



European Network on Religion & Belief

RELIGIOUS SYMBOLS IN A DEMOCRATIC EUROPE

Seminar 5

Brussels, December 3-4, 2013

European Network on Religion & Belief
333, Rue du Progres, 1030 - Brussels
enorb@enorb.eu
www.enorb.eu

CONTENTS

PART 1 – SEMINAR REPORT

	Page No.
1. Introduction	3
1.1 European Background	3
1.2 Key Issues	3
2. Key Issues from the Seminar	4
2.1 Freedom of Religion and Belief	4
2.2 Fundamental Rights and Values	4
2.3 Unity in Diversity	4
2.4 Diversity of Secular Contexts of Religion and Belief	5
2.5 Other Unifying Factors	6
2.6 Education	7
3. Key Issues from the Speeches	7
3.1 Introductory Speech: Nassima Ferchiche	7
3.2 Martin Gurvich	8
3.3 Inderpreet Singh	8
3.4 Karim Chemlal	9
3.5 Allan Hayes	10
3.6 Julie Pascoët	10
4. Elements Towards a European Policy	11
4.1 Draft ENORB Statement of Agreed Principles	11

PART 2 – TEXTS OF SPEECHES AND PRESENTATIONS

5.1 Secular Society and freedom to manifest religion and belief Nassima Ferchiche, University d'Aix-Marseilles	12
5.2 A Question of Faith, Manifesting Religion or Belief in Europe. Tamás Kádár, Senior Policy Officer, EQUINET	17
5.3 Is Wearing Articles of Faith a “Real” Threat to European Democracies? Martin Gurvich, Hindu Forum of Europe	19
5.4 Neutrality of the state in education: a right for all young people. Allan Hayes, British Humanist Association	20
5.5 Religious Symbols, clothing and headwear in the public space. Inderpreet Singh, United Sikhs	22
5.6 “WE”, inclusively, citizens together: Muslims and “ <i>Laïcité</i> ” ¹ . Karim Chemlal, Federation of Islamic Organisations of Europe	28
5.7 Neutrality of the state in education and health: Julie Pascoet, Policy Officer, European Network Against Racism	31

¹ Translator’s note: the French term “*laïcité*” cannot be fully translated into English as it is not simply secularism or “laicity” but comprises the whole French historical-political-sociological concept of the so-called secular state. For that reason the French term is used in this text

PART 1 - REPORT ON SEMINAR

1 – Introduction

1.1 European Background

The issues concerning definitions of secularism, including the implications for the wearing of religious symbols and clothing in certain strongly secular European States was discussed at one of ENORB's earliest meetings, when several founder members contributed short papers on the implications for the secular state of the plural character (in terms of religion and belief) of modern Europe. These contributions, written from various perspectives from Islam to Humanism, drew on the concepts and language of human rights as expressed in the EU Treaties and Charter of Fundamental Rights.

The request for ENORB to hold a seminar on this topic came primarily from European organisations representing several religious minorities whose members had been affected by the 2004 law in France, banning the wearing of any religious symbols or dress in state premises, including schools, after a debate about the increasing number of schools and public buildings which were permitting the wearing of the *hijab*, became the first European country to pass such a law. In France in 2010, a ban on full face coverings in public, including the *niqab* and *burqa*, was introduced. The justification for these laws was the French version of the European tradition of secularism –*laïcisme* - which had also given rise to similar laws (subsequently challenged) in Belgium, and the Netherlands.

Most EU member-states have maintained the long-standing European tradition of allowing people to dress as they wish, including the wearing of religious symbols (eg the cross), headgear and dress (eg by nuns; and by older women in much of Southern Europe). There have been public and political debates on the

issue in a few other member states, often driven by far-right or nationalist parties, and there have also been a few examples of local bans eg in Spain and Italy, overall, freedom to manifest one's religious affiliation through visible symbols or dress has been maintained.

1.2 Key Issues

The seminar and workshops included much debate between those who favoured the French interpretation of secularism (*laïcisme*), and others – including some non-religious, atheist contributors – who favoured alternative secular traditions of toleration of public manifestations of religious belief and non-belief. Nassima Ferchiche's introductory paper, outlined the historical background to the French concept of *laïcité*, and its origins in the 1789 revolution, and the Terror of 1793, when clergy were killed and the Church properties seized. The concept was defined in law in the 1905 legislation on the secular French state. It derived from public hostility to the Catholic Church and its perceived closeness to the *ancient regime*; the persecution of Protestants in some regions, and the sufferings across Europe during the Wars of Religion. Its key element is the complete separation of Church and State, which has come to be seen as a cornerstone of French identity. A stronger version of secularism has become more influential in recent French public life seeking to exclude any manifestation of religion in the public sphere, to exclude any possible influence of religion on public debate, and to relegate religion entirely to the private sphere.

During the initial discussions following this paper, the difficulties of coming to a consensus position on this issue were emphasised. The different views expressed by contributors both on definitions of a secular state, and on its implications for public manifestations of religion were highlighted by contributors from different regions of Europe with widely different histories, perspectives and current contexts.

Some spoke from the perspective of newer EU member-states where, in the twentieth century communist regimes with extreme versions of secularism had pursued policies of persecution and suppression of religion. Others spoke from the perspective of North European states where strong secular traditions have proved compatible with an established religion or state-recognised national church. Others spoke from countries which give legal recognition, and usually other rights (eg re taxation, or building and maintaining places of worship), to all religions - in various types of multicultural society. Others spoke from Southern and South Eastern European countries, where one church – Catholic or Orthodox - had for long held a dominant position often closely linked with the state through a legal ‘concordat’, and where religious minorities experienced difficulties in achieving full freedom to practice their religion, or even, in some cases, being officially recognised or registered. Finally, there were also references to the specific problems experienced by some ‘new’ religious organisations or movements which found themselves defined as cults, and refused recognition as religions.

Debates were both wide-ranging and intense, and by the end of the seminar there were strong indications, especially after the regional workshops and follow-up discussions on Day 2, that there could be a basis for agreeing some principles which could form the basis for ENORB policy recommendations. These principles would necessarily be based on, for Europe, the EU Charter of Fundamental Rights incorporated in the Treaty of Lisbon, and the Council of Europe’s Convention on Human Rights, adopted from the internationally accepted principles of the UN Declaration of Human Rights of 1948.

2. Key Issues from the Seminar and Workshops

The summaries below attempt to identify the key issues raised in the seminar and

workshops, focusing both on the issues where there was mainly consensus and on those where there were differences.

2.1 Freedom of religion and belief was quoted by one contributor as “the right to practice and manifest one’s religion and belief individually or in community, and in public or private, in worship, observance, practice or teaching” as defined most recently in the Guidelines of Freedom of Religion or Belief agreed by the European Council in 2013. By these guidelines all member states are committed to respecting, protecting and promoting freedom of religion and belief within their borders, as well as in the wider world. For most religions this includes the right to wear religious symbols, such as the cross (Christians) or the ornamental dagger (Sikhs), and to observe specific forms of dress code; eg covering the hair, or wearing specific types of dress or headwear, eg among many Hindu and Sikh, as well as Muslim and Orthodox Jewish women, and Orthodox and Catholic women of a certain age in Southern Europe, as well as men in various religious traditions.

2.2 Fundamental Rights and Values. The EU Charter of Fundamental Rights, incorporated in the EU Treaty of Lisbon, was referenced in several contributions. The treaty refers explicitly to the foundational European values on which the EU is based: liberty, democracy, the rule of law, solidarity, subsidiarity, human equality and non-discrimination. These values were quoted as being a vital underpinning to the fundamental rights set out in the EU Charter which seek to ensure that any form of discrimination is eliminated in all member states, and that the rights of all minorities are protected and guaranteed. They were also quoted as providing the basis for the right to freedom of religion and belief, which must operate in harmony with the other fundamental rights and freedoms.

2.3 Unity in Diversity. The principle of unity in diversity was quoted as another of the core European values underpinning the

EU, as emphasised in a series of EU contexts during the years 2013-14, eg, when the European project was referred to by the presidency as implying “unity in full respect of diversity...a Europe (which) has always been nurtured by difference as a pluralist, multi-lingual culture”. Other speakers emphasised the common commitment of all member states to other important rights and freedoms – of movement across borders, thought, speech, equal treatment, non-discrimination and access to education, health care and social welfare.

The richness of the diversity of Europe, both in its present and past was a theme several of the workshops. The long and fruitful mixing of Christian, Jewish and Muslim cultures over several centuries of the early medieval period, especially in Spain, was seen as being fundamental to the European Renaissance. The post-Enlightenment opening up of Europe to other religions and cultures of Southern and Eastern Asia was also quoted, as was the colonial period, with its extensive encounters, as well as clashes, between religious cultures. The post-colonial period of migration and the development of a European and global economy was cited as being a key to the recent emergence of pluralist, multicultural societies across Europe, leading to the additional presence of Hinduism, Buddhism and Sikhism, newer and older religious movements – as well as Christianity, Judaism, Islam, and of course Atheism and Humanism – as represented in the conference contributors.

2.4 Diversity of Secular Contexts of Religion and Belief across Europe’s 28 member states was explored in several speeches and workshops, including a considerable diversity of political contexts in member states, all of which describe themselves as secular, but with very different histories and contexts:

(i) The French tradition of *Laïcité*, forged in a climate of anti-clericalism in relation to the Catholic Church. This had contributed to a strong version of secularism, with strict separation of

Church and State, in which religion was permitted in the private realm, but its visible manifestation was excluded from the public or political arena.

(ii) North European traditions of broad toleration in religion, around post-Reformation national churches, many combining elements of both Protestant and Catholic traditions, alongside numerous ‘non-conforming’ Protestant sects, churches and, increasingly, local Pentecostal or community churches.

(iii) Eastern European contexts, ranging from Estonia in the North, to Bulgaria in the South, included religious contexts with Catholic, Protestant and Orthodox majorities, which had a shared experience of persecution of religion during the communist period, but had very different earlier histories both in religion and culture. Current definitions and attitudes to secularism are consequently diverse, some with a strong influence of Church on State, others where a strict separation is maintained, though often in both cases with the State continuing to assert the right to define which religions are officially recognised or given legal rights. Several states have been unwilling to register some churches (eg Pentecostals, Jehovah’s Witnesses), and some religions eg Buddhism, Hinduism. Historic Muslim minorities are also present in many of these states, some long-established for many centuries, others with more recent histories of migration and some unrecognised by the state.

(iv) Mainly Southern European contexts, where most countries maintain close links between Church and State. These include both the Catholic Church, in countries ranging from Poland to Portugal and Orthodox Churches mainly in Greece, the Balkans and further East.

- (v) Speakers from other countries, including Belgium, Germany, Netherlands, Ireland as well as some of those included under paras i-iv, were keen to emphasise the specificity of their own historical context, and of the particular secular settlements which had been negotiated in each case.
- (vi) All European countries also had strong humanist and atheist traditions which in the present day, and in nearly all countries ensured a prominent space for free thinking, differently expressed, in the variety of negotiated secular settlements across Europe.
- (vii) Pagan tradition, though varied are also shared across the whole of Europe are now being re-interpreted in the light of the environmental concerns of contemporary society and are attracting new followers, especially among young people.

