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The French principle of *laïcité*[1] and religious pluralism in the workplace: main findings and issues.

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Abstract:

The singular principle of « laïcité », in the French context, is often misunderstood even if secularism is searched with different degree of intensity among most democratic countries. Public service neutrality leading sometimes to religious expressions restrictions in the workplace often cause criticisms. But are these critics justified? What are the motivations behind the French principle of « laïcité »? What does jurisprudence say in France, in Europe but also in the United States and Canada on this issue? In fact, two different philosophies – however complementary - are to be distinguished. The French model places equality as a precondition to an ethical society. United States, Great Britain and Canada place freedom as a precondition to democracy. This text, based on a comparative analysis of the two models, and an analysis of justice decisions in this field, tries to give some understanding of this question; in its conclusion, the authors identify the impact of the « laïcité » principle on a pluralist society, alerting on the risk of the spread of religious-driven companies in the coming years.

Introduction

Since the beginning of the twenty-first century, the movement of people has become global

[1] The term "laïcité" is often approximately translated by secularism. However "laïcité" represents the constitutional principle of separation between the Church and State. State employees and public service organizations must show strict neutrality in their behavior and appearance, and the French Republican ethos includes a certain way of behaving around this issue in the broader social life which is in relationship with the History of France, notably the French socio-historical movement to free itself from the control of the Catholic Church (Bowen, 2007; Champion, 1993; Delfau, 2015; Haarscher, 1996; Pena-Ruiz, 2003; Schnapper, 2007; Weil, 2015).

(Mouhoud & Oudinet, 2007; Gedde & Scholten, 2016; Héran, 2007). We are living a veritable cultural revolution, what Claude Lévi-Strauss did not hesitate to qualify in an original French text, recently published, as world civilization (2013), notably due to the global economy, the mobility of individuals, the free circulation of ideas and the Internet; within this great social process at work, we have observed in recent years an increase in religious demands in many democratic countries, who, as in the case of France, thought they had settled the question once and for all. Sometimes heated debates begin to emerge around numerous story items, often high-profile, which question the principle of "laïcité", the French version of secularism and living together (Banon, 2008, 2016; Barth, 2012; Bowen, 2007; Laborde, 2008; Languille, 2015; Sciberras, 2010; Weil, 2015) from a debate which pits, on the one hand, advocates of a post-secular age who want to lift restrictions on the expression of religious beliefs in public spaces, against on the other hand, defenders of what might be called a naturalist secularism (Stavo-Debauge, Gonzalez & Frega, 2015).

Inside this now very interconnected world, the proliferation of information networks delivers in effect to our door spiritual offerings coming from all backgrounds. It is estimated that, today, 4000 forms of belief and tens of thousands of deities exist (Banon, 2008; Machalon, 2006). Although some studies indicate that one should not exaggerate the significance of religious requests in France, it remains that the proportion of conflicts in companies based on religion is growing (Institut Randstad & Ofre, 2014, 2015, 2016) and the challenge to democracies and organizations cannot be underestimated. For it is not a matter here to ask the question of the place religions should have but rather how to organize the equitable coexistence of a diversity of cultural expectations, traditions and religions in a multicultural society with secular character, in French words, "le principe de laïcité" (the principle of secularism) (Bowen, 2007; Delfau, 2015; Laborde, 2008; Languille, 2015; Schnapper, 2007; Stavo-Debauge, Gonzalez & Frega, 2015; Weil, 2015). The tragic events that we have witnessed in recent years in many parts of the world, and recently in France, while strongly marking consciences, lead our societies to question our ways of being together (Kepel, 2015). For if we know from history and anthropology, that religious systems and thought have accompanied and forged humanity for millennia (Durkheim, 1912, 2008; Hervieu-Léger & Willaime, 2001), the current globalization has not only served to emancipate cultures and religions from their land of initial development, it has also necessitated a change of era.

This text, based on a country's comparative analysis and an analysis of justice decisions in this field tries to give some understanding of this issue. The structure of the chapter will be the following: after a recall of the actual situation in matter of religious expressions in our countries, particularly in France, we will present: 1) the issue of religion visibility, 2) the countries' diverse responses: freedom of choice or equality of rights based on a study of legal decision cases, 3) the larger issue of religious expression in the public space according to secularism principles, in particular these French variations, and 4) the case of the so-called tendency companies. In our conclusion, we identify the impact of the « laïcité » principle on a pluralist society, come back to the innovative character of the French secularism on this issue and alert on the risk of the spread of religious-driven companies in the coming years.

Religious expressions diversity in the workplace: a growing trend

Contemporary spiritual rules, built during the agricultural revolution, of which there are nearly ten thousand, have organized our societies around the sacredness of the earth and the cycle of seasons. Taking part in the desecration of the earth, modernity and the ensuing globalization impose a mutation in religions rendering archaic and obsolete their historical life-regulating prescriptions (Banon, 2008, 2016).

The relationship to "the other" requires one to be humanized and equal. The different, foreigner, who comes from another country, who does not have the same skin color, who follows particular traditions or claims a different sexual orientation, has today in many democratic societies, the same rights as those born in the host country; and equal rights between men and women has become an imperative for any self-respecting democracy (Schnapper, 2007). In other words, from an anthropological point of view, we are indeed witnessing a fragmentation of religion and its attempt to restructure, according to a new social and political environment (Hervieu-Léger, 2001), which is characterized by both a religious globalization, a convergence of concerns about the human condition and by questioning the principle of secularism, notably in its French version. The challenge is not for a society to deconstruct religions or traditions but to bring those expectations in a democratic language (Bowen, 2009; Delfau, 2015; Gröschl & Bendl, 2015; King, Bell & Lawrence, 2009; Klarsfeld, 2016; Laborde, 2008; Le Monde, 2013; Languille, 2015; Stavo-Debauge, Gonzalez & Frega, 2015; Weil, 2015).

The management of the diversity of religious practices, coexisting in a shared territory, has thus become indispensable in our country. Currently, eight out of ten people in the world indeed identify with a religious group and 84 percent of the world population declare themselves a member of one of the five major religions or spiritual beliefs: Christianity, Islam, Hinduism, Buddhism and Judaism (Pew Research Center, 2013). All models of society are therefore faced with the coexistence of cultural and religious diversity (real, virtual or imagined) and inevitably, with the possible expression of both the nostalgia of a sacred territory and with the competition of the identities who claim it.

This encounter involves a number of potentially problematic questions: first, how to organize collective time in a multicultural society? Then, how to deal with the partial privatization of the collective space for individual purposes? How to manage the intrusion of an external moral system of prescriptions into the workplace? Can such an external moral system be presented as a set of "higher principles" for the implementation of the employment contract?

Time-space, geographical space and social space are now subject to these external pressures, which exert a direct internal influence on company performance. This involves a certain number of other questions: is this a redistribution of power of certain religious traditions in the space of a company thus far secularized? Is it a religious awakening in the face of the new realities of a diverse society? Is it the expression of an identity weakened by the loss of connection with a territory of reference? Or yet, is it a competition between different models of society, one privileging cultural freedom for each community, the other favoring equal rights for each individual?

One point shared by these models is the fact that there is no state which is not historically

organized around rituals, worship and holy commandments, serving to cement the collective and inspire social principles: social acts and status of women, men, citizens, and foreigners. "No state has ever been founded without a religious basis," wrote Jean-Jacques Rousseau three centuries ago (*Of the Social Contract,* book IV, chapter 8, *Civil Religion*, 1762). It is from socio-historical observation that we next study how these universal shocks affect the world of organizations, and in particular that of private-sector organizations; and what space we can leave for these cultural particularities in the collective space of the private sector organization, in particular in France.

The workplace on the front line of the globalization of religions

The world of work in Western countries, including those in private and public sectors, is today the front line to find the response to this question of the fragmentation of collective space and time, and even to the question of the alteration of societal principles believed to ensure social cohesion. In the public sector, particularly in the French case, the problem arises less obviously as a result of the 1905 law, which governs the principle of French secularism. This principle was extended to the educational realm for students and teachers from elementary public school through high school in 2004 (Languille, 2015; Weil, 2015).

However, two sectors (private and voluntary) are not subject to the principle of secularism. Strictly speaking, the French principle of "laïcité" is, as Guy Coq (2003) recalled, drawing inspiration from the definition of Ferdinand Buisson (1878), "the recognition of the autonomy of society and the state in relation to any religion". Leaders of organizations in these sectors must now respond to numerous questions that arise daily about: how to manage peculiar demands, to preserve individual freedom of belief and religion, while ensuring social cohesion and collective interest, as the jurisprudence on this issue remains unclear. Based on what criteria should a manager appreciate, support and at times restrict religious freedom?

