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Anne Fornerod

Abstract
The Stasi Commission in France was instituted in July 2003 to investigate the application of the principle of laïcité. Due to the media coverage, the headscarf issue overshadowed many other critical points, including the related recommendations of the commission. In terms of the practical consequences of the report, the contribution of the commission's work appears limited. However, the commission introduced into the report room for symbolic and oriented interpretations of laïcité, which here constitute a critical tool of analysis that enlightens the varying fate of the recommendations.

Introduction: The Neglected Recommendations

The Commission for Reflection on the Application of the Principle of *Laïcité* in the Republic of France,[1] commonly called the Stasi Commission, was instituted in July 2003 by then President Jacques Chirac in order to investigate the application of the principle of *laïcité*. In December 2003, the Stasi Commission published an extensive report, dealing with many points pertaining to *laïcité* and the contemporary challenges of religious practices in French society. However, with regard to the media coverage among other reactions, it quickly became apparent that this report would mainly be analysed and commented on only from the standpoint of the wearing of the Islamic headscarf at state-run schools (public schools). More precisely, the main centre of attention was whether or not a bill banning the wearing of religious symbols in public schools would be passed. In fact, the focus was clearly on the headscarf from the beginning of the process leading to the creation of the commission, and subsequent legal measures were more or less expected by society at large. Indeed, the creation of the commission could be analysed as a component of a broader mechanism designed to produce opinions in favour of the outlawing of the headscarf in public schools.[2] It must be pointed out that the number of cases actually involving a problematic wearing of the headscarf in schools was much too limited to justify setting up the commission.[3] However, according to Emmanuel Terray, this limited focus did not result from a random choice, since the wearing of this religious garment represents both an obvious failure to integrate and the lengthy process of obtaining gender equality. Therefore, the rhetoric used by the commission generally implies that the headscarf signifies the tip of the iceberg on such issues.[4] The headscarf is presented as a symptom of a social context that has deteriorated to the extent that the Republican pact would be threatened as a result of the action of small politico-religious or extremist groups.[5] Linking religion to the issue of integration unavoidably leads to treating Islam as identifying the religion of immigrants and their alleged difficulty in

supporting Republican values.[6] This type of link can also lead to conflating religious and social issues and going beyond the mere regulation of religious groups and practice. It remains that the headscarf issue overshadowed many other critical points, including the related recommendations of the commission.

Formally, the recommendations appear at the very end of the report and are detailed throughout the fourth part, entitled 'Affirming a Strong *Laïcité* that Brings People Together'. There are twenty-six recommendations, including the issue of religious symbols at school. This chapter specifically focuses on these points by assessing the ways in which they have been followed up on. Through an analysis of whether or not, or to what extent, the recommendations have been pursued, it appears that a small majority of them eventually were implemented, making tangible the weight of the perception of *laïcité* that underpins the report. Although the Stasi Commission relevantly raises several social issues—proven by the fact that it addresses the core question of discrimination—it introduces into the report room for symbolic and oriented interpretations of *laïcité*, which here constitute a critical tool of analysis that enlightens the varying fate of the recommendations. First, combining social and religious issues has given rise to symbolic recommendations that are unlikely to be implemented. In fact, apart from the 2004 Act on religious symbols at schools, only two other initiatives directly and unambiguously derive from the recommendations of the report: the Charter of *Laïcité* and the regulation of *laïcité* in hospitals. Moreover, although other recommendations were addressed by public authorities before and after the issuing of the Stasi report, it proves quite challenging, if not impossible, to clearly establish a connection between the recommendations and suggestions of the Stasi Commission and the measures that were eventually adopted. This challenge does not mean, however, that the Stasi report did not have any effect on the regulation of various religious issues that have come to the fore in subsequent years. However, some recommendations and, more generally, the issues addressed by the Stasi Commission were followed up on, but with a different understanding of *laïcité* according to the actors responsible for dealing with the related issues.

The Stasi Commission's Hallmark: A Strong *Laïcité*

By analysing the set of twenty-six recommendations, it appears that the way the commission handled the various religious issues in this report played a determining role. Indeed, it is noticeably marked by a specific perception of *laïcité*—a 'strong *laïcité*' (*une laïcité ferme*)—tightly linked to the integration issue. It should be kept in mind that the years 2001–2002 constitute a turning point with regard to the debates on *laïcité*, due to events such as the 9/11 attacks, as well as, in the French context, the presidential election of April 2002, which saw the head of the far right-wing party placed quite high. At the time, this result was interpreted as an outcome of the failure of public policy on social integration. Communitarianism and Islamism would threaten the Republic. This sentiment would be particularly tangible in two reports[7] preceding the establishment of the commission and explains why, in the Stasi report, '*laïcité*' is foremost a key value of French identity.[8] Although *laïcité* represents a historical value inherited from the Republican political movement and has since then been identified as a left-wing value,

the commission was appointed by the right-wing party governing at that time that also had its own interpretation of *laïcité*.[9] The result is an enlarged understanding of *laïcité*,[10] which is in particular connected to the issue of integration into French society. A successful integration necessarily demands adherence to the requirements of *laïcité*, which should be understood here as a component of Republicanism, namely overcoming religious or cultural belonging and affiliation. This perspective influences various statements throughout the report that do not directly pertain to religion, but rather deal with ways of achieving social cohesion, if need be, by overcoming and denying religious belonging. In this context, *laïcité* becomes a national value to be protected, rather than just a legal principle intended for regulating religious practices.[11] On this point, the report even shows a certain disapproval towards a perception of *laïcité* which would mainly rely on state neutrality. According to the commission, *laïcité* implies a dynamic intellectual attitude as opposed to the 'lazy' position of neutrality alone.[12] This position proves that *laïcité* cannot be reduced to a singular meaning, and leads to distinguishing between the legal principle of *laïcité* and *laïcité* as a value, or between legal and narrative *laïcité*s.[13] In this view, it has been noted that 'as of 2002 laïcité is redefined through a reformulation of the opposition private/public sphere, hitherto less contrasting in the legal definition of laïcité.'[14]

This conceptual background might explain why some recommendations appear distant from the kinds of proposals or solutions that would have derived from a more concrete and legal approach, one that was adopted later by the Machelon Commission (see Prélot's chapter in this book). Above all, such an approach paved the way for recommendations other than the sole outlawing of religious symbols in schools, since religious issues connected with integration challenges considerably enlarge the scope of the report. This approach also constitutes a limit to the eventual implementation of the subsequent recommendations. Indeed, instead of providing adapted answers to targeted issues related to religious practices and belonging, many recommendations actually aim at achieving social integration. In this regard, certain forms of religious practice and belonging often amount to an obstacle to such achievement. These recommendations being, however, conceived in the name of *laïcité*, there ensues an unavoidable, latent contradiction between their purpose and their applicability.

