

Cour de Cassation, Chambre Criminelle, 14 November 1989, No. 88-81.817

1) Reference Details

Jurisdiction: Court of Cassation, Criminal Chamber, France
Date of Decision: 14 November 1989
Case Status: Concluded

2) Facts

A decision was made by the Department of Social Aid in Paris to place, at the disposition of elderly persons, household helps during July and August 1977. Following this, Mrs Nicole X, head social assistant in the Office of the Director for Social Aid, sent a memo to her colleagues in neighbouring boroughs asking them to send any candidates they had for household-helps to the personnel department in Paris, but to 'avoid persons of colour'. Following the complaints of several associations, the Chambre d'Accusation sent the case before the Tribunal Correctionnel. They argued that Mrs X, without legitimate motive, had contributed to rendering more difficult the exercise, in normal conditions, of the activity of household-help by persons by reason of their race or ethnicity. This was an offence contrary to Article 416-1 of the Penal Code. The Tribunal Correctionnel decided that Mrs X was trying to prevent economic boycotts of a racist character and therefore acquitted her of the charges. However the Court of Appeal decided differently.

The Court of Appeal announced that the facts did not fit into the provisions of Article 416-1 of the Penal Code, but rather fell under Article 416-3. Under Article 416-3 all persons who, for their profession or their functions as an employer, for herself or another, without legitimate reason, subjects an offer of employment to a condition based on origin, sex, family situation, ethnicity, nationality, race or religion will be punished. Considering that the recommendation made by the accused to avoid hiring personnel of colour did not constitute an obstacle to the economic activity of household-helps but rather subjected an offer of employment to a condition which was forbidden by law, the Court of Appeal found Mrs X guilty of violation of Article 416-3 of the Penal Code.

3) Law

- Articles 416-1 and 416-3 of the Penal Code

4) Legal Arguments

Mrs X appealed the decision on the grounds that the Court was to consider her case in relation to Article 416-1 and not Article 416-3. Additionally she argued that as she was acting in her function as a civil servant she could not be held personally liable for the act.

5) Decision

The Court of Cassation ruled that it is forbidden for correctional judges to take account of a fact other than that which they were convened for. However, they also stated that judges have both the power and the duty to characterise the facts and apply the criminal law to them.

On the issue of personal liability, the Court of Cassation upheld the view of the Court of Appeal and stated that Mrs X had taken an initiative without instruction to do so and so committed a personal fault with no legal excuse.