The new realities of the world we briefly just recalled, indeed make any decision in this area increasingly complex. Decision-making is especially difficult as the intensity of the practices of certain religions appears to weaken, while that of other religions seems to progress (Tincq, 2013). In France, for example, according to the last available data, 50 percent of French managers have already been confronted with a religious order request. In 2015, 23 percent of respondents declare regularly facing a question associated with religious behavior in the company, this rate having doubled in a year, and the proportion of conflicts in the company based on religion has tripled in three years, then increased by 50 percent in 2016 (Institut Randstad & Ofre, 2015 and 2016). However the preoccupying issue is that nearly a third of Muslims in France place religious law above the law of the republic, and this proportion climbs to 50 percent among the younger part of the sample, people who will very soon enter the workplace (Institut Montaigne, 2016).

As we recall from the numerous studies in the contemporary world, the coexistence of more than 4000 beliefs and religions, tens of thousands of deities, cause as many cosmologies and

“ideal” social models evolving in the same space. Such a phenomenon is accentuated by the the internet. In fact, more than 2 billion active internet users on social networks – that is 28% of the global population - approach in one click, cultures that they never could have met nor interacted with before in the same proportions (Internet Statistics, 2015). The deterritorialization of cultures (Deleuze & Gattari, 1972; Warnier, 1999) makes obsolete the principle of the “law of the land” to privilege the universalism principle of equal human rights regardless of the culture of origin. Elsewhere is now here and everywhere (Chanlat, 1994; Banon, 2008; Chanlat, Davel & Dupuis, 2013). This new proximity to elsewhere has important consequences in questioning even the principle of cultural relativism. But the question remains unanswered of the prevalence of traditions and value systems of one territory over other traditions and practices attached to other territories. “Does this mean we have to live this way?” Claude Lévi-Strauss questioned in another published text edited recently (2013).

Concrete coexistence or exchanges in the virtual world of social networks, conditions of a grand societal disparity are reunited (Banon & Chanlat, 2014). Gods, people and traditions, once attached to a sacred territory, are now destined to coexist in multicultural territories with the contradictions that can result. Even if history shows some religious diversity experience in some geographical areas, it also shows that this diversity can sometimes lead to terrible events such as in India or elsewhere. Long ago, attached to a sacred land, to a heroized people and to a religion guaranteeing a privileged relationship with supernatural powers, *homo religiosus* (Eliade, 1969a) now aspires to be at once a citizen of the world, while claiming a local, or even tribal, attachment, real or fantasized. In fact, if man is, without a doubt, incapable of a total desacrilization of identity (Durkheim, 1912, 2008; Eliade, 1969b), the Republic reaches towards the sacredness within a national territory, which now leads us to recall the importance of this notion of territory.

Territory, workplace and religious expressions

Every human being and/or every social activity is always registered in time-space. Organizations and businesses surely do not escape this imperative (Chanlat, 1990). They, by registering in a space, themselves create a collective and personal space for those who work in them (Chanlat, 2006; Fischer, 1990; Hassard, 1990; Clegg & Kornberger, 2006). What do we observe today in this regard in terms of religious practices?

73% of the world population still lives in the territory where their religion of reference was born and has grown (Pew Research, 2015). Religious belief systems are historically attached to a people and to a territory. Thus, the attachment to the land was once defined as the identity of a person. The question was not therefore « who are you? » but « where are you from? ». For example, the term « Jew», *Yehudi* in Hebrew, stemming from *Yehudah* (Judah) did not first designate belonging to the Jewish religion, but the inhabitants of Judea (Sarfati, 1997). The citizen of Athens was, in turn, supposed to be « born of the earth » and not of women. The men of the same group were thus of the same blood and were related to each other by a common mother, their country (Nicole Loraux, 1981). As we can see, in ancient times,

collective identity is guaranteed by membership in a matrix territory. The closeness of a society refers to a likeness, to the same divine protector, to a common language, to the same food and to an appearance serving as window of the soul; and difference was then seen, as strange, even foreign, thus a potential source of chaos. Yet, it is very much the difference and how the other sees the self, which reveal identity. (Arendt, 1951, 2004; Laing, 1961; Honneth, 1995) No identity can be had without encountering the other. « We never exist in the singular » wrote Emmanuel Levinas (1982, p.50).

Today, as, in modern democracies, diversity is a characteristic of social life (Özbilgin & Tatli, 2008; Chanlat & Özbilgin, 2016), the loss of an original territory of reference can create a sentiment of isolation, weakening identities and pushing for a greater visibility based on new imaginary cultural territories (Kepel, 2012; Lagrange, 2013; Stavo-Debauge, Gonzalez & Frega, 2015; Banon, 2016). In such a context, private life is not intended to be subject to collective judgment, as can be observed in traditional societies. The exigency of visibility seeks first to express itself in the collective life, to meet the eyes of « the other » and thus confirm its identity.

The globalization of the current economy contributes to this deterritorialization of cultures that doubles a desecration of the territories. The religious proliferation that ensues intensifies competition for individual freedoms of opinion, conscience, and belief. This unprecedented pluralism differs according to societal, religious and philosophical heritage of different regions of the world. This is an upheaval that does not lead to the disappearance of religious expression, but contrarily to its revitalization; a distorted reality in certain countries, such as France, by the overrepresentation of a population not affiliated to any religion (Tincq, 2013), of which 44 percent can be found elsewhere in Western Europe and 43 percent in Pacific Asia (Pew Research, 2015). This religious presence in territories, which seemed to have eliminated it, challenges both officials and citizens (Bouchard & Taylor, 2008; Stavo-Debauge, Gonzalez & Frega, 2015), notably in France (Schnapper, 2007; Languille, 2015; d'Iribarne, 2013; Weil, 2015).

From this point of view, it is no longer necessary today to associate the sacred with a behavior insofar as this behavior is considered as part of the religious; a religion not limited to a belief or practice of a sect. Today, in the new context of globalization, the definition of religion also incorporates elements of the societal offering it proposes. In this context, what companies must take into consideration, is not therefore the relevance of such or such religion or belief, but rather the compatibility of its related traditions with collective interest, since the company itself is subject to principles of economic and social coherence of its own. In other words, the company does not manage beliefs but guarantees equality of its employees before a general rule: social cohesion and optimal operational performance.

So we are not living a new religious dynamic, but rather a process of readjustment of religion in this globalized world. The question is therefore no longer summarized by one religion, but concerns them all, and this adjustment asks new questions such as: how to define one’s territory in a space without borders? How, in a multicultural and secular democracy to define

one's identity, while all identities possess an equal right to expression?

Human organisations, and private businesses in particular, as ultimate meeting places of all human differences around a collective project, raise the question of managing a diversity of cultural heritages, with respect to individual freedom of conscience, religion and worship, while seeking optimal operation, and the equalizing of rights and obligations between different people. Spinoza (1677,1842) already affirmed a long time ago that the exercise of worship and the expression of all forms of piety should be measured against collective interest. This is indeed the same question asked today in private and public businesses. Resulting in two key questions for which our societies are currently seeking answers: the question of visibility and that of secularism or "laïcité" in France.

The question of the visibility of religion

In recent years, the concept of visibility, which has been debated in France since the French Revolution, appears in many Western countries with initial work focusing on the behavior of Muslims in public space (Dassetto, 1990, 1996), notably in France which has the largest community of Muslims in Europe, as one quarter of European Muslims live there (Godard, 2015; Tribalat, 2013). It entails more meanings here. First, religious expression is associated with celebrations and festivals which require appropriate accommodation, the definitive anchoring of the second and third generation immigrants into Western societies leading those who practice to claim such visibility in public space. Second, religious visibility refers to the categorization that followed the events of September 11th in New York, certain immigrant workers having been since qualified as Muslims, and having thus been associated with fanaticism and terrorism. Finally, a third meaning refers to the questions of social recognition, developed firstly by the thought leaders of multiculturalism (Taylor, 2009; Kimlycka, 2001), and secondly, by the philosophers of critical theory (Honeth, 1995, 2012).

In other words, as recalled by Philippe Gonzalez,

> *The visibility of Muslims can therefore be broken down into three meanings: (1) a Muslim presence still more marked in urban areas in connection with the mutations of immigration; (2) problematic media framing that generates effects of negative reputation due to international events; (3) a request for legal and cultural recognition resulting in the appropriation of public space. (2015, p. 253).*

So these meanings are especially important in a world where migration flows intensify, where the Islamic religion is growing, and where the attacks made on behalf of this religion are increasing. It must be remembered however that the question of visibility is not only a question relevant to the Muslim religion, notably in France.

The loss of cultural distance with a sacred territory of reference, real or imagined, can weaken individual identities and lead to more visible faith-based behaviors in host societies (Languille, 2015). This will be even more the case when host societies no longer know how to

convey the fundamentals of their living together. Some, like France, have left some of their suburbs drift apart from the rest of society. We speak in such cases of a growing social crisis in which identity issues play a key role (Godard, 2015; Lagrange, 2010; Tribalat, 2013; Kepel, 2014, 2015).