Inapplicable Symbolic Recommendations?

Over half of the twenty-six recommendations might be qualified as symbolic in that they were never implemented. Some of them logically result from—and legitimate—the approach that characterizes the report, which consists in connecting *laïcité* with a general social and political context. Pertaining to general public policies which go far beyond what *laïcité* can settle, these recommendations are marked by a gap between their simple and short phrasing and the measures that their implementation would imply, as well as the political and social evolutions required for successful achievement. They are mainly of a declaratory nature and sometimes stem from vague aspirations. Recommendations 1, 9, 10, 11, 15, and 20 illustrate this trend.[15]

Some recommendations directly stem from the concern of the commission that *laïcité* should be addressed through the integration issue. This result is the case for recommendation 7 on the insertion of *laïcité* into the program for the national defence preparation day,[16] which actually was motivated by the refusal of some girls to take part in mixed activities. Another example lies in the removal of the Education in Languages and Cultures of Origin (ELCO) program, as per recommendation 13. This lingering issue derives from a European directive dating to 1977 related to the schooling of the children of immigrants.[17] Other symbolic recommendations bring together statements revolving around school curricula and, more broadly, the idea of the transmission of *laïcité* values or the functioning of public services. Although their link with *laïcité* is more obvious and they correspond to a desirable purpose, their applicability was limited either by their general character (recommendations 2, 4 and 22) or because they concern potentially sensitive issues (recommendation 12). As for recommendation 18 related to broadcasting for atheists, it was settled long ago through a litigation before the Council of State, which denied the possibility of atheists sharing this opportunity with religious groups.[18]

Finally, the two recommendations concerning spiritual diversity should be mentioned here: making the festivals of Aïd-El-Kebir and Yom Kippur into public holidays for schools (recommendation 25), and the creation of a national school of Islamic studies (recommendation 26). At first sight, recommendation 25 does not seem exactly in line with the understanding of *laïcité* as being expected to overcome or even reduce religious specificities in the public sphere. In any case, this recommendation was dismissed several days later in President Chirac's speech following the publication of the report.[19] In addition, knowing the weight granted to a strong *laïcité*, the place given to spiritual diversity appears particularly limited. The same applies to the recommendation of the creation of a national Islamic studies school, which seems more like window-dressing and, in light of the envisaged contents, contributes to maintain the image of Islam as a foreign religion.[20]

By considering the fate of these recommendations, it would be tempting to conclude that the report reflects the comments and criticisms formulated about the real purpose and mission of the commission: legitimizing the passing of a bill on religious symbols in schools. However, the implementation of two recommendations reflecting a strong *laïcité* contradicts this particular analysis.

Two Implemented Recommendations

The two implemented recommendations that will be discussed in this section are numbers 23 and 6. Recommendation 23 concerns the implementation of *laïcité* in hospitals. Number 6 pertains to the Charter of *Laïcité*. Both examples help demonstrate the multivalent dimensions of the Stasi report.

Laïcité *in Hospitals*

The issue of *laïcité* in hospitals appears in recommendation 23, which aims at 'supplementing the Hospital Act to remind users of their obligations, including the prohibition of challenging the nursing staff, or the observance of hygiene and public health rules'.[21] The prohibition of challenging nursing staff actually refers to cases in

which women refused to be examined by male practitioners, supposedly on religious grounds. This issue was even mentioned by President Chirac in his speech following the report in December 2003. Both this discourse and the Stasi report supported the idea of passing a bill. It is interesting to follow the path taken by this issue of *laïcité* in hospitals and more precisely the refusal to be examined by a practitioner of the opposite sex, which, like the headscarf, represents an issue deeply embroiled with gender equality. It is noticeable that the Council of State, which devoted its 2004 annual report to the 100th anniversary of *laïcité*, unambiguously asserts that 'the wish to be cared for by a same-sex practitioner cannot prevail over the constraints of service organization'[22]. The reply of the Minister of Health to a parliamentary question of October 2004 shares a similar position by indicating that, at that time, the issue was about to be regulated by an administrative circular.[23] Indeed, instead of having a new bill passed, the government adopted a six-page circular on *laïcité* in public health centres in February 2005,[24] which clearly refers to the Stasi report in its preamble. Compared to the recommendation of the Stasi report, the input seems quite limited and, above all, is less one-sided against patients. The text rather seeks to obtain a balance between patients' rights and the efficiency of health units. The text nevertheless provides that 'although the patient is entitled to freely choose a physician, he/she cannot oppose care or treatment on religious grounds'. [25] This stipulation amounts to a limitation of the well-established right of patients to freely choose a practitioner; it can be explained via the symbolic weight of *laïcité*.[26]

It is interesting to note that six months before the adoption of the circular in 2005, the Ministry of Public Health had carried out an inquiry, the results of which revealed a limited number of incidents related to religious practice in hospitals.[27] This gap between the small number of incidents and the lingering discourse on 'strong *laïcité*' by focusing on these kinds of incidents related to religious affiliation is likely to be a key feature of this discourse, as demonstrated by the Rossinot report delivered in 2006. The Rossinot report also advocates a legislative act on this topic, despite the adoption of the 2005 circular, for the reason that it would not be a sufficient guarantee of a satisfying implementation of *laïcité*.[28] A survey issued in September 2009 upon the request of the Ministry of Health, on the application of the principle of *laïcité* in hospitals, indicates that the 2005 administrative circular globally met the expectations of public health civil servants and of users of this public service. This assessment did not, however, prevent the High Council for Integration (HCI) from once again broaching this issue in 2010 through a range of 'Recommendations to the Prime Minister on the Expression of Religious Beliefs in Republican Public Spaces' that support the idea of outlawing the free choice of the practitioner in hospital accident and emergency departments. In a report published in May 2014, the Monitoring Centre for *Laïcité* (*Observatoire de la laïcité*) holds that in general, local management of incidents related to religious practices has been satisfactory.

