

RELIGION, LAW AND COVID-19 EMERGENCY

Dialogue and cooperation between
French institutions and religious
groups

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Preliminary remarks about French secularism

The Law of 9 December 1905¹ established the State separation from the churches, excluding state funding of faith-based organizations. This system of secularism since the 1946 Constitution has assumed the specific form of French *laïcité*². It is a system which appears to be characterized on the one hand by the affirmation of the principle of strict neutrality of public institutions and on the other hand by the recognition of the religious freedom of individuals which, over time, has been posed limits, especially

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¹ Law 9 December 1905 concernant la séparation des Églises et de l'État, in Journal officiel de la République française, 11 décembre 1905, no. 336, also available in the version currently in force on the website of France Law at www.legifrance.gouv.fr where all the legal measures mentioned in this text can be consulted. This Law is not applied in certain territories of Metropolitan France and Overseas. For an exhaustive analysis of French legislation on religious matters, see F. Messner, P.H. Prélôt, J.M. Woehrling, I. Riassetto (Eds.), *Traité de droit français des religions*, II ed., LexisNexis, Paris, 2013, (1317 pp.) passim.

² See art. 1 French Constitution 1958 – «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». See also *Conseil constitutionnel*, decision no. 2013-297 QPC of 21 February 2013 (www.conseil-constitutionnel.fr/decision/2013/2012297QPC.htm) which identified six distinctive characteristics of secularism: 1) the neutrality of the State; 2) the non-recognition of any religion; 3) the respect for all beliefs; 4) the equality of citizens without distinction of religion; 5) the free exercise of religion; 6) the exclusion of public funding.

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in terms of external manifestations³. Furthermore, there are no special relationships between the State and the different religious institutions.

The French legal system does not define formally what a religion is or what secularism consists of. Reference should therefore be made to the different laws and their interpretation by case law⁴. It is indeed possible to identify a certain evolution of secularism, albeit always in maintaining a strict separation between what is relevant for the State and what is relevant for religions⁵.

The SARS-CoV-2 pandemic – in France as elsewhere – has been characterized by the enactment of emergency rules, often discussed from the point of view of constitutional compliance, through the pandemic-related important powers attributed to the Government and ministries, outside effective parliamentary control⁶. The exercise of these powers has affected the exercise of important fundamental rights such as freedom of movement, assembly, and religion.

Freedom of religion has been since the beginning one of the key issues of this period from several points of view, also in the unintentional spread of the coronavirus, as happened in the annual meeting of one evangelical megachurch (the Christian Open Door Church) which took place in Mulhouse (*Département du Haut-Rhin, Région du Grand Est*) between 17 and 24 February 2020. This was one of the most important clusters in the spread of contagion across Metropolitan France as well as in its overseas

³ In the lack of a constitutional provision recognising religious freedom – as well as other rights and freedoms – reference should primarily be made to the Rights of Man as defined by the Declaration of 1789, confirmed and integrated by the Preamble to the Constitutions of 1946 and 1958. As regards the right to religious freedom, it is necessary to refer to art. 10 of the Declaration and art. 1 of the Law on the separation of the Churches and the State. Both articles prescribe the limit of public order.

⁴ Especially from *Conseil d'État* case law. On this point M.C. Ivaldi, *The meaning of "Religion" in French case law. The judgement of the Conseil d'État*, in *Stato, Chiese e pluralismo confessionale*, online journal (www.statoechie.it), no. 39, 2017, p. 111 ff.

⁵ Among the most recent sensitive issues that have arisen are the wearing of religious symbols at school (*loi 15 mars 2004, n. 2004-228 encadrant, en application du principe de laïcité, le port de signes ou tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*) and the admissibility of the wearing of face veils in the public space (*loi 11 octobre 2010, n. 2010-1192 interdisant la dissimulation du visage dans l'espace public*).

⁶ It should be noted that the state of health emergency or its extension is declared by laws based on a Government draft. These laws have empowered the Government to act by decrees and granted it very broad powers. See Law no. 2020-290 of 23 March 2020 (declaration of the state of health emergency); Law no. 2020-546 of 11 May 2020 (extension of the state of emergency) and Law no. 2020-856 of 9 July 2020 (exit from the state of health emergency).

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territories. It has been estimated that a significant segment of the participants (more of 2500 people) was infected by the coronavirus⁷, taking it home with themselves⁸.