This social crisis requires clear decisions in a confused situation. This is not a crisis in the sense of a disaster but an acceleration of symptoms that are indicative of a paroxysmal situation. The principles on which our societies are organized seem challenged in many places and in different national contexts. Either this *krisis* leads to the birth of a new world organized around an ethics of differences, privileging diversity and equality of rights and opportunities, working towards a compensation of inequalities suffered and a dynamic of differences (Héritier, 2007; Özbilgin & Tatli, 2008; Klarsfeld, 2016; Chanlat & Özbilgin, 2016); or the fear of the other, the defiance with regard to difference can lead to a resacralisation of territories, the fragmentation of collective space and a return to the archaic scale of differences, which evaluate the rights and obligations based on appearances and their assumed complementarities. The corporate world lives this *krisis* directly, notably in France (Barth, 2012; Galindo & Surply, 2013; Banon & al., 2013; Banon & Chanlat, 2014).

Until a few years ago, geographical distance helped to minimize cultural distances. Exoticism anesthetized ethical and societal disruptions. What happened elsewhere stayed elsewhere; a way also to favor a comfortable principle of tolerance without having to feel responsible for the other. Claude Lévi-Strauss recalled that geographical difference contributed to a form of indifference towards excision. For example, excision "*did not disturb Western consciousness, when it was practiced far away, in an exotic country with whom we did not maintain relations"* (Lévi-Strauss, 2013). Religious customs and practices can coexist when they are assigned to a distant land. But nowadays, these distant territories no longer exist. As we have already underlined, elsewhere is here and is also everywhere. The responsibility towards others becomes an ethical condition for the intercultural relationships that ensue. Excision, early marriage, discrimination and other archaic traditions become the responsibility of all, regardless of distance, leading to discussions around a central question: in our own democratic societies, which of the two should take precedence, freedom or equality?

Freedom and/or equality facing a religious demand: diverse responses

The changes we have just mentioned are emerging situations that question not only our legal foundations, but also our ways of thinking about social life. As the following cases will show, the answers to this question can be quite variable according to the national contexts concerned. This provokes new questions. If we begin with the most favorable to religious demands, we will see that the legal decisions are frequently inconsistent.

First case: protective helmets in the United Kingdom and Canada

In 1973, British Parliament made the wearing of a helmet on motorcycles compulsory, which forced Sikhs to remove their turbans in order to wear a helmet. As this obligation was

presented at that time by the representative authorities of Sikhism as an indirect discrimination, a new legislation was adopted in 1976, exempting Sikhs from wearing helmets (*Motor-Cycle Crash Helmets; Religious Exemption Act*). If an equivalent exemption came into effect in Canada (Bouchard & Taylor, 2008), such an initiative is highly unlikely in France, whose model does not allow to grant differential rights based on a religion when doing so may prove to be ultimately detrimental to the person concerned (Weil, 2015).

However, such an equality requirement seems to have been echoed recently in Ontario. In 2014, this Canadian province indeed overturned the exemption granted to Sikhs not to wear helmets while on a construction site or on a motorcycle. In a letter addressed to the Canadian Sikh Association, Ontario's prime minister, Kathleen Wynne, while declaring she understood the religious importance of wearing turbans for Sikhs, added that such an exemption violated the safety of individuals; thus herein safety prevails over religious practice. Her stance seemed to contradict a decision adopted in 2010 by the Court of Human Rights of Ontario, which recognized that Home Depot had discriminated against Deepinder Loomba, a Sikh security guard, by requiring him to remove his turban and wear a protective helmet. The employee refused, arguing that exposing his hair in public was forbidden by his religion, despite the defense of the company concerned, noting that « The law on occupational health and safety requires that helmets be worn at all times on the sites». (*Loomba v. Home Depot Canada Inc*., [2010] O.H.R.T.D. No. 1422 (QL) (Ont. H.R. Trib.)

The same year, the Ontario Court of Justice had refused to grant a motorcyclist of the same faith an exemption to drive his motorcycle without a helmet. While supported by the Commission of Human Rights of Ontario, the plaintiff, Baljinder Badesha, had contested a violation received in September 2005 while driving his motorcycle without a helmet. (R. c. Badesha, 2008, O.J. n°854, Ont. C.J.). In another judgment in 1999, the Court of Human Rights of British Columbia, another Canadian province, confirmed the right of a Sikh wearing the turban, to ride a motorcycle without a protective helmet, and concluded its decision by affirming that the discrimination involved by mandating the helmet in spite of the obligation to wear a turban was not justified by the marginal increase of risk for the person or increased medical costs for society. It was therefore the motorcyclist without a protective helmet who would face alone the risk in question. (Dhillon v. British Columbia (Ministry of Transportation & Highways, 1999, 35 CHRR D/293).

For some French researchers and legal experts, the British and Canadian models of religious freedom and equality despite their often contradictory decisions seem now incompatible with the existing legal model in France. In this model, the obligation to guarantee optimal safety for all citizens takes precedence over religious practice, under the principle of individual equality before collective regulations, whereas, according to the Anglo-Saxon model, in the name of freedom, Sikhs seem less protected by the state than those faithful to other religions. Would the life of a Sikh have less value under Anglo-Saxon rule? The question posed here is that of the priority accorded to « freedom » over equality.

Second case: the case of behavior and religious symbols in several developed countries, an inconsistent jurisprudence

In the domain of religious requests, the workplace is a laboratory for the entire society. This is all the more true that today, as evoked previously, religious requests have increased in the workplace, particularly in France. But, in the current environment, reducing the reflection only to Islam would however be misleading.

In effect, since the French law of 1905 on the separation of the church and the state, there have been hundreds of court decisions by the French "Cour de Cassation", the highest French Court, relative to religious expression in the workplace, concerning Judaism, Catholicism, Protestantism, and now, Buddhism, Sikhism, and Islam. All religions have indeed the potential to develop an "orthodox" or "fundamentalist" vision and practice (Stavo-Debauge, Gonzalez & Fraga, 2015). We know the religious practices rate in France: 41 per cent of Muslim people declaring they are observant and 71 percent saying they observe Ramadan (an increase of 11 percent compared with 1989 (IFOP-La Croix, 2011) and 12.7 percent of French Catholics declaring themselves observant (Fourquet & Le Bras, 2014). Such results do not indicate that Muslim faith people will move into fundamentalism behavior nor that 87.3 percent of the non-observant Catholics are totally disconnected from the Judeo-Christian model of society. It is indicating that the pool from which a possible resurgence of more rigorist practices exists and could create difficulties for management when orthodox practice is growing among these religions.

Faced with religious demands, as we have seen, states do not all react in the same way but rather according to their legislation, their history, or their demography. Court decisions in this area can thus vary, or often be contradictory, no common position succeeding to prevail. In such a context, the existing jurisprudence cannot therefore dictate decision-making without risk to managers, as we will now discuss in more detail, from a certain number of recent legal decisions made in different countries, especially in France.

In 2014, in the spirit of the First Amendment, which prohibits the United States Congress from passing law restricting religious freedom and the liberty of expression (Lacorne, 2007), the Supreme Court of the United States authorized prayers at the municipal council of the city of Greece in the state of New York, judging them «conforming to the heritage and tradition of the country» (Galloway and Stephens v Greece municipality & John Auberger, case 12-696, 2014). In 2015, on the other hand, the Supreme Court of Canada banned the recitation of prayers from municipal councils of the Quebec town of Saguenay, while no charter clearly states the obligation of the religious neutrality of the State, and refused at the same time to comment on the presence of the crucifix in the deliberation room, considering it as a reminder of the Catholic «heritage» of the Province. (Mouvement laïc québécois v Saguenay (Ville), 2015 CSC 16, 2R.C.S.3, dossier : 35496)

In France, the administrative tribunal of Nantes requested the dismantling of the Nativity scene, installed in the space of the Vendée General Council during the Christmas period,

considering the Nativity scene as a « religious symbol » violating « the neutrality of public service with respect to religions ». It is clear that the heritage dimension of the Nativity scene had not been raised here by the court, despite the arguments of the General Council who estimated that «the respect for secularism is not the abandonment of traditions and the breaking with cultural roots». On the 13th of October of 2015, the Administrative Appeals Court of Nantes, conforming to the recommendations of the Observatory of Secularism, «cancelled» this Court decision. In its ruling, the Administrative Appeals Court of Nantes considered that the Nativity scene, although « constituting subjects representing Mary and Joseph accompanied by shepherds and magi surrounding the bed of the infant Jesus» fits « in the part of the tradition relative to the preparation of the family celebration of Christmas and does not take the nature of a « religious emblem.» (Jugement du tribunal administratif de Nantes, 14 novembre 2014, Fédération de Vendée de la libre pensée, n° 1211647)

On the 16th of July of 2015, the administrative tribunal of Montpellier decided to leave the nativity scene installed in the town of Béziers in place, because it did not give rise to « disturbing the public order », and did not constitute « proof of infringement of the principles of secularism and neutrality » of the Town Hall. The tribunal found that the prohibition under Article 28 of the law of 1905 does not concern all of the objects having religious significance, but only those which « symbolize the reclamation of religious views ». Only objects having a « clearly symbolic » character fall within the scope of the prohibition, taking into account the criterion of the « presentation asserting religious signs », also retained by the State Council in a decision of the 27th of July of 2005 n° 259806, recommended the 7th of April of 2015, by the Observatory of Secularism (l'Observatoire de la Laïcité, a public advice body related to the French Government).

