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NEWS REPORT

Country:	France
Title:	Decision of the Administrative Court of Appeal of Versailles, 19 December 2017, N° 15VE03582
Date:	10 January 2018
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<u>Context</u>	
Issue at stake:	The wearing of a beard interpreted as a religious sign in the public service
Ground of discrimination:	Religion/belief
Source:	National court decision
Field:	Employment
Applicable law:	Principle of neutrality of public agents

Content

Case: Petitioner is an Egyptian medical student who was admitted as trainee for one year in the digestive surgery department of a public hospital of the Paris suburbs, pursuant to a convention between the hospital and his university.

Article 6 of the convention states that the trainee will be bound to respect the rules of discipline provided by the Code of Public Health, which among other requirements, sets out a rule of religious neutrality. The director of the hospital enforces them, after advice taken from the medical practitioner supervising the trainee.

Four months after he took service, the hospital annulled the convention and put an end to petitioner's training, on the ground that he wore an Islamic beard. The supervising practitioner was consulted and issued a favourable recommendation because "of the disturbance created by this situation" within the work environment.

Decision of the Court: The Court states that its decision takes in consideration the following facts:

Petitioner's beard was very imposing. He was working in a multicultural environment. His beard was perceived as a religious sign by members of personnel. He was invited to have it reduced so that it would not be perceived as an Islamic religious sign. In reply, petitioner refused to reduce his beard invoking his right to privacy. Petitioner's refusal was stated without referring to his religion, but without making a statement denying that his appearance could be held to manifest an Islamic religious sign.

The court holds that a beard, even long, cannot be held to constitute in itself a religious sign, in the absence of other factors confirming that it is, in the circumstances, the manifestation of a religious sign.

However, it holds that the request of the hospital authorities to reduce petitioner's beard was justified by the necessity to enforce the principle of neutrality on the premises, particularly in a multicultural environment.

In these conditions, he must be held to have failed his duty to respect the principle of neutrality, even if this beard was not combined with any religious proselyte behaviour, or remarks on the part of patients and the public, because petitioner did not establish that his beard was not religious.

Key points of analysis: This is the first administrative appeal court decision on the subject.

Most commentators consider that its reasoning is flawed, since it is contradictory, recognizing that a beard is not per se a religious sign but imposing on petitioner the burden of proving that his beard is not related to a religious practice, in contradiction with the principle holding that a public agent does not have to express his or her religious belief, or absence of belief.

In addition, it seems to hold that the multicultural environment of the hospital has an impact on the enforcement of the rule. This indirectly refers to the right of the public authority to take in consideration the risk of disturbance of the behaviour of a public agent. However, in this case, the Court expressly states that it created no disturbance towards the public and patients.

Internet link source:

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