

The French Tales: On Christmas crèches in town halls

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Abstract: The following article deals with the French principle of laicity in relation to Christmas celebrations. Specifically, there are two cases decided by the French State Council, in which the town halls were forced to remove the exposed Christmas crèches. The article provides an analysis of both cases and points out the possible consequences of this case law in the future. The introductory part also deals with the relevant national legislation, especially the law whilst dealing with the separation of the church and state. At the same time, the article points to other possible problems that arise with the depiction of religious symbols. The contribution also discusses whether there is a possibility to see religious symbols in other Christmas decorations and to which consequences this perception may lead.

Introduction

France as a state has been well-known for its strict principle of laïcité. In compliance with the attitude and opinion neutrality, it is, above all and without any excuses, required for the State itself and for its civil officials, hospitals, and schools. In these days, the freedom of religious expression across Europe raises a number of questions and causes further conflicts. The religious freedom is guaranteed by the European Convention on Human Rights, but it can be constrained by a variety of legitimate aims in individual states. As for instance, France also lays down the principle of its own laicity. The following article examines two cases of exhibiting Christmas crèches in the premises of French municipal authorities. On the one hand, there is the state above which have stood with the principle of laicity, and on the other hand, there are advocates of cultural traditions. The article offers an insight into both decisions, their shortcomings, and possible consequences as well. The main question asks whether it is necessary to hold such a strict view of absolute secularity in cases which do not threaten anyone or anything so seriously? The following pages are to justify why the perseverance of laicity principle should not be the principal way in which to decide in every situation.

French legal background

The first article of the 1958 Constitution clearly proves to be in favour of the principle of laïcité (laicity, being translated as “secularity”) towards the French society by stating: “France is an indivisible, secular, democratic, and social republic.” Thus, the laïcité principle was transferred into a constitutional law and has become one of the most significant legal principles. At the same time, as manifested in the previous 1946 Constitution, everyone’s equality before the law shall be guaranteed, regardless of race, origin and/or religion. And therefore, all religions are to be respected. It is necessary, however, to bear in mind the core of the laïcité concept. This principle represents the expression of freedom, not only in respect of religious expression, of which it is to guarantee the equality and plurality of opinions within society. France had adopted this principle “to protect all opinions and all beliefs ... since even the freedom of belief is understood as the ordinary opinion freedom[1].” In order to implement this freedom properly, the next step, which has also been the second part of the laïcité principle, is to separate the state and church from one another. Hence, the state detaches its policy from any ecclesiastical affairs, thereby ensuring the application of equal rights for the whole society[2]. And it even implies that the fraternity part of the French national motto remains maintained as: “Freedom, Equality, Fraternity[3].” Moreover, as the French instance demonstrates, the church operates as a private entity and thus may be sponsored by the state neither financially, nor organisationally[4]. This principle shines through all the legal branches and the whole legal order, and it essentially affects the French State Council in decision-making, too. Provided that a case is referred at the highest judicial level in France, and the creed is only being referenced, the case is examined in accordance the laïcité principle forthwith. In these instances, it does not matter whether it is purely any religious manifestation or even a slightest endeavour to get a tax credit for religiously oriented organisations.

The key legislation France possesses in this matter has certainly been the law that came into existence in the aftermath of the Alfred Dreyfus affair, and it may be perceived as an accelerator for the laïcité principle to be set up in France. As a bill, it may be dated back to the 9th December 1905 whilst dealing with the separation of the church and state (from the original: *concernant la séparation des Églises et de l'État*)[5]. The Commission for the Separation of Church and State elaborated on this law, which had been drafted in March

1905. A debate took place in the Chamber of Deputies from the 21st March to the 3rd July 1905. The bill was subsequently discussed in the Senate within a month, and it passed on the 6th December 1905, and was proclaimed on the 9th December 1905. The actual deliberations on the law were, as evident from the aforementioned, rather time-consuming and demanding due to negative reactions, especially from the religiously faithful members of both French chambers. Nevertheless, Pope Pius X, who was opposing and criticising this law, directly emphasised that France had been violating the 1801 Concordat, known for containing a mutual agreement on a further financial assistance to the Churches by the State [of France] in exchange for the supervision of these Churches. And it used to be respected up to that point[6].

