

Employees' freedom of religion and ban on wearing a beard

Does an employer who dismisses for serious misconduct an employee working as security consultant for a company providing security and defense services to governments, international non-governmental organizations or private companies, accusing him of wearing a beard that is *"trimmed in a way that is intentionally meaningful in both religious and political terms"*, infringe said employee's freedom of religion?

The *Cour de Cassation* (French Supreme Court) was asked to address this issue and has expanded existing case-law in this area, by issuing on July 8, 2020 a ruling on the fundamental rights and freedoms of employees in the workplace. The Labor Chamber of the *Cour de Cassation* specifically considered that dismissal for serious misconduct based on such a ground was discriminatory.

The security consultant employee was assigned to missions in Arab-Muslim culture countries. Given his duties, which, according to his employer, led him to work in potentially dangerous and politically unstable areas, said employer had asked him to wear a beard with a more neutral appearance, as he had at the time he was hired. The employer considered that, because of the meaning given to the appearance of the beard in those areas, he could not take the risk of sending an employee whose look could justify stigmatization and jeopardize his safety and that of the persons with him.

The employee refused to trim his beard in a *"more neutral"* way. He was blamed for wearing a beard that was *"trimmed in a way that was deliberately meaningful in both religious and political terms"* and dismissed for serious misconduct.

The trial judges considered that this was a discriminatory ground for dismissal. The case was subsequently

brought to the *Cour de Cassation* and the Labor Chamber was asked to rule on the possible discriminatory nature of the dismissal.

The *Cour de Cassation* based itself on the already established case law^[1] in this area, which requires two points to be verified with regard to restrictions on freedom of religion imposed by the employer:

- Does a general and undifferentiated neutrality clause, applying only to employees in contact with customers, prohibit the visible wearing of any political, philosophical or religious signs in the workplace (a clause that may be incorporated into the company's internal rules or into an internal memorandum)?
- In the absence of such a clause, does the imposed restriction meet an essential and determining occupational requirement which is proportionate to the aim pursued?

The determining occupational requirement must be understood – as per the European case law cited by the *Cour de Cassation*^[2] – as a requirement objectively dictated by the nature or the conditions of exercise of the professional activity in question, without subjective considerations being taken into account.

Consequently, in the absence of a neutrality clause and a determining occupational requirement, the fact that the employer requires his employee to wear a beard in a more neutral manner constitutes discrimination.

The *Cour de Cassation* concluded its analysis by specifying that such discrimination could have been justified by the legitimate objective of ensuring the safety of the company's staff and customers in order to prevent an objective danger. Since the employer did not demonstrate the existence of the alleged specific safety risks associated with wearing a beard during the performance of the employee's mission, the *Cour de Cassation* agreed with the trial judges who had found that the dismissal was based on a discriminatory ground.

[1] Labor Chamber of the *Cour de Cassation*, November 22, 2017; appeal No. 13-19.85 ([Cass. soc., 22 novembre 2017, pourvoi n° 13-19.855](#))

[2] Court of Justice of the European Union, March 14, 2017, *Micropole Univers*, C-188/15

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