The Charter of Laïcité

Apart from the Act banning religious symbols at school, the Charter of *Laïcité* is the recommendation that experienced the most tangible level of implementation. Recommendation 6 advises as follows:

> Solemnly adopt a Charter of *laïcité* which would be provided on different occasions: the electoral map delivery, the initial training of civil servants, the start of the school year, welcoming of migrants—whether a convention of welcoming and integration has been signed or not—, or the acquisition of citizenship. The commission recommends that the Charter be displayed in the corresponding public spaces.[29]

One observes a slight variation between the way the charter is depicted in the report and the formulation in the final list of recommendations, in that the former version of the charter would 'define the rights and duties of everyone' and would be 'deprived of normative value'.[30]

In addition, this recommendation has undergone an interesting fate. First, the implementation of the Charter followed several steps. In 2006, the HCI was entrusted with the task of drawing up such a Charter related to *laïcité* in public services.[31] Then, the text came into force through the enactment of an administrative circular of the Prime Minister in April 2007.[32] Moreover, an opinion delivered by the National Advisory Council of Human Rights (CNCDH)[33] mentions that the Charter has been circulated in public services in the form of posters since 2010. Second, one observes an extended use of this concept of Charter. Indeed, beyond the expected Charter of *Laïcité* in public services and then more specifically at school (see below), one should also mention the adoption in February 2014 of a Charter of *Laïcité* and Diversity by a private company (specialized in waste recycling) that advocated for such guidelines to be included in the company's internal regulations.[34] With regard to the contents of this Charter, it remains apparent that it does not completely abide by the enforceable law, in that it does not provide any particular reason for prohibiting the wearing of overtly religious garments or symbols. Actually, it is rather a matter of wording, the name *Charter* being somehow a guarantee of respectability and perhaps a way to achieve a better reception for the document. This strategy corresponds to a soft law technique. Above all, discussions have been increasing on whether the principle of *laïcité* is applicable outside the public service sphere, namely within private companies. This issue was also addressed in the Stasi report.

Before being formulated in the final list of recommendations, the concept of the Charter of *Laïcité* is broached within a section entitled 'Reaffirming the Notion of *Laïcité*'. It is worth noting that in this section, the commission also explicitly excluded enacting a code of *laïcité*, because the number of relevant legal texts would be too limited. This assertion calls for two short comments. First, a book entitled 'Laïcité and Religious Freedom, A Collection of Texts and Case Law' was edited by the French Home Office in 2011 and is comparable to a code. The foreword of this book states that 'this "code" of *laïcité* and religious freedom brings together the main legal texts applicable to religious issues: constitutions, international treaties, Acts and regulations, and also circulars and case law'[35]. Furthermore, the document states that 'this collection results from the statement that these norms are today scattered in various codes, Acts, or regulations that are sometimes very old or several times revised and that law must be easily accessible and intelligible.'[36] This book is not intended to be cited as a legal source in itself, but rather

as a document that aims at informing citizens about their rights and duties. It thus serves a pedagogical goal.

Second, the statement on limited relevant legal texts reflects the aforementioned understanding of *laïcité* adopted in this report. At first sight, legal sources explicitly referring to *laïcité* are actually rare. However, as the collection of texts brought together by the Home Office demonstrates, texts pertaining to religious issues and governed by the principle of *laïcité* are much more numerous. Admitting such an approach towards *laïcité*, however, reveals a certain pragmatism (see Prélot's chapter in this book), which is far removed from the symbolic value referred to by the Stasi Commission. In this regard, some of the recommendations of the Stasi Commission were implemented not because they were formulated in the report, but rather because they correspond to certain requirements of the legal principle of *laïcité*.

Implementing the Legal Principle of *Laïcité*

At the time they were examined by the commission and before they were entrenched in recommendations, certain issues were already—and are still—regulated by law, thus corresponding to the application of the legal principle of *laïcité*. The work of the Stasi Commission only corresponds to a—limited—step in their public discussions. The issues of chaplaincies, cemeteries and catering will be specifically emphasized in this section.

Muslim Chaplains

In respect of the recommendations pertaining to the removal of discriminatory public practices, the report suggests the hiring of Muslim chaplains in the army and in prison (recommendation 16).[37] The commission rightly stresses the fact that there is no Muslim chaplain in the army. Figures provided by a response to a parliamentary question of 2001 demonstrate that there are only chaplains representing the Christian and Jewish faiths.[38] An older parliamentary question paints a similar portrait for chaplaincies in prison.[39] As a matter of fact, this lingering issue had been discussed several years before 2003, as evidenced by a parliamentary question of 1996. The ministerial response already points out the difficulty coming from the lack of a representative body for people of Muslim faith in this field.

The issue of chaplaincies has also been analysed by the Council of State in its 2004 report on *laïcité* as follows: 'the creation of chaplaincies ruled by the 1905 Act illustrates the active role that public authorities play to ensure religious practices without discrimination'[40]. The Council states that Muslim chaplains in prison are still not very numerous, and further declares that the Stasi Commission 'advocates the implementing of the enforceable legal texts on chaplaincies'.[41] Chaplaincies are actually considered in several sections of the report. First, the report mentions that access to chaplaincies belongs to the realm of the implementation of freedom of religion.[42] Second, the commission deplores the lack of Muslim chaplains in prisons, hospitals, in the army and in schools, something that is partly due to the absence of representatives of the Muslim faith.[43] Finally, the issue of chaplains in prisons is addressed in the section dedicated to the defence of public services.[44] By the way it is formulated, the hiring of Muslim chaplains sounds more like a way of placing limits and countering communitarianism and

proselytism.[45] The position reflects the still ambiguous role that prison authorities make the chaplains play.[46] Indeed, this issue of Muslim chaplains in prisons is the object of an amazingly consistent approach, combining the requirements of freedom of religion and concern related to religious radicalism.[47]

The appointment of chaplains was favoured by the creation of the French Council for the Muslim Religion in 2003, just before the setting up of the Stasi Commission. More precisely, an ordinance of the Minister of Defence of March 2005 resulted in the creation of a Muslim Head Chaplain position in the army, entrusted with the task of appointing military chaplains. Two months later, the French Council for the Muslim Religion appointed a national chaplain for prisons upon the request of the Minister of Justice. Lastly, in March 2006, the French Council for the Muslim Religion appointed a national chaplain for hospitals, the army and prisons.