2.5 Unifying Factors. In addition to those mentioned earlier under the general framework of the common commitment to human rights, equality and non-discrimination across EU member states, a number of other unifying factors emerged at various points in the discussions:

- (i) The European Union's basic stance, as an economic union of secular states, with no specific competence in matters of religion or belief, but with firm principles of freedom of religion and belief, and with policies, directives, guidelines and statements designed to underpin European equality in diversity.
- (ii) Migration to Europe from the Global South from the 1950s onwards, and subsequent internal migration between EU countries, has meant that all countries now have religious minorities in addition to their historic Jewish and Muslim minorities, though in very different quantities, alongside their mainstream Christian and atheist/humanist traditions.

- (iii) Inter-religious and inter-convictional dialogue. This is an increasingly important factor in promoting the peaceful and harmonious societies which are fundamental to European peace and security in a plural society. EU dialogue with and among European Religions and Philosophical Associations began as an initiative of the European Commission Presidency under Article 17 of the Treaty of Maastricht. It was disseminated throughout Europe, especially through the European Year of Inter-Cultural Dialogue 2009 (which also gave birth to the notion of a European Network on Religion and Belief). Many European member states also have some form of structure for dialogue with and/or among religions, either as a government-led and/or as a civil society initiative by the churches and religions.

- (iv) European Religion and Belief Organisations have become a key means for bringing both hierarchies and grassroots members together for dialogue and discussion of policy issues. From the beginnings of the Ecumenical movement and the World Council of Churches, the churches have developed methods and mechanisms of dialogue, in Europe, mostly through the European Council of Churches (CEC/KEK), and the Catholic Bishops' Conference (COMECE). The European Humanist Federation has brought atheist, humanist and free thinking organisations together and in dialogue with the EU. The European Council of Religious Leaders (ECRL), along with ENORB, Religions for Peace and the EP Intergroup on Freedom of Religion and Belief seek to extend this work at inter-faith and inter-convictional levels, while other religions, including Jews (EJC, CEJI), Muslims (FIOE, EMF), Hindus (HFE), Sikhs (United Sikhs) and

Buddhists (EBU) also have European organisations.

- (v) Social Action by religions, inter-religious and increasingly inter-convictional, partnerships, across religious and non-religious boundaries has played a vital role in European social and political action throughout the twentieth century. Organisations like CND, Amnesty, Oxfam, Human Rights Watch and many others exemplify the benefits for the disadvantaged, and the whole of society of committed people, from religious and non-religious backgrounds, coming together to work for good causes. In the 21st century, the role of R&B organisations, has become even more important at European level, as various events, such as the collapse of communism, the rise of religious and political extremisms, the tensions between certain rights and freedoms, have challenged the European secularist consensus which has held sway over the previous 50 years. Joint actions, for example against hate crimes and attacks on freedom of speech, in solidarity with oppressed minorities (by many networks, in many member-states), have become more frequent. So also have action-focused seminars meetings and conferences, (ENORB, G3i) at European level, some followed up with joint statements, reports, policy papers and campaigns (ECRL, EHF, RfP, CEC/KEK, HRWF), and a multitude of activities in member states.

2.6 Education. Education emerged as a key issue at several points in the seminar: if religion and belief were important in European societies; if extremism both on the far right and from small minorities among Muslim and other groups, a good education around all aspects of religion and belief was an essential component of a balanced preparation for life in the modern world.

It was agreed that the topic of Education merited a separate seminar. There was no consensus on whether the various national solutions, such as separate schools run by specific faiths, or a state secular system which included a good education on religion and belief, provided a full solution, but the importance of the topic for all member states was accepted by all.

3. Key Issues from Speeches.

After introductory speeches giving the context of secular and *laiciste* positions on the manifestation of religion and belief, powerful pleas for tolerance of the wearing of religious symbols and dress were made by three speakers from minority religious traditions and one from a humanist tradition. The summary notes below are based on what was said in the seminar, including points raised in sessions as well as the written texts.

3.1 Introductory Speech: Nassima Ferchiche from the University of Aix-Marseilles' Religion and Law programme spoke on Secular Society, *Laïcisme* and Freedom to Manifest Religion or Belief. She gave an introductory overview of the origins of *laïcité* in France, initially in the French Revolution and the Terror of 1793, and later in the 1905 Law setting out the conditions of separation of Church and State. She then outlined the content of the law of 2004 which banned the wearing of religious symbols or dress in public/municipal contexts (ie by school students as well as civil servants and teachers) and the 2010 law banning any form of dress which covers the face and full body in public.

She analysed the background to these new restrictions as being largely a product of the presence of a large and increasing population of Muslims in France. The state has justified such laws by arguing that these dress codes are an attempt by external versions of Islam to counter the development of a French version of Islam adapted to its cultural norms.

Studies show that Muslims born in France are more likely to accept a dual culture, and to adapt to French styles of dress and social interaction. But this process is seen by some Muslim groups as being un-Islamic, and important debates on an Islamic perspective on living in the *laïciste* version of a secular society have been ongoing in Muslim communities in France across Europe.

Examples of recent movement in France towards adapting to a more plural society have included the return of some elements of religious education in schools, the provision of *halal* meat in prisons and some schools, and increased permissions to build mosques on public land at low rents. But, at the same time, some far-right municipalities have banned the provision of *halal* food options in school canteens.

She summarised the current situation as being a gradual process of state and institutional adaptation to a religiously plural context, which will necessarily have ups and downs, and will have to take account, of developments within Muslim communities of different generations, both of the normalisation of Islam in secular contexts, and of an increasing re-emphasis on the quest for a religious identity among the Muslim population, in the light of events in the Middle East as well as in Europe.

She concluded by suggesting that there has to be a realisation among the indigenous French communities that neither strongly held religious views, whether Catholic, Protestant, Jewish or Muslim, nor the wish to manifest these beliefs according to cultural traditions represent a threat to French freedoms and way of life.

3.2 Martin Gurvich, from the Hindu Forum of Europe (HFE), also drew a distinction between the historical context which led to the development of the *laïciste* position and the current multicultural context. Before the 19th-20th century secular settlements, Catholic (and other Christian Churches) were perceived as trying to

dominate debate in the public space and to exercise undue influence over political decisions. In the current context of plural societies, with several religions and beliefs represented in most European societies, he pointed out that for some religions, certain religious symbols or dress are an essential part of their identities. Their aim is therefore not to seek to dominate the public space, but simply to express their religious identity freely.

He argued that by denying them this freedom the state is not taking a neutral *laïciste* position but is furthering one particular worldview – a strong, exclusive rather than inclusive version of *laïcisme*. Neutrality is demonstrated in actions, not dress, whether one is wearing a tie or a turban. He sees the form of state secularism which has developed in many European states, in which states demonstrate their neutrality between religious and non-religious positions by allowing the wearing of articles of faith, so that people from any religion can attend school, or work in the public service, without having to adapt their dress code for any reasons other than health, safety etc, as more appropriate to the twenty-first century European context. But making it work effectively requires more work by the state, in the form of dialogue, consultation and working out solutions acceptable to all religions and to non-religious communities.

3.3 Inderpreet Singh's presentation focused on the position of Sikhs in Europe. He took a similar position to previous speakers on religious wear and symbols, adding a legal perspective based on the need for full recognition of the necessity for all initiated Sikhs to wear five religious symbols - including the turban, which can never be removed in public, and the *kirpan*, a small ornamental knife.

He gave an overview of recent cases, contrasting decisions in France and Belgium which have banned the wearing of the turban by school students, with the findings of the UN Human Rights Committee, which had

found that such decisions violated the individual's human rights. He cited similar cases concerning searches at airports which require removal of the turban, which had led to a European Commission amendment changing these regulations. He ended with a plea for a fuller acceptance of the human right to freedom to manifest one's religious affiliation across all European countries, which should mean the incorporation into national laws of the right for schoolchildren and adults to wear religious clothes and symbols, in schools, public/municipal services and in the public space.

3.4 Karim Chemlal in his presentation added a historical perspective to the debate, noting that the initial experience of the notion and practice of *laïcité*, for most Muslims, had been during the period of colonialism, in North Africa and in the Middle East and South Asia. Secularism, and specifically the French version of *laïcité*, had been experienced at that time by many Muslims not as introducing freedom or state neutrality in relation to religion, but rather as part of the imposition of a foreign system of domination, which ignored national and Muslim traditions of culture, law and religious expression.

He argued that, in the same way, the maintenance of the strong form of *laïciste* state by new leaders in the newly independent countries after the anti-colonial movements and revolutions of the 50s and 60s, was not experienced by most of the population as a positive outcome of freedom or democracy. It was experienced rather as the continuation, by autocratic regimes such as those in Egypt, Algeria, Tunisia, Syria, Iraq, of the colonial form of secularism, in that it continued to impose the relegation of religion wholly to the private sphere, as part of the rigorous separation of state and religion. This was not uncharacteristic of the historical/cultural traditions of these countries.

Increasingly, for much of the non-Muslim population, though again not for all, this

system has become associated with political repression rather than with liberation. (And in very recent times, following the Arabic Spring, and the subsequent reaction of some regimes, there has been a further debate within Islam, and *laïcité* is now seen sometimes as having become a channel for the repression both of religion *and* democracy.) He recognised that the present situation is undoubtedly complex, but what is important is for Europeans to recognise, and listen to, the debates which are going on throughout the Muslim world – including across Europe - rather than seeing all Muslims either as a monolithic group, or as all tarnished by the action of a tiny violent extremist minority.

He distinguished four types of response to the current situation:

- (a) Acceptance out of necessity – recognising that Muslim political traditions are different, but agreeing to abide by the rules - both of European traditions and the laws of the country in which they live;
- (b) A process of gradual adaptation, with increasing adoption, especially by the second and third generations, of local cultures and norms;
- (c) A process of re-examination of Muslim traditions, accepting the challenge of Western norms and developing 'new' responses to them, which included, for some, the re-adoption of traditional dress and headwear, seen as symbols of liberation from norms inherited from the colonial period, signifying a specific place within the local culture, distinguishing them from a hegemonic culture which appeared to have no place for Islam;
- (d) Finally, he noted an emerging and widespread political position, by which *laïcité* has come to be perceived among many Muslims, not as a method of *managing* religion, but of *opposing* or *rejecting* religion. And it is against the background of such a perception that there has been recent

disaffection, and a movement, especially among some young second or third generation Muslims in Europe, towards a revival of religious practice and return to those Muslim traditions which have a lesser, if any, emphasis on the separation of religion and state.

Dr Chemlal summarised his position as wishing to enrich the debate, by rejecting standard over-simplifications of European discussions around Islam, which fail to understand, or even to take any interest in the ongoing discussions within Muslim communities. What is needed is a re-examination of *laïcité*, and of the nature of a secular society in a religiously plural age, when there is an increasing interest in the various religious perspectives, and a greater recognition by *all* groups that, critical rationality cannot be maintained where there is an attempt to impose dogmatic political or religious beliefs at either end of the spectrum, on a complex society.

3.5 Allan Hayes spoke from a Humanist perspective. He argued that, from the perspective of a diverse city such as his own, Leicester, where one third of the population is from non-European cultures, the issue of religious symbols or dress is of little importance. As in the rest of the UK, historically people wear every kind of religious symbol and dress, people from different backgrounds generally work well together and there has been no threat to democracy from the tolerant version of a multicultural society. In the specific area of education, local input, (from humanists, as well as religions), contribute to a broad education in religion and belief. In an age when decreasing numbers of young people are actively religious, it is important that all learn together and from each other through a good education across the whole spectrum of religion and belief. He was opposed to the UK policies on faith schools, initiated by the churches, and now followed by other faiths which wish to create more faith schools, usually with an emphasis on one specific

religious tradition, which should be seen as divisive in a plural society.