The primary principles are depicted in the first two paragraphs of the law. While the first guarantees the freedom of religion and the freedom of expression or worship of religion. All of this, indeed, with possible limitations which may be imposed by the law and intended to principally protect and maintain the public order. The second paragraph specifically contains a clear statement that “the Republic does not recognise, pay or support any particular religion.” On that account, the idea of laïcité principle appeared for the first time, and consequentially it has been turned into a constitutional principle mirroring in the contemporary constitution of the Republic[7]. Furthermore, this paragraph also affirmed the obligation to withdraw all the state, regional, and municipal financial reserves which had been earmarked for the expenses or as financial support to any religious society.

For the cases determined by the French State Council, which are therefore the analysed samples in this paper, the fifth section of the law is crucial. The main part of the fifth section is Article 28 stating: “It is forbidden to set up or attach any religious symbol or emblem to public monuments or other public places in the future, except for buildings serving as churches, lands serving as grave sites in cemeteries, cemetery monuments, and sculptures, as well as museums and exhibitions.” A public place has been comprehended as a piece of land or a place owned by the state, such as, for instance, the promenades, hospitals or schools[8].

This law stands as the most general regulation which is mainly supplemented by more concrete directions or guidelines. For example, areas related to the medical staff or public schools are continuously being modified. In 2003, a commission[9] was formed in order to investigate compliance with the principle of laïcité in the public space. According to the commission’s findings, there has been a need for further legal regulations so that the principle of laïcité may be observed more consistently in France. Thus, the Republic of France restricts public officials in their religious freedom, and continually adopts further measures which are expected to result in a fulfilment of the church and state separation.

Two cases as decided by the French State Council

In 2016, the State Council ruled in two gripping cases of displaying the Christmas the crèches, the so-called Nativity Scene, in town halls. Both these cases took place in 2012 and the Federation of Freethinkers (La Fédération de la libre pensée), whose members protested against such public displays, took part in both cases. According to their stances, it is a stricto sensu religious symbol. These two cases have commenced a placid “war”, sometimes nicknamed as a “cribs war”.

The first decision[10] concerned the town hall in Melun. At the beginning, it denied a request from the Federation of Freethinkers of the Seine-et-Marne to remove the crèche exposed in a niche below the porch connecting the garden of the town hall with its main courtyard. The town hall refused to accept this request and so the Federation turned to the Melun Administrative Court. Inasmuch as the suit was rejected as well in the 2014 judgment, the matter was brought to the Administrative Court of Appeal in Paris. This court reversed the decision of the first instance court, and ruled in favour of the Federation and, at the same time, abolished not only the previous decision of the administrative tribunal but also the former decision of the Melun town hall. Against this decision, the town of Melun filed a cassation complaint addressed to the State Council to issue a judgment annulling the final say of the Administrative Court of Appeal. This complaint included a request towards the Federation to pay a financial compensation in the total of 6,000 euros.

In its decision, the State Council has referred to the first paragraph of the French Constitution, of which the pivotal point focuses on, among other things, the French principle of laïcité. As evident, this ruling was based on the 9th December 1905 law, namely Article 2 and 28. It has been especially the later one, Article 28, that prohibits any display of religious symbols in public areas. This limitation is primarily intended to ensure and provide people who work in public service and thus are being employed by the state as a whole with a religious neutrality, and it shall intensify the eventuality to keep the image of a secular country.

The State Council stated that there were some exceptions to the ban on the display of religious symbols in the public space. The court highlighted the fact that, in case of exhibition as such which was meant to serve the cultural and/or educational purposes, there was allowed to display these religious symbols in publicly accessible places. As for the crèches, as a particular religious symbol, the State Council then clarified:

“Christmas crèches stand for a number of meanings. They may be a scene counting among the Christian iconography, and thus it would be perceived as religious *ab intra*. On the other hand, it may be seen as part of decorations and illustrations that go hand in hand with the traditional end-of-year celebrations, and this would imply no religious message[11].”

Despite profound debates, the State Council did not have to ponder upon a deeper meaning of crèches. In the court decision reasoning, it has been delineated that when it comes to the crèche displaying in any public space under the auspices of public authority, there is no eventuality of thinking of the end-of-year celebrations, and therefore, there must be a certain religious symbolism for such activities. A possible proselytism by state officials is only marginally mentioned in this decision. The idea, however, was to be turned back soon, and it points at the fact that this religious symbol was exposed during the Christmas period, meaning that it is not likely to consider this an attempt to gain new members of the Church.

The State Council, at the conclusion of this first decision, took the Freethinkers group’s point since they could, in the council’s opinion, feel justly concerned about their rights and therefore it had been ruled in their favour and Melun’s complaint had been rejected then. In addition, Melun had to pay the Federation 3,000 euros as to the winning side. This amount of money was meant to serve as a compensation for delays during the course of trial.

