



Степанов Кирилл Алексеевич

Уральский государственный юридический университет имени В.Ф. Яковлева

Институт прокуратуры

Россия, Екатеринбург

minerality@yandex.ru

Stepanov Kirill

Ural State Law University named after V. F. Yakovlev

Institute of the Prosecutor's Office

Russia, Ekaterinburg

ТРЕБОВАНИЯ К ВНЕШНЕМУ ВИДУ РАБОТНИКА ВО ФРАНЦУЗСКОМ ТРУДОВОМ ПРАВЕ

Аннотация: в данной статье рассматривается правовое регулирование дресс-кода во французском трудовом праве. Автор приводит анализ действующего законодательства, ключевых решений судов, а также компетентных органов по защите лиц от дискриминации. В статье рассматриваются основные проблемы, существующие в регулировании и правоприменении института дресс-кода во французском трудовом законодательстве, а также дается общая оценка рассматриваемого института.

Ключевые слова: трудовое право, французское трудовое право, сравнительное трудовое право, дресс-код, внешний вид работника.

REQUIREMENTS FOR THE APPEARANCE OF AN EMPLOYEE IN FRENCH LABOR LAW

Annotation: this article examines the legal regulation of the dress code in French labor law. The author provides an analysis of current legislation, key decisions of the courts, as well as competent authorities for the protection of persons from discrimination. The article examines the main problems that exist in the regulation



and enforcement of the institute of dress code in French labor legislation, and gives an overall assessment of the institution in question.

Key words: labor law, French labor law, comparative labor law, dress code, employee appearance.

Before starting to consider the dress code under French law, it is necessary to make a reservation that the exact definition of this concept is not given in the French Labor Code. Nevertheless, at the doctrinal level, there are a number of certain features from which it seems possible to form a single concept. So, sociologist Nicholas Herpin, trying to deduce significant signs of the dress code, comes to the following conclusions: *«the way we are dressed is an important component of appearance. Together with the bodily characteristics of the carrier, it forms a single whole that serves to determine many factors that are significant in the social sphere, such as material condition, respect for the principles of the collective in which the person is located, and others»* [1, с. 4-37].

Based on the general provisions of French law, it can be concluded that employees are given the freedom to choose their appearance in the workplace. This is dictated, among other things, by the norms of the French Labor Code, which provide that an employer cannot restrict an employee's work clothes without proper justification based on the nature of the tasks performed, and that any such restrictions must be proportionate to the goals set by the employer. To confirm the above, let us turn to French law and judicial practice.

Thus, according to article L1132-1 of the French Labor Code: *«no one may be excluded from the procedure of hiring or appointment to a position, from an internship or training at an enterprise, be punished, fired or discriminated against, directly or indirectly in connection with his ... morals, appearance...»*. These provisions are supplemented by Article 1 of Law No. 2008-496 of May 27, 2008. *«On various provisions for adaptation to Community legislation in the field of combating discrimination»*, which states that *«a situation in which, on the basis of ...*



appearance, morals ... one person is treated less favorably than another person who has been or will be in a comparable situation ... constitutes direct discrimination».

Earlier, in Articles L122-35 of the French Labor Code of January 1, 1993, which has now become invalid, a provision on the dress code was fixed, specifically concerning the employer and internal documents of the organization. Thus, the article stated that *«the rules of internal labor regulations (French. - Le règlement intérieur) cannot ... establish restrictions on individual rights and individual and collective freedoms that are not justified by the nature of the task performed and are not proportionate to the goal pursued ... cannot include provisions that adversely affect employees in their employment or work because of their opinions, beliefs, appearance...».*

Based on the analysis of the above provisions, it can be concluded that discrimination, and equally the establishment by the employer of any restrictions applicable to the appearance of the employee, is unacceptable. But, in this matter, there are several points when the law allows you to deviate from the fixed principle. These include:

- 1) restrictions related to the company's image, the need for identification or professional necessity (public service);
- 2) restrictions related to health and safety (visitors and employee);
- 3) restrictions related to generally recognized standards of morality and decency.

Let's look at such exceptions using examples of judicial practice in similar cases.

According to the decision of the French Court of Cassation for Civil Cases No. 06-43784, a hotel employee who worked as an administrator was fired for refusing to wear uniforms. The court ruled that the employer's decision to approve in the Rules of Procedure the provision on the wearing of uniforms by hotel employees *«is justified by the task performed and proportionate to the goal pursued»*, in addition,



the court made an important reservation that wearing a uniform «should allow the employer to achieve the goal that he pursues by making such a decision».

In this case, the restriction on wearing clothes that did not comply with the rules of the hotel was dictated by the principle of «matching the image of the company». When installing uniforms, the employer aimed, first of all, to associate the uniform with the employee's belonging to the hotel staff and did not aim to infringe on the rights of the employee. This practice is certainly applicable to other industries or enterprises.

To consider the remaining limitations, let's turn to examples from judicial practice, which Alain Pousson examines in his publication [2].

