a republican law dating back before 1946. The Constitutional Council has defined five PRFLR more or less closely linked to religious law: freedom of education, freedom of conscience, respect for private life, freedom of association, freedom to communicate ideas.

As for the State Council, it has established in its ruling of 6 April 2001 (SNES) another PFRLR, the principle of "laïcité", in order to confirm the stability of the local religious law of Alsace-Moselle, which had been maintained by a law dated 1 June

1924. The principle of "laïcité" already had constitutional value before its inclusion in the Constitution of 1946, and was already in force when the local religious law was confirmed by the legislative power.

The principle of "laïcité", which is mentioned notably in article 2 of the law of 9 December 1905, is sometimes interpreted extensively to support the idea that the public financing of religions is illegal. But such a position is untenable, in so far as the law also provides for a whole series exceptions to the general rule. If the extensive interpretation was correct, then the exceptions would become unconstitutional, while the French system of public financing of religious bodies is precisely based on the recognition of exceptions.

The constitutional texts and the Constitutional Council give no definition of "laïcité". Still, some elements of a definition can be deduced from an examination of positive law, and more precisely of religious legislation. The constitutional principle establishes the separation between the political power and religion. The State is neutral in religious matters, and the public services are non-religious. However, neutrality does not imply that the State ignores all religions. The law of separation between Church and State of 1905 goes against such an idea, because as a law it is meant above all to guarantee the free exercise of religious worship and to organize religious institutions; it is not meant to establish the indifference of the State towards religions. French "laïcité" establishes a principle of positive neutrality on the part of the State, which respects all religions and recognizes religious pluralism. The chairman of the Constitutional Commission declared in 1946: "Laïcité is not a philosophy or a doctrine, it means the coexistence of all philosophies and doctrines, and respect for all beliefs."

In its ruling of 19 November 2004 (n° 2004-505 DC) on the compatibility of the French Constitution with the Treaty establishing a European Constitution, the Constitutional Council ruled that the first paragraph of article II-70 recognizing the right to manifest one's religious belief by practising it in public individually or collectively, does not contradict the first article of the French Constitution, which says that France is a secular republic "which forbids anyone to take advantage of their religious beliefs to consider themselves as not bound by the common rules that govern the relations between public institutions and individual citizens."

3. The General Characteristics of the System

France has much fewer constitutional or legislative texts establishing a status or a system for religions than other member-states of the European Union. This scarcity of texts has led to the establishment of a variety of systems in French religious law. French religious law is indeed far from monolithic; it is rather plural, because of pragmatic policies that have created a tradition of asymmetrical systems legitimized by geographical and cultural differences, and by historical contingencies.

- A first element of diversity is the law of 9 December 1905, called the law of separation. It applies to all the French "départements", but with some exceptions: the department of Guyane **(**Ordinance on 27 August 1828**)**, the departments of Bas-Rhin, Haut-Rhin and Moselle **(**law of 18 germinal an X - 1802, and Ordinance in 1844**)**, and the French overseas territories called "Territoires et collectivités d'Outre-Mer" **(**Modified Decree on 16 January 1939).

- A second significant element of this particular French diversity derives from "gallicanisme", that is to say, the alliance between the French king and the French clergy with the aim of limiting the power of the Holy See. This policy was partly upset by the laws of the French Revolution, but it still survives today, in a watered-down form, in the religious policies of French governments and public administrations. It is characterized by attempts at controlling religious institutions and activities, which are considered with distrust.

- A third element is that the texts of the French Revolution dealing with religious freedom have an individualistic approach. They are concerned with the freedom of individuals as such, and not as members of networks of traditional social ties. As a consequence, in principle it is impossible to grant specific rights to social groups. However, even though the French juridical system rejects the idea that the autonomy of a social group can be recognized by law, the freedom of religious bodies to organize themselves has been accepted by jurisprudence. According to Jacques Robert, a former member of the Constitutional Council, "religious freedom goes beyond mere freedom of opinion, because religious faith can thrive only if churches are totally free of their activities. Religious freedom implies that churches should have the right to organize themselves freely..."

- Fourthly, France has set up a very selective system of cooperation between the State and religions. The religions that are considered acceptable by philosophical "laïcité" are the only ones who are allowed to receive some support from the State.

Conversely, religious groups who are socially controversial or whose religious practice is considered excessive fall within the scope of specific laws, such as the following two: the law of 12 June 2001, which contains stronger preventive and repressive measures against cultic movements which violate human rights and fundamental liberties; and the law of 15 March 2004, which, applying the principle of "laïcité", regulates the wearing of external signs or clothes expressing religious membership in public primary and secondary schools. Controversial laws can be submitted to the Constitutional Council for further examination, if a minimum of sixty deputies or senators request it. But this has happened to neither of these two laws, which suggests they were not suspected of being unconstitutional among the legislature.

