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NEWS REPORT

Country:	France
Title:	Court of Cassation, Social Chamber, 12 December 2017, n° 16-25793
Date:	13 March 2017
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<u>Context</u>	
Issue at stake:	The main French trade unions have challenged the admissibility of the candidacy to the professional elections of the National Corsican Trade Union because it promotes the 'corsicanisation' of hiring in Corsica
Ground of discrimination:	Race/ethnic origin
Source:	National court decision
Field:	Employment
Applicable law:	Article 2122-10-6 Labor Code

Content

The National Corsican trade union (Syndicat des travailleurs corses -STC), has presented its candidacy to the national elections of trade union representation. This trade union advocates la 'corsisation des emplois', which can be translated as 'corsicanisation of employment in Corsica, and says so in its electoral propaganda. The director of employment has duly registered its candidacy.

The mainstream trade unions CGT, CFDT, CFTC and FO have challenged the admissibility of this candidacy on the basis of article L2122-10-6 of the Labour Code which states that candidates must satisfy the requirement of « comply with requirements of Republican values ». They consider that STC pursues an illegal and discriminatory purpose.

Decision of the Court:

The Social Chamber of the Court of Cassation takes this opportunity to provide some precisions on the concept of 'Republican values'. It states that a trade union which promotes direct and indirect discriminations on the ground of origin, referring to the letter of the law, does not satisfy this requirement.

However, it stresses that the petitioners have the burden of establishing fact from which it can be presumed that the respondent trade union has effectively promoted discriminatory behavior. In this case, the court interprets 'Corsicanisation of employment' as promoting local hiring in Corsica and considers that it does not amount to promotion of discrimination or violation of Republican values.

The position of the Court in this decision regarding the definition of the concept of Republican values takes the concept further by explicitly targeting the promotion of direct and indirect discrimination on the ground of origin. Prior cases systematically excluded

any intervention on the level of the trade union's discourse by requiring that Petitioners establish that respondent trade unions had carried on illegal acts. By encompassing promotion of discrimination in the definition of the prohibited behaviour, the Court opens the scope of action that can be sanctioned to acts that meet the definition of provocation to discriminate in French law.

However, the Court considers that the concept of Republican values must not become a mean of censorship and limitation on legitimate expression of political opinions. It must therefore be interpreted in such a way as to accommodate freedom of political expression.

Thus, the Court concludes that the fact of promoting 'corsicanisation' of employment is insufficient to constitute a provocation to discrimination, and that such a provocation must clearly call upon the pursuance of explicitly discriminatory behavior, in the same manner as the fact of promoting feminization in recruitment cannot be considered to per se lead to discriminatory behavior.

Hence, the Court of cassation clearly states that a discourse to promote local employment will not be deemed to be anti-Republican.

Internet link source:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000033631545&fastReqId=322200566&fastPos=1>.