

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

### **France: the dismissal of an employee wearing the headscarf is discriminatory**

On 19 March 2013, the French Court of Cassation (*Cour de Cassation*) found that the dismissal of an employee of a private child-care facility in Chanteloup-Les-Vignes (Parisian region) motivated by the fact that she was wearing a headscarf in the workplace was discriminatory.

The Court found that the internal regulation of the facility, establishing a general prohibition to wear religious symbols for employees, was at odds with French Labour Code, according to which restrictions on the human rights of the employees, including their rights to freedom of expression and to freedom of religion or belief, can be justified only in relation to a specific occupational requirement and insofar as they are proportionate to the aim sought.

Amnesty International maintains that the rights to freedom of expression and to freedom of religion or belief can be restricted in some instances including in the workplace. However, such restrictions are permissible under international and European human rights law only under specific conditions. In particular, an employer can for example lawfully restrict these rights on the basis of a legitimate aim including the protection of public safety, order, health, morals or the rights and freedoms of others. Any restrictions should also be proportionate and necessary to the aim sought.

However, the restriction imposed by the child care facility on its employees could not be seen, as acknowledged by the Court, as stemming from a specific occupational requirement taking into account the tasks assigned to the employee and the working environment in which she operated.

Amnesty International is concerned about the recent declarations of the French President François Hollande, who argued in a TV interview on 28 March 2013, that new legislation was necessary to enforce the respect of “secularism” for employees in private child care facilities receiving public funds.

Amnesty International calls on French authorities to avoid the introduction of a general prohibition on religious and cultural symbols and dress in private child care facilities and to ensure that any restriction stems from a genuine and determining occupational requirement, in line with the interpretation of such notion given by the Court of Justice of the European Union. Amnesty International calls on the newly established observatory on secularism (*observatoire de la laïcité*) to fully take these principles into account when discussing the potential introduction of new legislation prohibiting the wearing of religious and cultural symbols and dress.

### **Background**

A bill aimed at imposing the respect of neutrality in private-child care facilities, structures hosting minors put under state protection and child-minders was adopted by the French Senate on 17 January 2012. The bill is currently pending before the National Assembly.

Article 1321-3 of the French Labour Code states that “internal regulations cannot restrict individual and collective rights and freedoms unless these restrictions are justified by a professional requirement and are proportionate to the objective sought”.

With respect to permissible restrictions to the rights to freedom of expression and to freedom of religion or belief, the Human Rights Committee, the body tasked to monitor the International Covenant on Civil and Political Rights (ICCPR) found that the request from an employer to wear a helmet did not discriminate against a Sikh mason who wanted to wear a turban in the workplace because the restriction to his right to freedom of religion was based on a legitimate aim, namely safety (*Karnel Singh Bhinder v. Canada*, no. 208/1986).

Restrictions on the rights to freedom of expression and to freedom of religion or belief can also be justified on the workplace if they stem from a genuine and determining occupational requirement, as established by the EU Framework Employment Directive (2000/78/EC of 27 November 2000) that France has transposed into its domestic legislation.

Amnesty International argues that a prohibition on wearing religious or cultural symbols and dress may for example be justified with regard to state officials such as law enforcement agents, public prosecutors and judges exercising potentially coercive powers of the state

The Court of Justice of the European Union pointed out in the case *Wolf v. Stadt Frankfurt am Main* (C-229/08) that a difference of treatment on a prohibited ground, age in that case, does not amount to discrimination only if stemming from a requirement for the specific occupational activities in question or for carrying them out.

The observatory on secularism has been established by the President François Hollande on 8 April 2012.

### **More Information**

Draft bills before the National Assembly: <http://www.assemblee-nationale.fr/14/propositions/pion0061.asp>

Judgment of the Court of Cassation: [http://www.courdecassation.fr/jurisprudence\\_2/chambre\\_sociale\\_576/536\\_19\\_25762.html](http://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/536_19_25762.html)