As far as national and European contexts are concerned, he argued that secular societies should not encourage a flattening neutrality, but the state should rather recognise that all beliefs are important and all should be free to express themselves within an overall framework of state neutrality.

3.6 Julie Pascoët, from ENAR, the European Network Against Racism, argued for equal and solidarity for all minorities – religious as well as ethnic. There is research evidence that the wearing of visible signs, such as worn by Jews, Muslims, Sikhs, has been demonstrated to be associated with greater numbers of attacks and hate crimes. There is therefore a need for states to give support publicly and clearly, to the rights of minorities to religious freedom and to the manifestation of their beliefs through dress or headwear. Recent studies by FRA and ENAR also show that Jews and Muslims, in different percentages up to one third, avoid displaying their religion in public places. This should not be the case in free societies, These studies also show that Islamophobia, anti-semitism and other hate crimes, especially against women, are on the increase across Europe.

The ENAR responses are:

- to campaign for the full adoption of the 2008 draft EU Directive on Equal Treatment by the EU Council and all member states.
- protection on grounds of religion and belief should be extended to cover all important policy areas, ie equal treatment in the supply of all goods and services – including education, health and social provision.
- In addition ENAR will develop a new programme, focusing on Islamophobia, especially in relation to women, as a specific form of racism which needs positive policies for social inclusion in order to counter it.

4. Towards a European Policy on Fundamental Rights and Manifesting Religious Belief

The purpose of the seminar was not to draw up a clear statement on the issue of the meaning of religious dress or symbols, but rather to facilitate the emergence, through discussion and debate, of the main elements of a position, which could if possible be elaborated and defined at a later follow-up meeting. The task of this section of the report has therefore been to summarise, from very wide-ranging discussions, what might be the main elements of such a position.

It is first of all worth pointing out that none of the speakers, whether coming from religious, atheist or humanist perspectives, argued in favour of the bans which have been introduced by two EU member states on the wearing of religious dress or symbols in the public space, or in educational or public service contexts.

In the workshops, there were arguments from members from two countries, explaining the origins of such bans in public service contexts on grounds of local traditions or legal definitions of laicity, but these were expressed with clear reservations where there is conflict with policies of religious tolerance. Arguments that EU member states were also justified in asking for those from religious minority backgrounds to demonstrate acceptance of, and promote ownership of, the national culture; and of the need to take into account in their own discussions, the strong national traditions of conforming to national dress-codes which were being claimed by far-right or extreme populist groups. None of the reports from the workshops recommended the maintenance of bans on freedom to manifest religion, arguing rather for wider consultation, which recognised the needs of all groups, and a more open public debate which might allow inclusive policies to build support over time.

4.1 The basic agreed principles and practice which emerged from the seminar were:

- (i) To condemn all hate crimes of speech, violence or damage to people, communities or property on grounds of religion, belief or non-religious convictions, and encourage action to prevent or oppose them wherever they occur
- (ii) To work for the implementation of the EU Charter of Fundamental Rights, especially Article 10 on the right to manifest one's religion or belief, including the right to wear specific symbols or dress, in employment, public service, and the public space, subject only to any limits set out in the laws of member states (eg re health or safety)
- (iii) To work for the adoption and implementation of the draft EU directive on Equal Treatment (2008), which would extend the full range of EU fundamental rights and equalities (already adopted on grounds of race and gender) to the other protected areas, including religion or belief.
- (iv) To condemn, and encourage action to prevent, any use of force, coercion or pressure on individuals to wear or not to wear any form of dress or symbol, whether from the state, local authorities, communities (including religion/belief communities), and political minorities (eg far-right groups) at European, national and local levels
- (v) To promote consultation processes which draw on all communities, to work towards reasonable accommodation of all communities' rights to manifest their religion or belief

PART 2 – TEXTS OF SPEECHES AND PRESENTATIONS

5.1 Secular Society and freedom to manifest religion and belief

Nassima Ferchiche, Faculté de Droit, Université d'Aix-en-Provence

The French concept of *Laïcité* is often difficult to understand partly because the word itself is not easy to translate. As it means the strict separation of Church and State, the closest approximation in English is "secularism". In France, this concept has become a system of belief. Some people would say even a civil religion.

Indeed, its historical origin in the French Revolution gives it a certain extreme character. There are people in other European countries who sometimes think that the French "*laïcité*" is the harshest form of secularism which goes to the extreme of persecuting and repressing religion. Some consider that *laïcité* accords greater importance to the principle of neutrality which attempts to relegate the practice of religion to the private sphere, leaving the public sphere free from any expression of religion, than to its original purpose of creating a neutral space for belief and non-belief and freedom of conscience. I will try to demonstrate that things are not so clear-cut.

The term Secular State is not pejorative in French context and from a legal perspective it is an exact definition of the state's position on religion: a non-confessional state, without organic links with any religion, whose "philosophical" ideal is republican and democratic. These positions are no longer challenged by any mainstream political or academic group. A consensus has been reached since the synthesis of the Fifth Republic.

Where does secularism in France come from and what does it mean?

In France, the struggle for secularism was primarily a history of conflict throughout the nineteenth century between two visions of France. Catholics, who had played a decisive role in the Revolution of 1789 with the rallying of the clergy to the third state, were permanently traumatized by the persecution that struck them under the Terror of 1793. The majority of them supported the conservative camp in the nineteenth century, against the progressive camp in civil society, which derived its policies from the key ideas of the Enlightenment.

The key justification for *laïcité* was to ensure that State respects all faiths equally, the state should not recognize any. According to this principle, religious belief is a matter for the private sphere (including atheism, which is a particular opinion that the secular state should not promote or destroy: although not bound to a particular religion, a secular state is not necessarily an atheist state). Therefore, the State does not interfere in the religion of the citizen, nor is religion involved in the functioning of the State, unless the religion is persecuted (Article 1 of the Law of 9 December 1905: "The State guarantees the exercise of religion."). The collective organisation of worship must be in the framework of the Law of Association (1901). So French secularism takes as its basis the religious neutrality of the State, and does not intervene in the functioning of religion.

This principle was elaborated essentially in two phases:

- First, during the French Revolution, in the Declaration of the Rights of Man and of Citizens of 1789, (which, however, refers to a Supreme Being), and is also included in the preamble to the 1958 Constitution in Article I France is a secular republic), and
- Second, by the Law of 9 December 1905, on the separation of church and state, which introduces the principles of state

non-interference in, and separation from, religious institutions; and also states that religious institutions can not have any influence on the State and State can have no influence on the churches and their believers other than as citizens: the separation is mutual. There is no religious education in schools, though the Church is allowed to maintain its own schools. (NB The 1905 law replaced the regime of the Concordat of 1801. NB This is still in force in Alsace-Moselle, where, for historical reasons, Bishops, priests, rabbis and pastors are still treated as civil servants and maintenance of buildings is paid for by the State. Religious instruction in public schools is also preserved.)

Consequently, French *laïcité* :

- operates the separation of State and Church (non-confessional State, neutrality: no visible preference, law can be in opposition with a religion).
- but proclaims the freedom of conscience (all the religions are respected)
- and guarantees the free exercise of religion (which should include, for example, religious symbols, clothing and headwear)

Article 1: "The Republic guarantees the freedom of conscience. It guarantees the free exercise of religion [...]."

Article 2: "The Republic does not recognize, pay or subsidize any worship [...]"

Under Article 4 of the law, worship associations whose sole purpose is the exercise of worship are legal associations under the Law of Associations of 1901. They must not have other goals, and they can not engage in social, cultural, educational and commercial activities. However, they have a significant tax advantage and substantial leverage. They can receive donations and bequests which are exempt from duty. Regional officials grant worship association status every five years. Any disputes between

associations falls under the jurisdiction of the Council of State.

In terms of property and finance, the law has three major consequences:

Religious ministers (bishops, priests, pastors, rabbis ...) are not paid by the State (art. 2) (promised during the French Concordat in exchange for restoring the Church property seized in 1790 (art. 14).

Public establishments of worship were dissolved (art. 2) and replaced by worship associations whose sole purpose is to "provide for the expenses, maintenance and public religious worship" (art. 18); they can receive the proceeds of collections for the expenses of worship, but in no case receive subsidies from the State, departments or municipalities;

The religious property seized by the State in 1789 remains its property : the State retains the right to entrust buildings of worship to religious associations. Beneficiary associations are obliged to carry out "repairs of any kind, as well as insurance costs and other expenses related to buildings and furniture." (art. 13); There are also established chaplaincies (ministers of religion (chaplains) in closed environments such as prisons, hospitals and army, which usually have a contractual status of the Public Service) and later, religious programmes on public television.

There have been many new developments since this law: today, Article 1 of the Constitution (1958) states that « France is an indivisible, secular, democratic and social republic ». Article 2 adds « It ensures equality before the law for all citizens without distinction of origin, race or religion. It shall respect all beliefs ». The Constitutional Council has ruled on the principle of secularism, in 2004 on the constitutionality of the Treaty establishing a Constitution for Europe (TECE) stating that the provisions of the Article 1 of the 1958 Constitution "forbid anyone to take advantage of religious beliefs to free himself from common rules governing the relations between public authorities and

individuals". More recently, in a decision of 22 October 2009, the Council reaffirmed the constitutional principle of *laïcité*.

Neutrality: the principle of secularism imposes obligations on public service neutrality with respect to all opinions and beliefs. "Neutrality is the common law of all public servants in the performance of their service".

Religious Freedom: secularism is not limited to the neutrality of the State, or tolerance. It can not ignore the religious fact and implies equality between religions. In the line of its traditional jurisprudence on civil liberties, the administration tries to reconcile religious freedom and respect for public order.

Pluralism: the 1905 law eliminated the category of recognized religions, and the State must therefore now "recognize" any religion, it should not ignore any.

So what is the main issue today?

The manifestation of new religions and beliefs came primarily through the migrations, in the specific context of decolonization. This evolution makes society increasingly complex and multifaceted. The policy of *laïcisme* today is put into question by the issue of identities - religious or otherwise - in the legal framework, including how the state guarantees each identity its place.

In this context, the French State intervenes now more in religious affairs, in order to improve the free exercise of religion, than the theoretical separation might be thought to allow. That is a new and significant trend. But it would be false to say that the law has always acted in the same way. We can find at the same time restrictive rules and liberal rules, which show that France is still looking for the best balance between neutrality, implied by the option of secularism, and a true freedom of religion, imposed by the Constitution. The *hijab*, or veil, can seem like the tree which hides the forest!

The balance between secularism and free exercise of worship, in particular Islamic worship (since Christianity has already "been accommodated"), began to be a problem at the end of the 80s. In order to preserve the neutrality of public services, especially at school, French law and jurisprudence were compelled to introduce restrictive laws or decisions. This is "legal" because after examining the issue of compliance with the principle of *Laïcité* as it applies in France to freedom of religion the Courts held that freedom of religion is not absolute and could be restricted. Paragraph 2 of Article 9 provides, in effect: "Freedom to manifest one's religion or beliefs may be subject to such limitations as are prescribed by law and are necessary in a democratic society, public security, the protection of public order, health or morals, or the protection of the rights and freedoms of others". Some examples are:

- (i) A law of 2005 makes it illegal to place political, philosophical or religious symbols on public buildings, including the city hall;
- (ii) the same law makes it illegal for public officials to wear conspicuous religious symbols or clothing;
- (iii) the most controversial is the 2004 law which forbids school students to wear any conspicuous religious or political signs or symbols, such as the Islamic headscarf, the Jewish skullcap or large Christian crosses. Essentially, the law has to strike a balance between two of the central principles of the French Republic: freedom and equality. [But there are other considerations, for example freedom and security - in relation to the geopolitical context, which include the public fear of Islamic fanaticism in France]. Those in favour of the law argued that at school everyone was a student first and that individual beliefs were secondary. Whereas those against argued that equality was not the same thing as uniformity and that *Laïcité* should become more flexible as the ethnic make up of French society changed.