A detailed analysis of the wide range of rules⁹ adopted since the beginning of the Covid-19 outbreak goes outside the purposes of this essay. Nevertheless, this analysis will take into account the Government decrees marking the main phases of the period (total lockdown, phase 1 of lockdown lifting and so on) insofar as they have interfered with the exercise of religious freedom.

Lockdown (from 17 March progressively extended until 11 May)

The Decree no. 2020-293 of 23 March 2020 prescribed a severe lockdown, imposing numerous closures (schools, business, venues, facilities, amenities). In other words, only essential commercial (food shops, pharmacies, banks, etc.) or public services (first of all hospitals) were allowed to remain open. This Decree enacted further restrictions like the banning of all non-essential movement (mandatory home confinement) and contact with people outside home including non-cohabiting family members and relatives. Citizens were also asked to avoid gatherings of more than 10 people in public places.

As regards the limits placed on the freedom of movement (within one kilometer from home, with specific exceptions) it remained possible to go out to work, buy essential goods, and for health or family reasons or brief individual physical exercises (under the requirement to bring along a signed declaration stating the reason for the movement). These rules limited the possibility for believers to go to a place of worship for individual prayer.

All religious gatherings were forbidden, even though places of worship could remain open. Only one exception was provided for: funeral ceremonies attended by a maximum of 20 people including the celebrants and the funeral home staff were allowed¹⁰. In any case, it should be noted that many religious groups, even before the lockdown, had decided a self-limitation¹¹ or ordered the total closure of the places of

⁷The official releases of the aforementioned Church on this regard are available at [//porte-ouverte.com/information-covid-19](http://porte-ouverte.com/information-covid-19).

⁸ For other phenomena of contagion related to religious practices, see also the cases related to the South Korean Shincheonji Church of Jesus Temple of the Tabernacle of the Testimony and the Shiite pilgrimages to the city of Qom in Iran.

⁹ For a review of the rules approved over time see www.vie-publique.fr/covid-19-les-textes-publies-au-journal-officiel.

¹⁰ See art. 8, IV, Decree no. 2020-293 – «Worship establishments ... are allowed to remain open. Any gathering or meeting within them is prohibited, except for funeral ceremonies with a limit of 20 people».

¹¹ As for example is the case of the French Bishops' Conference which prohibited the celebration of masses in assembly before it was imposed by law ([//eglise.catholique.fr/sengager](http://eglise.catholique.fr/sengager)).

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worship, in compliance with the respect for human life, which should be prioritized also over the exercise of religious freedom. This was the case with the Jews, Muslims and Buddhists who first announced the suspension of prayers and then the shutting of synagogues, mosques, and pagodas¹². By contrast, the greatest part of churches, especially Catholic ones, remained open throughout the lockdown.

The suspension of in-person worship during the Covid-19 pandemic made religions lead virtual services and prayers that were broadcast on traditional media (radio and tv)¹³ and on new social ones (youtube, facebook, etc.), to maintain a bond with the believers during the temporary moratorium on public worship. The prohibition of public worship raised and still raises some important doctrinal issues for the different religious groups, especially for those whose rites are not considered as admissible in the virtual form. This is the case of the Orthodox Jews who are forbidden to use electricity during the Shabbat and other festivities and, consequently, are prohibited from using televisions and computers¹⁴.

It goes without saying that the measures taken at that stage – as well as at the subsequent ones – were adopted unilaterally by the state authorities. Nevertheless, the President of Republic Emmanuel Macron, in his speeches to the Nation, has always called for French unity and national cohesion. That was the spirit that inspired the first video-conferenced meeting on 23 March 2020 between the President and the representatives of the major religious and philosophical groups (including masonic, atheistic, and agnostic ones). This meeting was followed by another one in less than one month – on 21 April 2020 – and a third one, announced by President Macron, to be held in the future to address the post-pandemic situation¹⁵.

These meetings represented a communication channel at the highest level through which President Macron announced the Government's health crisis-related measures to the participants. At the same time, they allowed to understand the instances of the

[dans-la-societe/sante/coronavirus-covid19/495218-covid-19-message-de-eric-de-moulins-beaufort-a-freres-ereques/](#)).

