

FILIP DORSSEMENT

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Research themes: European labour law - Law of collective labour relations - workers' fundamental rights

Publications:

- «Les religieux et la relation du travail: beaucoup de subordinations, mais peu de contrats?», in S. Gilson, *Subordination et parasubordination*, Limal, Anthemis, 2017, 355-376.

- "The Right to Bargain Collectively. A Matrix for Industrial Relations", in N. Bruun, K. Lörcher, I. Schömann and S. Clauwaert, Oxford, Hart Publishers, 2017, 249-288.

FREEDOM OF RELIGION IN THE WORKPLACE AND THE COURT OF JUSTICE OF THE EUROPEAN UNION: A RETURN TO THE PRINCIPLE OF CUIUS REGIO, EIUS RELIGIO?*

RÉSUMÉ

La contribution tend à soumettre deux arrêts de principe de la Cour de Justice (14 mars 2017) de l'Union européenne relatifs à la discrimination basée sur la religion ou la conviction à une analyse critique. L'auteur estime que la Cour de Justice a refusé erronément de reconnaître la nature directe de la discrimination dans l'affaire belge. Il marque son désaccord quant à l'idée qu'une politique de neutralité puisse constituer un élément permettant de justifier la discrimination indirecte qui pourrait résulter d'une interdiction de porter le foulard. La référence à la liberté d'entreprendre est inappropriée et ne peut pas militer en faveur de l'interprétation restrictive d'une directive qui tend à protéger une idée de citoyenneté. La contribution contient aussi une admonestation contre la référence aux aménagements raisonnables. Elle se marie difficilement avec l'approche adoptée par la Cour européenne des droits de l'homme et elle peut confiner à une forme de harcèlement contre des travailleurs relégués « en back office ».

Mots-clés : Discrimination basée sur les convictions religieuses ou philosophiques, liberté de religion, port du foulard, directive UE 2000/78.

ABSTRACT

This contribution provides a critical analysis of two landmark judgments of the Court of Justice of the European Union related to discrimination based upon religion or belief (14 March 2017). The author contends that the Court of Justice has erroneously qualified the discrimination concerned in the Belgian case as indirect discrimination. Furthermore, he argues that a policy of neutrality cannot be considered as legitimization of the indirect discrimination stemming from the prohibition of the headscarf. The reference to the freedom to conduct a business is no grounds to justify a restrictive interpretation of a directive related to the idea of citizenship. Last but not least, the author argues that the use the CJEU has made of the notion of reasonable accommodation is at odds with the approach the European Court of Human rights and contains a risk of harassment of workers confined to a space in the back office.

Keywords: Discrimination on the Grounds of Religion or Belief, Freedom of Religion, Headscarf, EU Directive 2000/78.

* This contribution contains the main part of the analysis in a longer, more detailed contribution originally written in Dutch submitted to The Hague, Boomjuridsch. It is the fruit of a research and teaching secondment to the Comptrasec in March and April 2017 in my capacity as a visiting professor. The provisional results of this study were the subject of an in-house seminar at the Comptrasec organised with my colleague Rachid Fillali.