Those supporting a ban argued that the headscarf was a symbol of the repression of women, although many women protested and argued that it was their choice, their right and their religion;

- (iv) the 2010 law officially called « the bill to forbid concealing one's face in public», refers neither to Islam nor to veils, but in practice introduced a ban on the wearing of the *burqa* or *niqab* in public. Officials insist the law against face-covering is not discriminatory because it applies to everyone, not just Muslims. They also cite a host of exceptions, including motorcycle helmets, or masks for health reasons, fencing, skiing or carnivals.

This text was adopted despite the conclusions of the Council of State, submitted to the Prime Minister on March 25, 2010 which considered that a general ban on wearing the full veil in France would have "no incontestable legal basis", declaring that « a general ban on covering the face in public places could only be based on a new conception of public order ». But the high court defined the intangible public order (*ordre public immatériel*) as "a minimum set of reciprocal requirements and essential guarantees of life in society, which [...] are so fundamental that they influence the exercise of other freedoms, and they require to exclude, if necessary, the effects of certain acts guided by the individual will. However, these implicit and permanent basic requirements of social contract, could mean, in our republic, that, when the individual is in a public place in the broad sense, that is to say in which he may encounter others freely, he can not deny his membership in the society, nor may be denied his society membership, by concealing his face from another's eyes so as to prevent any recognition."

- (iv) In addition, the text of the 2010 law introduced a penalty for the use of coercion in relation to concealment of

the face seen in the public space by a third party, punishable by a heavy fine, and up to one year's imprisonment. When the fact is committed against a minor, the maximum penalty is increased to two years ' imprisonment and 60,000 euros fine.

Why these reactions?

Irrespective of any question of the political aims of Islam, public fears have crystallised around "conspicuous signs" attached to Islam, seen as violations of the principle of secularism. Religious rituals rooted in everyday life in terms of food, prayer or dress, especially for women, in some forms of Islam, contrast with the treatment of Christianity, where religion has over the decades become largely confined to the private sphere.

Behind these laws, the State can be seen as wanting to free French Muslim worship from the influence of foreign countries and to limit the influence of those countries on the Muslim community in France. This attitude is a reality among the French authorities, but also among a majority of French people who are suspicious of this visible, non-European minority. They fear a loss of the French sense of identity. But the visible minority is also afraid of losing its identity, fearing that it could be diluted by what some see as an Islamophobic mainstream society.

The well known « Baby Loup » case illustrates these fears: In 2008, Fatima Afif was fired from her job at the private Baby-Loup nursery school in Paris suburb Chanteloup-les-Vignes after she refused to remove her veil while at work.

In April 2013, after years of legal wrangles and appeals, the [Court of Cassation](#) (France's highest court) ruled that Afif was unfairly fired and was a victim of "religious discrimination", arguing that because Baby-Loup was a private institution, France's strict secularism rules did not apply. It also ordered the nursery school to pay Afif compensation.

The decision overturned a ruling by an employment tribunal in 2010 – upheld in appeals the following year – that found Baby-Loup had acted legally when it fired Afif in December 2008 on the grounds of serious misconduct. France's chief prosecutor François Falletti said that he considered the nursery school "within its rights to enforce religious neutrality". Afif's lawyer Michel Henry responded that the sole purpose of the new trial, which will review all aspects of the case, was to "restore an abused truth".

The case went to the Paris Appeals Court in November 2013 which overturned the High Court decision, ruling that a private nursery school was justified in firing an assistant director who refused to remove her Islamic head scarf while on the job.

The reasons given by the judges were that Baby Loup association may be categorised as an enterprise of belief (*une entreprise de conviction*) able to require neutrality from its employees. Staff should therefore, in work context, respect neutrality in relation to the public. The principle of freedom of conscience and religion of each member of staff cannot override the principles of *laïcité* and neutrality in all its activities; in the local nursery, its annexes and outside, for example in accompanying children entrusted to the nursery.

The decision to fire this person was found therefore not to infringe fundamental freedoms, including freedom of religion, and not to be discriminatory in this case. Its aim: to respect and protect the conscience of children. This decision has since been confirmed by the final Court of Appeal – *the Cour de Cassation*. This shows that France has a huge problem with the visibility of Islam. The issue is: Can the practices of this religion be compatible with *laïcité*?

Some positive actions

Education - In 2000, the Article 30 prohibiting religious instruction during school hours in

public schools was repealed. There are now proposals for the teaching about religion, ie through description of the characteristics of religions (dogmas, structures, history, etc.) The Debray (2002) and Stasi (2003) reports recommend addressing the facts of religions as sociological facts. Public opinion, in its vast majority, approves the idea of strengthening the study of religion in public schools. The reports showed that knowledge of religious cultures was necessary for the understanding of contemporary societies, their past and their present, their literary and artistic heritage, their legal and political systems.

Prisons - There is now the possibility to have halal meals in prison (by a 2013 judicial decision)

Mosques - More are being built. Although the law of separation forbids the giving of subsidies to places of worship some local authorities have allocated premises on perpetual lease at a nominal fee.

Cemeteries - Permission for a Muslim private cemetery exists (in Strasbourg, 2012) These are important because of the feeling among many of the very heterogeneous Muslim population in France, is that from the colonial period of the Third Republic to the law against religious symbols at school, and the recent refusal to admit veiled mothers in school outings, the same colonial mindset has been at work, with racist implications for many. Many aspects of the treatment of Algerians during the colonial period (the 1905 law was not enforced in the colonies: state permission was required to make the pilgrimage to Mecca; use of the term "French Muslims of Algeria" etc.)

Conclusion :

French *Laïcité* is a process (with its natural ups and downs) which has the potential for adaptation as well as to stability, which should lead to the "normalisation" of the presence of Islam in Europe. In most member states it has gradually led to take into government's account the needs of Muslims

and other 'new' religions in France. Examples include: regular consultation methods, the construction of mosques, accession to positions of responsibility, limited flexibility as well as accommodation to the basic principles of secularism among Muslims born in Europe. In the context of increasing tension, some of the younger generations of Muslims are exploring new ways of practising their faith in a changed context – with many participating in the new culture and often enjoying its norms in terms of French society, culture etc, adapting the process of secularisation. In France, one third of citizens are of Muslim faith or culture, according to a 2009 survey FIFG. But in most European countries, ways of Islamization or radical Islamization also appear, along with a fundamentalist reading of texts fueling fears and rejection. Unlike their parents or their grandparents, most Muslims born in Europe tend to assume their dual culture, even though a minority adopt a religious identity or adhere to stricter versions of Islam.

French law and its practice (because the political will is present) is currently trying to reconcile the neutrality of the state with the needs of a pluralistic and free society which should include the free exercise of different religious and cultural practices. This is a difficult task given the complex problems of histories, cultures and the new diversity of religion, given the constitutional principles of freedom, equality and neutrality. The task will not be easy, nor will it be resolved quickly, nor necessarily in the same way as other European countries, because of the specificity of *La laïcité Française*. But it is a process which, despite the opposition of some at the extreme ends of both political and religious spectrums, is being undertaken by the French political and administrative classes.

5.2 A QUESTION OF FAITH: RELIGION AND BELIEF IN EUROPE

Tamás Kádár

1. Outline of the presentation (Notes on Power Point Presentation)

Why focus on religion and belief?

Controversial issues, highly present in Europe
Issues:

- Relationship between ECHR and EU system of protection
- Conflicts with fundamental rights of others - a fine balancing of rights needed
- Conflicts with secularity and neutrality of States and companies

2. Legal framework – EU Framework Directive 2000/78/EC:

Protection against direct, indirect religious discrimination in employment: Exceptions under EU law:

- Genuine and determining occupational requirements
- Ethos-based organisations

2.1 Legal framework – ECHR: Article 9 of ECHR:

- (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.

3. Key cases in the field of employment

3.1 Schools and furthering children's education

Azmi case (UK) [2007] ICR 1154

- Classroom assistant wanting to wear full veil.
- EAT: no direct discrimination, possible indirect?
- Discrimination justified as proportionate and legitimate so that children can learn better.
- Lead to conflict between freedom of religion and rights of the children.

3.2 Health and safety concerns

'Headscarf case' (Austria) GAW II/8/2007; GKB II/27/07

- Muslim woman wearing a headscarf applied for a job as a seamstress in a textile company
- Offered job, but on condition of not wearing any headscarf – outcome: not accepted for the job
- Company invoked security reasons for the prohibition.
- Equal Treatment Ombud argued direct and alternatively indirect religious discrimination, on grounds that even if indirect, measure was not appropriate and necessary.
- Equal Treatment Commission accepted justification as legitimate and proportionate.

3.3 Dress codes

Eweida v British Airways (UK) EWCA CV 80, Court of Appeal

see also *Chaplin v Devon and Exeter Hospital* [2010] ET

- Ms Eweida worked as a stewardess at British Airways
- She was refused permission to wear a necklace with a cross over her uniform as this was in breach of her employer's dress code
- Other religious groups such as Muslims and Sikhs were permitted to wear headscarfs and turbans

- Eweida refused to do administrative work which would have not required a uniform
 - BA eventually changed its policy to permit wearing of cross but would not refund salary while Eweida was suspended.
 - Ms Eweida brought claims of direct and indirect discrimination, harassment and Article 9 ECHR violation
 - Court of Appeal: no indirect discrimination and no breach of Art. 9
 - Wearing a cross not a mandatory requirement of her religion, therefore unable to prove particular disadvantage of Christians
 - Article 9 does not protect every act motivated by religion
 - She voluntarily accepted a role that doesn't accommodate her practice and there are other means to practice her religion (outside workplace, but she was also offered backroom post)
 - Cases taken to ECtHR claiming breach of Art. 9 and 14
 - Equality and Human Rights Commission of Great Britain intervened and provided submissions
 - Key arguments:
 - No need to establish that the practice is required by the religion
 - Setting too high a threshold for establishing Article 9 interference.
- ECtHR decision (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)
- Interference with her right to manifest her religion
 - Domestic courts failed to strike a fair balance between her desire to manifest her religious belief, and on the other side, BA's wish to project a certain corporate image (no matter how legitimate that aim might be)
 - Also took into account that other BA employees were earlier allowed to wear e.g. turbans and hijabs without

any negative impact on BA's corporate image

- 2000 € non-pecuniary damages.

Chaplin (UK) –Final decision by ECtHR in *Eweida and others vs. UK* (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)

- Qualified nurse working in a hospital
- New uniforms with V-necks, Ms Chaplin's manager asked her to remove the crucifix on the chain around her neck
- She refused and finally was moved to another non-nursing position
- ECtHR: The protection of health and safety on a hospital ward was inherently of much greater importance than corporate image in *Eweida* case
- Decision: the interference with her freedom to manifest her religion had been necessary in a democratic society.