4. The Organization of Religious Institutions

In France there is no public institution specifically responsible for treating the wishes of the population in religious matters. Individuals and private associations can only turn to the administrations whose fields of competence bear a relation to these wishes: regional educational authorities and local school authorities concerning secondary school chaplaincies, prison authorities concerning prison chaplaincies, health authorities for hospital chaplaincies, etc.

The supervision of religious groups lies within the responsibility of two administrations: the Central office for religious groups ("Bureau central des cultes") in Paris, and the Office for religious groups ("Bureau des cultes") of the departments of Bas-Rhin, Haut-Rhin and Moselle. Those two offices are under the authority of the central administration of the State, more precisely the General directorate of the administration and the Directorate of territorial administration and political affairs – sub-directorate of political affairs and private associations of the Ministry of the Interior.

The Central office for religious groups (based in Paris) exercises administrative supervision over religious groups which are recognized within the framework of national law and local law (Alsace-Moselle, Guyane and other overseas dependencies). It also intervenes in the procedures of approval for gifts and legacies made in favour of religious groups, especially when these procedures have been blocked by inheritors.

The administrative competences of the Central office for religious groups are limited. It has only a few other roles, like giving juridical advice to public and religious authorities concerning religious law; it has also recently played an important role in organizing the Muslim religion in France, notably at the time of the setting up of the French Council of the Muslim religion ("Conseil Français du Culte Musulman").

The Office for religious groups of the departments of Bas-Rhin, Haut-Rhin and Moselle is part of the central administration but is situated in Strasbourg. It is responsible for the administrative and financial management of the ministers of recognized religions. It is also responsible for the management and supervision of public religious institutions and of religious territorial constituencies.

Those two institutions do not run their own budgets. From time to time, the Ministry of the Interior appoints in his cabinet a technical adviser for religious affairs, if this is needed. These last years, this adviser has been specialised in questions dealing with Islam.

a) In general law

Contrary to what is often believed, the law of 9 December 1905 does not establish a principle of total indifference of the State towards religions. Public authorities, quite naturally, do not ignore organized religious groups, since religious groups are social groups, like trade unions or other associations of people pursuing common goals. And for all such groups the law provides for a juridical framework in order to facilitate their organization and the support they may receive. Following the example of the law of 1 July 1901 on associations and the law of 21 March 1884 on trade unions, the law of 9 December 1905 grants a public freedom to religious groups, by notably creating for them an associative structure adapted to their goals. In that sense, the name given to the law of 1905, "law of separation between Church and State", is an outdated formula. It is also incorrect, as the law of 1905, abolishing the status of religious bodies as public institutions (which had been granted by the law of 18 germinal an X - 1802), replaced this by giving religious bodies the status of private associations, theoretically considered all equal while at the same time benefiting from a system of selective public support. Therefore today the law of 1905 and its subsequent texts must be considered as establishing a system guaranteeing

above all the free exercise of religion, and organizing religious institutions and activities.

The law of 9 December 1905 appears as a special law, beside the law of 1 July 1901 which establishes the general system of associations. It creates a new type of association defined by its specific goal. According to articles 18 and 19 of the law of 1905, the purpose and character of religious associations must be solely religious. In other words, the State does not grant this type of association the freedom to define its own purpose. Membership of the association is also regulated: members must be residents of the religious district covered by the association[3]; and the association must have a minimum number of members, between and 7 and 25 depending on the number of inhabitants of the municipal district where the association is registered. The State Council considers that there are three necessary conditions for an association to be granted the status of a religious association: the association must represent a community of people whose object of belief is supernatural[4], its purpose must be solely religious, and its activities must not upset public order[5].

However, the law of 1905 remains ambiguous as regards the specific religious purpose of religious associations. According to articles 18 and 19 of the law, religious associations are set up in order to provide for the financing, the maintenance and the exercise of public worship. Thus, religious worship comprises both a material dimension and a spiritual dimension. This led to a condemnation of the law of 1905 by the Catholic church, because in the eyes of the Catholic church the law ignored the central role of episcopal authority in the Church, by attributing the administration and the supervision of worship to an association of lay people[6]. In other words, the Catholic church is not constituted by the assembly of the faithful turned into an association, but by the presence of a successor of the apostles, a bishop. In that sense the law of 1905 became a bitter failure for the Republic and for militant republicans, because its title IV on religious associations was never enforced upon the Catholic church, the religion practised by the majority of French people. This rejection by the Catholic church led to several difficulties.

The first difficulty, concerning the organization of the public exercise of worship, was solved in a short time. Prior to 1907, non-religious private associations had to declare to the public authorities any public meeting that they were about to hold; only religious associations were exempted from this. The law of 28 March 1907 abolished this compulsory declaration, which meant that Catholic parishes and dioceses were also freed from this obligation without having to become religious

associations. The same law allowed public authorities who owned religious buildings to lend those buildings free of charge to religious ministers for worship.