¹² For Muslims see: Conseil Français du culte Musulman, *Communiqué: Appel à la fermeture de toutes les mosquées de France à compter de dimanche 15 mars et jusqu'à nouvel ordre*, 14 March 2020, ([www.cfc-m-officiel.fr/2020/03/14/fermeture-des-mosquees-de-france-a-compter-du-dimanche-15-mars-et-jusqua-nouvelordre/](#)).

¹³ It should be remembered that in France the most important religions have access to the public radio and television system through dedicated broadcasts. To limit ourselves to the France 2 broadcaster this is the case of *Le Jour du Seigneur* ([www.lejourduseigneur.com/](#)), *À l'origine, Berechit* ([www.alorigine-berechit.com/](#)), *Islam* ([www.france.tv/france-2/islam/](#)), *Présence protestante* ([www.france.tv/france2/presence-protestante/](#)), *Chrétiens orientaux* ([www.chretiensorientaux.eu/](#)), *Sagesse Bouddhistes* ([www.france.tv/france-2/sagesse-bouddhistes/](#)).

¹⁴ See, as a balancing effort, the online celebration of pre-shabbat, the day before of its beginning.

¹⁵ Both events were included as formal meetings in the President's agenda and were also attended by the Minister of the Interior, who is in charge with the regulation of the relationships with religious denominations.

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different stakeholders and to take into account the collaboration that they could offer both spiritually and materially. The invitees were not all denominations¹⁶ – but only the participant of the *Conférence des responsables de culte en France* (i.e. Conference of Worship Leaders in France)¹⁷, namely, Catholics, Protestants, Orthodox, Jews, Muslims and Buddhists.

In the second meeting, they were joined by the *Conseil national des évangéliques de France* (i.e. National Council of Evangelicals of France)¹⁸, probably for both their relevance in terms of members, and the circumstance that they have unintentionally started one of the most important clusters in the Country¹⁹.

Apart from general issues, specific questions were addressed. One concerned the creation of freephone numbers for psychological and spiritual assistance by the different religions, and their transmission through the Ministry of the Interior to other public institutions, first of all municipalities and hospitals)²⁰. Another question was about the treatment of mortal remains and burial. These issues were the object of a subsequent meeting with the above-mentioned Ministry; local authorities in charge of cemeteries were also involved.

Emmanuel Macron guaranteed that people who died in France during the coronavirus outbreak would be buried in accordance with their religious beliefs and traditions, thus excluding all mandatory cremation, which is a practice forbidden by Judaism and Islam. Likewise, the treatment of the deceased according to religious prescriptions was allowed within certain limits, that is, the health-related measures meant to avoid contagion.

A specific problem was posed by the French Muslim Worship Council (*Conseil Français du Culte Musulman*)²¹ regarding the lack of adequate space in the Islamic areas of cemeteries. This issue originated from the impossibility to bury the deceased in their own country of origin, which is a very common practice among Muslims (and Jews alike).

¹⁶ The French term for denomination is “culte”, which – unlike its English equivalent – has not a derogatory meaning. See Cf. P. Rolland, *Qu'est ce qu'un culte aux yeux de la République?*, in *Archives de sciences sociales des religions*, no. 129, 2005, pp. 51-63 (online at <http://journals.openedition.org/assr/1109>).

¹⁷ It was founded on 23 November 2010 with the aim of achieving regular consultation, encouraging inter-religious dialogue and social cohesion, respecting other currents of thought in society, and working for the common good. It is currently chaired by the Protestant pastor François Clavairol. See <http://lacrf.fr>.

¹⁸ This Council, created on 15 June 2010, represents about 70% of the Evangelical churches of France (www.lecnecf.org).

¹⁹ The above-mentioned cluster in Mulhouse.

²⁰ See Ministère de l'Intérieur, *Communiqué de presse. Dispositif d'écoute et de soutien spirituel*, 9 April 2020 (www.interieur.gouv.fr/Actualites/Communiqués/Dispositif-d-ecoute-et-de-soutien-spirituel).

²¹ The CFCM is a non-profit association created in 2003 under the Law of 1 July 1901, upon the invitation of the State to identify a unified representative of French Islam.

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The above-mentioned meetings, although including the representatives of non-religious groups, were criticized as a threat to French *laïcité*²². This circumstance shows a certain short-sightedness on the part of those who cannot appreciate the extent to which religious institutions, in a circumstance like the pandemic, have provided (spiritual and non-spiritual) support to citizens and non-citizens²³ beside helping to maintain national cohesion.