However, the Association of Mayors of France in its guide of « good secular conduct » (2015) addressed to local elected officials, condemns indeed the presence of Nativity scenes Town Halls, as « incompatible with secularism » (Tribunal administratif de Montpellier - 5èmechambre - « la Ligue des droits de l'Homme » vs Commune de Béziers, N° 1405625, Audience, 30th of June, 2015). A yet contradictory position there with the opinion of the Minister of the Interior who, in 2007, declared that: « the principle of secularism does not impose on local authorities to disregard the traditions arising from religious faith which, without constituting the exercise of worship, are nevertheless more or less directly attached to it. »

At the European level, the European Court of Human Rights has, for its part, already accepted the asymmetry between religions on the basis of local cultural criteria, deciding, for example, the crucifix installed in public schools or in forums representative of the State were a symbol of national culture rather than a case of religious proselytism; it could not therefore request their removal on the basis of their religious characteristic. In effect, as, in 2005, an Italian court had already ruled that the crucifix could be present in the polling stations relevant to the State, in 2007, the Italian Minister of Justice decreed that the crucifix could be displayed in government buildings since it was a symbol of Italian culture and values; which in 2011, the European Court of Human Rights upheld, arguing that the crucifix is essentially a passive

symbol in secular schools and that there was no violation of the right to an education, such as defined in the European Convention (Case of Lautsi and Others v. Italy, HREC, n°30814/06, 18 march 2011).

If the presence of religious symbols in certain public spaces brings, as we have just seen from these different court decisions, a variation in their judgments, the wearing of the headscarf arouses the same types of reactions, the restriction not being appreciated in the same manner in Germany, Belgium, Switzerland, the United Kingdom or France. Let us see for illustrative purposes, some examples drawn from such European country's case law.

In Germany, the recent decision, rendered the 13th of March of 2015 by the Constitutional Court, ruled that the general prohibition of religious expression determining « the external appearance of teachers in public schools » was not compatible with the freedom of religion provided in the fundamental German Law of 1949 (Jones, 2015). For the constitutional judges, wearing a veil or head covering is not a « sufficiently concrete danger » which calls into question the neutrality of the State, or disruptive to the proper functioning of a school. This decision of the Karlsruhe Court reversed an earlier decision of the Constitutional Court in 2003, while several German Länders, in this case those of Bavaria, of Bade-Württemberg and Hessen, had then banned wearing the veil for teachers and professors in the enclosure of public schools. The question regarding the potential ban on headscarves and all other religious symbols by German pupils, on the other hand, has not been raised.

In Belgium, a judgment from the 15th of January in 2008, of the Brussels Labor Court (J.T.T. 2008, p. 140) upheld the dismissal of a bookstore's saleswoman for serious misconduct, and motivated by the wearing of a headscarf. In 2013, a judgment of the Tongres Labour Tribunal admitted that the decision of HEMA (a Dutch store chain) to dismiss a temporary worker established directly a distinction on the basis of the manifestation of a religious conviction. The same court seemed to recognize, however, that the private company had the right to claim « neutrality », just as a public service. In other words, if an internal regulation, imposing a specific dress code, had been enforced in the company, there would not be ground for discrimination based on religious beliefs.

In 2001, in the judgment of Lucia Dhalab against Switzerland (15th of February, 2001), the European Court of Human Rights ruled inadmissible the appeal of a teacher of a public school in Geneva, against a decision of the board of primary education which prohibited her from wearing the Islamic headscarf in the exercise of her professional duties. The Court agreed with the public school, on the basis of the fragility of students between 4 and 8 years of age; the wearing of a headscarf by a teacher being detrimental to the religious sentiments of the student and their parents and thus the principle of religious neutrality of the school. In the United Kingdom, however, the Muslim headscarves and Sikh turbans are accepted at public school, especially following the decision rendered in 1983 by the House of Lords, which established that their prohibition would amount to racial discrimination.

Third case: French Baby Loup nursery

In France, the case of the Baby Loup nursery in Mantes-la Jolie, highly publicized, added to the confusion in this domain. In December of 2008, returning from a parental leave, the associate director of the nursery made a request to the Director of her desire to wear the veil. Being opposed to this persistent behavior, and despite its injunctions, the Director decided to lay off the associate director, then dismissing her for serious misconduct on the 19th December of 2008. The internal code of conduct of this establishment clearly prohibited the wearing of religious symbols in the name of the principle of "laïcité" (neutrality). Alleging unfair dismissal, the employee then appealed the HALDE (Upper authority for the fight against discrimination [Haute autorité de lutte contre les discriminations], created by the French government and integrated today into the Defender of Rights, the French Ombudsman body), then the Employment Tribunal, claiming more than 80,000 euros in damages and interest. After having received a positive opinion from the HALDE, the Employment Tribunal of Mantes-la-Jolie upheld her dismissal for serious misconduct. The judgment recognized « repeated characterized insubordination » of the employee. Thereafter, the Versailles Court of Appeals upheld the decision of the Employment Tribunal (October 27th, 2011) and underlined in its own decision that the Baby Loup nursery must « ensure neutrality of staff with the aim to welcome all the children of the quarter, regardless of cultural or religious belonging, and that these children given their age do not have to be confronted with ostentatious manifestations of religious affiliation». The dismissal of the employee does therefore not adversely affect her religious freedom, and restrictions imposed in this case by the employer were justified by the task performed and proportionate to the objective sought.

On the 19th of March of 2013, the Social Chamber of the Court de Cassation, the highest French Court of Justice, overturned the decision of the Appeals Court of Versailles and therefore, the dismissal of the employee of the Baby Loup nursery. However, the same day, a second decision of this Court upheld the dismissal of an employee who worked for the CPAM (Health Insurance Fund [Caisse primaire d'assurance maladie]) and who wanted to wear a « religious » headdress, clearly presenting them as belonging to a faith community. By that decision, the Court of Cassation extended the principle of secularism, by imposing the neutrality of civil servants to private bodies, charged with a public service mission. « *The principles of neutrality and secularism of public service are applicable to all public services, including when they are provided by private bodies.* » held the Court de Cassation (Banon and Chanlat, 2014, 2015).

The Baby Loup nursery appealed the judgment of the Court. On the 27th of November in 2013, the Paris Court of Appeal confirmed the judgment of the Employment Tribunal of Mantes-la-Jolie, confirming the dismissal's validity. On June 25th, 2014, the plenary assembly of the Cour de Cassation put an end to four years of proceedings, and issued a decision confirming the one made by its social chamber in 2013. The Court recalled that, according to the Labor Code, a private company, or an association in the case of the nursery, can restrict the freedom of employees from displaying religious beliefs, if doing so is justified by *« the nature of the task performed »* and if the measure is *« proportionate to the objective sought »*. Now, Baby Loup had adopted internal rules, which stated that *« the principle of*

freedom of conscience and religion of each member of staff cannot hinder respect for principles of secularism and neutrality that are applied in the exercise of all activities ». The purpose of the nursery being to support childcare impartially, without distinction of opinion « *and to work for the social and professional integration of women (...) without distinction of political or religious opinion* », the dismissal was therefore confirmed. (Arrêt du 25 juin 2014 n° 612 Assemblée plénière n° de pourvoi : E1328369)

As we have seen, the confusion of judgment decisions relating to the wearing of religious symbols, notably of the veil or turban, in the workplace led the Social Chamber of the Cour de Cassation to turn towards the Court of Justice of the European Union in April of 2015 asking for clarification of the contours of the Directive of 2000, which sought to establish a general framework for fighting against discrimination in the domain of work, based on religion or belief, disability, age or sexual orientation and its views on the relationship between religious freedom and the commercial interest of the company. (Arrêt n° 630 du 9 avril 2015 (13-19.855) - Cour de Cassation - Chambre sociale); the Cour de Cassation is still awaiting a reply as of October 2016.

The examples in this field are numerous, here is a final exemplary case which also led the Cour de Cassation to turn to the European Union Court of Justice for interpretation of what constitutes « an essential and determinant professional requirement ».

