Guest Post by Professor Vivian Grosswald Curran: The French Supreme Court Reverses Itself in an Islamic Veil Case in « L'Affaire Baby Loup »

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France's Cour de cassation decided yesterday (June 25, 2014) in plenary session that a private day care center could terminate an employee for wearing an Islamic veil (or outward sign of another religion) where the latter contravenes company rules deemed to be reasonable and proportionate in terms of the employer's mission. The case had made its way to the Supreme Court once before, in March of 2013. At that time, the Court had held that the employee could not be terminated because the private company's prohibition against outward signs of religion infringed its workers' religious freedom. A key word here is « private.» Where the employer is public, by contrast, the principle of laïcité , or secularism in the public space, is deemed to justify the absence of manifestations of religious conviction.

Yesterday, however, the Court reversed itself, finding for Baby Loup, a rare day care center open seven days a week and around the clock, so that poorer women and especially single mothers, sometimes working night shifts, can find a place for their young children. The Court approved the lower court's finding that the restriction on religious freedom at issue was justified inasmuch as the center was a small business whose employees come into continual contact with young children and their parents, such that the day care center has a legitimate interest in trying to make parents from all backgrounds feel welcome.

A note on French procedure may be of interest. Since the Supreme Court can only in the rarest of cases directly decide the substantive result of cases, in 2013 it had

remanded to the Court of Appeals for further decision-making. In France, moreover, courts of appeal need not agree with the Supreme Court in its initial ruling, and the second appellate court rejected the high court's ruling, thus leading the plaintiff to appeal to the Supreme Court a second time, yielding yesterday's decision.

The facts of the case beyond those mentioned above add a potentially pragmatic cast to the plaintiff's quest. She had been an assistant manager of the day care center before taking three years of maternity leave, followed by another three years of parental leave. When she returned after six years, she asked her employer to release her from her contract through a rupture conventionnelle, which would have guaranteed her certain benefits. The company refused, saying she would have to resign. Instead, she returned to work wearing an Islamic veil, knowing that it violated the company's rules because she had helped draft those rules. When the company then terminated her employment for violating the prohibition, she sued.

A last legal option remaining to the plaintiff is an appeal to the European Court of Human Rights. Baby Loup, meanwhile, according to press accounts, is skirting financial failure due to the accumulated costs of its legal defense.

For those who read French, the decision is Arrêt n° 612 du 25 juin 2014 (13-28.369) – Cour de cassation – Assemblée Plénière – ECLI:FR:CCASS:2014:AP00612, and is available here.