Phase 1 of lockdown lifting (11 May-2 June)

During the second meeting (21 April) President Macron announced the first steps to restore public worship by mid-June at the earliest. Likewise, on the occasion of the presentation of the plan for the progressive lockdown lifting to the Parliament (28 April and 4 May), the Prime Minister announced the re-opening of schools and many commercial activities and the authorization of movement of people within 100 km – but not of the celebration of religious ceremonies, which was further postponed.

With the notable exception of the Catholic Church, all the religions referred to in the above-mentioned Conference readily accepted the situation; all of them were constantly guided by the need to give the highest priority to the protection of life. The French Bishops' Conference, in a press release dated 28 April 2020²⁴, considered it regrettable that the restarting of religious ceremonies was not authorized, while other behaviors and practices – equally liable to create situations for contagion – were permitted.

Decree no. 2020-548 of 11 May 2020 was issued despite the French Episcopate's criticism, while negotiations among the different religious groups and the Ministry of the Interior were envisaged in order to prepare a protocol for the future restoration of religious rites.

The decision on this issue made by the Council of State²⁵ at the request of some private citizens, Catholic traditionalist associations and a political party, pressed the Government to review its position and restore the exercise of collective religious freedom. According to the Council of State – which issued a preliminary ruling in accordance with the procedure known as *référé liberté* – the ban of all religious

²² G. Chevrier, *Laïcité: pourquoi Emmanuel Macron a commis une erreur en consultant les représentants des cultes*, 8 May 2020, in «www.marianne.net/debattons/billets/laicite-pourquoi-emmanuel-macron-commis-une-erreur-en-consultant-les-representants».

²³ It is worth mentioning the countless subsidiary initiatives on the part of third-sector organizations for the weakest (poor, refugees, foreigners), regardless of any distinction of belief or affiliation, widely reported by the websites of the different religions.

²⁴ Conférence des Évêques de France, *Suite aux annonces du Premier Ministre concernant le déconfinement*, 28 April 2020 (<http://eglise.catholique.fr/espace-presse/com-muniques-de-presse/498364-suite-aux-annonces-premier-ministre-concernant-deconfinement/>).

²⁵ Decision of 18 May 2020 available on database *ArianWeb*.

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gatherings was «disproportionate with regards to the objective of preserving public health» and caused «damage that was seriously and manifestly illegal». For this purpose, it ordered the Government to amend the impugned measures within 8 days.

The Government complied with the decision by issuing Decree no. 2020-618 of 22 May 2020, which allowed the immediate resumption of religious celebrations. At the same time, the Minister of the Interior – acknowledging the constant dialogue between French institutions and the mentioned religious groups – recommended to make the resumption of public worship start only from 2 June, despite noting that it would have been possible to do so immediately. This press release of 28 May 2020²⁶ was accompanied by the publication of the guidelines on the fight against outbreak of coronavirus during religious ceremonies, drawn up upon consultation with the religious representatives²⁷. In other words, the exercise collective worship had to abide by several conditions, including the wearing of masks, keeping a distance of at least one meter among worshippers (social distancing rule), washing hands and sanitizing objects and premises, being the administrators of the place of worship liable under civil and criminal law. Beside these prescriptions, others were given by each religious group, which took into account their peculiarities. Such prescriptions were published on their respective websites and affixed outside each place of worship)²⁸.

Only the Catholic Church took advantage of the immediate resumption of religious gatherings, while the other faith communities restarted progressively.

Phase 2 of lockdown lifting (3-14 June)

This and the subsequent phases marked the progressive decrease of interference with the exercise of collective religious freedom, although the need to respect barrier gestures while performing all acts of worship was confirmed.

The new phase was regulated by Decree no. 2020-663 of 31 May 2020, and subsequent amendments. The restrictions on movements within metropolitan France were lifted and this benefitted the religious communities which are not deeply rooted in the territory, since from that moment religious ministers were no longer restricted by the limits previously laid down (respectively 1 kilometer and 100 kilometers). Bars

²⁶ Ministère de l'Intérieur, *Communiqué de presse. Reprise des cérémonies religieuses*, 22 May 2020 (www.interieur.gouv.fr/Le-ministre/Communiqués/Communiquede-presse-de-Christophe-Castaner-sur-la-reprise-des-ceremonies-religieuses).