5.3 Is Wearing Articles of Faith a “Real” Threat to European Democracies?

Martin Gurvich, (ENORB and Hindu Forum of Europe)

These are my initial reflections about the main arguments used to justify or rationalize the banning of articles of faith.

One argument used is based on the recent history of Europe (or at least of certain countries in Europe). Historically there was a strong opposition (and still is to a certain degree) to the domination of the Christian Churches and specially the Catholic Church in the public space and sphere. So a strong campaign from Humanists and supporters of *Laïcité Philosophique* has targeted the supremacy and undue influence of the Christian Churches in European affairs. And though this phenomenon is understandable and we can still see some confrontations between the Christian “side” and the

Humanist and (*Laïcité Philosophique*) “side” in some countries, the religious and social landscape of Europe is changing very fast. In a globalized world in which ethnic, national and religious communities move and settle in every nook and corner of the globe, Europe is no exception. In Europe religious and ethnic minorities that are majorities in other parts of the world, are more and more part of the European landscape. These religious and ethnic minorities for whom articles of faith are an essential part of their identities are not trying to dominate the public space and sphere with their religious views and dress, they are only trying to protect their religious freedom. To deny them part of their identity because of the disputes of an older “historical” reality in Europe would to deny the new “historical” reality of a multi-faith Europe. For example, discrimination on grounds of Gender, Race and Sexual Orientation are “historically” engrained in Europe, yet none the less the European Institutions and National Governments are actively combating these forms of discrimination with quite a degree of success. It is time for the same institutions and governments to combat discrimination on the basis of religion and conviction no matter how sensitive and historically engrained these are.

Another argument used is that the state should remain neutral on all matters of religion and belief. I also agree that neutrality of the state is essential in a democratic society (as well as in enlightened monarchies or other forms of government). At present there are two main approaches to neutrality of the state (or *laïcité*). One approach does not accept any or very little religious expression in the public space and sphere, and thus favours non-religion; the other accepts religious and convictional expression in the public sphere as long as it follows human rights and the principles of public order, and thus favours neither religion or non-religion.

In the first understanding of neutrality the state chooses to not recognise or interact with any religious or convictional communities and in many cases chooses to not allow any expressions of religion or conviction in the public service and in certain cases imposes restrictions in the public space as well. On the basis that religion and conviction are very sensitive issues for people, the state chooses to avoid having to deal with it by ignoring the issues or by banning certain type of religious expression in certain places. This type of neutrality is from my perspective a weak form of neutrality. To equate neutrality with how you dress or present yourself is at best a very superficial understanding of neutrality. You may have a public servant or politician wearing a Sikh turban who is neutral in his service to the public and you may have a man wearing a tie who is extremely intolerant and biased. In India, which is a democracy on the European model, debate and criticism are common and you will hear many criticisms of the current Prime Minister but you will hardly hear anyone criticise him on the grounds of wearing a turban, nor see it as proof that he is not neutral in exercising his functions.

In the second type of neutrality the state has to make more effort to understand and accommodate all forms of religious and convictional expression, without favouring any particular one. Of course this form of neutrality requires more effort from the state like: dialogue, consultation, understanding, compromise, etc. Banning and ignoring the issue is always less work.

We have many cases in Europe where member states fall short of real neutrality in both of these approaches. In the first form of neutrality there is the risk that a state favours the humanist/*laïcité* worldview. How can a state claim to be neutral if some of its citizens are not allowed to go to school because of wearing articles of faith which are essential to their identity? To ban the wearing of the Sikh turban and Muslim hijab is not a sign of neutrality but a sign of partiality for a

particular worldview. If Sikhs are disturbed by the way non-religious children dress in a public school then they have to start a private Sikh school, where certain religious requirements can be established. The same principle applies to the Jewish, Christian, Muslim, Hindu, Buddhist, Humanist and other communities. In other words if parents with a Humanist worldview are disturbed by the fact that some children wear a turban or hijab in a public school, then they should start a humanist school, where wearing articles of faith are banned. Then the public schools remain really neutral and open for all, while religious or convictional schools can introduce different standards for their students (at least on wearing or not wearing articles of faith).

However, in the second form of neutrality, the state may favour a particular Church or religion. How can a state claim to be neutral when it has a “state” religion or a very ancient “concordat” with a particular religion. It is simply not possible that favouritisms and discriminatory legislation should be favoured or tolerated in the name of “history”. There may be different “systems” and regulations that states decide to implement in dealing with religious and convictional communities, but they should all be in accordance with basic human rights and non-discriminatory principles.

5.4 Neutrality of the state in education and health: a right irrespective of religious or non-religious affiliation.

Allan Hayes, British Humanist Association

Leicester, where I live, is one of the most religiously diverse cities in Europe - the percentages amongst 16 to 24 year olds are Christian 26%, Hindu 13%, Muslim 18%, Sikh 4%, No Religion 33%, Not Stated 5%. Burkas, niqabs, turbans ... are commonplace in the street and on buses. We have councillors, successful business men, ordinary people, we have had Lord Mayors, from all backgrounds.

We have had no riots - we get on well with one another. So my immediate response to the question posed for the seminar: "Is wearing articles of faith a threat to European democracies?" "No, democracy is not so fragile".

We have, in fact, quite a relaxed approach to religion: there is a conscious effort to build bridges, to relate to people as people, and through this to appreciate their beliefs. For example, I, am a Humanist, and member of the local Secular Society, and I participate in a Travelling Roadshow made up of people from different beliefs that visits local schools (it is organised by a Muslim and an Anglican Church). We are encouraging local initiatives for doing things that benefit the neighbourhood and that bring people together regardless of any belief.

Moving on to the title of this section: "Neutrality of the state in education and health". My question is about education - 'how does education contribute to nurturing the next generation as people?' Here I am thinking, not of the acquisition of facts, but of a sense of what it is to be a human being and part of the human family - to take pride in being human.

In the UK, religious education must, by law, be provided by every school and has traditionally been looked on as providing an important contribution to this. Religions still have great importance for many and still have much to offer - to the non-religious as well as the religious - I take much from my Christian upbringing. However the population data (1) above show that, in Leicester, religion alone - and still less one religion - cannot provide a basis that all can identify with and that brings all together. We need education in humanity both for itself and as framework within which to appreciate one another and our religions and beliefs.

The seriousness of the situation for education in the UK is emphasised by the conclusion "If RE fails to transform itself... then it will

deserve to die" of a recent book "**Does Religious Education Have a Future?**" (<http://amzn.to/14vzIXr>). The following national figures underline the situation.

- British youth (18-24) are rejecting religion: only 25% believe in God (<http://bit.ly/11ZnR4U>)
- "Religious leaders don't represent religious people" (<http://bit.ly/1d4re0k>)
- The percentage not affiliated with a religion is up from 30 to 50% in 30 years (<http://bit.ly/1fcLSv0>)

And we need to have regard to the emerging environment- global communication and awareness, flooded with information and influences, education using MOOCS, more science and understanding. Similar considerations hold across Europe and further.

How we can respond will depend on national politics, so I will touch only briefly on the situation in the UK, where regrettably, the Church of England is blocking development: seeking to add to the number of tax-paid schools that it controls and to keep RE more or less as at present but via an imposed national curriculum. This, in response to results like:

- Church of England affiliation plummets (40% -> 20%) in 30 yrs, and is likely to continue down; (<http://bit.ly/1fcLSv0>)

For Leicester this has the serious effect of encouraging and legitimising demands from other religions for their own schools, thus promoting separation of children by religion and residential segregation.

Finally, two general points:

What I am advocating is not a passive or flattening neutrality, it recognises that beliefs are important; it encourages their expression; and charges schools with enabling students to deal with and learn from diversity. I urged a meeting of Sikhs to take their religion seriously and to ask what they could share. The state should facilitate profiting from

diversity and change. We need an open, contesting as well as compassionate society. Finally, I ask whether we looking at things far too much through religious and belief categories – many people simply don't want to be bothered with them.

5.5 Religious Symbols, clothing and headwear in the public space.

Inderpreet Singh – UNITED SIKHS

1. Who are we?

UNITED SIKHS is an UN-affiliated, international non-profit, non-governmental, humanitarian relief, human development and advocacy organization, aimed at empowering those in need, especially disadvantaged and minority communities across the world. The mission statement is to recognise the human race as one. UNITED SIKHS is not representing the entire Sikh Community / faith in Europe, but represents them on common issues faced by the Sikhs in their respective communities.

2. Opening Note – Pope Benedict XVI Lecture given by Baroness Warsi

Baroness Warsi, a Senior Minister of State and Minister for Faith and Communities, in United Kingdom, said that more work needs to be done on interfaith communication. "There needs to be more Religion in the World and not less". Religion should be seen as two parts of a river. The flowing river is representative of a religion and the river bed is representative of the country or environment in which the river flows. They are hand in hand and the river bed can be seen to be setting the flow of the river. For example, when France is the river bed and Sikhism is the Religion and the state needs to acknowledge that Sikhs in France are proud to be French and are not against the state, but are against their rights being infringed.

3. Religious Symbols, clothing and headwear: in the public space.

This is what is happening in Europe in those states where laws have been passed without considering the impact on its citizens, on their civil and human rights and their religious freedom.

Three main problems on this issue are facing the Sikhs in Europe:

- **Right to wear the Turban in France and Belgium:** Bikramjeet Singh, Jasvir Singh and Ranjit Singh in Paris since the 2004 law and Sikhs in some Belgian schools that have banned religious signs, including the Sikh turban, in schools since Sept 2013.
- **Airport screening of the Turban in Europe** and the arbitrary procedures used in violation of EU regulations.
- **A UK case concerning the Kara (bangle)** – a mandatory Sikh article of faith. This was viewed by a school as a piece of jewellery and hence it was banned because it breached the school's uniform policy. It was **feared** that allowing one person to wear a "bangle" would create a precedent. The High Court defended religious freedom when it upheld the Sikh student's right to wear the Kara.)

Clarification - Who is a Sikh? And why is the Turban so important?

Sikhism is one of the newer major monotheistic faiths. Its founder, Guru Nanak Dev Ji (1469-1539) was succeeded by nine living Gurus. The 10th Guru, Guru Gobind Singh, instructed that he would be replaced, not by a person, but by teachings of the Sikh Gurus and saints compiled in spiritual text/scriptures: the Guru Granth Sahib. Today, the scripture remains the highest authority of the Sikhs, offering guidance on all situations in life, and motivating personal transformation. There are over 24 million Sikhs estimated in the world today. With a long history of respecting all faiths and promoting religious freedom, Sikh teachings do not proselytise. All initiated Sikhs are required to wear the 5Ks: Kesh (uncut hair), Kara (a steel bracelet), Kanga (a wooden comb), Kaccha - also spelt, Kachera (cotton underwear), Kirpan (steel sword).

The turban (also known as *dastar*, *pag* and *pagri*) is a long loose piece of cloth wrapped and tied around the head to cover the hair. The Turban is used to cover one of the Five Ks, *Kesh*, which a Sikh is mandated to do. The Turban is decreed to be an **integral part of the body and makes up part of the Sikh identity**. The Turban is not an option; it is not merely a representation of faith but is much more. The Turban cannot be taken off and placed in a drawer and chosen when to be worn. It is an “integral part of the body”. It is important to note that as well as having religious significance, the turban is of exceptional importance to the cultural and racial identity of Sikhs, and is also worn by most non-initiated Sikhs.

What is the main Article upon which the cases were decided by the UN Human Rights Committee?