At first sight, the second decision[12] of the State Council may appear similar, it differs though. In the other case, the town of Vendée was concerned. The local branch of the Federation of Freethinkers demanded all the possible religious objects which might be associated with the end-of-year celebrations to be removed. As the town authorities rejected their complaint and the Christmas crèche was placed in the town hall lobby by December 2012, the Federation turned to the President of the General Council of Vendée. Nonetheless, he decided not to comply with the Federation, and on that account the Federation filled in a request to the federal court. The Nantes Provincial Administrative Court granted this motion in November 2014. However, the town that appealed to the Administrative Court of Appeal in Nantes opposed to its decision, and surprisingly the Court of Appeal ruled in favour of the town. Indeed, this resulted in another complaint to the French State Council by the Federation of Freethinkers, whose members, in addition to the abrogation of the aforementioned judgment, demanded an increased compensation payment of 5,000 euros from the town of Vendée.

Simultaneously, the State Council used the identical assessment logic and therefore once again, it stated that it had been a placement of religious symbols in a publicly accessible area where such exhibition shall be forbidden, as given by the precepts of the Constitution and the law on the separation of church and state. Yet this is a different case since before the Court of Appeal in Nantes, the crèche placement had been marked as a cultural expression regarding the end-of-year celebrations. The town hall claimed that the crèche installation was executed in the town hall only during December whilst serving as part of the family celebration events marking the Christmas time. Therefore, no display of proselytism, religious beliefs, or any other possible influence on citizens may be observed in this exposure. On the contrary, these celebrations should have connected citizens and were anticipated as religiously neutral. The Court of Appeal also confirmed this argumentation.

Despite both the statement of Vendée and the final say of the Appellate Administrative Court, the State Council again endorsed the Federation of Freethinkers and its complaints which met the criteria of the Council. Subsequently, when the Council cancelled the verdict as delivered by the Administrative Court of Appeal in Nantes, the case had to be returned to the lower instance for a further discussion. Moreover, an obligation was imposed on the town of Vendée to pay the Federation the sum of 3,000 euros as laid down because of delays and as it was the successful and prevailing side of this dispute.

It is undisputed that the State Council stood for the principle of *laïcité* without any possibility of changing its legal opinion. The fact that the State Council itself was the first to express the view perceiving the possibility to expose a religious symbol, for instance the Christmas crèches as in examined cases. The *sine qua non*, however, was the ability to prove that the item, as being located in a publicly accessible place administered by the state and its officials, would only serve as a cultural subject associated with the end-of-year celebrations. Consequently, in the following judgment, the council has diverged from the former statement and decided exactly the same, preserving its uncompromising stance and its previous legal opinion whilst relying again on the limitation and preservation of the *laïcité* principle. In the second ruling, it was clear that both the town and the Appellate Administrative Court did consider the Christmas crèche installation in the town hall just for the end of the year and for the purpose of expressing religious beliefs or sympathising with one concrete religion.

At the moment, it remains unanswered whether this matter shall be apprehended as a form of public proselytism or it shall be linked to celebrations with specific decorations. Therefore, the dispute may lie in the court association and by whom it shall be decided after all. The State Council, unambiguously as one of the highest courts in France, has failed in this case with argumentation grounds, and it has dealt with this outlined question completely wrong. On the one hand, it is certainly meritorious that the Council of State has a

predictable case-law and it contributes with a new judgment, and thereby being foreseeable in the near future. On the other hand, the State Council should not express any possibility of certain exceptions in its judgments; then in cases in which this possibility of exception from the decision-making practice occurs, this possibility cannot be completely ignored by the State Council and the court should decide in the light of the real background of the particular case or situation.

Where do the next problems lie?

A problem that may arise in the future is the utter unpredictability of judicial decisions in analogous matters. If the State Council, as one of the highest judicial authorities in the country, does not take a closer look at the reasons why the town authorities or officials are acting in this particular way, a credible and transparent judgment will not be able to be drawn. Finally, if the Council expresses the idea or view that, under certain conditions the installation of Christmas crèches is unlikely to be treated as a religious symbol, these conditions should be employed in other cases too. It shall not be noted merely in a general sense of evaluation to refuse any discussion due to the reference to the principle of *laïcité*. The need to examine the individual circumstances has been expressed at the conclusions of the public rapporteur[13] on these two decisions in which it had been remarked that the display of Christmas crèches has already been losing its religious subtext in the course of this tradition development[14].