Catering During Public Services

Catering during public services is addressed via recommendation 5, which invites public authorities to provide meal replacement options.[48] This recommendation intervenes in a context of uncertainty as there was no appropriate regulation at that time. Fostering administrative authorities to provide religiously adapted catering actually relied on existing practice only.[49] As the Council of State indicates in its 2004 report, the Stasi Commission refers to reasonable accommodations in order to conciliate religious alimentary requirements and public service efficiency. It adds that in this area progress can still be achieved.[50] However, in this context, referring to reasonable accommodation[51] very often reflects a situation related to new religious practices that are regulated neither by the 1905 Act nor any other specific Act. With regard to catering in public schools, like several other issues, an administrative circular was adopted in 2011 to provide a legal framework to solutions arising in practice.[52] It specifies that meals compatible with religious requirements is neither a right for public service users nor compulsory for public authorities, though such meals are very often provided in practice. This solution applies for other public services as well. In a document on *Laïcité Today* dated May 27, 2014, the *Observatoire de la laïcité* recalls the main guidelines applicable to this topic.[53]

Religious Practices and Cemeteries

The input of the commission on this point is twofold. On the one hand, it takes the form of recommendation 8: 'Invite administrations to consider religious funeral requirements'.[54] On the other hand, the commission takes a liberal stance on this point, as it asserts that '*laïcité* cannot be an excuse for municipal authorities to deny that graves are cardinally oriented in cemeteries'[55]. This point actually represents a main challenge for municipal authorities, as bringing together graves oriented towards Mecca would *de facto* result in a separate Muslim burial section that would be contrary to the neutrality of public cemeteries. Moreover, the commission encourages dialogue with religious representatives with a view to accommodating religious requirements related to ossuaries. This discourse implicitly relates to the refusal of cremation by people of Jewish and Muslim faiths.

This issue of religious requirements related to cemeteries is typical of the French system of regulation of new practices deriving from religious pluralism. Instead of amending old and unquestionable legal texts dating to the end of the nineteenth century and embodying symbolic *laïcité*, public authorities resort instead to administrative regulation. Concerning the specific requirements of the Muslim faith, two administrative circulars were adopted in 1975 and 1991, respectively demonstrating that the question of religious burial spaces is older than the Stasi report.

Moreover, this issue was later addressed separately from its recommendation. Two parliamentary reports on funerary legislation are worth mentioning here. The first one dated in 2006 clearly states that the Minister of the Home Office already supported the gathering of Muslim burial places in April 2003. It then suggests that the contribution of the Stasi report on this issue is limited, and therefore not very helpful when it comes to deciding whether or not it is legally feasible to pass a bill on religious burial sections.[56] The same report mentions the appointment of the Machelon Commission to settle difficulties in this area. The second report (preceding a bill on funerary legislation), while discussing this issue, refers not to the Stasi Commission but to the Machelon Commission.[57] Lastly, an administrative circular was adopted in February 2008 encouraging the mayors to respond to the wish of religious burial spaces when expressed, which was inspired in this case by the report of the Machelon Commission.[58]

After the Stasi Report

What have we inherited from the Stasi report? More specifically, has its perception of *laïcité* prevented the report from having a lasting impact? The answer is twofold. Current discussions on issues addressed by the commission prove to remain topical, thus obviously echoing the report. However, different solutions have been brought forth, partly due to the changes that occurred among the public actors involved.

Implementing Laïcité *as a Republican Value: Four Revisited Recommendations (2013–2014)*

This section will concentrate on the years 2013 and 2014, which are characterized by an understanding of *laïcité* as a Republican value, namely much less connected with the integration issue than it was at the time of the Stasi Commission. Despite this different way of interpreting the principle of *laïcité*, three recommendations from the Stasi report have been followed up on: the Charter of *Laïcité* at school, the displaying of French and European flags on the façades of schools and, lastly, including the principle of *laïcité* in the statute of civil servants. In addition, an in-depth analysis shows that the Stasi report only marks a step in the discussion of these issues, already contained in the report but recently revisited, through a perception of *laïcité* differing from that prevailing in the report. Religion in the workplace should be mentioned as well, as it has become quite a topical issue even though no subsequent regulation is expected, except perhaps for the circumscribed situation of private childcare facilities (see below).

Although it was not eventually formulated in a recommendation, it is worth stressing the suggestion pertaining to the French motto that was to be displayed on each school façade.[59] In the report itself, it was addressed together with the idea of establishing a

‘Marianne Day’[60] intended to make *laïcité* a major theme in civic education. Only the latter eventually led to a recommendation. Although this recommendation was set aside, the Act of July 8, 2013, on public schools added an Article to the Education code, which provides that the Republican motto and the French and European flags are displayed on the façades of schools (Article L. 111-1-1). These new provisions resulting from a parliamentary amendment were debated without reference to the Stasi report.[61]

Still in the realm of schools, the adoption of the Charter of *Laïcité* should be pointed out, although the Stasi Commission did not have in view a separate text for schools but, rather, a common document to be handed out at various public services. On September 9, 2013, the Minister of Education introduced the Charter of *Laïcité* at School intended to be displayed in every state school. Its purpose is to remind French pupils of the rules for living together at school and to help them understand what this means.[62] The text of the Charter sets out fifteen principles, beginning with a slightly adapted version of Article 1 of the Constitution. Article 14 reiterates that ‘the wearing of signs or dress by which pupils overtly manifest a religious affiliation is prohibited’[63]. The French Council for the Muslim Faith (*Conseil Français du Culte Musulman*) expressed its concern that the Charter may enhance the sense of stigma against the Muslim community and denounces the reference to the 2004 Act banning conspicuous religious symbols in schools.

