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NEWS REPORT

Country: France
Title: Dijon Administrative Appeal Court, 23 October 2018, n° 17LY03323, Town of Chalon-sur-Saône
Date: 31 October 2018
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Context

Issue at stake: Legality of the decision to remove alternative meals in school on the ground of secularity of the public service
Ground of discrimination: Religion

Source: Court decision
Field: Access to goods and services
Applicable law: Law of 9 December 1905 on the Separation of Church and State; Cities and Towns Code

Content

Case: In France, public school cafeterias are managed and financed by cities and towns. Since 1984, the Town of Chalon-sur-Saône provided alternative meals to children in the school cafeteria when serving pork.

Mayor of Chalon-sur-Saône made a public statement to the press that meals of substitution will not be served in public school cafeterias anymore in order to enforce secularity and neutrality of the public service. The Municipal Council abrogated the municipal by-law authorising meals of substitution on the ground that it was illegal and contrary to the principles of neutrality and secularity of the public service and adopted a new by law to approve the restauration programme that does not provide alternative meals when pork is on the menu.

The League of Judicial Defence of Muslims (Ligue de défense judiciaire des musulmans) attacked the legality of this new municipal by-law on the ground of illegality and discrimination on the ground of religion before the administrative Court of Dijon. The Court requested the observations of The Defender of Rights (the Equality body) and the National Consultative Committee of Human Rights (the National Human Rights Institution).

The Court concluded that this by-law was illegal because it was exclusively based on the will to implement the principle of secularity and because it was contrary to the higher interest of children, an issue raised by the National Consultative Committee of Human Rights.

The Mayor appealed the decision before the Dijon Administrative Appeal Court.

Decision of the Court: The Administrative Court of Appeal quashed the decision of the Administrative Court of Dijon on the basis that Petitioner had not raised the issue of the violation of the higher interest of children provided by the International Convention on the Rights of the Child. Considering that this principle was not of public order it could only be raised by the parties.

However, the Appeal Administrative Court maintained the arguments raised by Petitioner and the Defender of Rights to annul the by-law.

It stated that principles of secularity and neutrality of the public service do not prevent the provision of alternative meals in substitution of pork, and that modifications to the organisation of a public service could only result from considerations related to constraints resulting from necessities of service.

The Town did not raise any element that would indicate that the provision of this service for more than thirty years created difficulties of management of school restauration. Thus, considering that this decision was exclusively based on considerations of secularity and neutrality, the Town's decision was illegal.

Petitioner and the Defender of Rights presented arguments that this Municipal by-law constituted discrimination on the ground of religion. However, the legal principle of economy of means leads the administrative judge to state that he will not examine further arguments when a general principle of public law leads to a conclusion of illegality. Thus, the argument of discrimination was not examined even if it may have been held to be well founded.

Key points of analysis: This decision asserts that the decision of a public authority to provide meals accommodating a population on philosophical and religious grounds is not illegal.

In addition, it indicates to all public authorities that neutrality of the public service and secularity are not legal grounds that can support a Mayor's decision to maintain or not an existing service to the population, hence in the provision of alternative meals by restauration services under its control.

Internet link source:

https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=26346&code=987a505c8a9d6714bcb4fb21ee363883&emprlogin=servicedocumentation&date_conex=1540392485.