The fourth case: Micropole Universe

Recruited in 2008 as a design engineer by Micropole Universe, a consulting company, specialized in engineering and training, an employee was dismissed in 2009 after having been rejected by a client, Groupama in Toulouse, where she was conducting an information services training session. « *Following this intervention*, explains the employer in the dismissal letter addressed to the employee and cited by the Cour de Cassation, *the client informed us that the veil, that you effectively wear every day, had bothered a number of their employees. They also asked that there be « no veil the next time.* » (Letter of dismissal from the employer Micropole Universe to the employee dated June 22, 2009, quoted *in extenso* by the Cour de Cassation). If the employer had in fact stated, upon the recruitment of this engineer, to respect fully the principle of religious freedom for all, it was added that once in contact internally or externally with clients of the company, in the interest and for the development of the company, her veil may not be worn at all times. The young woman having refused to commit to removing it, was dismissed without notice, and filed a suit with the Employment Tribunal of Paris, arguing that her termination constituted discrimination by reason of her religious convictions. The judgment of the 4th of May of 2011 sided with the employer, holding that the dismissal was for a real and serious cause. The Court of Appeals of Paris, by judgment on April 18, 2013, upheld the judgment. The Cour de Cassation, in turn, examined the case and recalled several times in its reasoning of April 9th « that the restrictions to religious freedom must be justified by the nature of the task to be performed, must correspond to an essential and professional determinant requirement as long as the objective is legitimate and the requirement proportionate ». This is the reason why the Social Chamber requested an opinion

from the European Court (Arrêt n° 630, 9 April 2015 (13-19.855) - Cour de Cassation - Chambre sociale).

The question of the Cour de Cassation put to the Court of Justice of the European Union is indeed one facing many corporate managers today. In this latter case, does the desire of a client firm to no longer benefit from the services of an employee, engineer, wearing a headscarf, constitute an essential and determinant professional requirement? Do the commercial interests of the company constitute a legitimate criterion of the restriction of religious freedom? Referring as well to « values of efficacy » (Tania Sachs, 2010), the fault of the employee could be characterized by the negative effects their conduct has « on the operation of the company » (Soc. 3/04/1981, Droit ouvrier, 1982, p. 168). However, as there exists no clear definition of the interests of the company, especially as the accounting realities can be interpreted in different ways (Colasse, 2015), and as the « common good » does not necessarily reflect the addition of individual interests, the legitimate criteria for restriction of religious freedom in France, let alone elsewhere in Europe, remains to be defined.

In the French context, restricting religious freedom in the workplace should in effect respond to legitimate criteria, justified by the task to be performed and proportionate to the objective sought. In order to do this, following current case law, a certain number of criteria already exist which limit employee freedom: compliance with health and safety rules, prohibition of proselytism, prohibition of discrimination (including with respect to religious beliefs), prohibition of imposing on others in accordance with one's own religious requirements, compliance with obligations related to the mission entrusted to the employee, and defined by the employment contract, compatibility of the religious practice with the proper functioning of the company's services, the good organization of the team to which the employee is integrated, and the commercial interest of the company. Note here that, regardless of the criterion applied, the burden of proof that there is no discrimination remains the company's responsibility (Banon & al., 2013; Banon & Chanlat, 2014).

Another element to consider here is the zone of cultural and religious expression to which the behavior in question refers. 1) Is it an individual behavior that only has an effect on the person him or herself and his or her privacy? 2) Is this a behavior that would have a direct effect on the functioning of the company and its social cohesion by promoting a social fragmentation based on religious practices of certain employees (dietary restrictions, conspicuous symbols or attire, partial privatization of collective space, grouping together fellow believers in the company)? 3) Are these accommodation requests during working hours, which naturally affect other employees' working hours, and more broadly in the organization of collective time (festivals, prayers, holidays)? 4) Is it a behavior that would directly cause harm to the commercial interest of the company (breach of the employment contract, refusal to reconsider behavior with regard to clientele or jeopardizing the image of the company)? 5) Is it a behavior that challenges certain basic principles of society (gender equality, diversity, proselytizing and discrimination)?

All of these issues have led many authors to reflect on the larger question, which is that of the place that the principle of secularism should occupy in the public space.

Public space, religious expression and secularism

Today, notably in France, the principle of secularism is not only perceived as a political claim, and a rampart against communitarian temptations, but appears also increasingly as a claim coming from the managerial world. In line with what exists in the state sphere, secularism in the business sphere would not require employees to renounce their beliefs, but would limit the expression of religious beliefs in the space-time of work. This would be not only a way of avoiding the competition of practices but also a way of avoiding the guilt of members of the faith with moderate observance towards the observant of the most rigorous practice. Secularism thus appears as a barrier to both discrimination and proselytizing, and the guarantee of equal treatment of employees, notably between believers and nonbelievers.

It is in this spirit, for example, that the recycling group, Paprec, adopted in agreement with all employees a Charter of "Laïcité"on February 10th, 2014. Article 5 of the Charter stipulates that « Laïcité *in the corporate setting implies that staff members have a duty to maintain neutrality: they must not express their political and religious convictions in the exercise of their work.* », adding in its article 7 : « *The wearing of symbols or clothing by which staff members conspicuously show religious affiliation is not authorized* ». (Paprec, 2014).

Note that this initiative has no binding legal significance, and that this Charter of Laïcité cannot under current legal circumstances, be integrated into the internal regulations of the company. Note also that the claim of terminology "Laïcité" in the corporate setting has no legal foundations, since French secularism concerns to date neither the private sphere, nor the company under common law, but only the State and its remit, including companies of public service, or private or community organizations of public interest (Delfau, 2015; Languille, 2015; Weil, 2015; Portier, 2016).

The Act of December 9th, 1905 of Separation of Church and State outlines in effect clear principles that have constitutional value since the 1st Article of the Constitution of October 4th, 1958 states that: « France is an indivisible Republic, laïque (secular), democratic and social. » The principles of the 1905 Law ensure the freedom of conscience and guarantee the freedom of religious exercise, under the sole restrictions enacted in the interest of public order (Article 1). The Republic does not recognize, pay nor subsidize any religion (Article 2). Religions and their ministers nevertheless remain under supervision of the State, since Article 35 prohibits the speeches or writings designed to resist the execution of laws or legal acts of the public authority. And according to Article 31, Proselytism and any pressure of any nature to exercise or abstain from observing religion are prohibited.

The European Convention on Human Rights, meanwhile, stipulates in its Article 9 that the freedom to manifest one's religion or beliefs shall be subject only to such restrictions as are

prescribed by law, and constitute necessary measures, in a democratic society, for public safety, the protection of public order, public health or morals, or the protection of rights and freedoms of others, and in its Article 9:2, « freedom of thought, conscience and religion»). If these questions and debates are particularly vivid in France, they are also present in other countries, notably in Europe. The debate around secularism is not therefore exclusively French.

In Europe, as can be observed, coexist three models of relations between religion and the State: the model of « separation-cooperation » or of « active neutrality », which is found in Germany, Belgium, Austria, Spain, Italy, and Switzerland; the "State-Church" regime, which is found in England, whose sovereign is also head of the Anglican Church; and in Greece, Iceland, Finland, and Denmark, which subsidize Orthodoxy for the first, and the protestant Lutheran Church, for the other three (the Danish Parliament voted in 1947, against the opinion of the majority of clerics, in favor of granting women access to the function of pastor); and the "strict separation" regime, which is found in France, the Netherlands, and Ireland (Haarscher, 1996; Rambaud, 2011).

France is therefore not the only country concerned with the debate of the place of religion in workplace, in the State's sphere or even at school. France is not the only State in Europe to enunciate a principle of secularism. But we can observe differences within these three models: some advocating a strict separation between the state and religion, others seeking to give religions a place in the space of the State, a distinction, which is historically in relationship to the dominant religion in these European countries, notably Protestantism or Catholicism (Champion, 1993). If the French, British, German, Belgian, Swiss or Nordics have different approaches of religious pluralism according to their history, we must also note that since June 2013, the European Union has discussed these different models and tested their potential convergence; and that the European Court ruled in favor of the decisions of the French Parliament to prohibit the full face cover (including burka) in public space, declaring that these provisions did not violate the European Convention on Human Rights, and that the motive of living together invoked notably one of its conditions: showing one's face, can be legitimately invoked by the French legislator to regulate this practice and preserve public safety. Therefore, the absolute prohibition is not disproportionate to the objective pursued; the question of the acceptance or rejection of the complete covering of the face in public space constituted, according to the Court, a societal choice. As written by Constantin Languille: "*...the full and entire respect of human rights may have as a consequence the destruction of common rules without which it is not possible to live together*". (2015, p. 129).

