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FLASH REPORT

Country:	France
Title:	Court of Cassation, Social chamber, 30 January 2019, No.17-28905
Date:	11 March 2019
Expert:	Sophie Latraverse, in collaboration with Marie Mercat-Bruns
<u>Context</u>	
Issue at stake:	Liability of employer for harassment by volunteers
Grounds of discrimination:	Sex, Other ground
Field of application:	Employment
Source:	National court decision
Applicable law:	Article L1132-1 and L 4121-1 Labour Code, law n°. 2008-496 of 27 May 2008

Content

Case: The claimant is a woman employed by a tennis club in the context of a tutored social integration contract.¹ She was victim of harassment at the occasion of an event organised by the club where she was working in the kitchen with volunteers in the presence of her tutor. Some of the volunteers started insulting her by saying sexist remarks and throwing garbage at her and the tutor did not interfere. The volunteers were called to order after the event, when the claimant addressed a written complaint to her employer. She subsequently instituted an action before the labour court alleging that the employer had failed to assume its obligation of protecting her against discriminatory harassment. She alleged intersectional harassment on both the ground of sex and economic vulnerability.

Decision of the court: The Court of appeal dismissed the case on the ground that the employer had no supervisory duty over the volunteers.

The Court of Cassation decided that in the context where the tutor was present and had the duty to monitor and support the conditions of integration of the employee who benefited from an employment contract related to a social integration contract, the fact that he did not interfere was sufficient to trigger the employer's liability. The case was sent back to the Court of appeal.

Key points of analysis: In this case, the Court asserts the obligation of the employer to take effective measures to protect their employees when it is in a situation to exert de facto authority on non-salaried persons who are responsible for the sexist harassing behaviour. The Court specifically points out the lack of "reaction" of the tutor, which triggers the liability.

¹ This is an employment contract with specific tutoring in order to accompany the return in employment of persons in a very precarious situation.

This situation exposes a truly intersectional approach by the Court, considering that it deliberately underlines that the duty to protect the employee against sexist harassment is amplified by the context of her particular vulnerability and the obligations related to the social insertion contract. The Court also emphasizes the existence of a combination of harms, which reflects a situation of abuse of power, an effect of multiple discrimination. The nature of the acts is both discriminatory and degrading: "sexist insult" (verbal acts) and trash throwing (non-verbal act).

Internet link source:

<https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000038112097&fastReqId=1554383201&fastPos=1>.