



NEWS REPORT

Date: 29 December, 2009
Expert: Latraverse, Sophie
Title: Cour de Cassation, Social Chamber, n° 07-42849, 10 November, 2009
Country: France

Context

Issue at stake: Are comparative elements between the situation of the plaintiff and that of other employees necessary in order to establish a prima facie case of discrimination

Ground of discrimination: of all grounds

Source: National court decision

Field: Employment

Content

Case: The plaintiff had a substantial professional progression during the first 7 years of her employment passing through 14 scales of the employment progression, until she participated to a legal strike. After that, for the next 18 years she only progressed by two scales. She alleges having been a victim of discriminatory harassment and interruption in her career progression by reason of her union activities. She establishes that her duties were changed progressively to in the end be insignificant, that her office was moved in a very small space, that she was isolated in her work by her hierarchy.

Her claim for discrimination was dismissed by the Court of Appeal on the ground that she did not present comparative evidence of the situation of her colleagues in support of her claim for harassment and discrimination in her career progression. The employer was condemned on the basis of another legal argument, unrelated to allegations of discrimination, relating to the violation by the employer of his obligation of good faith in the execution of the labour contract.

Decision of the Court: The Court of Cassation ruled that the Court of Appeal misdirected itself when it required comparative evidence and did not take into consideration all the evidence adduced by the plaintiff. Discrimination is not necessarily based on a comparison with the situation of other employees. The unfavourable modification of one's duties, the refusal to give an employee duties in relation with his or her level and unfavourable working conditions are sufficient to lead to a presumption of discrimination.

The Court should have evaluated her professional progression, taken in consideration evidence of her duties and situation, and determined whether her career difficulties were justified, as elements of facts relevant to a claim in discrimination.

Internet link source and additional information:

[http://www.legifrance.gouv.fr/affichJuriJudi.do?
oldAction=rechJuriJudi&idTexte=JURITEXT000021270548&fastReqId=19743181
9&fastPos=1](http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000021270548&fastReqId=197431819&fastPos=1)