Such a decision very well shows, once again, the tension between freedom and equal rights as experienced in each society starting from its own definition of living together. Beyond the specific case of the full face cover, the question of secularism in Europe inevitably opens the debate on religious demands that arise today in the workplace, while being related to the manner that each country historically sees the relationship between public and religious space. This is what we will now focus on what is happening in France.

French variations on secularism principles

In a recent survey, 83 percent of French believe that « the company must remain a neutral place and not take into consideration claims of a religious order», as, for example, an arrangement of working time for religious practice. The French largely privilege religious neutrality, not only at the level of the State and public services as the law already requires, but in society in general and at the company-level in particular. This view is widely shared among all religious denominations; 87 percent of Catholics, 79 percent of Protestants, 92 percent of Jews and 69 percent of Muslims approving this stance. In addition, the number of French in favor of the expression of religious faith at work is declining; there were in effect 23 percent in 2013 compared to 3 percent in 2010 (a reduction of 7 points) who considered « normal to adapt the location, working hours or collective catering to accommodate religious practice». (Observatoire Sociovision de la Société française, 2014)

82 percent of the French also believe « religious symbols must remain discreet in public »; compared to 79 percent in 2013. The judgment, however, differs according to religious affiliation. Thus, 49 percent of people of the Catholic faith accept « the possibility of finding in the canteen food suitable for all religious precepts», while 88 percent of persons of the Muslim faith are along these lines, and 55 percent of all French. French secularism remains an « essential value» for 78 percent of French. If everyone does not see this to the same extent, religion is reaffirmed as relevant in the private domain. 79 percent of the French think indeed that « as religion is a private matter, signs of religious affiliation should remain discreet in public» (Institut sociovision, 2014). But, in France itself, everyone does not assign “laïcité” the same meaning.

As mentioned above, the principle of French secularism is a complex concept whose direct translation into English does not exist. In English, for example, the terms used to express this principle are « secularism » and « pluralism ». But in France “laïcité” (French secularism) in the diversity of its interpretations, is not limited only to the dynamics of secularization, but creates a social, historical and heritage link, among all cultural backgrounds involved (Champion, 1993; Delfau, 2015; Pena-Ruiz, 2003; Weil, 2015). By allowing everyone to free themselves from their social community of reference, French secularism fixes an historical continuity close to a collective identity. As the French historian, Patrick Weil, recently recalled, "*what is the identity of France,...it is the construction, by generations of French, of a common social and political history which gives specific references and has shaped our identity*" (2015, p. 160). In France, denying the principle of “laïcité” (secularism) can be perceived at a macro level, as a refusal to be part of the nation, in the political sense of the word, and in the world of work, would be to refuse to be part of the collective project which the company represents. By putting religious affiliation above citizenship, collective interest is placed second. This is not acceptable in the French context (Champion, 1993; Delfau, 2015; Pena-Ruiz, 2003; Weil, 2015) but perhaps, also in many other countries. As Constantin Languille recalled again,

"*If the function of the nation is to unite across differences, it is unlikely that human rights can achieve the same result insofar as their purpose is to protect precisely the differences from*

the pressure of the majority. The sense of community can hardly be based on something that separates. The difficulty results from the fact that human rights are not transcendent: they allow the definition of a sphere where everyone can show their subjectivity but cannot constitute the common reference that transcends individual differences and establishes the community by supporting a sense of belonging. This function characterizes only the nation. Knowing whether we can do without such a common principle is the burning question of our time...the response to the question of the possibility of cosmopolitanism is primarily philosophical: we must make a judgment on what keeps the world human. Is horizontal solidarity, resting on inclusive collective decision-making and mechanisms of social insurance, sufficient to ensure living together? Or do human beings need a verticality that transcends differences and unites hearts, so that they feel they belong to the same political community? Can political bonds be emancipated from all transcendence? (2015, p. 130 and p. 134).

Heir to the spirit of the French Revolution and consolidations by the Third Republic, reaffirmed later in the establishment of the Constitution of the Fifth Republic, it is Citizenship that is very well in question here but all Republicans do not perceive in citizenship the same obligations, duties and rights. Jean Jaurès [note of the editor: a leading figure of the French left] already affirmed in 1904 that “the Republic must be secular and social. It will remain secular if it knows how to remain social”

The differences in appreciation of what is or is not the principle of French secularism is therefore not new. Since the 1789 Revolution, the confusion has been instilled in successive stages, following the Law of separation of Church and State, about the neutrality of the public service, and today, questions concerning religious pluralism (Costa-Lascoux, 1996; Haarscher, 1996; Delfau, 2015).

This confusion can even be found at the heart of public service companies. For example, the project of the “Laïcité” charter of part of French Social Security, while reaffirming in its article 6 the strict obligation of neutrality to which public services are subjected (2015), advances in the same document that the restrictions on wearing religious symbols « are justified by the nature of the task to be performed, and proportionate to the objective sought». The RATP [Paris Public Transportation Authority] felt, in turn, the need to recently specify the principles of French secularism and neutrality of the company in a practical guide. The employment contracts of the employees indeed recall that « RATP being a company of public service bound by the principle of neutrality, you agree to prohibit all attitude or wearing conspicuous signs that may indicate an affiliation to any religion or to some unspecified philosophy (RATP, 2013, p.6). Yet, in this same guide, RATP eludes the question of men who refuse to shake hands with women (or vice versa), noting that the company cannot codify greetings, this refusal « can only give rise to disciplinary sanction » (RATP, 2013, p.16).

This behavior is nevertheless a discriminatory act recognized by the courts. In May 2013, an employee of the city of Brussels had thus been dismissed because of his refusal to shake hands with a work colleague given that his religion « forbids him to touch women ». The

Court of The Hague ruled on April 10th, 2012, that the refusal to shake hands with women is « unacceptable », and constituted « a violation of gender equality ». The Utrecht court ruled in the same direction on January 9th, 2013. France refused French nationality to a Moroccan national because of his « discriminatory attitude with regard to women ». He specifically refused to shake hands with a female agent who received him at the Prefecture on the grounds that it was against his religion (July, 2010). The Cour de Cassation also found that the negative context of refusing to shake a woman's hand, justifies dismissal among other elements (Cour de Cassation, Social Chamber, n°08-41239, November 10th, 2009). In other words, the refusal to signal civility does not identify a simple cultural difference, but rather a religious norm (Nounckele & Christians, 2013). This behavior has therefore no place in the space of a company of public service, subject to secularism principles.

As this is a discriminatory practice, this behavior has no place either in the space of a firm governed by private law. Accommodating the wearing of religious signs and even indirectly legitimizing religious behavior in the space of public service, contributes without a doubt the confusion that reigns on this subject. The distinction between territories which should be neutral, and those in which religious expression can manifest freely, must indeed be clarified. A former French Prime Minister has otherwise proposed that violating the principle of secularism in public service qualifies as an « offense obstructive to "laïcité" [secularism]» (Juppé, 2016).

"Laïcité of separation" versus "open laïcité": it is always in the name of secularism that some want the neutralization of the collective space, and others want the acceptance of religious expressions in their diversity. It should be recalled here again that contrary to what some people think, the French principle of secularism is not the refusal of religion. French secularism is neither atheist nor faithful to a religion, but it is a-religious, the believers and the unbelievers being treated equally (Delfau, 2015; Pena-Ruiz, 2003; Portier, 2016; Weil, 2015). Neither a Republican religion, nor opposing religions, French secularism accepts all forms of religion, but refuses the irruption of their regulations in the remit of the State. Guarantor of the unity and indivisibility of the Republic (Constitution of 1793, Article 1), French secularism rejects any religious practice that may fragment the nation, opposing the communities that compose it, creating social schisms which promote the legitimacy of a differential right according to religious culture. French secularism is not « against » religious or customary practice, but decides where and when it is possible. It is not up to religious thought systems to define what falls under the principle of secularism, but for secularism to define the space of expression of traditions of religious inspiration and thus the State, guaranteeing both the unity of the nation and of individual rights. As recently stated one American commentator, Paul Berman,

"*Republican secularism is not, after all, merely a negative concept, useful for fending off religious fanatics. Republican secularism is a positive principle. It offers something to the individual. This is citizenship. In its French version, republican secularism says to every individual: The "Human and citizen rights are your own rights, regardless of what some church might say. The aspirations of the French Republic are open to you, as well as to everyone. These are the aspirations of the French Revolution. You have access to political*

freedom and a modern education and a modern culture and an advanced welfare state. At least, you ought to have access, and, if you find that you do not, you have a right to march in the streets and to vote for the political party that speaks for you. You have a right to be a Muslim, or to adhere to any other religion, or to none, and this right is yours precisely because, as a citizen of France, you enjoy rights on the broadest of scales. The French republican idea, with its secularism—this idea is, in short, grander than anything the Islamists can offer. The Islamist ideal is an ugly and deceptive promise. It is a self-oppression. But the French republican ideal is a liberation—at least, in principle (2016, page 3).