²⁷ *Recommandations générales en matière de la lutte contre la pandémie de Sars-CoV-2 lors des cérémonies cultuelles*, available, among others, at [//eglise.catholique.fr/wp-content/uploads/sites/2/2020/05/Lignes-directrices-concernant-la-luttecontre-la-pandemie-de-COVID-pour-la-reprise-des-cultes.pdf](http://eglise.catholique.fr/wp-content/uploads/sites/2/2020/05/Lignes-directrices-concernant-la-luttecontre-la-pandemie-de-COVID-pour-la-reprise-des-cultes.pdf).

²⁸ For the Hebrews see Consistoire National – Consistoire de Paris-Île de France – Association des Médecins Israélites de France, *Protocole de réouverture des synagogues*, (www.consistoire.org/2020/06/02/reouverture-des-synagogues/).

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and restaurants as well as museums could re-open, always in compliance with the rules of social distancing.

As announced by the Prime Minister in Parliament²⁹, the celebration of civil marriages (also same-sex ones), religious marriages and PACS (*Pacte civile de solidarité* – civil partnerships) – which had been suspended during the pandemic except in the case of danger of death and similar cases – were authorized to restart from 3 June. This was an important development, given the fact that French law only recognizes the validity of civil marriages, whose celebration must precede that of religious ones³⁰.

That phase was thus characterized by the reopening of places of worship, including those of the Jews and Muslims, who decided to follow the Government's recommendation to re-open after June 2.

On the other hand, the *Grande Pagode de Paris* was still closed at the date of submission of this essay³¹.

Phase 3 of lockdown lifting (15 June-10 July)

The same day of its announcement in Macron's speech to the French on 14 June 2020³² the Decree no. 2020-724 was enacted. By amending Decree no. 2020-663, it started a new phase setting progressive deadlines (15, 22, 28 June and 1 July) until 10 July, that is, the end of the state of emergency as fixed by the above-mentioned Law no. 2020-546.

In fact, at that stage, no new provisions were issued that interfered substantively with the right to religious freedom. Nevertheless, it was a period when each religious group took the opportunity to reflect in depth on the period just elapsed, both individually³³ and collectively.

²⁹Video Available at www.gouvernement.fr/partage/711591-conference-de-presse-sur-la-deuxieme-etape-du-deconfinement

³⁰ Pursuant to art. 433-21 of French Criminal Code any religious minister who habitually conducts religious ceremonies of marriages without being presented beforehand with the marriage certificate issued by officials responsible for civil status is punished by six months' imprisonment and a fine of 7.500 euros.

³¹ 22 October 2020. Notice at www.bouddhisme-france.org/la-grande-pagode/activites-a-la-pagode.

³² E. Macron, *Adresse aux Français*, 14 June 2020, at www.elysee.fr/emmanuel-macron/2020/06/14/adresse-aux-francais-14-juin-2020, where both the video and the transcript of the presidential address are available.

³³ For examples see Fédération Protestante de France, *Plaidoyer pour une transformation écologique, solidaire et démocratique*, 21 April 2020 (www.protestants.org/articles/54249-plaidoyer-pour-une-transformation-ecologique-solidaire-et-democratique) and for the Catholic Church, E. de Moulins Beaufort, *Le matin, sème ton grain. Lettre en réponse à l'invitation du Président de la République*, Bayard – Cerf – MamE, Paris, 2020, *passim*.

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The collective dimension of this reflection was characterized by the meeting among religions, which are members of the above-mentioned Conference of Worship Leaders in France (CRCF), held on 23 June 2020 at the *Collège des Bernardins*³⁴.

In that phase of an attenuated pandemic, the initiatives (even the State-led ones) aimed at investigating the impact of the crisis also on the religious sphere did not stop. On July 2, the Parliamentary Office for the Evaluation of Scientific and Technological Options (*Office parlementaire d'évaluation des choix scientifiques et technologiques*) issued two notes concerning respectively religions facing Covid-19 in France³⁵, and the funeral crisis were issued³⁶.

