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FLASH REPORT

Country:	France
Title:	Conseil d'Etat, 12 February 2020, n° 418299
Date:	21 April 2020
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Update of flash report:	France - Decision of the Administrative Court of Appeal of Versailles, 19 December 2017, N° 15VE03582 (PDF 109 kB)
<u>Context</u>	
Issue at stake:	The wearing of a beard interpreted as a religious sign in the public service
Grounds of discrimination:	Religion or belief
Field of application:	Employment
Source:	National court decision
Applicable law:	Principle of neutrality of public agents

Content

Case: The claimant is an Egyptian medical student who was admitted as intern 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 intern 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 intern.

Four months after he took service, the hospital annulled the convention and put an end to the claimant's internship, on the ground that he wore an Islamic beard. The supervising practitioner was consulted and issued a favourable recommendation because 'of the impression it was making on the work environment and the perturbation created by this situation'.

Decision of the Versailles Administrative Court of Appeal: On 19 December 2017, the Versailles Administrative Court of Appeal took a decision on the following facts:

The claimant is Muslim. His very imposing beard was perceived as a religious sign by members of personnel. Furthermore, he was working in a multicultural environment. He was invited to have it reduced and refused, invoking his right to privacy. The claimant'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 administrative court of appeal held 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 decided that the request of the hospital authorities to reduce the claimant's beard was justified by the necessity to enforce the principle of neutrality on the premises, particularly in a multicultural environment.

In these conditions, the claimant was to 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 the claimant did not establish that his beard was not religious.

Decision of the Conseil d'Etat: On 12 February 2020, the Conseil d'Etat decided the appeal from the Versailles Administrative Court of Appeal decision.¹

The Conseil d'Etat starts by reiterating that interns in public hospitals are protected against discrimination on the ground of religion but are subject to the obligation of religious neutrality imposed on agents of the public service.

The Conseil d'Etat concludes that the decision of the Versailles Administrative Court of Appeal is erroneous in law because the fact that the claimant had refused to reduce his beard and had not denied that he was of Muslim faith was insufficient to conclude to the manifestation of one's religion in the context of the public service, in the absence of other manifestations of his religious convictions.

Key points of analysis: This is the first decision of the Conseil d'Etat on the subject.

When it was rendered, most commentators considered that the reasoning of the Administrative Court of Appeal was flawed and contradictory, since it was recognising that a beard was not per se a religious sign but nevertheless imposed on the claimant the burden of proving that his beard was 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.

The Conseil d'Etat clearly states that the beard in itself cannot be held to be a religious sign, that colleagues' impressions as to the religious meaning of a beard are insufficient to characterise public manifestation of a religious belief and that, in order to protect public agents' freedom of conscience, the judge must seek objective manifestations of a person's religious convictions before concluding to a violation of the obligation of religious neutrality.

Internet link source: Versailles Administrative Court of Appeal:

https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CE_TATEXT000036252625&fastReqId=110506859&fastPos=1.

Conseil d'Etat:

<https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-02-12/418299>.

¹ France, Supreme Administrative Court (Conseil d'Etat), 12 February 2020, n° 418299.