It is the reason for which, in November 1903, George Clemenceau, a leading French senator, rejected the idea of an « integral laïcité » seeing in it the risk of « only escaping the Church to fall into the hands of the State » (1903); Jean Jaurès in turn condemned « all that could resemble a breach of freedom of worship ». During the debates of 1905 on the law of separation of the Church and State, were opposed two factions: proponents of atheistic secularism, that is to say those in favor of the abolition of religions, deeply influenced by the model of the abolition of the monarchy on the one hand; supporters of inclusive secularism, protector of religions, that is to say favorable to a secularism of religious coexistence in the Republic. This struggle is still alive today. Even if the model of atheistic secularism was rejected in 1905 by the French Parliament by a large majority, many incorrectly associate French secularism and atheism, and imagine that after the liberation from the monarchical yoke, humanity must break free from the shackle of religion. This anti-religious secularism has become today a proposal for managing religious diversity in certain spheres of the workplace.

The above-mentioned charter of “laïcité" adopted by Paprec, had the advantage of concretely posing the question of the place of secularism and thus religions in a company under private law. In fact, as we have seen, the legal uncertainty that go hand in hand with conflicts of religious order disarms managers and promotes demands for accommodation of religious practices. Managers have the feeling of having to choose only between two attitudes: either acceptance, and support of requests of a religious order; or taking the risk of being accused of discrimination in case of non-acceptance.

This is why the vast majority among them now call for a clarification of the rules for managing religious practices; and by clarification, they most often imply the extension of secularism principle to non-State entities. In effect, among more than eight hundred SME managers (encountered in groups of ten to twenty over two years) with whom we exchanged views on religious practices in the workplace, almost all of them demanded the right to benefit from the secularism principle reserved to the State (Banon & al., 2013). This is also the case for French employees.

If 55 percent of employees say they have a connection to religion, 84 percent of the French « agree », of which 60 percent « strongly agree », that « the company must remain a neutral place and not take into consideration claims of religious order » (Institut Randstad & Ofre 2016;Observatoire Sociovision, 2014; BVA, 2013). French secularism rejects any religious practice that may fragment the nation, pitting the communities that compose it against one

another, creating social schisms, sometimes geographic or temporal or worse which promote the legitimacy of a differential right according to religious culture. It is in this spirit that in 2011, the High Council for Integration (which has ceased operating in 2012) filed an opinion on « Religious expression and secularism in the workplace» proposing to augment the Labor Code with an article authorizing companies to adopt internal rules relative to the prohibition of clothes, the wearing of religious symbols and religious practices in the company with the purpose of maintaining a certain neutrality in the space of the company, all while guaranteeing everyone's freedom of belief. This opinion did not result in an evolution of the law in this domain. But the question of the restriction of religious freedom arises today with even more acuity, particularly through the extension of the principle of secularism in a company under private law.

The HALDE affirmed in 2008 that « the principle in the private sector is that of freedom of conscience and religious liberty, which includes that of manifesting religion. The company cannot be built in a neutral or secular place in the absence of a statutory rule that restricts such fundamental freedom » (HALDE deliberation n°2008-10 from January 14th, 2008). Until now, the secularism principle stops at the doors of the enterprise and the freedom of religion figures among fundamental freedoms. To put in question these two principles has direct effects on the French model, which raises equality to the rank of essential condition for veritable freedom. « The principle of French secularism designated the attitude of the State towards the religious. It is not applicable to civil society » (Huglo, 2013, p. 6).

Under current regulations, the company under private law is not authorized to discriminate in the name of promoting any secularism. To extend the principle of "laïcité" to the private (non-State) workplace may seem in the short term as a good response to help managers deal with an unprecedented diversity of cultures and religious traditions at the workplace. Some indeed consider secularism as a social project in itself, but we must not forget that such a principle is not a goal, but primarily a means towards better living together, in equality of rights and separation of spheres.

The concept of enterprise of 'conviction' or 'tendency'

Establishing a concept of secularism with variable scope makes it lose its specificity as a pillar of the French Republic. From a fundamental principle, French secularism would be reduced to a simple philosophical principle. This secularism then risks being perceived as a tendency, as well as all other religious or political beliefs (Aldigé, 2013). In other words, if the company of the « secular » tendency is authorized to reduce the religious freedom of its employees, it will be difficult to avoid the right of companies of « religious» tendency to impose their own religious regulations on their employees too.

Extending the domain of secularism in companies under private law could lead to the proliferation of peer companies, meaning companies animated by a philosophical principle or "tendency", religious or political. Creating the conditions for legal discrimination could favor

the development of communitarian businesses, creating veritable schisms in a Republic founded on the principle of indivisibility. Extending the principle of secularism throughout the workplace, would lead to a result inverse to the one sought; that is to say social sectarianism, accompanied by geographic and social fragmentation, which inevitably leads to cultural schisms; that which is indeed integrated in the definition of this notion of companies of conviction or “tendency”.

The notion of « tendency » companies (a term borrowed from German law and from the notion of “*tendenzbetriebe”* meaning "convictional" or religious business, advocating a doctrine or an ethics, is recognized by the European legal framework. Article 4 of the European Directive 2000/78/CE of November 27, 2000 provides more flexibility of the principle of non-discrimination at work in the name of « the right of churches and other public or private organizations whose ethos is founded on religion or beliefs … to require of those working for them an attitude of good faith and loyalty towards the ethics of the organization».

Despite the lack of implementation of this part of the European directive into French law, this notion derived from case law is already taken into account and allows justification of violations of equality and the freedom of conscience of employees. Thus, in 1978, The Cour de Cassation judged that the dismissal following the divorce and remarriage of a teacher, employed in a private Catholic institution, was justified, since religious convictions had been mentioned in the employment contract (Dame ROY case, public audience, 19 may 1978, n° 76-41.211). Divorce not being authorized by the religious rule of the institution of employment, the teacher had thus, according to the Court, broken the moral contract with her employer. Yet, freedom of marriage is a fundamental constitutional principle. Marriage is a union governed by civil law and not by religious law. Everyone possesses the freedom to marry or not to marry and no one can punish a person for having exercised this right. This is not however what is expressed in the judgment of the Plenary Assembly « Dame Roy » (Cour de cassation, public audience, May 19th, 1978, n°76-41211).

The second case is that of a professor of the Protestant Theological faculty of Montpellier who was dismissed due to disagreements with certain elements of the ideology of the establishment. In 1986, the Cour de Cassation Social Chamber asserts that Article L 122-45 (that forbids discrimination) of the Labor Code does not apply « *when the employee, who was hired to perform a task implying that they are in communion of thought and faith with their employer, disregards the obligations resulting from this commitment* » (the Cour de Cassation, November 28th, 1986 – Reformed Church of France /Demoiselle Fisher, bull. n° 555). In other words, in this case, the employee had the obligation to act in communion of thought and faith with their employer. The Cour de Cassation considered in its judgment that although there was an employment contract, Article L 122-45 should not apply due to the religious nature of his functions, positing in principle that the end-purpose of the organization constitutes a legitimate reason for discrimination.

A third case is that of an employee, dismissed for adultery. Responsible for monitoring compliance with ‘*Kosher*’ (compliance with food prohibitions and Jewish religious

obligations), this Jewish supervisor was fired for not having respected the religious commandment prohibiting adultery, which presents herein the question of the boundary between private life and professional life. This employee, given his professional status and religious responsibilities, would appear to demonstrate an exemplary piety and therefore accept the restrictions on his private life without « power to avail himself of the freedom of a private life in order to keep his job » (Toulouse Employment Tribunal [Conseil des Prud'hommes de Toulouse], June 23rd, 1995, Cahiers prud'homaux, 9/1995, p.159; judgment of August 17th). A decision that joins the analysis of the German Court of Justice, justifying the dismissal without notice of a German employee of the Mormon Church for adultery; this decision being reaffirmed by the European Court of Human Rights on appeal for the same reason: "*the incompatibility of his extra-marital relationship with the increased duties of loyalty he had contracted towards the Church as director for Europe of the public relations department perhaps contributing to the loss of credibility of their employee"* (Obst v. Germany, European Court of Human Rights, 425/03, September 23rd, 2010).

A restriction that remains at least arbitrary if one believes the case of another Jewish '*Kosher*' supervisor, dismissed for having been absent for twenty-five days for the funeral of his brother in Israel (conforming to Jewish law). The employer had then considered that only a statutory period of three days leave is authorized for family bereavement. The Paris Court of Appeal nevertheless considered the dismissal unjustified, taking into the consideration the spiritual environment of the company and the fact that the Consistory of Paris had proposed a replacement to the company: « *Considering that the employer gave the restaurant (...) its specific character founded on the strict observance of Jewish law, considering that the contractual relations supposed equal commitment of the parties to Jewish law, and the reciprocal concern to apply it without restriction even beyond the scope of the assignment of ritual supervision.* » (Judgment of the Paris Court of Appeal, no 90556, May 25th, 1990). This consideration was nevertheless insufficient to allow a pastor of a church to dismiss his sacristan who, for religious reasons, refused to work on Sundays, « sacred» day of rest (Tribunal du travail, Rennes, July 8th, 1993, Cahiers prud'homaux, 7/1994, p. 111).

