



NEWS REPORT

Date: 1 November 2011
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Title: Versailles Court of appeal decision of 27 October 2011 in the Baby Lou case
Country: France

Context

Issue at stake: Opposability of in-house regulation of a private day care centre imposing on employees a duty of neutrality

Ground of discrimination: Religion/belief

Source: National court decision Ms. Afif vs. Association Baby Lou, Versailles Court of Appeal, 11th Chamber, R.G. N° 10/05642, 27 October, 2011

Field: Employment

Legislative provisions: Articles L1132-1 and ss., L1121-1 and L1321-3 of the Labor Code

Content

Case: The plaintiff was assistant director at a day care centre financed by City funds, which was open 24 hours a day in a disadvantaged neighbourhood where the majority of the population is of migrant background. She returned at work after a parental leave of 5 years, wearing the Islamic veil and was invited by the Centre's director to remove it on the ground of the in-house regulation imposing on employees of the centre a duty of neutrality.

The versions of the facts conflicts: the plaintiff claims to have always worn this veil, which is denied by management, who claims that at the time of return, she wore the veil to work with the intention to negotiate her departure and that she refused to leave the premises, was aggressive and created important turmoil, which is denied by Plaintiff.

The ^plaintiff argued that in the private sector employees are not bound by a duty of neutrality and that imposing a requirement of neutrality by way of in-house regulation is discriminatory and contrary to the prohibition of discrimination provided by articles L1132-1 and 1321-3 of the Labour Code and a limitation to her fundamental rights contrary to article L1121-1 of the Labour Code, which could not be justified by the nature of her function or proportionate to the objective pursued.

On the contrary, the employer argued that the centre offers a service in support of the social reinsertion of disadvantaged populations and that it receives children of all origins and that, in this context, it must offer a neutral environment open to all.

Decision of the Court: On the facts, the Court concluded that neutral garments have been required since the adoption of an in house regulation in 1990. It further decided that Plaintiff had an aggressive and inadequate behaviour at the time of her reintegration and conflict with the direction, refusing to take out her veil or leave the premises that are sufficient to justify her dismissal.

It concluded that considering the centre's statutes underlining its mission as developing an action toward disadvantaged children and social reinsertion of the women of the neighbourhood, neutrality was justified in order to insure hospitality to all. The principle of freedom of religion protected by article L1121-1 of the Labour Code cannot undermine the respect of the principle of secularity and neutrality that is to be applied by personnel in all its mission and duties. These restrictions are therefore justified by the nature of the function of the personnel and the Centre's in-house regulation therefore complies with the requirements of article L1121-1 and L1321-3 of the Labour Code.

Since Plaintiff's dismissal is not in violation of her fundamental rights pursuant of article L1121-1 of the Labour Code, it cannot be discriminatory according to article L1132-1 of the same Code.