

RELIGIOUS CLOTHING

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Religious freedom – France

General framework

- 1789 Declaration on the rights of man and the citizen, art. 10 « No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order »
- Constitution of 4 Oct 1958, art. 1: « 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. It shall be organised on a decentralised basis »
- National legislation: prohibition of discrimination on the grounds of religion
- IL: ECHR, ICCPR, EU Law (Charter + directives)...

Laïcité - France

- Separation of Churches and State

- *1794 French Revolution – 1802 Concordat*
- *Law of 9 Dec. 1905*
- *Constitution of 4 oct 1958: Article 1*

- Scope & Meaning

- *The Republic guarantees the free exercise of cult*
- *Public authorities are subjected to an obligation of religious neutrality*
 - Religious neutrality of civil servants & public agents
 - *Regardless of job description (CE, avis, 3 May 2000, Mlle Marteaux n°[217017](#))*
 - *Recently extended to employees of private organizations associated with the public service (Cour de cassation, 19 March 2013, n°[12-11.690](#))*
 - *Upheld ECHR, 26 Nov 2015, Ebrahimian v. France n°[64846/11](#)*
 - Religious neutrality of public buildings (art. 28 of Law of 9 Dec. 1905)

Religious clothing – public schools

- 1989: the Creil « affair »
- 1980-1990s: laïcité as compatible with the exercise of religious freedom by school pupils: Conseil d'Etat, Avis, 27 Nov. 1989, n° 346893; Conseil d'Etat, *Kherouaa*, 2 Nov. 1992, n° 130394
- Law of 15 March 2004: « the wearing of symbols or garb by which students [of public elementary, middle and high schools] ostentatiously manifest a religious belonging is prohibited ».
 - Scope: « large » signs
 - ECHR: inadmissibility decisions in challenges to 2004 law
 - HRC: see *Bikramjit Singh v France* (1852/2008) Views, 4 February 2013, CCPR/C/106/D/1852/2008 (2013)
 - Expansive readings of the ban
 - « religious signs »: bandanas (Conseil d'Etat, 5 Dec. 2007, M. et Mme A, n° 295671), long skirts (Conseil d'Etat, 19 March 2013, n° 366749,), woolen hats (Conseil d'Etat, 10 June 2009, n° 306833)...
 - From « pupils » to « users » of public schools
 - Accompanying parents: Council of State Dec. 2013 study + TA Nice 9 June 2015, n° 1305386
 - Vocational training students: CAAParis, 12 October 2015, n° 14PA00582,

Religious clothing - public space

- No regulation – no restriction
 - *But: a question that is increasingly voiced in the public debate*
 - *The Burkini saga of Summer 2016: CE, réf., 26 Sept. 2016, CCIF, n° [403578](#)*
- Burqa ban: Law 2010-1192 of 11 Oct. 2010 on the concealment of the face in the public space
 - *Upheld by the French Constitutional Council, 2010-613 DC, 7 Oct 2010*
 - *Upheld by the ECHR 1 July 2014, SAS v. France, n° 43835/11*

Religious clothing - at work

- Classical approach of the Labor code
 - *Retention of religious freedom at work*
 - *Possible restrictions with respect to particular (individual) job descriptions*
 - Ex.: clothing retail / niqab (CA, St Denis de la R union, 9 Sept. 1997, n 97/703306); butcher / refusal to manipulate pork meat (Cass. Soc., 24 Oct. 1998, n 95-44738)
- The Baby Loup saga
 - *Cour de Cassation, 25 June 2014: upholds the firing of the employee of a daycare facility who refused to comply with an internal rule prescribing religious neutrality to all personnel, on the grounds that the undertaking is small in size and that children are involved*
- Law of 8 August 2016: admissibility of religious neutrality clauses in private undertakings' internal rules
- CJEU, GC, 17 March 2017, Bougnaoui and Achbita cases
 - *Cour de Cassation, 22 Nov. 2017, n [13-19.855](#)*

Wider context – religious signs

■ Crèches and Crucifix

- *Art. 28 of Law of 1905 bans the future edification of religious symbols « on public monuments or in any public place whatsoever, except for buildings used for worship, burial grounds in cemeteries, monuments and museums or exhibitions »*
- *CE, Ass., 16 nov. 2016, n° 395223: admission of the « plurality of significations » of nativity creches*
 - In public buildings, general rule is that of the prohibition of such installations except when/where cultural, festive or artistic
 - In public spaces, general rule is that of admissibility except when/where motivated by proselytism or expression of a religious opinion
- *CE, 25 oct. 2017, n° 396990: judicial order to destroy the high cross above a municipal statue honoring Pope JP2*

■ School canteen menus

- *Accommodation practices since the 1980s*
- *TA Dijon, 28 août 2017, n° 1502100: a municipal decision no longer to offer alternative menus when pork is served as a violation of France's obligations under the Convention on the rights of children*