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Freedom of religion in France

By Bill Beckham

Even though the Freedom of religion is a fundamental right guaranteed by many national, European and International provisions, it remains a sensitive and delicate topic to deal with. A brief reminder of the current state of French law appears relevant.

First, let us mention the Article 10 of the Declaration of the Rights of Man and Citizen of August 26th, 1789 which provides that « *No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law* »¹.

The Preamble of the French Constitution of October 4th, 1958 refers to the Declaration of 1789. It means that in the context of a Constitutional control conducted via the Priority Preliminary Rulings Procedure (also known as the « QPC mechanism »), a reference to Article 10 of the 1789 Declaration before the Court is possible.²

Then, the « *regime concordataire* » was established on July 15, 1801 in order to organize the relations between the French State and the different religions. This « *regime* » was then repealed following the adoption of the French Act of December 9, 1905 on separation of the Churches and the State. By means of the 1905 Act, the French State is prohibited from defining what is or is not a religion or a belief.

Article 1 describes the purpose of the Act as to ensure "*freedom of conscience (or thought)*" and to guarantee "*the free exercise of religion under the provisos enacted hereafter in the interest of public policy.*".

Article 2 states "*The Republic does not recognize, pay, or subsidize any religious sect. Accordingly, from 1 January following the enactment of this act, there will be removed from state budgets, departments and municipalities, all expenses related to the exercise of religion.*". Exceptions are enumerated regarding "*schools, colleges, hospitals, asylums and prisons*" so as "*to ensure the free exercise of religion in public institutions*".

It is from Articles 1 and 2 of this Act that the principle of secularism has been introduced (it should be noted that the terms "secularism" and "secular" do not appear in any of the provisions of the 1905 Act). According to this last principle, the public service employees are bound by a duty of

¹ http://avalon.law.yale.edu/18th_century/rightsof.asp

² https://www.ajk.elte.hu/file/annales_2012_04_Xavier.pdf

neutrality which forbids them to manifest, within the framework of their function, their belonging to any religion (to deepen this matter, look at the decision "**Abbé Bouteyre**" delivered by the Council of State [Conseil d'Etat] on May 10, 1912 ; Case No : 46027).

In addition, the 1905 Act does not apply in Alsace-Moselle region because by the time of its adoption, Alsace-Moselle was a territory annexed by Germany.

Finally, let us refer to the Article 1 of the French Constitution of October 4, 1958 which states in essence : "*France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs [...]*"³.

Nevertheless, the constitutional provision set out here is so general that it seems difficult to invoke it effectively in a trial. At most, it would allow the plaintiff **to illustrate** a legal argument before the Court, rather than **to base** it.

So were exposed provisions developed by the French legislator in order to organize relations between the State and religions. It is true that these relations are strained because of the surrounding context. Freedom of religion is threatened due to terrorists acting supposedly in the name of a religion. Nevertheless, this fundamental freedom is – as best it can – preserved, in particular thanks to the provisions and legal remedies provided for at European level (to deepen this matter, look at **Article 9** of the European Convention on Human Rights ; **Article 10** of the Charter of Fundamental Rights of the European Union ; the functioning of the European Court of Human Rights and of the Court of Justice of the European Union (CJEU) ; Cases « **G4S Secure Solutions NV** » no. C-157/15 and « **Micropole SA** » no. C-188/15 delivered by the CJEU).

³ https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/constitution_anglais.pdf