The Law organizing the exit from the health emergency (22 July-30 October)

A government draft law to declare the end of the lockdown was discussed in Parliament and was approved as Law no. 2020-856 of 10 July 2020. Under the law, the Government has retained important powers in the event of a resurgence of the coronavirus pandemic, including the power to declare a new state of health emergency³⁷. The same day the Decree no. 2020-860³⁸ was approved to implement the

³⁴ Meeting titled «Les religions pendant et après l'épreuve: Quels constats? Quels regards sur l'avenir?». The meeting, which lasted more than two hours, was held upon the initiative of the *Collège des Bernardins* and the *Institut des hautes études du monde religieux*, which also received the patronage of the Ministry of the Interior and the *Observatoire de la laïcité* (www.gouvernement.fr/observatoire-de-la-laicite) can be viewed at www.college-des-bernardins.fr/content/les-religions-pendant-et-apres-lepreuve-quels-constats-quels-regards-sur-lavenir.

³⁵ Office parlementaire d'évaluation des choix scientifiques et technologiques, *Note à l'attention des membres de l'Office. Les cultes religieux face à l'épidémie de Covid-19 en France*, 2 July 2020, in www.senat.fr/fileadmin/Fichiers/Images/opecst/quatre_pages/OPECST_2020_0028_note_cultes_covid19.pdf, pp. 38.

³⁶ Office parlementaire d'évaluation des choix scientifiques et technologiques, *Note à l'attention des membres de l'Office. Crise du funéraire en situation de Covid-19: mort collective et rituels funéraires bouleversés*, 2 July 2020, in www.senat.fr/fileadmin/Fichiers/Images/opecst/quatre_pages/OPECST_2020_0027_note_rites_funeraires_covid19.pdf, pp. 20.

³⁷ Art. 2, II, Law no. 2020-856.

³⁸ *Décret* prescrivant les mesures générales nécessaires pour faire face à l'épidémie de Covid-19 dans les territoires sortis de l'état d'urgence sanitaire et dans ceux où il a été prorogé or Decree prescribing the general measures necessary to deal with the Covid-19 epidemic in the territories exiting from the state of health emergency and in those where it has been extended.

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provisions on the collective exercise of worship by confirming the same, specific legal provision³⁹.

At the moment, the date of the third meeting between the French President Macron and the representatives of the religious denominations, freemasonry, humanistic and atheistic associations has not been arranged yet.

Despite much criticism of Macron, who allegedly breached a certain – uncompromising – declination of French *laïcité*, the consultation practice which has been introduced should be appreciated also in the light of article 17 of the Treaty on functioning of the European Union, which enshrines the principle of constant dialogue with churches and non-confessional organizations⁴⁰. On several occasions President Macron has resorted to consultation, highlighting a notion of secularism which does not oppose religion, but which is declined as neutrality.

In the meantime, religions have not stopped asking questions and confronting each other on the dramatic challenges emerged during the outbreak. This has been the case of the above-mentioned meeting held at the *Collège des Bernardins* in mid-June 2020. That is the same place where two years before, on 9 April, President Macron, invited by the French Bishops' Conference and in the presence of the representatives of other religions, took the opportunity to expound his vision of secularism: this principle should not deny the spiritual in the name of the temporal nor replacing the divine transcendence with a republican creed⁴¹.

³⁹ Art. 47, Decree no. 2020-860 – «I. Les établissements de culte ... sont autorisés à recevoir du public dans le respect des dispositions qui leur sont applicables et dans des conditions de nature à permettre le respect des dispositions de l'article 1^{er} [*i.e.* respect of barrier gestures]. Toutefois, les personnes appartenant à un même foyer ou venant ensemble dans la limite de dix personnes ne sont pas tenues de respecter une distanciation physique d'un mètre entre elles dans ces établissements.

II. Toute personne de onze ans ou plus qui accède ou demeure dans ces établissements porte un masque de protection.

L'obligation du port du masque ne fait pas obstacle à ce que celui-ci soit momentanément retiré pour l'accomplissement des rites qui le nécessitent.

II. Le gestionnaire du lieu de culte s'assure à tout moment, et en particulier lors de l'entrée et de la sortie de l'édifice, du respect des dispositions mentionnées au présent article.

IV. Le préfet de département peut, après mise en demeure restée sans suite, interdire l'accueil du public dans les établissements de culte si les conditions de leur organisation ainsi que les contrôles mis en place ne sont pas de nature à garantir le respect des dispositions mentionnées au présent article».