In this context, other opinions have emerged when assessing the character of Christmas crèches which are in favour of the mere possibility of exhibitions[15]. Indeed, in these cases, the installation would fall under the exception provided by Article 28 of the Church and State Separation Act. This interpretation is also indicated by the crèches display in some towns where they were placed as a show case, as for example in museums or art exhibitions[16]. These event considerations are apt and appropriate for the situation. If it is possible to consider that in some cases the installation of Christmas crèches might be a mere expression of the cultural tradition associated with the end-of-year celebrations, and these crèches would be exhibited under similar conditions as pieces of art at exhibitions or as exhibits in museums, in these particular cases and situations it is appropriate to apply the exception arising from the above-mentioned provision of the 1905 Act. The only counterargument could then be that the depiction of the birth of Jesus Christ serves only to celebrate this religious occasion, and this reminder works for the Christian faith only. On the other hand, given the opinion of the rapporteur, as expressed in the previous paragraph, this depiction of the birth of Jesus Christ has now lost its originally strong religious subtext.

Although the proposal of the necessity to examine individual circumstances has been expressed in the decisions of the State Council, newer judicial practice continues to omit this consequential element. The decision of the Marseilles Court of Appeal[17], which was delivered in accordance with the State Committee may act as an instance in this sphere because it had also assumed that the exhibition of crèche in the Béziers town hall had had a religious background and displayed the Christian iconography and therefore it could not be displayed in a public building. The most recent decision may be found within the Montpellier Administrative Court's judgment[18] which involved the crèche installation at the Béziers Town Hall again. By this time, the Nativity Scene was displayed next to the mailbox of Père de Noël (Father Christmas, the French equivalent to Santa Claus). The argumentation based on symbolism that it is inherently connected to the end-of-year celebrations was not accepted in this case either. As these two judgments demonstrate, neither of these courts has accepted the justification that crèches are merely cultural or festive decorations, and that both courts have been adhered to the judgments of the Council of State in their reasoning.

Is one to see other Christmas decorations as religious symbols?

Despite the fact that France used to be under the religious influence of Christianity for centuries, there has been an attempt of such absolute neutrality. Therefore, it may be possible that, during some time, the tradition which evolved in France and which originated in religion, may disappear too. These tendencies may be seen, for example, in the case of the town of Vendée. When the Federation of Freethinkers asked for a total ban on the town within its public powers in installing any Christmas expressions and symbols. If the principle of *laïcité* were to be brought to a complete perfection, serious considerations would be followed by steps leading to removal or ban of every Christmas decoration in the form of stars and/or Christmas trees.

The star as a symbol that appears not merely in the form of a lighting decoration but also as the main adornment of Christmas trees, symbolises the Bethlehem star, well-known for showing all the believers the right direction where to go to see baby Jesus, the new king and messiah[19]. Consequentially, the star keeps reappearing as a religious symbol and as a miracle in other parts of the Bible, not only in the New Testament but also in the Old Testament (e.g. Numeri 24:17). Due to the fact that Christmas has primarily been the Christian occasion, the decorations have a religious background. And this does not apply to the Nativity Scene but to any

ornaments in the form of stars, be it those above the crèche, Christmas trees or at the streets. According to another point of view, religious symbols could potentially threaten the French principle of laïcité and therefore, in extreme cases, the principle could be enforced and lead to banning the aforementioned in public spaces and public buildings for good.

The same could be predicted in case of Christmas trees since under certain circumstances, they might be regarded religious symbols, too[20]. These trees, given that they are evergreen species and are therefore all time green, may symbolise eternal life which embodies the so-called tree of life as obvious from the Bible[21]. One of the three possible origins of Christmas tree tradition contributes to this interpretation whilst claiming that the use of a Christmas tree as a decoration evolved in Germany in the 15th century. By that time, the medieval theatres used to perform in the squares and the “Paradise” was the most popular play. This performance was dedicated to the expulsion of Adam and Eve from the Garden of Eden, the Paradise. In this play, the Paradise was symbolised by firs decorated with apples of knowledge. Since that period of time, people have been decorating trees with apples in their homes, together with small white waffles symbolising Christ’s body[22]. To no amazement, two other origins of Christmas tree tradition have been recognised more profoundly. While the first one originates in the pagan legends, the later one is being associated with Martin Luther.

Conclusion

Even though the last two examples may be seen as delivered ad absurdum, the fact is that even for the common Christmas tree or star decoration, a religious symbolism may be observed. And if France wanted to bring the principle of laïcité to perfection, it would also, as in the crèche judgments, have to ban these symbols at the same time. If this has really happened, and the town hall would have met the requirements of groups asking for a complete removal of all Christmas decorations from the streets during the holidays, all the traditions associated with these celebrations, are to disappear for good. Therefore, in my humble opinion, it is not necessary to ban any exhibition of crèches during Christmas because it still remains crucial to preserve cultural traditions.