International Covenant on Civil and Political Rights **Article 18**:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include **freedom to have or to adopt a religion** or belief of his choice, and freedom, either individually or in community with others and in public or private, **to manifest his religion or belief in worship**, observance, practice and teaching.

Q: – Is the wearing of a Turban not a manifestation of one’s religion?

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Q: – Is removing the Turban for an ID Photo not coercion by the State?

3. Freedom to manifest one's religion or beliefs **may be subject only to such limitations as are prescribed by law and are necessary to protect public safety**, order, health, or morals or the fundamental rights and **freedoms of others**.

Q: – Will prohibiting the Turban protect public safety or restrict it, or prevent falsifying ID?

Q: – Is the freedom of others in a class room infringed by a child wearing a Turban which is part of the Sikh Religion.

4. The States / Parties to the present Covenant undertake **to have respect for the liberty of parents** and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

4. CASE LAW

4.1 Extract from UNHRC Comments re Bikramjeet Singh Case in France

Substantive issue: Right to manifest one’s religion to privacy; non-discrimination

Act No. 2004-228 of 15 March 2004, which, in conformity with the **principle of secularism, covers the wearing in public primary schools, secondary schools and lycées of symbols and clothing manifesting a religious affiliation**. This Act has led to the introduction of article L.141-5-1 in the Education Code, under which: “In public primary schools, secondary schools and lycées, the **wearing of symbols or clothing by which pupils manifest their religious affiliation in a conspicuous manner is forbidden**. Under the rules of procedure, disciplinary procedures shall be preceded by a dialogue with the pupil.”

The author started his studies at the lycée Louise Michel in 2002. He was initially given permission to wear the *patka* and then, after September 2003 at the age of 17, he wore the *keski*, a small light piece of material of a dark colour, often used as a mini-turban by young boys as a precursor or alternative to a larger turban. **The wearing of the turban is a categorical, explicit and mandatory religious precept in Sikhism. It is an essential component of the Sikh identity: to be Sikh is not to cut one’s hair and, consequently, to wear a turban. Asking a Sikh to remove his turban is therefore tantamount to asking him to perform an impossible act.** The *keski* (like the turban for adult men) is not meant as an external display of faith but is rather intended to protect the long uncut hair, which is considered as a sacred, inherent and intrinsic part of the religion. The turban is not worn with a view to proselytize – a concept which is foreign to the Sikh religion.

Complaint

The author alleges violations of articles 17 (arbitrary or illegal interference in one's private life) and **18 (freedom of religion)**, either taken separately or in combination with articles 2 and 26 of the Covenant, on the grounds that he has been subject to discriminatory treatment on account of his religion and/or ethnic origin.

The author maintains that the application of Act No. 2004-288, which resulted in his expulsion from school, was not justified according to any of the legitimate aims recognized in article 18, paragraph 3. The two reasons put forward by the minister before the Council of State were: (a) the law was a response to a worrying increase in tension connected to the claims of communities, after the Stasi Commission had indicated that identity-related conflicts could become a factor of violence in schools; (b) the law also met the objective of protecting the rights and freedoms of others, so that it aimed to protect students, and particularly younger ones, from the pressures that could be brought to bear on them to oblige them to wear items of clothing that would make them identifiable first and foremost by their religious affiliation.

The author felt naked and degraded without his turban. Asking a Sikh to unveil his hair fully in public is akin to constantly reminding him of a feeling of betrayal and dishonour. The context and implementation of the Act show that the corresponding bill did not mention the Sikh community and that the aims of the law are not in the least related to French Sikh students. **The Stasi report was intended above all as a response to the situation of young Muslim girls, who wear the headscarf or veil, and to the schools unsure as to what measures to take if this was perceived as being against their will.** The aim of the report was not to outlaw all manifestations of religious belief, which is why the law allows discreet religious symbols to be worn. **Far from promoting peaceful**

coexistence in schools, however, the law has had the effect of humiliating and alienating certain minorities."

Comments

The author recalls that in its concluding observations on the fourth periodic report of France, the Committee referred to Act No. 2004-228 in the following terms: **The Committee is concerned that both elementary and high school students are barred by the Act from attending the public schools if they are wearing so-called 'conspicuous' religious symbols.** The **State party has made only limited provisions** — through distance or computer-based learning — for students who feel that, as a matter of conscience and faith, they must wear a head covering such as a skullcap (or *kippa*), a headscarf (or hijab), or a turban. Thus, **observant Jewish, Muslim, and Sikh students may be excluded from attending school in company with other French children.** The **Committee notes that respect for a public culture of secularism would not seem to require forbidding wearing such common religious symbols (arts. 18 and 26).** The State party should re-examine the Act in light of the guarantees of article 18 of the Covenant concerning freedom of conscience and religion, including the right to manifest one's religion in public as well as private, as well as the guarantee of equality under article 26.

The author also cites, among others, the concluding observations on the second periodic report of France, in which the Committee on the Rights of the Child notes: **The Committee is also concerned that the legislation on wearing religious symbols and clothing in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education, and not achieve the expected results (...)."**

The **Committee recommends that the State party, when evaluating the effects of the legislation, use the enjoyment of children's**

rights, as enshrined in the Convention, as a crucial criteria in the evaluation process and also consider alternative means, including mediation, for ensuring the secular character of public schools, while guaranteeing that individual rights are not infringed upon and that children are not excluded or marginalized from the school system and other settings as a result of such legislation. The dress code of schools may be better addressed within the public schools themselves, encouraging participation of children.”

Concluding point

The Committee had rule on the author’s allegation that his expulsion from school for wearing the *keski* is an infringement of his rights to freedom of religion, and in particular, his right under article 18 of the Covenant to manifest his religion. **In the author’s view, this measure would not be justified as the State party has not produced any evidence that the Sikh community posed a threat to public safety, order, health or morals, or that the fundamental rights of others were affected in any way through the wearing of a turban, keski or other head covering.**

The Committee refers to its general comment concerning article 18 of the Covenant and considers that the freedom to manifest a religion encompasses the wearing of distinctive clothing or head coverings. **The fact that the Sikh religion requires its male members to wear a turban in public is not contested. The wearing of a turban is regarded as a religious duty for a man and is also tied in with a person’s identity. The Committee therefore considers that the author’s use of a turban or a *keski* is a religiously motivated act, so that the prohibition to wear it under Act No. 2004-228 constitutes a restriction in the exercise of the right to freedom of religion.”**

4.2 Extracts from UNHRC Comments re Ranjit Singh Case

Subject Matter - Refusal to renew a residence permit in the absence of an identity photograph showing the applicant bareheaded

Substantive Issues - Freedom of religion, non-discrimination, liberty of movement”

The author is an Indian citizen who has had refugee status and a permanent French residence permit since 1992. In 2002, his permanent residence permit was due for renewal. (...) On 22 February 2002, the Prefect of Paris informed him that the photographs which he had provided failed to meet the requirements of articles 7 and 8 of Decree No. 46-1574 of 30 June 1946 governing the conditions applying to foreign nationals’ admission to and residence in France, which require individuals to appear full face and bareheaded.(...)”

Complaint

The author explains that **wearing a turban is a religious obligation and an integral part of Sikhism, his religion. It is the outward manifestation of Sikhism and is closely intertwined with faith and personal identity.**

The removal of his turban could be viewed as a rejection of his faith, and its improper use by third parties is deeply insulting. **Appearing bareheaded in public is deeply humiliating for Sikhs, and an identity photograph showing him bareheaded would produce feelings of shame and degradation every time it was viewed. It is not just that the author would have to appear bareheaded for the photograph to be taken; the State party is, in essence, asking Mr. Singh to repeatedly humiliate himself whenever proof of his identity is requested.** This is why the author has refused to comply with the requirement to remove his turban for his residence card photograph.

The author submits that the Decree, **takes no account of the fact that members of the Sikh community are bound by their religious beliefs to cover their heads in public at all times. He claims to be a victim of indirect discrimination by the State party in violation of article 18, paragraph 2.** He explains that,

without his residence card, he is considered to be living illegally in France. As a result, he has also lost access to the free public health-care system.

The author points out that article 18, of the **Covenant permits restrictions on the freedom to manifest one's religion only if such limitations are prescribed by law and are necessary to achieve one of the aims referred to in article 18, paragraph 3.** He explains that **an identity photograph showing him bareheaded would very probably lead to repeated situations in which he would be ordered to remove his turban for ease of comparison with the photograph.** The author would thus suffer a double humiliation: each time that the authorities require him to remove his turban for ease of identification and each time that the photograph showing him bareheaded is examined by the French authorities. **This repeated humiliation is not a proportionate measure for purposes of identification. He submits that requiring a person to be photographed bareheaded is not necessary in order to maintain public safety.** The State party requires a photograph showing a person bareheaded, **but has no objection to one showing a person with a beard covering half of the face.** His first residence card bore a photograph showing him with a turban, while Decree No. 46- 1574 was already in existence. He also notes that other European countries have issued residence cards with photographs of Sikhs wearing turbans and that **it is difficult to understand how a person wearing a turban can be considered identifiable in some European countries but not in France.**

He submits that **the authorities' explanation that a turban would prevent them from distinguishing facial features and would thus make identification more difficult is not a valid argument, since he wears a turban at all times.** He would therefore be more readily identifiable from a photograph showing him wearing a turban than from one showing him bareheaded. He submits that

requiring him to appear without his turban in identity photographs is disproportionate to the aims pursued.

Concluding point

The Committee refers to its general comment No. 22 concerning article 18 of the Covenant and considers that the freedom to manifest a religion encompasses the wearing of distinctive clothing or head coverings. **The fact that the Sikh religion requires its members to wear a turban in public is not contested. The wearing of a turban is regarded as a religious duty and is also tied in with a person's identity. The Committee therefore considers that the author's use of a turban is a religiously motivated act and that article 11-1 of the Decree interferes with the exercise of freedom of religion.**

The Committee must therefore determine whether the limitation of the author's freedom to manifest his religion or beliefs (art. 18, para. 1) is authorized under article 18, paragraph 3, of the Covenant. The Committee notes that there is no dispute as to the fact that the law requires people to appear bareheaded in their identity photographs and that the purpose of this requirement is to protect public safety and order. It is therefore the responsibility of the Committee to decide whether that limitation is necessary and proportionate to the end that is sought. The Committee recognizes the State party's need to ensure and verify, for the purposes of public safety and order, that the person appearing in the photograph on a residence permit is in fact the rightful holder of that document. **It observes, however, that the State party has not explained why the wearing of a Sikh turban covering the top of the head and a portion of the forehead but leaving the rest of the face clearly visible would make it more difficult to identify the author than if he were to appear bareheaded, since he wears his turban at all times. Nor has the State party explained how, specifically, identity photographs in which people appear bareheaded help to avert the risk of fraud or falsification of**

residence permits. Consequently, the Committee is of the view that the State party has not demonstrated that the limitation placed on the author is necessary within the meaning of article 18, paragraph 3, of the Covenant.”

4.3 Turban Screening - Airport screening of the Turban in Europe and the incorrect procedures adopted.

Sikhs around the world had been concerned, since a briefing in the US that under the revised Federal Aviation Administration (FAA) guidelines, **a Sikh Turban could be subject to random patting down at US airports, even if metal detectors are not set off.** Under the original Federal Aviation Administration guidelines, which were formulated after consulting the US Sikh community, a Sikh Turban was only patted down to resolve a scanner alarm.