⁴⁰ Among others see F. Colombo, *Interpreting Article 17 TFEU: New Openings towards a European Law and Religion System*, in *Stato, Chiese e pluralismo confessionale*, online journal (www.statoechiese.it), no. 1, 2020, p. 17 ff.; A. Portaru, *In Search of a Soul: Article 17 TFEU and its Functioning*, in «Nottingham Law Journal», no. 26, 2017, p. 37; S.A. Mudrov, *Religion in the Treaty of Lisbon: Aspects and Evaluation*, in *Journal of Contemporary Religion*, (www.tandfonline.com/doi/full/10.1080/13537903.2016.1109863), no. 1, 2016, p. 1; P. Annicchino, *Religion and eu Institutions*, in *Ecclesiastical Law Society*, no. 15, 2013, p. 326.

⁴¹ The video of the speech and its complete transcript are available at www.elysee.fr/emmanuel-macron/2018/04/09/discours-du-president-de-la-republique-emmanuel-macron-a-la-conference-des- eveques-

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The new emergency

Since the second part of the summer and especially in September there has been a resumption of contagions leading to a new series of local⁴² or general provisions⁴³, adopted taking into account the spread of the virus in different areas of the State⁴⁴.

The increase in the numbers of infected people led to the declaration of a new state of health emergency⁴⁵, announced by the President of the Republic⁴⁶ during a television interview on 14 October 2020 and then illustrated in greater details by the Prime Minister the following day⁴⁷.

The relevant measures were adopted by Decree no. 2020-1262 of 16 October 2020. The main one is the introduction of curfew in specific departments⁴⁸ (the most affected ones by the spread of Covid-19⁴⁹) which prohibits movement outside the place of

[de-france-au-college-des-bernardins](#). For a comment that highlights the parts of Macron's speech recognizing the Catholic specificity in French history and identity while respecting other faiths, see B. Bourdin, *Le discours de Macron aux Bernardins*, in *Études*, 2018/6, pp. 67-76 (www.revue-etudes.com/article/le-discours-de-macron-aux-bernardins-19292).

More generally, on the President of the Republic's approach to religion, see S. MALKA, *Dieu, la République et Macron*, Édition du Cerf, Paris, 2019, 224 pp., *passim*.

⁴² For examples see the Press Release of 27 August 2020, whereby the prefectures of the area of Paris make the wearing of the mask in public spaces compulsory from the following day ([/cdn.paris.fr/paris/2020/08/27/f617109e20b041e6574451de1772194b.pdf](http://cdn.paris.fr/paris/2020/08/27/f617109e20b041e6574451de1772194b.pdf)). The Council of State has also decided on the lawfulness of this measure (decisions available at www.conseil-etat.fr/actualites/actualites/dernieres-decisions-referes-en-lien-avec-l-epidemie-de-covid-19).

⁴³ See for example the classification of the French Departments according to the Covid-19-related alert grade (*i.e.* reinforced alert, maximum alert or simple alert). This classification was partially revised in the second half of October.

⁴⁴ For the basic information on the epidemic crisis, see the Government web page at www.gouvernement.fr/info.coronavirus.

⁴⁵ Decree no. 2020-1257 of 14 October 2020 *décretant l'état d'urgence* pursuant to art. L. 3131-13 of the Public Health Code.

⁴⁶ www.elysee.fr/emmanuel-macron/2020/10/14/covid-19-interview.

⁴⁷ www.facebook.com/watch/live/?v=2774942479449357&ref=external. The interview is also available on the dedicated website www.gouvernement.fr/info.coronavirus.

⁴⁸ Decree no. 2020-1262, Annex 2. See also the draft law no. 3464 of 21 October 2020, *autorisant la prorogation de l'état d'urgence sanitaire et portant diverses mesures de gestion de la crise sanitaire* (www.assemblee-nationale.fr/dyn/15/textes/l15b3464_projet-loi) and the State Council opinion no. 401419 of 20 October 2020, ruling in favour of the extension of the state of health emergency until 21 April 2021 (www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publics/avis-sur-un-projet-de-loi-autorisant-la-prorogation-de-l-etat-d-urgence-sanitaire-et-portant-diverses-mesures-de-gestion-de-la-crise-sanitaire).

⁴⁹ Cf. art. 51, Decree no. 2020-1262 giving powers to the departmental prefects.

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residence from 9.00 p.m. to 6.00 a.m.⁵⁰, whereas at the moment there are no substantial changes with respect to religious practice⁵¹.

However, the evolving situation may require the adoption of new measures restricting collective religious freedom as it has been the case with the introduction of the limit on gatherings of more than one thousand people in the French capital⁵². This restriction will once again force religions to adapt their precepts and practices.