So, he gives an example when an accountant of one of the companies was fired due to the fact that she repeatedly wore too «revealing outfits». In particular, in this case, the wearing of transparent blouses was considered. The court supported the employer's decision, since non-compliance with the internal rules of the organization, as well as generally recognized norms of how an employee should look, was regarded as a factor that could lead to «probable problems for the business». In addition, the court took into account that the internal acts of the organization establishing the dress code are justified, since they are based on considerations of professional necessity in this area. At the same time, it was separately noted that the accountant contacts visitors in a number of situations, which refers us to the first exception to the general rules discussed above.

An example of limiting the appearance of an employee from safety requirements may be the butcher's case, which A. Pousson also analyzed in his publication. Based on the case file, several visitors to the butcher shop appealed to the employer with a complaint that the «careless» appearance of the butcher, unkempt hair, as well as the lack of a special apron were violations and asked to take action. The employer pointed out the violations to the butcher, in particular, asked him to wear a special apron and hat, and also supported his demands with the provisions of the acts, the employee did not agree with the demands, considered them



discriminatory and appealed to the court. The French Court of Cassation recognized the employer's requirements as legitimate, justifying them as follows: the provisions established in the rules of procedure are not discriminatory, since they are dictated by the specifics of the work, epidemiological and other requirements specific to this industry, and therefore, the provisions of the rules of procedure comply with current legislation and are mandatory.

Based on the analysis of all the above-described judicial practice, it can be concluded that the employer, acting in his own interests and on the basis of generally recognized requirements, has the right to restrict the employee in the choice of wearable clothing or even prescribe mandatory provisions in local acts, despite the fact that this norm is not directly dictated by law.

Despite the fact that these restrictions are not prescribed by law, many experts do not consider them discriminatory. In particular, J. Francequin justifies such restrictions of the dress code as follows: «the appearance of clothing plays a key role in social interactions and in the professional world, since it allows you to reflect a certain image, often standardized, corresponding to the field of activity, profession or hierarchical level. Thus, there are many meanings of the «dress code» in terms of comfort, protection, authority, rank, prestige, belonging to a professional team» [3].

It is important to note that the Commissioner for Human Rights (French: Défenseur des Droits) in October 2019 adopted an important framework decision (French: décision-cadre), which identified the most important principles relating to protection against discrimination in the field of appearance. The current trends and problems have also been identified.

First of all, employers are encouraged to educate all their employees about the rights and freedoms related to appearance and the principles applicable to their limitations. First of all, this is due to the fact that many employees do not know the basic requirements for their appearance, which was previously confirmed by the author when analyzing relevant judicial practice. There is also a problem of discrimination on the part of HR specialists when applying for a job. Thus,



«recruiters consider it acceptable to reject candidates based on the principle of non-compliance with corporate standards of clothing established at the enterprise or other elements of an employee's appearance, for example, the presence of piercings, tattoos and other elements that should not be taken into account, based on the principles of protection against discrimination».

The decision concludes that discrimination based on the principle of appearance is becoming the most frequent type of employment or direct work in the company. And some studies even cite statistics that employees who meet the standards of appearance can receive salaries 12% higher, while employees who do not meet the requirements set by the employer for appearance receive salaries 11-15% lower than average [4, 5].

Such discriminatory practices are certainly contrary to current French and international law. Thus, the consistent case law of the European Court of Human Rights protects «the choice made by people regarding how they want to look in public or in private». In addition, this freedom is guaranteed by the fundamental right to privacy within the meaning of article 8 of the European Convention on Human Rights, which covers «the physical, psychological and social identity of a person».

Summing up the analysis of the dress code in French labor law, it should be said that, at the moment, not all provisions governing the appearance of an employee are fixed in the legislation. Many of the provisions stem from the analysis of judicial practice, that is, from precedents, which, due to France's belonging to the Romano-German legal system and the «non-recognition» of judicial practice as a source of law, seems not entirely correct and requires improvement. The active participation of the Commissioner for Human Rights in issues of protection against discrimination of employees on the basis of appearance, as well as the courts in the interpretation of current legislation, is certainly a positive aspect of the analyzed aspect of legal regulation.



1. N. Herpin. (1984). Comment les gens qualifient-ils les tenues vestimentaires. *Economie et statistique*. 168. pp. 4-37.
2. P. Alain. (2015). Chapitre IV. Le vêtement en droit du travail. Le vêtement dans les relations de travail entre liberté et égalité. Toulouse: Presses de l'Université Toulouse 1 Capitole. pp. 175-250.
3. G. Francequin. (2009). Le vêtement de travail, une deuxième peau. *L'orientation scolaire et professionnelle*. 38/2. pp. 262-263.
4. Aller au-delà des apparences dans le monde du travail, 2015. URL: <https://egalitecontreracisme.fr/dispositifs/aller-au-dela-des-apparences-dans-le-monde-du-travail> (accessed 04 December, 2023).
5. G. Aurore. (2019). *La confiance: un dialogue interdisciplinaire*. New edition. Université Toulouse 1 Capitole: Presses de l'Université Toulouse Capitole. 139 p.