Third, the recommendation that consisted of including the principle of *laïcité* in the statute of civil servants was ‘implemented’ in July 2013. According to the explanatory memorandum of the Bill on the Ethics and the Rights and Obligations of Civil Servants, Article 1 of this text ‘sanctions, for the first time in law, applicable to civil servants’ the compliance with the principle of *laïcité*.[64]

Finally, the issue of the workplace is handled in a very interesting way in the report. Indeed, by comparing the 1960s context and the present situation, the commission makes this issue a problem by stating that ‘large companies had managed to settle religious issues they were facing due to the origin of their employees’[65]. More precisely, this management was based on ‘arranged menus and catering’, on ‘the organization of working time, through specific breaks, [which] was adapted to reflect the period of Ramadan’.[66] Last, ‘some companies had made internal prayer rooms available’[67]. These companies appear to have found a balance between the operations of the company and respecting religious observance, in a context of the promotion of integration of foreign workers. Yet, the situation would be different in 2003 for ‘companies are no longer faced with the expression of needs, but claims.’[68] These claims would relate to the wearing of the headscarf and raise problems regarding relationships between men and women, such as women refusing to shake hands with their male colleagues. Without unduly interpreting the observations made by the commission, it does not seem to be a coincidence that issues about the headscarf and relationships between men and women surface again. Indeed, they relate more widely to the commission’s perception of *laïcité*, which requires an egalitarian relationship between men and women. This point leads the commission to make its vision of religious practice regulation prevail over the—still—applicable law, which clearly distinguishes between the public and private sectors. On one hand, the commission closely associates public services and private companies in its

proposal of a bill on *laïcité*,[69] although only the former are subject to the implementation of the principle of *laïcité*. On the other hand, the commission suggests that an article be added to the Labour Code, which would allow companies to insert provisions into their internal regulations pertaining to dress codes, the wearing of religious symbols and religious practices on the premises (recommendation 24). In a 2010 report, the HCI focuses on this issue again. By doing so, it refers to the Stasi report and draws the same conclusions of an alarming situation and of the necessity to pass new provisions.[70] It should be noted that this issue of religious practice in the workplace is still regulated today by Article L.1121-1 of the Labour Code, which prohibits limitations put on religious belief unless justified by the nature of the work and proportionate to the aim pursued. The *Observatoire de la laïcité*'s report of 2013 marks—in our view—a return to normalcy in the way this issue of religious practice in the workplace is handled,[71] although the Baby Loup Nursery case has also continued to stimulate public debates on this point. Precisely as a result of this case, in March 2015, the *Observatoire de la laïcité* opposed a bill intending to extend the neutrality on religious matters as an obligation for private childcare facilities.[72] The input of the *Observatoire de la laïcité* in this domain illustrates the role played by such bodies before and after the issuing of the Stasi report.

The Actors of *Laïcité*

As exposed above, the background related to a certain *laïcité* has had a critical impact on the conclusions of the Stasi report. Beaugé and Hajjat explain that 'since the late 1980s, *laïcité* has been the object of an intense symbolic struggle in which several actors seek to impose their own definition, which generally depends on their diagnosis of the "Muslim issue."'[73] Indeed, political authorities have since the Stasi Commission felt the need to entrust various bodies with issues related to *laïcité*. As mentioned above, the report is based on a certain understanding of *laïcité*, which would be shared in the following years, thus explaining the perception of following up. In this regard, the HCI, created in 1989, played a key role before and especially after the Stasi Commission in furthering the discourse on strong *laïcité*. First, as the HCI claims of itself, it relies almost in its essence on a tight link between *laïcité* and integration.[74] Second, its internal evolution has contributed to making it an important cog of the public policy on *laïcité* after the Stasi report.[75] As early as 2002, the renewal of the HCI members, together with a much more demanding idea of integration, led this body to adopt a vision of *laïcité* mainly characterized by a reluctance towards the expression of religious practices in the public sphere. In fact, the role of the HCI especially contributed to the following through of the recommendation on the Charter of *Laïcité*. It also focused on the issue of religion in the workplace.

One should also mention the Rossinot report on *laïcité* in public services. The politician André Rossinot delivered a report in September 2006, upon the request of the Minister of the Home Office. Rossinot worked with seven other people, including two former members of the Stasi Commission, who together contribute to a continuity of strong *laïcité*. The report states that it is 'first and foremost an ideal before being a legal standard' and that 'it is—now more than ever before—one of the most powerful engines of integration.'[76]

Although the creation of the High Authority for the Struggle against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE) is usually attributed to the Stasi Commission, the speech by Jacques Chirac of October 16, 2002, proves that this project preceded the Stasi report (see recommendation 17).[77] The HALDE was eventually created in 2004.[78] It assisted all individuals facing allegedly discriminatory practices, by providing advice on legal options and helping establish proof of discrimination. It had the power to refer cases to the court system on any discriminatory practice brought to its attention. Above all, this body was entitled to issue recommendations directed at the applicants and the public authorities. It was discontinued and included in the powers of a new body, the Defender of Rights (*Défenseur des droits*), in 2011. The HALDE nevertheless left behind a significant set of decisions pertaining to discrimination on religious grounds, including the Baby Loup case.[79]

Finally, the role of the recently created Monitoring Centre for *Laïcité* (*Observatoire de la laïcité*) should be reported .[80] It is a public advisory body created in 2013 which is now responsible for addressing issues related to the implementation of the principle of *laïcité*. Indeed, the above-mentioned perception of following up was mainly due to the fact that all of the Rossinot group of experts and the HCI—along with some of their members—shared a common understanding of *laïcité*. The conclusions of their respective reports and opinions are unsurprisingly cut from the same cloth. The *Observatoire* offers a different view, however. In its first annual report, one can read a short but interesting reference to the Stasi Commission. In fact, the *Observatoire* states:

