

## RELIGIOUS AND RACIAL DISCRIMINATIONS

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### INTRODUCTORY CHAPTER

Who didn't think about the sentence ascribed to André Malraux, in connection with the religion,<sup>1</sup> upon reading the 2013 case law? On the national scene as well as internationally, the courts were animated by debates relating to the legal problems raised by the employee's religion.

First of all, on an international level, no one can ignore the four judgments delivered by the European Court of the human rights on January 15<sup>th</sup>, 2013.<sup>2</sup> Those cases opposed British citizens to the United Kingdom. Only one applicant won her case. Mrs. Eweida, devoted Christian woman working for an airline company, had been dismissed because she refused to remove the crucifix she carried around the neck. The British judge had considered that the reason for the dismissal was legitimate but had not sufficiently put out of balance the interests of the company and those of the applicant one. This approach was criticized by the European Court. For the sake of consensus, the employer can promote an image of secularity but he cannot completely prohibit the wearing of religious signs. Moreover the European judge pointed out the particularly discriminating attitude of the employer who dismissed an employee to have worn a crucifix but had tolerated that others wore a hijab or a turban.

However the European Court acknowledges the soundness of the religious signs' prohibition when the employer can put forward a legitimate reason to impose such a rule. Thus a nurse of a geriatric service, Mrs. Chaplin, had also been dismissed because she refused to remove a crucifix around her neck. The employer had made the point to her that the religious sign could be dangerous because insane patients could tear it off. Her stubbornness had been the cause of her dismissal. Here the European Court noted that the freedom of religion and its corollary, the right to carry a religious sign, could be legitimately restricted for reasons relating to hygiene and safety. Consequently the dismissal did not contravene the article 9 of Convention.

<sup>1</sup> « The XXI<sup>ème</sup> Century will be religious or will not be ». This sentence's paternity was ascribed to André Malraux by some authors among whom the pope Jean Paul II : « André Malraux was certainly right to say that the XXI<sup>ème</sup> Century will be religious or will not be » *Entrez dans l'espérance*, Plon-Mame, 1994, p. 331. Other authors adamantly denied the fact that he wrote or said such a sentence. C. Tannery, *L'Héritage spirituel de Malraux*, Arléa, 2005, pp. 81-83 ; M. de Saint Cheron, *Malraux : la recherche de l'absolu*, La Martinière, 2004, pp. 20-21.

<sup>2</sup> *Chaplin* (req. n° 59842/10), *Eweida* (req. n° 48420/10), *Ladele* (req. n° 51671/10) and *Mc Farlane* (req. n° 36516/10). K. Blay-Grabarczyk, *JCP G* 2013, 180 ; L. Burgorgue-Larsen, *AJDA* 2013, p. 1801 ; G. Gonzalez, *RTDH* 2013, p. 975 ; A. Hamblen, I. Leigh, *Oxford Journal of Law and Religion*, 2014, p. 2 ; F. Laronze, *RDT* 2013, p. 337 ; P. Lokiec, J. Porta, *D.* 2013, p. 1026 ; V. Nivelles, *JSL* 2013, n°340, p. 9 ; G. Pitt, *Industrial Law Journal* 2013, p. 398 ; C. Willman, *Lexbase éd. soc.* 2013, n° 515.