Q: – What are the procedures for patting down Sikh turbans at European airports?

Inderpreet’s Personal Experience of Charles De Gaulle airport, Paris:

- Wearing only a t-shirt, shorts and **a turban** caused a security breach;
- No beep in the metal detector, no beep using the metal detecting wand and no option to be have a “Explosive Trace Detection” done;
- When the Explosive Trace Detection (ETD) equipment was requested, supervisor with the equipment in hand, demanded the turban be removed and the Police called due to a breach of security procedures and non removal of the Turban;
- Amended EU Directive was provided to the authorities but the response given was “we are not lawyers”;
- Eventually, with some reasonable negotiation, an index finger patting down of the Turban (in the same manner a child would touch a Turban) was the matter resolved;
- The specific airline actually waited on the runway for a UK national as they are aware of these incidences happening before.

Rationale given for procedures for patting down a Sikh's turban?” Any passenger can be hand-searched at random. But when the passenger is a Sikh, or has headwear - a hand-held metal detector is used in the vicinity of the turban. If the hand-held wand beeps when it is waved above a Sikh's Turban, he would be requested to untie his Turban in a private area and the search would be conducted with dignity.

(Situation in the UK. Department for Transport agreed that turbans would not be subject to manual checks introduced at airports across the European. The EU checks were shelved by British airports after complaints from Sikh passengers and airport employees.)

EU Amendment.

In 2010, the European Commission introduced new regulations which require the manual searching of headgear at airports. Recognising the sensitivities which exist in certain communities, the UK Government held a series of constructive discussions with faith representatives. As a result, both parties were able to agree to a trial - approved by the EC - which aimed to maintain high levels of security while offering alternative screening methods for religious/cultural headgear.

This trial was successful, and an EU amendment to the regulations came into effect on 25 February 2013 which allows **the use of explosive trace detection (ETD) equipment and hand held metal detection (HHMD) equipment for screening of persons (passengers and persons other than passengers).** Reasons given were:

- (i) Experience has shown that **hand searches of passengers and persons other than passengers are not always the most efficient means of screening certain parts of the person**, in particular where those parts are not readily accessible such as certain headgear, plaster casts or prosthesis.
- (ii) Trials have demonstrated the effectiveness of the combined use of ETD and HHMD in such cases. Moreover,

the use of ETD and HHMD may facilitate the screening process and be experienced to be a less intrusive means of screening than a hand search, thus constituting an improvement in the experience of persons screened.

- (iii) **It is thus useful and justified to allow these methods for screening of those parts of the person where a hand search is considered inefficient and/or undesirable such as certain headgear, plaster casts or prosthesis.**
- (iv) **This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, notably the human dignity, the freedom of religion, the non-discrimination, the rights of persons with disabilities, and the right to liberty and security.** In so far as it limits those rights and principles, such limitation is made genuinely to meet objectives of general interest and the need to protect the rights and freedoms of others, respecting the conditions laid down in Article 52 of the Charter. This Regulation must be applied in accordance with those rights and principles.”

5. General Conclusion

Original Question - Is wearing articles of faith a threat to European Democracies?

No, wearing articles of faith or religious headwear in public places is not threatening to European Democracies, but is an individual human right of the citizen. (Democracy is a form of form of government in which all eligible citizens participate equally. This can be either directly or through elected representatives in the proposal, development, and creation of laws. Democracy also encompasses social, economic and cultural conditions that enable the free and equal practice of political self-determination.)

Therefore, what is more threatening to European Democracies is the abuse of power some specific member states are exercising

through legislation, enforcement of existing draconian laws and a lack of domestic remedies. The question should therefore be, are member states allowed to infringe the rights, religious freedoms of their own citizens when they feel their democracies are threatened?

Specific member states are showing themselves to be afraid of different religions due to portrayals in the media. They are showing signs of xenophobia by arguing secularism and ‘normality’ as a rationale for their action. They are not taking responsibility for how the laws are affecting the everyday man or woman in reality. The impact shows there to be a disconnect between the states’ aim in passing such laws and the impact being felt by the public through the implementation of those laws.

No consultation or very little has taken place with regard to the impact a blanket ban can have on religious headwear and specifically in the Sikh community. The Sikh community are often go under the radar due to being a minority represented in small numbers in these member states. However, as the two UN decisions have shown, the issues faced by Sikhs are very grave and in fact a real breach of human rights. Such a ban discriminates against a state’s own nationals, due to fear of a supposed reaction by the ‘general public’.

5.6 “WE”, inclusively, citizens together: Muslims and “*Laïcité*”².

Karim Chemlal, Federation of Islamic Organisations of Europe

The issue of Muslims and “*laïcité*” is a complex one and I shall endeavour to give some pointers for lines along which to reflect

² Translator’s note: the French word “*laïcité*” cannot be fully translated into English as it is not simply “laicity” but comprises the whole French historico-politico-sociological concept of the so-called secular state. For that reason the French word is left in this text

further, rather than to cover the whole field – in the hope that we can manage to understand the complexity of the current position relative to “*laïcité*” or secularisation.

1. Historical dimension

There are two facets to the encounter between Muslims or the world of Islam, with “*laïcité*”.

1) In first place of course comes the historical one. This shapes the theoretical considerations. It is an ongoing reality of Islamic law. Formally speaking it preceded the theoretical considerations but they led to structural developments. And it is important to know, and remind ourselves that the first concrete experience the world of Muslim consciousness had with the notion of “*laïcité*” was that of colonisation. A colonisation that was perceived as the imposition of a model. A model which gave a structure to the sphere of power, and so to domination, a legal basis for, and a certain type of relationship to the phenomenon of what is religious. All too often under colonisation this was seen in terms of the ruler’s, coloniser’s intent to delegitimise any reference to Islam within the lands being colonised. This is an experience found not only all across North Africa, but also in India and Asia. It is a historical experience which is absolutely not one of freeing up the public sphere but rather one of asserting domination over the political sphere.

2) The second thing it is important to note is that step two of this relation between the world of Islam and “*laïcité*” does not follow any chronological order even if that dimension is largely thrown into relief in the course of the process of becoming independent. The experience of the adaptation of the secularisation process or of “*laïcité*” was not in fact, in the post-independence periods, a democratic experience: it was again imposed from above.

The developmentalist theory of the sixties suggests that modernising autocracies

were characteristic of most Muslim countries. Tunisia is a flagrant example of this. As for Turkey, or other countries considered as secular states, such as Syria or Iraq, all that can be said is that in the general perception of Muslims, the organisation of power - whether influenced by a somewhat left-leaning regime on the political stage, or by something like the Ba’athist party in Iraq - experience of implementing “*laïcité*” of any kind in the Muslim world has been anything but an experience of increasing democracy. That negative experience still lives on in the type of relationship there has been between Muslims and “*laïcité*”, in Europe since the 1960s particularly at the time of the first waves of migration, in that what the first immigration generation remembers most keenly and still trails along is this negative picture of a secular society.

3) Third point: the migration question. There was a time when people did not consider the everyday world in which one was living as our own referential world. This was the case for our parents, the earliest population groups, the proto-migrants as it were, who still saw the way things were back home as the main reference point for their world. And then things evolved, from inside, due to our experience of “*laïcité*” – and here we see a number of different intellectual strands emerging:

a) An intellectual strand saying “this is not our own world, but we are living here and we will dig our own little corner here”. We shall see that that chimes with a trend in current thinking that says “we are living in a world of “*laïcité*” only insofar as it allows us to stay true to our own world. So we cut ourselves off from our new setting and don’t interact with it at all.”

b) A second strand, chosen by some of the first and many of the second generation, is one of gradual adaptation to the world of the adopted country eg France.

c) A third strand, which does not merely adapt to the new setting, but sees how

this setting may prompt questions as to our relation with our original point of reference, ie the home country. In this strand, we may ask whether we should re-examine our understanding of our origins in the light of the new world we now inhabit. This may mean not simply adapting, historically speaking, but allowing ourselves to be fundamentally challenged by the types of relations we have with our own points of reference in the new world and in the old.

2. The doctrinal level

- 1) On the doctrinal level, this separation poses – and has posed a problem, not just for Muslims but also for the way the West speaks about Islam. For example, when some people from the host country said, “for Muslims in any case, there are no differences between the two worlds”, they were in fact echoing the very same thoughts some Muslims had when talking about themselves.

So “*laïcité*”, for many, has come to be understood – as a result both of the first encounter with it, and of subsequent thinking on the doctrinal level – not as a way of coming to terms with the phenomenon of religion, but as a rejection, or a way of opposing religion. That has by no means been erased from Muslim awareness today. If you look at how things are moving in Muslim areas of Africa today, you will realise that there are movements that consider it in exactly that fashion. This is also true in the North African, Middle Eastern and Asian contexts. And consequently there are widespread movements which do not make any distinction between Church and State. And equally there are very different traditions of thought on key areas such as rationality, dogma and the law – which have existed for a very long time.

The debate around the question of “*laïcité*” is not purely juridical or doctrinal in nature, but there is also a fundamental

political dimension to it. It exists in the Muslim world, especially after the ‘Arab Spring’, and the manner in which it is to be treated is becoming crucial. The response to it: the ways in which different countries are defining their position in Europe or American – and in France in particular will be important for future peace and stability across these regions.

- 2) I should like finally to challenge a certain number of common assumptions. They often crop up in connection with the question of “*laïcité*” in relation to the Muslim world and in relation to those who have migrated from that world to settle in Europe and who are thus now Europeans of Muslim faith.

- a) The first obvious one which needs knocking on the head straightaway is the fact that in the Arab Muslim world – and this is but one example – all “*laïcs*” or non-religious people are by definition democrats.

Once again, the simplification that whoever speaks out in defence of “*laïcité*” must be a democrat, is not only politically naïve, but is making assumptions which may happen to apply to much of the West, but certainly not in the Muslim world. It has allowed people to justify – in the name of questionable references to “*laïcité*” – their unconditional support for dictatorships across North Africa.

- b) Secondly, it is just as false to say that all democrats must be “*laïcs*” in the sense in which they might refer to this notion these days in the Muslim world. You have democratic movements that do not make reference to this term, but rather to their religious heritage – because they feel it is important to stay in touch with the mainstream Muslim world in symbolic terms – but who are in fact more democratic than other movements.
- c) Thirdly, it is also false to say that all the tendencies that are labelled

“Islamic”, or even “Islamist” are necessarily opposed to what “*laïcité*” stands for. If you listen to what some of them are actually saying, you will notice that in some cases their thinking is evolving – sometimes in quite an earth-shaking manner – on the issue of “*laïcité*” or at any rate secularity as a political principle.

We need to move away from the simple dialectic of Church/State, public sphere/private sphere: we need to go further as the issue is more complex than just that. It seems to me fundamental these days, especially living in Europe, to talk about the complexity of “*laïcité*” and to examine the different forms it takes across Europe (eg UK). It is also important to deconstruct the various forms that are making reference to:

- try and work out how “dogma” may take among different schools of Islam.
- to examine how to actually interact with “rationality” in practice, in discussion and debate.

I think this is the most important thing: How significant is critical rationality for people when they engage as active citizens? It is much more important to know what one has gained from the “*laïc*” experience than to care whether or not one makes reference to a transcendent dimension of reality. One can retain one’s critical rationality while maintaining a belief in the transcendent; one can equally lose one’s critical rationality without any belief in the transcendent, while holding a political position which is entirely dogmatic.