> The recommendations have been unequally followed, the balance between duties and rights remaining problematic. It goes on to state that the Stasi report has not put an end to discussion and that it is important to again consider, point by point, the issues and problems addressed to achieve an overview of the situation ten years afterwards.[81]

Although its works are also based on *laïcité* as a value, the link between the former and integration has changed. In fact, in its first report of June 2013, the *Observatoire* makes it clear that it intends to be cautious about this approach which consists in closely connecting the two elements.[82]

Conclusion

In conclusion, the purpose of this chapter is not to state whether the results of the Stasi report have been positive or not, since determining this result depends very much on the aims pursued. In this regard, it is not certain whether this entire process was beneficial to an effective religious pluralism. The efficiency of such an initiative and the accompanying commission, in terms of pluralism, is obviously questionable for two reasons. First, the report is much too constrained by a context marked by a political and symbolic approach to *laïcité*, which is supposed to go beyond religious belonging, especially in the public sphere. Second, as shown above, the aim pursued by the commission was clearly directed at taking a stand on the ban of religious symbols at school. In terms of the practical consequences of the report, the contribution of the commission's work appears limited. These works were rapidly followed in time by other reports pertaining to similar issues. The generalist character of its remarks restricts their scope and their direct applicability,

overshadowing relevant issues which would have deserved their own report. In particular, the recommendations appear more like general statements and, unlike other subsequent reports, this one is deprived of concrete measures. The extended issues addressed necessarily give rise to composite discourse, though dominated by a specific understanding of *laïcité*.[83] Lastly, although the report pointed out relevant questions related to living together (*vivre ensemble*), the answers provided depend too closely on a certain perception of *laïcité*. It remains the case, however, that this same enlarged approach of *laïcité*, considered together with critical social issues, was new and for the first time at the centre of discussions made public by the media exposure of the works of the Stasi Commission (see also Prélots's chapter in this book).

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[1] Bernard Stasi et al., *Commission de réflexion sur l'application du principe de laïcité dans la République: Rapport au Président de la République* (Paris: La Documentation française, 2003). Please note that the author has translated all of the French texts quoted in this chapter.
[2] See Françoise Lorcerie, 'La "loi sur le voile": une entreprise politique', *Droit et société* 1.68 (2008): 53–74.
[3] In this regard, the way the debates have been conducted is quite important; they did not rely on statistics, but mainly, if not exclusively, on testimonies. See Jean-Claude Vatin, 'Retour critique sur la "Commission Stasi": trois remarques', in *Frontières du droit, critique des droits. Billets d'humeur en l'honneur de Danièle Lochak* (Paris: LGDJ, 2007), 105–113; Julien Beaugé and Abdellali Hajjat, 'Élites françaises et construction du "problème musulman": Le cas du Haut Conseil à l'Intégration (1989–2012)', *Sociologie* 1.5 (2014): 31–59.
[4] Emmanuel Terray, 'La question du voile : une hystérie politique', *Mouvements* 2.32 (2004): 99; Stasi et al., *Commission de réflexion*, 45–46.
[5] Stasi et al., *Commission de réflexion*, 7, 15, 43, 46.
[6] On Muslims and integration into French society, see, among others: Jane Freedman, 'Secularism as a Barrier to Integration? The French Dilemma', *International Migration* 42.3 (2004): 5–27; T. Jeremy Gunn, 'Under God But Not the Scarf: The Founding Myths of Religious Freedom in the United States and Laicite in France', *Journal of Church and State* 46 (2004): 7–24; John R. Bowen, *Can Islam be French? Pluralism and Pragmatism in a Secularist State* (Princeton, NJ: Princeton University Press, 2010); Jonathan Laurence and Justin Vaïsse, *Intégrer l'islam. La France et ses musulmans, enjeux et réussites* (Paris: Éditions Odile Jacob, 2007).
[7] Those reports are by François Baroin (2003), *Pour une nouvelle laïcité*, and Jean-Louis Debré (2003), *Rapport fait au nom de la mission d'information sur la question du port des signes religieux à l'école*. On the political background of the Stasi Commission, see Prélot's chapter in this book.
[8] Valérie Amiraux, 'Visibilité, transparence et commérage: de quelques conditions de possibilité de l'islamophobie... et de la citoyenneté', *Sociologie* 1.5 (2014): 89.
[9] On a detailed survey of the links between *laïcité* and political positions, see Martine Barthélemy and Guy Michelat, 'Dimensions de la laïcité dans la France d'aujourd'hui', *Revue française de science politique* 5.57 (2007): 672. The authors explain that 'performed shortly before delivery to the president of the report of the Stasi Commission on secularism and the passing of the Act of March 15, 2004 on the wearing of religious symbols in schools, [this survey] was undoubtedly strongly influenced by this context.' Moreover, they establish that among older graduates, people supporting right-wing values and the attachment to *laïcité* increases with hostility to immigrants.
[10] Maurice Barbier, 'Pour une définition de la laïcité française', *Le Débat* 2.134 (2005): 130.
[11] Stasi et al., *Commission de réflexion*, 36.
[12] Ibid.
[13] On the latter distinction, see Alessandro Ferrari, 'De la politique à la technique: laïcité narrative et laïcité du droit. Pour une comparaison France/Italie', in *Le droit ecclésiastique de la fin du XVIIIe au milieu du XXe siècle en Europe*, ed. Brigitte Basdevant-Gaudemet and François Jankowiak (Leuven: Peeters, 2009), 333–345. In this regard, the phrasing of the report and its recommendations somehow contrast with the

