



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	France
<b>Title:</b>	UN Human Rights Committee Complaint procedure CCPR/c/123/D/2662/2015 of 18 June 2018 (published 10 August 2018) of Ms Hafif vs France (Association Baby Loup case)
<b>Date:</b>	5 September 2018
<b>Expert:</b>	Sophie Latraverse
<b>Update of news report</b>	<a href="#">France - Plenary session of the Court of cassation, decision of 25/06/2014 further to the prior decision of the Court of Cassation, Association Baby Lou, n° 536, case no 11-28 (PDF 62 kB)</a>
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Non-conformity of the decision of the plenary assembly of the Court of Cassation in relation to the dismissal of a child care director for wearing the Islamic veil to the International Covenant on Civil and political right
<b>Ground of discrimination:</b>	Religion
<b>Source:</b>	UN Human Rights Committee decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 18 and 26 of the International Covenant on Civil and Political Rights

### Content

**Case:** The claimant was employed from 1993 to 2003 first as educator and then as deputy director of a day care centre for underprivileged children. From 2003 to 2008, she was on maternity and parental leave. Returning to work on 8 December 2008, she was dismissed for wearing an Islamic veil to work in violation of internal regulations. She filed a complaint to the Labour Court alleging that the dismissal was null and void as it violated the principle of non-discrimination on the ground of religion protected by articles L1121-1 and 1132-1 of the Labour Code (LC).

After a first decision of the Social Chamber of the Court of Cassation stating that the principle of neutrality did not apply to private employment and concluding that the dismissal of the claimant was discriminatory,<sup>1</sup> the Court of Appeal of Paris contradicted the Social Chamber of the Court of Cassation and concluded that the prohibition of the Islamic veil could be an occupational requirement based on the secular ethos of the child care centre.<sup>2</sup>

<sup>1</sup> Social Chamber of the Court of Cassation, *Baby-Loup Case* n°536 of 19 march 2013 (11-28.845), ECLI:FR:CCASS:2013:SO00536. Available at: [https://www.courdecassation.fr/jurisprudence\\_2/chambre\\_sociale\\_576/536\\_19\\_25762.html](https://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/536_19_25762.html).

<sup>2</sup> Appeal Court of Paris, *Baby Loup Case* n°13/02981 of 27 November 2013. Available at: [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=7450](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=7450).

The case returned before the plenary assembly of the Court of Cassation.<sup>3</sup> The Court did not discuss whether the principle of neutrality could form the basis of an exception based on occupational requirements and excluded all arguments holding that the principle of secularity was applicable to private employers.

The Court's analysis followed one of the arguments of the Paris Court of Appeal and discussed the issue on the basis of the only legislative path available in French legislation: that of legitimate restrictions to rights and freedoms that can be imposed by an employer on the basis of Article L1121-1 and L1321-3 LC, through the adoption of in-house regulations. The Court transformed its analysis in a pure question of facts relating to the evaluation of whether or not these restrictions were legitimate given the circumstances of the execution of the employment contract based on the evidence presented.

The Court held that considering the size and conditions of operation of the day care centre, which was conceived as a social cohesion unit promoting social stability, kinship in the respect of the various origins of the children and their parents in a disadvantaged neighbourhood, the fact that all employees were in direct contact with the parents and the children and the fact that the claimant was Director of the facility, the employer demonstrated that the proposed limitation to a right or freedom in application of Article L1121-1 LC, i.e. religious freedom, was, in this case, justified by the nature of the operation and the specific function of the claimant. The limitation was proportionate to the legitimate objective pursued since it supported a message of inclusiveness related to the specific mission of this child care centre and that the claimant represented the centre in her function as director.

The Court limits its analysis to the requirements of the claimant's function and the context of employment to appreciate the legitimacy of a limitation to a freedom pursuant to the Labour Code. The Court of Cassation does not address whether this requirement constitutes a direct or indirect discrimination, limiting its analysis to whether it is a reasonable limitation of the freedom to express one's religion.

**Arguments before the Human Rights Committee:** The claimant argued that the decision of the plenary assembly of the Court of Cassation is a violation of article 18 (freedom of religion) and 26 of the Covenant (non-discrimination). It is a restriction to freedom of religion that is not foreseen by law; it is not necessary in a democratic society since it cannot be justified by the protection of security, public order or public health; it is not proportionate since it gave rise to her dismissal without compensation; and finally, the internal regulation which is being discussed is illegal because it is general, imprecise and disproportionate.

After stating that national law protects freedom of religion and that the freedom to manifest one's religion, as part of the freedom of religion, is the principle in private employment, the French State argued that the Covenant allowed restrictions to the expression of religion. In this case, the State argued that freedom of religion was restricted by law as prescribed by the application of Article L1121-1 and L1321-3 of the Labour Code. In addition, the State argued that this restriction pursued a legitimate aim, since it protected the freedom of others, here the children's and the parents' freedom, and is proportionate considering that it is only applicable when the claimant is present in the child care centre. Therefore, according to the French State, the internal regulation is not discriminatory in light of article 26 of the Covenant, since it does not target a particular religion and is justified as it is legitimate and reasonable.

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<sup>3</sup> Plenary Court of Cassation, *Baby Loup Case* n° 612 of 25 June 2014 (13-28.369), ECLI:FR:CCASS:2014:AP00612. Available at: [https://www.courdecassation.fr/jurisprudence\\_2/assemblee\\_pleniere\\_22/612\\_25\\_29566.html](https://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/612_25_29566.html).

**The Human Rights Committee decision:** The Committee holds that the State does not explain how wearing the Islamic veil is incompatible with alters the capacity of the claimant to insure social stability, kinship and the rights of the children and their parents. Moreover, the State does not explain how wearing the Islamic veil is incompatible with the purpose of the day care to “develop an action toward early childhood in disadvantaged area while working on the social and professional insertion of women in those areas”. For the Committee, it is also not clear from the State’s arguments how it interferes with fundamental rights and freedoms of children and parents in the day care.

Wearing the Islamic veil does not constitute a proselytising act. The restriction imposed is therefore not a measure proportionate to the objective pursued. The claimant’s dismissal further to her refusal to remove the Islamic veil is not in conformity with article 18 par 3 of the Covenant and constitutes an intersectional discrimination based on gender and religion violating article 26 of the Covenant.

**Internet link source:** Court of cassation plenary session of 25 June 2014:

[http://www.courdecassation.fr/jurisprudence\\_2/assemblee\\_pleniere\\_22/612\\_25\\_29566.html](http://www.courdecassation.fr/jurisprudence_2/assemblee_pleniere_22/612_25_29566.html).

Human Rights committee decision:

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F123%2FD%2F2662%2F2015&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F123%2FD%2F2662%2F2015&Lang=en).