Finally, a recent decision of the United States Supreme Court warns of a potentially discriminatory in the notion of "tendency" organizations. Based on the « Religious Freedom Restoration Act » adopted in 1993, the Supreme Court established in fact in its judgment of June 30th, 2014 the profitmaking notion of a "tendency" organization, finding that a commercial company enjoys the same constitutional right to religious freedom as a person, thereby creating a differential right between female and male employees.

The first case is that of Hobby Lobby Stores, a chain store specializing in the sale of articles of decoration. The Green family of Oklahoma founded the company in 1972 with the following philosophical strategy: « Honouring the Lord in all its activities, leading the company in accordance with biblical principles ». The second case is that of the company of Conestoga, specializing in furniture, closets and kitchens. Founded in 1964, in Pennsylvania by devout Mennonite Christians, the company aims to « ensure a reasonable profit in accord with their Christian heritage ». These two companies refused to provide contraceptives, some

of which belong to the category of « morning-after pills », as part of their employees' healthcare coverage, on the ground that such contraceptives are tantamount to abortion. The judgment of the Supreme Court, thru two decisions (Burwell v. Hobby Lobby Stores, inc, et al, No. 13–354, 2014; and Conestoga Wood Specialties Corp v Burwell, no 13-356, 2014), by upholding the religious freedom of companies and their leaders, has thus restricted the freedom of their employees. This is a perverse effect equivalent to the exemption in the law that allowed Sikhs, as we have shown above, to not wear a construction or motorcycle helmet. This is a right conferred in the name of religious freedom, which eventually may be unfavorable to individuals, and creates inequalities of rights and treatment between persons. The development of such a moral contract, superior to the contract of employment, thus creates the conditions of differential rights between employees according to their employer.

The proliferation of companies « of tendency » imposing religious values-based management disrupts the sacred/profane balance. Considering the secularism principle as one tendency among others would make our companies leap back into a time when religious law prevailed over any other rule. From this point of view, the establishment of such companies would be without a doubt entail the worst adverse effect: that of an extension of the principle of secularism in the entire workplace.

Conclusion

As we have seen, every culture, belief and tradition expresses many particularities, sometimes conflicting with fundamental principles of democratic societies. Trying to satisfy all requests in the name of tolerance can create an approximate and impressionable human right. The logician and mathematician, Kurt Gödel, has written when he appeared before the American commission of citizenship, "*If we extend the unrestricted tolerance, even for those who do not tolerate anything...then tolerance will be destroyed, and tolerance will be destroyed with us"*. 2013).The rigidity of belief and the pressure of traditions inevitably lead to a «legitimate» inequality between individuals, and to the trivialization of a process of exclusion, or self-exclusion from the collectivity of a company. A certain number of errors are thus to be avoided.

The first mistake would be to reduce an individual to his or her community of origin, to recognize a different law for them on the pretext of their cultural heritage. This would caricaturize them, describing them on the basis of stereotypes and depriving them of personal liberty of conscience and the right to equality. This is an aspect emphasized by many authors (Banon, 2008, 2016; Lahire, 2006; Pierre & Mutabazi, 2010).

The second would be to evaluate religious diversity, proceeding by the association of ideas, without seeking to know the impact of the particularities of the collective concerned. There are behaviors that could be problematic for living together. For example, when a colleague refuses to shake hands with a woman because she is a woman, it recognizes explicitly the social differentiation of the sexes and the marginalization of women. Such behavior is incompatible with the definition of living together in a secular republic and reinforces the idea that women are *de facto* impure; which is the true element behind this behavior.

The third error is to imagine that beliefs, rites and religious symbols are ethnic identification when a religion is not an ethnic group, and when belief is not transmitted genetically but by membership. We must therefore distinguish the collective rights of an ethnic group from those of religious expression in the workplace. The company finds itself therefore in a dilemma: to adapt to individual particularities and disappear in an inevitable fragmentation until the concept of social cohesion itself becomes a distant myth; or to reject multiculturalism, and disappear for having given up universal values of human rights, freedom of conscience and worship which built the same society. The question therefore arises of the degree of recognition of individual expectations vis-à-vis the coherence of collective expectations. Any organization or company finds itself faced with two evident contradictions: how do we make choices without discriminating? And, on what basis do we forge a just opinion about a religious request without having to enter into a religious debate?

We have just highlighted that knowledge in both religion and human rights, as well as a solid ethical reflection become crucial elements for making decisions that are both enlightened and just. There are in fact still too many decisions founded on ignorance and lack of reflection. When we see that a large municipality in Ontario has removed the Christmas tree of the City Hall lobby in order to avoid offending different sensibilities, we measure how far we still have to go in some cases. The Christmas tree is not religious, and neither is Santa Claus, both of which, incidentally, were opposed by the Catholic Church when introduced (Lévi-Strauss, 2013).

Promoting the coexistence of differences therefore requires a distancing from the relevance of a cultural or religious expectation. Anthropology of the social context concerned then becomes a key element in order to measure the effects of these differences on the persons themselves and on the collectivity in which they are situated (Chanlat & al., 2013; Chanlat, Davel & Dupuis, 2013). This posture is similar to that of John Dewey who considered that religion had no place in the management of public affairs for two main reasons. 1) The method for religion to establish its values and to form its beliefs does not lend itself to the open and public investigation specific to the management of public affairs. 2) Religious language only plays a role in religious life animated by the faith that enlivens it. Therefore, believers are not entitled to impose their ideals on a community of citizens under the pretext that they are dictated and guaranteed by a sacred or transcendent higher power (Dewey, 2011; Quéré, 2015).

In other words, as French philosopher Louis Quéré underscored, "*in order to participate in the learning and identification of purposes and values in the treatment of public issues, they* [believers] *must adopt an ethical attitude. This requirements is as costly for non-believers as for believers* " (2015, p. 143). Dewey, as a naturalist pragmatist philosopher and advocate of social Democracy, puts forward what is qualified today as social reflexivity, which is particularly pertinent in his view that is based indeed on a method, which excludes dogmatic beliefs.

In times of “war of the Gods”, as Max Weber called it, and of the surge of religious fundamentalism in society, the principle of secularism is undoubtedly one that guarantees this ethic of inquiry urged by John Dewey (Quéré, 2015). Dewey made an interesting distinction between religion and the religious. While religion refers to "a particular body of beliefs and practices that have an institutional organization, more or less constraining" (Dewey, 2011, p. 93), the religious, meanwhile, refers not to a religious experience but to a quality of experience, that is to say to a set of attitudes which produce a harmonization of the self with

the surrounding universe. Accordingly, one must free the religious from religion (Dewey, 2011; Quéré, 2015).

From this point of view, French secularism is an ongoing social innovation system. Antidote to the confinement of individuals to their community of reference (real or imagined), emancipator of customary times and traditional social organizations, secularism in its French version, by its capacity to create a shared space of reference, is intended to accompany the expression of an individual identity (Weil, 2015; Banon, 2016; Fourest, 2016). Territory of reference in a globalized world where the territories of identification seem to evaporate, secularism has meaning only because it is not integral. It is a kind of application of the distinction established by Dewey between religion and the religious.

In the French model of an indivisible, secular, democratic and social Republic (Banon, 2016; Delfau, 2015; Fourest, 2016; Portier, 2016; Schnapper, 2007; Weil, 2005, 2015), the state is neutral and individuals are unique and singular persons. They are not elements of a whole, but a whole in itself. If, in the state sphere, the law is clear, only demanding to be applied in case of deviation, this is not the case in the non-state workplace, which is strictly governed by private law.

As we have seen in this last case, French "laïcité" must not be extended to the private setting. It should instead provide criteria for supporting or restricting religious freedom in the workplace. This involves giving managers the freedom to make choices calmly, clarifying principles, simplifying decision making, and adapting criteria to the activity of the company, to its image and to its social/commercial interest. The recent proposals of the Badinter Committee on the redesign of the French Labor Code follow this line of thought: "the freedom of employees to manifest their beliefs, including those which are religious, can be subject to restrictions only if they [the restrictions] are justified by the exercise of other fundamental rights and freedoms or by the necessities of the proper functioning of the company and if they are proportionated to the objective sought." (Badinter, 2016, article 6). This would be a way to ensure that everyone is working towards corporate performance without religious convictions disrupting economic performance and internal social peace.

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