name of the commission, i.e. Commission for Reflection on the Application of the Principle of *Laïcité* in the Republic. See also David Koussens, 'Expertise publique sous influence?' *Archives de sciences sociales des religions* 155 (2011): 61–79.
[14] Beaugé and Hajjat, 'Élites françaises,' 48.
[15] See the list of recommendations at the end of this paper.
[16] Stasi et al., *Commission de réflexion*, 43.
[17] On this topic, see Stasi et al., *Commission de réflexion*, 53 and Haut Conseil à l'Intégration, *Avis relatif à l'expression des religions dans les espaces publics. Recommandations du Haut Conseil à l'intégration relatives à l'expression religieuse dans les espaces publics de la République remises au Premier Ministre* (Paris: La documentation française, 2010), accessed 19 November 2014, http://archives.hci.gouv.fr/Avis-relatif-a-l-expression-des.html. See also the parliamentarian question (*Journal Officiel*, n. 18691, 2 February 2013, 1741) arguing that ELCO goes against integration and the ministerial response (*Journal Officiel*, August 6, 2013, 8474), which makes it very clear that ending them has not been envisaged.
[18] See Council of State, *Union des athées*, n. 17651, October 1, 1980.
[19] Jacques Chirac, *Discours prononcé par M. Jacques Chirac Président de la République relatif au respect du principe de laïcité dans la République* (Palais de l'Élysée, 2003), accessed 27 November 2014, http://www.jacqueschirac-asso.fr/archives-elysee.fr/elysee/elysee.fr/francais/interventions/discours_et_declarations/2003/decembre/fi001576.html.
[20] Stasi et al., *Commission de réflexion*, 63.
[21] Ibid., 68.
[22] Council of State, *Rapport public 2004. Un siècle de laïcité*, (Paris: La documentation française, 2004), 332.
[23] Question n. 45514 published in *Journal Officiel*, August 8, 2004, 6003; Response published in *Journal Officiel*, October 26, 2004, 8526. See also question n. 31764, *Journal Officiel*, January 1, 2004, 227; response, *Journal Officiel*, March 15, 2005, 2809. This time, the response clearly calls for a legislative stance on this issue.
[24] Ministère du travail, de l'emploi et de la santé, *Circulaire n° DHOS/G/2005/57 du 2 février 2005 relative à la laïcité dans les établissements de santé.* Accessed 27 November 2014, http://circulaire.legifrance.gouv.fr/pdf/2011/09/cir_33766.pdf
[25] *Circulaire n° DHOS/G/2005/57 du 2 février 2005 relative à la laïcité dans les établissements de santé.*
[26] See Diane Roman, 'Le respect de la volonté du malade: une obligation limitée?' *Revue de Droit Sanitaire et Social* 3 (2005): 423–441.
[27] Observatoire de la laïcité, *Point d'étape sur les travaux de l'Observatoire de la laïcité* (Paris: La documentation française, 2013), 112, accessed 19 November 2014, http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/134000405/0000.pdf.
[28] André Rossinot, *La laïcité dans les services publics*, 2006, 23, accessed 19 November 2014, http://www.grandesvilles.org/thematiques/laicite/rapport-m-andre-rossinot-laicite-services-publics-septembre-2006. Indeed, a circular is not legally binding for public service users (i.e. patients) for the reason that it applies only to civil servants and personnel working for the public service.
[29] Stasi et al., *Commission de réflexion*, 67.

[30] Ibid., 50–51.
[31] Haut Conseil à l'Intégration, *Charte de la laïcité dans les services publics et autres avis* (Paris: La documentation française, 2007), 202 *et seq*., accessed 19 November 2014, http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/074000341/0000.pdf.
[32] *Circulaire n° 5209/SG, du 13 avril 2007 relative à la charte de laïcité dans les services publics*.
[33] Commission nationale Consultative des Droits de l'Homme, *Avis sur la laïcité*, *Journal Officiel*, n.0235, 9 October 2013, text n. 41.
[34] See the charter: http://www.paprec.com/fr/groupe/ressources-humaines/charte-laicite-diversite, accessed 19 November 2014.
[35] Ministère de l'intérieur, de l'outremer, des collectivités territoriales et de l'immigration, *Laïcité et liberté religieuse. Recueil de textes et de jurisprudence* (Paris: Les éditions des journaux officiels, 2011), 2.
[36] Ministère de l'intérieur, de l'outremer, des collectivités territoriales et de l'immigration, *Laïcité et liberté religieuse*, 2.
[37] Stasi et al., *Commission de réflexion*, 67.
[38]See question n. 66307 (*Journal Officiel*, September 24, 2001, 5397) and ministerial response (*Journal Officiel*, November 11, 2001, 6612).
[39] See question n. 15281 (*Journal Officiel Sénat*, April 25, 1996, 987) and ministerial response (*Journal Officiel Sénat*, June 20, 1996, 1533).
[40] Council of State, *Rapport public 2004*, 392.
[41] Ibid.
[42] Stasi et al., *Commission de réflexion*, 23, 27.
[43] Ibid., 39–40, 63.
[44] Ibid., 42.
[45] Ibid., 61.
[46] On this issue, see Céline Béraud and Claire de Galembert, 'Des hommes et des dieux en prison,' 2014, 5, available at: http://www.gip-recherche-justice.fr/wp-content/uploads/2014/05/Entretien_hommes-dieux-en-prison.pdf and, more generally, Céline Béraud, Claire de Galembert, and Corinne Rostaing, *Des hommes et des dieux en prison* (Paris: Mission de recherche Droit et Justice, 2013).
[47] See for example parliamentary question n. 96754 (*Journal Officiel*, December 2, 2010, 13654) and ministerial response (*Journal Officiel*, March 8, 2011, 2315). See also the document presented by a member of the senate on November 20, 2014, n. 114, on the 2015 Financial Bill and especially prison service, accessed 30 November 2014, http://www.senat.fr/rap/a14-114-8/a14-114-81.pdf, 46 *et seq*.
[48] Stasi et al., *Commission de réflexion*, 66.
[49] In the same vein, see Rossinot, *La laïcité dans les services publics*, 28.
[50] Council of State, *Rapport public 2004*, 326.
[51] Stasi et al., *Commission de réflexion*, 38.
[52] For public schools, see the circular of August 16, 2011: 'Rappel des règles afférentes au principe de laïcité — demandes de régimes alimentaires particuliers dans les services de restauration collective du service public', Ministère de l'intérieur, de l'outremer, des collectivités territoriales et de l'immigration, accessed 25 November 2014, http://www.legirel.cnrs.fr/IMG/pdf/110816.pdf.

