

Cases and rulings

Country Code	Year	Reference details title	Reference details URL	Hate Bias motivation	Court / Body	Key facts of the case	Results (sanctions, outcome) and key consequences or implications of the case	Main reasoning / argumentation	Key issues (concepts, interpretations) clarified by the case	Key quotation in original language and translated into English with reference details
France	2018	France / Public Defender of Rights/2018-241	https://jurisique.defenseurdesdroits.fr/doc_num.php?expidnum_id=18214	Religion	Public Defender of Rights	A complaint was lodged with the Public Defender of Rights concerning the refusal of mandatory training for nursery assistants for a Muslim woman wearing a headscarf. The internal regulations of the private school where the training takes place stipulate that "nursery assistant" trainees undertake to respect the duty of reserve and discretion allowing the group to express itself freely and exercise their right to freedom of expression and thought with respect for others and in a spirit of tolerance in accordance with the principle of secularism, pluralism and neutrality.	The Public Defender of Rights recommended that the management of School Y amend its internal regulations by removing the neutrality clause, change its practices with regard in particular to Muslim women who attend training courses in the school, and finally to pay damages to Ms X in full.	The rule of secularism and neutrality applicable to trainees undergoing vocational training provided for in the internal regulations, which require the headscarf to be removed, characterizes religious discrimination in access to vocational training and to goods and services.	The rule of secularism and neutrality applicable to trainees undergoing vocational training provided for in the internal regulations, which require the headscarf to be removed, characterizes religious discrimination in access to vocational training and to goods and services.	"Le législateur français a prévu que le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse était interdit aux élèves de l'enseignement des établissements publics d'enseignement primaire et secondaire (article L. 141-5-1 du Code de l'éducation, issu de la loi n°2004-228 du 15 mars 2004). Depuis l'entrée en vigueur de la loi n° 2014-1088 du 8 août 2014 (dite loi El Khomri), l'article L.1321-2-1 du Code du travail dispose que « le règlement intérieur peut contenir des dispositions inscrivant le principe de neutralité et restreignant la manifestation des convictions des salariés si ces restrictions sont justifiées par l'exercice d'autres libertés et droits fondamentaux ou par les nécessités du bon fonctionnement de l'entreprise et si elles sont proportionnées au but recherché ». Toutefois, cet article ne vise que les salariés du secteur privé et non des stagiaires d'une association privée suivant une formation professionnelle. Ainsi, ni l'article L. 141-5-1 du Code de l'éducation ni l'article L.1321-2-1 du Code du travail par lesquels le législateur a prévu d'interdire les signes religieux ostensibles d'une part, aux élèves de l'enseignement primaire et secondaire et a permis, d'autre part, aux employeurs d'imposer une neutralité dans certaines conditions à leurs salariés ne semblent applicables à une association privée qui dispense des formations professionnelles à des adultes stagiaires telle que L'Ecole Y. En l'espèce, le règlement intérieur de L'Ecole Y évoquant « le devoir de réserve et de discrétion permettant la libre expression du groupe L. J dans un esprit de tolérance selon le principe de laïcité, de pluralisme et de neutralité » (art. 10) n'explique pas les obligations tirées de la laïcité et de la neutralité auxquelles les stagiaires devraient se soumettre. Il ne leur interdit pas de manière expresse le port de certains signes notamment religieux. Les effets de l'exigence de neutralité prévue par le règlement intérieur du groupement solidaire pour la formation des assistants maternels de la métropole de Z ne sont pas clairement énoncés. Compte tenu de ce qui précède, la règle de laïcité et neutralité applicable aux stagiaires suivant une formation professionnelle d'assistante maternelle prévue par l'article 10 du règlement intérieur du groupement Y, contraignant Madame X, musulmane, à retirer son foulard, caractérise une discrimination religieuse dans l'accès à la formation professionnelle et aux biens et services aux termes des articles 8 et 9 combinés à l'article 14 de la Convention européenne des droits de l'homme, des articles 225-1 et 225-2 du Code pénal ainsi que des articles 2-2 et 2-3 de la loi n° 2008-496 du 27 mai 2008 modifiée portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations. Since the entry into force of Law No. 2014-1088 of 8 August 2014 (known as the El Khomri law), Article L. 1321-2-1 of the Labour Code provides that "The internal regulations may contain provisions enshrining the principle of neutrality and restricting the manifestation of employees' convictions if these restrictions are justified by the exercise of other fundamental freedoms and rights or by the needs of the company's proper functioning and if they are in proportion to the desired purpose." However, this article only applies to employees in the private sector and not to trainees of a private association undergoing vocational training. Thus, neither Article L. 141-5-1 of the Education Code nor Article L. 1321-2-1 of the Labour Code, by which the legislator has provided for the banning of conspicuous religious symbols on the one hand, for primary and secondary school pupils, and has allowed employers to impose neutrality under certain conditions on their employees, on the other hand, seem applicable to a private association that provides vocational training to adult trainees such as the Y School. In the present case, the internal regulations of the Y School, which refer to "the duty of reserve and discretion allowing the group to express itself freely (L. J) in a spirit of tolerance in accordance with the principle of secularism, pluralism and neutrality" (article 10), do not explain the obligations derived from secularism and neutrality to which trainees should submit. It does not expressly prohibit them from wearing certain signs, particularly religious ones. The effects of the requirement of neutrality provided for in the internal regulations of the solidarity group for the training of nursery assistants (groupement solidaire pour la formation des assistants maternels) in the metropolitan area of Z are not clearly stated. In view of the above, the rule of secularism and neutrality applicable to trainees undergoing professional training as nursery assistants provided for in Article 10 of the rules of procedure of group Y, forcing Ms X, a Muslim, to remove her headscarf, constitutes religious discrimination in access to vocational training and goods and services under Articles 8 and 9 combined with Article 14 of the European Convention on Human Rights, Articles 225-1 and 225-2 of the Criminal Code and Articles 2-2 and 2-3 of Law No 2008-496 of 27 May 2008 extended by various provisions for adapting to Community law in the field of the fight against discrimination."

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