5.7 Neutrality of the state in education and health: a right irrespective of religious or non-religious affiliation.

Julie Pascoet, European Network against Racism (ENAR)

1. ENAR

The European Network Against Racism (ENAR) is a network of 150 NGOs which stands up against racism and discrimination and advocates for equality and solidarity for all in Europe. The Secretariat in Brussels connects local and national anti-racist NGOs throughout Europe and acts as an interface between our member organisations and the European institutions. We voice the concerns of ethnic and religious minorities in European and national policy debates.

2. Communities

ENAR Defends the rights of all religious and ethnic minorities but over the years we have noticed that some groups are particularly affected by racism and discrimination in very specific ways. These include: Roma, Jews, Muslims, Sikhs, PAD/BE. On « Wearing articles of faith », groups on which we are particularly working include: Jews, Sikhs and Muslims, and who are more affected by discrimination and racist violence because of “visible characteristics of difference” linked to their religion and culture.

3. Some facts and figures

3.1 Recent FRA report on Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of anti-Semitism, 2013. The survey asked respondents if they ever avoided wearing, carrying or displaying items in public that could identify them as Jewish, for example a kippa/skullcap, a magen david/Star of David, specific clothing, etc. Across the EU Member States surveyed, with the exception of Latvia, a majority of those respondents who at least sometimes carry or display such items said that they have avoided doing so at least

occasionally (in the case of Latvia, 25 % said they avoid wearing or displaying the items at least occasionally). The highest proportions of respondents who always avoid wearing, carrying or displaying these items were in Sweden (34 %), France (29 %) and Belgium (25 %).

For Jews, the key issue is less about access to education and health but mainly racist violence. 8% of Respondents who personally felt discriminated against by people working in a school or in training because they are Jewish: similar percentage of respondents who have been in the corresponding situation or used a particular service in the past 12 months, 3% by people working in public or private health services.

3.2 ENAR Shadow report on racism 2011/2012

ENAR Shadow Report 2011/12 on Racism in Europe - Key findings on Muslim communities and Islamophobia.

The European Network Against Racism (ENAR) 2011/12 Shadow Report on racism in Europe includes a special focus on Muslim communities. It is both an assessment on how these communities experience discrimination and how Islamophobia manifests itself and represents the first pan-European qualitative survey of Islamophobia.

- The findings are based on data and information from ENAR's national Shadow Reports, prepared by ENAR members in 26 European countries
- Statistical evidence of discrimination against Muslims is often uneven because not all countries collect such data
- Nevertheless, Islamophobia is widespread and prejudice towards Muslims has been more visible than that experienced by other religious or ethnic minority groups
- Women particularly affected by discrimination and racist violence

Neutrality

The way some countries approach neutrality and secularism is directly influenced by negative political discourses and fantasies about Muslims. Much of this discourse sees a woman wearing hijab as both oppressed,

and as being powerful enough to convert people just by wearing a hijab (those arguments were used in the debate around the French law of 2004 which led to the bans on the *hijab* and *niqab*). This example illustrates Islamophobia in that it ascribes to all Muslims a monolithic mentality and behaviour. Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief has said: "Such ascription of a collective mentality may amount to 'de-personalised' perceptions of human beings, possibly with devastating dehumanizing repercussions."

The term neutrality likewise can have different meanings depending on the specific historical and political context where it is used. It can refer, for example, to the state adopting an impartial stance towards all political, religious and philosophical beliefs. In some countries the term can refer to the duty of civil servants and public officials to be impartial towards users of public services.

In France, for instance, the neutrality of public servants directly stemming from secularism is interpreted to mean a prohibition on wearing any form of religious and cultural symbols and dress in the public service. In Belgium the debate is on whether the neutrality of public servants applies only to how they exercise their functions (for example, avoiding treating users differently) or also to their appearance (refraining from wearing any religious, political or philosophical symbols).

Can we justify limitation of human rights?

A difference of treatment may be considered as having an objective or reasonable justification if it is for a legitimate purpose compatible with the human rights obligations of the state. A legitimate purpose could be related to public policy concerns such as health, safety or security. However, in order for a difference of treatment to qualify as objective and reasonable it should also be proportionate to the aim it seeks to achieve. The European Court of Human Rights has been insistent that unfavourable treatment based on prohibited grounds will require

particularly weighty justification to be compatible with the non-discrimination principle. Prohibitions on the wearing in public of particular forms of religious or cultural symbol or dress may violate the right to freedom of expression and the right to manifest religion or belief if such restrictions are not based on a legitimate aim and are not proportionate and necessary to the achievement of that aim.

“The burden of justifying a limitation upon the freedom to manifest one’s religion or belief lies with the state. Consequently, a prohibition on wearing religious symbols which is based on mere speculation or presumption rather than on demonstrable facts is regarded as a violation of the individual’s religious freedom.”

Right to education

Students in France are not allowed to wear conspicuous religious and cultural symbols and dress in any public school. In the Netherlands or Spain individual schools make their own policy. In the last decade, there have been cases of students forbidden to wear the headscarf or other religious and cultural symbols and dress in specific schools in many countries, including Belgium, France, the Netherlands, Switzerland, Spain, Turkey and the United Kingdom.

The wearing of particular symbols or forms of dress can be an aspect of the right to manifest religion or belief. International law permits certain restrictions to be placed on this right but only where three conditions are fulfilled:

- the restriction must be provided for in law;
- it must be for one of the aims recognized as legitimate under international law, that is, to protect public safety, order, health, or morals or the rights and freedoms of others;
- and it must be demonstrably necessary and proportionate to the achievement of that aim.

Any restriction on the wearing of religious and cultural symbols and dress in school should be

precisely assessed on a case-by-case basis. General bans do not allow this approach. There can be no general blueprint applicable to all situations. The goal must always be to equally protect the positive and negative aspects of freedom of religion or belief – that is, the freedom to manifest one’s belief and the freedom not to be exposed to pressure to perform religious duties. When imposing a restriction, the state has an obligation to demonstrate that it meets the test for permissible limitations under international law. While in specific circumstances restrictions on the wearing of religious and cultural symbols or dress could meet that test, it is likely that general bans (for example in education or employment as detailed in chapter 4) could not satisfy the test of justification and the case-by-case approach.

3.3 Sikhs - Case law – European Court of Human Rights

Cf Bikramjit Singh v. France: <http://strasbourghobservers.com/2013/02/14/freedom-of-religion-in-public-schools-strasbourg-court-v-un-human-rights-committee/>

In a recent [decision](#), the Human Rights Committee of the UN found a violation of the right to freedom of religion in a case concerning the famous and highly debated [French law of 2004](#) that prohibits the wearing of religious garments in public schools. Accordingly the UN Committee called upon France to review its legislation. This UN Committee’s decision is remarkable, especially since the European Court of Human Rights was also confronted with the same question —whether expelling pupils from school because of their wearing of religious garment is violating fundamental rights such as the freedom of religion and the prohibition of discrimination—, but ECtHR declared the claims ill-founded.

Hence, with this case the UN Committee gives again a clear signal that a general principle such as secularism, however important, cannot trump individuals’ rights, such as the

right to freedom of religion, without looking at the particularities of the case.

It is also important to note the possibility of prejudices in the judiciary on sensitive issues which are politicised (see Ibrahim Akrouh's article on judicial power and anti-racism in ENAR's book: http://cms.horus.be/files/99935/MediaArchive/publications/SymposiumReport_LR%20final%20final.pdf)

The judge, as any person, is susceptible to the negative influences of intolerance which currently prevails in society. If he/she comes to endorse these negative stereotypes and prejudices, he/she can perpetuate intolerance instead of being a bulwark against it.

4. ENAR's next step on Islamophobia

4.1 Call for adoption of Horizontal Directive 2008

European Union anti-discrimination Directives do not provide an equal level of protection against different forms of discrimination. For example, while Directive 2000/43/EC (Race Directive) requires member states to forbid discrimination on the ground of race in the areas of employment, education, social protection, social advantages and access to goods and services, Directive 2000/78/EC (Framework Employment Directive) forbids discrimination on the ground of religion only in the area of employment.

The European Commission put forward a proposal for a new anti-discrimination Directive on 2 July 2008 with the aim of introducing European standards of protection against discrimination on the grounds of sexual orientation, age, disability and religion or belief in the areas of access to goods and services, education, social protection and social advantages.

ENAR, together with other organisations such as ENORB, has advocated for the adoption of the proposal for a Directive on implementing the principle of equal treatment between

persons irrespective of religion or belief, disability, age or sexual orientation in areas other than employment and occupation.

This new Directive would provide EU-wide protection against discrimination on the ground of religion in several areas including education. The Directive should clarify that differences of treatment on the prohibited grounds are allowed only if based on objective and reasonable justification.

4.2 Recognition of Islamophobia - as a specific form of racism, deriving from Europe's history and colonial past. Acknowledgement of specific racist narrative behind that (different from any criticism of Islam but based on a monolithic social construction of what Muslims are). On the model of the EU Framework for NRIS, first time social policy measures were requested from MS for an ethnic group, ENAR would like to explore the potential of an EU framework on social inclusion of Muslims as a way to coherently and comprehensively address the numerous challenges faced by the various European Muslim communities.

Denmark: headscarf in department store – dismissed because of not complying with dress code not allowing to wear any headgear.

- Eastern High Court: this was indirect religious discrimination as treatment was not proportionate. Compensation of 10.000 DKK.

Sweden: Muslim man wearing a beard due to his religious belief.

- First hired, but then told to shave and when refused, he was dismissed.
- Company claiming dress code did not allow for a beard, even though the dress code originated from the USA and it could have been adapted to conform with Swedish law.
- Ombudsman held that it was indirect discrimination, but dispute was settled and the complainant was awarded 75.000 SEK.

4.3 Employer's wish to remain neutral

Danish headscarf case:

Plaintiff serving customers in a supermarket dismissed due to wearing headscarf. She claimed indirect discrimination.

Supreme Court accepted that a private company's wish to remain neutral was a legitimate aim and that the clothing requirement to reach this was objectively justified, appropriate and necessary.

Belgian headscarf case:

Complainant working at the company since 2003, decided to wear headscarf in 2006. Employer refused, on ground of principle of neutrality that the company pursues.

Court accepted neutrality of the company as a legitimate aim and the means appropriate and necessary. Imposing neutral clothes and uniform does not affect the ability to have a religious belief.

Austrian headscarf case:

Muslim woman working in a kindergarden, some parents successfully opposed the renewal of her contract. Kindergarden invoked both Article 4 (1) and 4 (2) of the Framework Directive (genuine occupational requirement and ethos-based exception, respectively), claiming that it wishes to remain neutral, thus does not accept wearing of religious dresses.

Ombud took this case as direct discrimination, challenging applicability of Article 4. Friendly settlement was reached before the case could have been decided.

4.4 Lessons learnt

Domestic courts and the ECtHR seem generally to adopt a strict and narrow interpretation of Article 9, with most cases dismissed.

Specific observations:

Legitimate aims accepted if proportionate: interest of children in education; health and safety; efficient functioning

Dress codes and neutrality of employer: courts appear to be too reluctant to establish religious discrimination –a more thorough analysis of proportionality might be needed.

Courts take a narrow approach in accepting practices as manifestation of religion

8 cases out of the 11 examined were dismissed as not discriminatory and not violating freedom of religion.

Contacts

www.equineteurope.org

Tamas Kadar, Senior Policy Officer

EQUINET SECRETARIAT