[53] 'La laïcité aujourd'hui', l'Observatoire de la laïcité, accessed 25 November 2014, http://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2014/07/note-d-orientation-la-laicite-aujourdhui.pdf.
[54] Stasi et al., *Commission de réflexion*, 67.
[55] Ibid., 65.
[56] Jean-Pierre Sueur and Jean-René Lecerf, *Bilan et perspectives de la législation funéraire — Sérénité des vivants et respect des défunts. Rapport d'information fait au nom de la commission des lois et de la mission d'information de la commission des lois*, n. 372, 2006, 90–91, accessed 27 November 2014, http://www.senat.fr/rap/r05-372/r05-3721.pdf.
[57] Philippe Gosselin, *Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale de la république sur la proposition de loi (n° 51), adoptée par le sénat, relative à la législation funéraire*, n. 664, 2008, 38, accessed 27 November 2014, http://www.assemblee-nationale.fr/13/pdf/rapports/r0664.pdf.
[58] Pamphlet available at: 'Police des lieus de sépulture: Aménagement des cimitières – Regroupements confessionnels des sépultures', Ministère de l'intérieur, de l'outre-mer, des collectivités territoriales et de l'immigration, accessed 28 November 2014, http://circulaires.legifrance.gouv.fr/pdf/2009/04/cir_13981.pdf. On this point, see also Prélot's chapter in this book.
[59] Stasi et al., *Commission de réflexion*, 52.
[60] Marianne is an allegorical figure of the French Republic.
[61] Discussions available at: 'Rapport fait au nom de la Commission des affaires culturelles et de l'éducation sur le projet de loi d'orientation et de programmation pour la refondation de l'école de la République', Assemblée nationale, accessed 27 November 2014, http://www.assemblee-nationale.fr/14/rapports/r0767-tI.asp.
[62] For translation and comment, see: Frank Cranmer, 'France, *laïcité* and the *Charter of Secularism at School*', in *Law & Religion UK*, last modified 11 September 2013, http://www.lawandreligionuk.com/2013/09/11/france-laicite-and-the-charter-of-secularism-at-school/.
[63] Text available at: 'Charte de la laïcité à l'École : Valeurs et symboles de la République', ministère de l'Éducation nationale, de l'enseignement supérieur et de la recherche, accessed 28 November 2014, http://www.education.gouv.fr/pid25535/bulletin_officiel.html?cid_bo=73659.
[64] The file regarding this bill is available at: 'Fonction publique : déontologie et droits et obligations des fonctionnaires', Assemblée nationale, accessed 28 November 2014, http://www.assemblee-nationale.fr/14/dossiers/deontologie_droits_obligations_fonctionnaires.asp.
[65] Stasi et al., *Commission de réflexion*, 44.
[66] Ibid.
[67] Ibid.
[68] Stasi et al., *Commission de réflexion*, 44. On the notion of 'claim' in labour law applicable to religious practice, see Philippe Auvergnon, 'Les "revendications" du salarié en matière religieuse', *Revue du droit canonique* 63 (2013): 109–148.
[69] Stasi et al., *Commission de réflexion*, 68.
[70] Haut Conseil à l'Intégration, *Avis, expression religieuse et laïcité dans l'entreprise*, 2011, 17, accessed 19 November 2014, http://archives.hci.gouv.fr/IMG/pdf/HCI-Avis-laicite-entreprise-pdf-2.pdf.

[71] Observatoire de la laïcité, *Point d'étape sur les travaux de l'Observatoire*, 39 *et seq*.
[72] See the release at: 'Communiqué de l'Observatoire de la laïcité sur la proposition de loi n. 61', Observatoire de la laïcité, accessed 28 November 2014, http://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2015/03/communique_odl_ppl_accueil_mineurs.pdf.
[73] Beaugé and Hajjat, 'Élites françaises', 48.
[74] Haut Conseil à l'Intégration, *Avis, Expression religieuse et laïcité dans l'entreprise*, 3. However, this approach has not been as steady as the HCI would like to suggest. See Beaugé and Hajjat, 'Élites françaises,' 37 *et seq*.
[75] Nine members of the Stasi Commission are or were also members of the HCI. Beaugé and Hajjat, 'Élites françaises', 48.
[76] Rossinot, *La laïcité dans les services publics*, 3, 6.
[77] Jacques Chirac, 'Discours de Président de la République prononcé à Troyes', accessed 28 November 2014, http://www.jacqueschirac-asso.fr/archives-elysee.fr/elysee/elysee.fr/francais/interventions/discours_et_declarations/2002/octobre/discours_du_president_de_la_republique_prononce_a_troyes.1560.html.
[78] Act n. 2004-1486 of 30 December 2004.
[79] The case involved the employee of a nursery run by a private association, the Baby Loup Nursery, in a Paris suburb. An employee had been dismissed because of her refusal to remove her headscarf. She referred the matter to the HALDE, which originally supported the employee (March 2010). Indeed, the equality body had held that both principles of *laïcité* and neutrality do not apply to the employees of a private association in the absence of public service activity. In addition, the internal regulation amounted to an unlawful general and absolute forbidding of religious freedom. Consequently, the dismissal was discriminatory on grounds of religion (see deliberation n. 2010–82 of 1 March 2010. However, a new leader of the HALDE was appointed, who publicly challenged this deliberation. While the case was pending before the Labour Court, the HALDE issued a note in which it maintained its initial opinion concluding with a discriminatory dismissal. Beyond the turmoil which accompanied this affair, it has raised an important debate on the enforceability of the principle of *laïcité* in private companies. Thus followed a deliberation of the HALDE of 28 March 2011 on religious freedom in the workplace (n. 2001-67), which aims at 'examining the opportunity to make the duty of neutrality enforceable in private welfare companies'.
[80] See the Observatoire's website: http://www.gouvernement.fr/observatoire-de-la-laicite.
[81] Observatoire de la laïcité, *Rapport annuel de l'Observatoire de la laïcité 2013-2014*, 261.
[82] Observatoire de la laïcité, *Point d'étape sur les travaux de l'Observatoire*, 133.
[83] It follows that opposite or various analyses of the report sound equally correct. See Jean Baubérot, 'La laïcité française : républicaine, indivisible, démocratique et sociale', *Cités* 4.52 (2012): 11–20 and Freedman, 'Secularism as a Barrier to Integration.'