At the moment there has not been a new meeting between the representatives of the religious denominations and President Macron on the subject of Covid-19, but there has been one concerning the draft of a new law aimed at fighting separatism, primarily the Islamic-oriented one.

This took place on 30 September 2020⁵³ when the contents of the draft law were illustrated in the presence of the Minister of the Interior⁵⁴. On 2 October Macron presented it to the French⁵⁵.

The most relevant points include the neutrality of public services and the preservation of public order; the exclusion of any support to associations which do not respect equality between men and women or which are the expression of sectarian deviations, the control of faith-based educational institutions, the limitation of home-schooling, and the legal regime of associations managing mosques.

The President of the Republic stressed the intention to present a draft law on 9 December 2020, 115 years after the issue of the Law on separation of the Churches and the State, as a way to reinforce secularism and consolidate the Republican values⁵⁶.

Beside the fight against what Macron has defined as separatism rather than communitarianism⁵⁷, the Presidential has recognized the freedom of blasphemy related to freedom of conscience: this occurred in the speech he delivered on 1 September

⁵⁰ In the first phase the curfew affected not only Paris and *Ile de France* but also the 8 metropolitan cities of Grenoble, Lille, Lyon, Aix-Marseille, Montpellier, Rouen, Saint-Etienne and Toulouse.

⁵¹ Cf. art. 47, Decree no. 2020-1262.

⁵² This is a limit that the *Grande Mosquée de Paris* has taken into account since the beginning. See for example the *Communiqué* of 1 October 2020, concerning the access restrictions for Friday prayers (www.mosqueedeparis.net/priere-du-vendredi-salat-al-jumab-la-capacite-daccueil-de-la-gmp-a-nouveau-reduite/).

⁵³ www.elysee.fr/agenda-septembre-2020.

⁵⁴ The Ministry of the Interior has also met single religious representatives on this matter, as shown by his agenda (www.interieur.gouv.fr/Le-ministre/Agenda-du-ministre).

⁵⁵ *Discours du Président de la République sur le thème de la lutte contre les séparatismes*, 2 October 2020. Video and speech transcript available at www.elysee.fr/emmanuel-macron/2020/10/02/la-republique-en-actes-discours-du-president-de-la-republique-sur-le-theme-de-la-lutte-contre-les-separatismes.

President Macron has also met separately representatives of the *Conseil français du culte musulmans* on October 19, after the previous meeting on September 26 (www.elysee.fr/agenda).

⁵⁶ See the above-mentioned video of 2 October 2020, minute 22.19 ff.

⁵⁷ Cf. www.elysee.fr/emmanuel-macron/2020/02/18/proteger-les-libertes-en-luttant-contre-le-separatisme-islamiste-conference-de-presse-du-president-emmanuel-macron-a-mulhouse.

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2020 during a visit to Beirut⁵⁸. The occasion for such a statement was the decision of the satirical weekly magazine Charlie Hebdo to republish the satirical cartoons concerning Islam, on the occasion of the beginning of the appeal process for the massacre of 12 people of the editorial staff on 7 January 2015. Soon after, on 16 October 2020, the satirical cartoons costed the life of Professor Samuel Paty⁵⁹.

This confirms and stresses even more the French commitment to a better protection of public order and republican unity against what can be described as “pathological” aspects linked to certain kinds of religious affiliation. On the other hand, this rigor goes hand in hand with the repeated dialogue with religions – at least some of them⁶⁰ – understood as a positive force for the country.

⁵⁸ Video available at www.youtube.com/watch?v=oP5c71Dgyrs. For an earlier example see www.lemonde.fr/societe/article/2020/02/12/affaire-mila-emmanuel-macron-reaffirme-le-droit-au-blaspheme_6029272_3224.html. On the freedom of blasphemy see N. Colaïanni, *Il presidente Macron e la libertà di blasfemia*, 21 October 2020, in www.questionegiustizia.it/articolo/il-presidente-macron-e-la-liberta-di-blasfemia.

⁵⁹ This news was reported among others by www.lemonde.fr/societe/article/2020/10/16/decapitation-dans-les-yvelines-l-assemblee-nationale-debout-denonce-un-abominable-attentat_6056355_3224.html.

⁶⁰ The dialogue always included only the members of the above-mentioned Conference of Worship Leaders in France (*supra* fn. 16).