The second difficulty was that, unlike the other formerly recognized religions (Protestant and Jewish), the Catholic church refused to obey the 1905 law and to restructure itself into religious associations, which meant that the Catholic church in France remained without any juridical status. The solution to this deadlock was to allow the Catholic church to create for itself religious associations that were in accordance with the law of 1905 and at the same time compatible with the special constitution of the Catholic church, by recognizing and guaranteeing the authority of the bishop. Statutes for Catholic diocesan associations on this model were drawn up by the French government and submitted to the advice of three jurisconsults, who on 7 April 1923 judged them to be in conformity with the law of 1905. An official declaration of conformity was issued by the general assembly of the State Council on 13 December 1923. Then came the approval by the Holy See, through the *Maximam Gravissimamque* Encyclical of 18 January 1924, following negotiations with the French government and on the basis of a *modus vivendi* defined by the Catholic church as an international agreement in a simplified form. A diocesan association has a more limited purpose than a simple religious association. Its purposes is "to provide for the financing and the maintenance of Catholic worship under the authority of the bishop, in communion with the Holy See and in conformity with the constitution of the Catholic church." It was provided that there should be one diocesan association for each French Catholic diocese, created on the sole initiative of the bishop.

b) In the local law of Alsace-Moselle

In the local law of Alsace-Moselle there are four officially recognized religious confessions (Catholic, Lutheran, Reformed, Jewish), which are organized within the framework of public law, while respecting the particular constitution of each confession. Other religious groups organize themselves freely within the framework of private law.

The Catholic dioceses of Metz and Strasbourg, the Reformed Church of Alsace-Lorraine, the Lutheran Church of Alsace-Lorraine and the Jewish religion are organized by the public authorities within the framework of religious districts and public religious institutions as established by the law of 18 Germinal an X -1802 (Concordat and Organic Articles) and by the ordinance of 25 May 1844. Catholic

and Protestant parishes and Jewish departmental consistories are run by public religious institutions: the Catholic "fabriques", the Protestant presbyteral councils, and the Jewish consistories. Those public religious institutions are at the same time *sui generis* institutions. Because of their religious nature, their pastoral mission and their freedom to organize themselves, they cannot be defined as State institutions. And because of the principle of "laïcité", State supervision can be exercised over these institutions only with the aim of preserving public order or the proper interests of each of them[7]. The decision-making organs of those institutions have the status of administrative authorities and their decisions must follow all the rules of administrative law just like any other administrative body. They can be brought before the administrative courts.

Non-recognized or non-statutory religious groups are organized within the framework of private law, more precisely within the framework of the associations established by local law[8]. This type of association is granted legal personality with an enlarged capacity, once it has been entered in the register of associations.

c) In the local law of overseas territories

The law of 9 December 1905 has never been introduced in the department of Guyane or in the "Territoires et collectivités d'Outre-Mer", where religious bodies are governed by specific measures. The local law of Guyane[9] provides only for the support of the Catholic religion, which is organized both within the framework of public institutions (the "fabriques") and of private institutions (the councils of mission). The councils of mission were created in 1939[10], and are also found in the "Territoires et collectivités d'Outre-Mer". They are granted an extended capacity and their acquisitions are not limited by the principle of speciality.

d) Religious congregations

Religious congregations are voluntary groupings of people belonging to a certain religious confession and who wish to live a communal life and a commitment inspired by a rule of life. Congregations can be recognized by the State according to a procedure established by general law[11] or by the local law of Alsace-Moselle[12]. Today there are no differences any more between the two systems. The applications to obtain recognition must be addressed by the leader of the community, the Ministry of the Interior, along with the statutes of the congregation and a certificate from the

religious authority that stands above the congregation. In the Catholic church, it is the bishop. Recognized congregations are granted an extended capacity and they can perform the acts of civil life accessible to juristic persons.

So, as a conclusion to this part: in France, religious bodies are organized either as private associations, under the law of 1905; or within the framework of the relevant public institutions, while taking into account the special features derived from the constitutions and internal rules of each religious group, under the local law of Alsace-Moselle.

(to be continued)

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3. Decree of 16 March 1906.

4. State Council, 17 June 1988, Union of Athées.

5. State Council, notice, 24 October 1997, No. 187122.

6. *Vehementer Nos* Encyclical, 11 February 1906.

7. Tribunal administrative of Strasbourg, 27 June 1996.

8. Articles 21 to 79, Code civil local.

9. Article 26, Ordinnance du 27 August 1828.

10. Modified Decree on 16 January 1939.

11. Modified Law on 1 July, title III.

12. Law on 2 January 1817, and Decree 31 January 1852.