In the two analysed cases, it was clear enough that while the French State Council was of a constant attitude, the court stated a completely dissimilar say in each case. In its decisions, it resembles a bit of similarities with the Canterbury tales since a variant story is always made up and perceived differently afterwards. That way of thinking would not be worthless, but once these unlike views on similar situations are not taken into account in the final denouement of the story. Although the imaginary tales are different, the sad ending is still the same then.

References

- [1] M. FROMONT, “La Liberté Religieuse et le Principe de Laïcité en France,” *Universal Rights in a World of Diversity, The Case of Religious Freedom, Acta 17, 2012*, p. 307
- [2] Premier Ministre, “La Laïcité Aujourd’hui: Note d’orientation de l’Observatoire de la laïcité,” *Observatoire de la laïcité, 2014*, p. 5
- [3] Included in Article 2 of the Constitution of 4 October 1958
- [4] M. FROMONT, “La Liberté Religieuse et le Principe de Laïcité en France” *Universal Rights in a World of Diversity, The Case of Religious Freedom, Acta 17, 2012*, p. 310
- [5] Law of 9th December 1905 on the separation of church and state. Available on <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070169&dateTexte=20080306>
- [6] O. GUERLAC, “The Separation of Church and State in France,” *Political Science Quarterly*, vol. 23. No. 2, 1908, p. 281
- [7] The idea of non-funding of churches, however, is not strictly adhered to, and this is also “sanctified” by the French Constitutional Court, which, in its decision n° 2012-297 QPC of 21st February 2013, ruled that the lay state may continue in funding the church dignitaries in Alsace-Moselle. The decision is available on <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2012-297-qpc/decision-n-2012-297-qpc-du-21-fevrier-2013.136084.html>
- [8] P. REUTENAUER, “Nouveau Regime Des Cultes En France: Commentaire de la Loi Du 9 Decembre 1905 sur la séparation des Églises et de l’État,” *Du Bulletin-Commentaire des Lois Nouvelles et Décrets*, 2. edition, 1906, p. 96
- [9] Commission de reflexion sur l’application du principe de laïcité dans la republique, “Rapport au President de la Republique,” 2003
- [10] Decision of Conseil d’État N° 395122 of the 9th November 2016

- [11] Point 4, Decision of Conseil d'État N° 395122 of 9th November 2016
- [12] Decision of Conseil d'État N° 395223 from the 9th November 2016
- [13] The public rapporteur is a court official whose task is to present an impartial view based on legal arguments at public hearings. This case presentation is called "Conclusions of the Public Newsletter" and only the most important cases appearing before the Council of State are examined. The position description is available on <http://arianeinternet.conseil-etat.fr/arianeinternet/infosmaj.asp?ifonds=6>
- [14] See A. BRETONNEAU, "Conclusions de 395122 et de 395223", conseil-etat.fr [Online]. Conseil d'État ArianeWeb. Available: <http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=2&fond=DCE.%20CRP&texte=cr%E9ches%2C+Aur%E9lie&Page=1&querytype=simple&NbEltPerPages=4&Puriels=True>. [Accessed: Oct. 5, 2019]
- [15] T. HOCHMANN, "Le Christ, le père Noël et la laïcité, en France et aux États-Unis," Les Nouveaux Cahiers du Conseil constitutionnel, N° 53, 2016, p. 60
- [16] H. PAULIAT, "Crèches et bâtiments publics: la discorde," JCP Actualités 1002, N° 49, 2015, p. 2
- [17] Decision of Court Administrative d'Appel de Marseille, N° 15MA03863 of 3rd April 2017
- [18] Decision of Tribunal Administratif de Montpellier, N°1705777 of 18th December 2017
- [19] Matthew 2., Bible, New Testament
- [20] M. ARNOLD, "Should Christmas trees be considered a religious symbol?" catholic.com [Online]. Catholic.com. Available: <https://www.catholic.com/qa/should-christmas-trees-be-considered-a-religious-symbol>. [Accessed: Sep. 27, 2019]
- [21] Genesis 2:9, Bible, Old Testament
- [22] A. MOSTELLER, "Christmas, Celebrating the Christian History of Classic Symbols, Songs and Stories," celebratingholidays.com[Online]. Celebrating Holidays. Available: http://www.celebratingholidays.com/?page_id=1535. [Accessed: Sep. 28, 2019]

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