

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	2019	France / Public Defender of rights/n°2019-201	https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=19124	Religion	Public Defender of Rights	Ms. X was authorised to occupy a stand at the Christmas market which was held from 30 November to 9 December 2018 in the municipality of Z. However, at the end of the day on 30 November, the mayor of municipality Z, ordered Ms X to leave her stand on the grounds that she was wearing a veil. The mayor of the municipality rejected Ms. X's appeal, drawing her attention to the need for those involved in the organisation of a municipal event to respect the principles of secularism and neutrality.	The Public Defender of Rights recommended that the mayor of Z approach Ms. X in order to discuss with her ways of providing fair compensation for the non-material and material damage she suffered as a result of the ban on her holding her stand. It also recommended that the mayor ensure in the future the proper application of the principles of secularism, neutrality and religious freedom.	The organising of a Christmas market by the municipality at which traders, craftspeople and associations sell goods in public for their own profit to passers-by does not constitute a public service, particularly in the absence of an activity in the public interest and the exercise of public authority rights made available to these people. All the more so as the fact that this market takes place in public has no effect on its possible legal qualification as a public service. As such, in the absence of such a qualification, the principles of neutrality and secularism could in no way be applied to traders with a permit to occupy a hut, who, like any other user, had the right to show their religious conviction.	Do the principles of neutrality and secularism apply to traders at the municipal event, or do they have the right, like all users, to express their religious beliefs?	"Les principes de neutralité et de laïcité du service public sont applicables à l'ensemble des services publics, y compris lorsque ceux-ci sont assurés par des organismes de droit privé. Ainsi pour que ces principes soient applicables, encore faut-il être en présence d'une activité pouvant être qualifiée de service public. Le Conseil d'État, dans son étude du 19 décembre 2013 réalisée à la demande du Défenseur des droits, et l'observatoire de la laïcité, dans son avis du 29 mai 2018 sur l'application ou la non-application du principe de neutralité aux prestataires extérieurs de l'administration publique ou des services publics, ont rappelé les principes d'identification des services publics. En premier lieu, l'existence d'un service public peut résulter de garanties constitutionnelles ou avoir été prévue par des dispositions législatives. En second lieu, en l'absence de qualification textuelle, l'identification d'un service public suppose de rechercher si des activités d'intérêt général sont assurées sous le contrôle de l'administration et que les personnes privées qui en sont chargées sont dotées à cette fin de prérogatives de puissance publique. En l'espèce, ces trois critères ne sont pas réunis. En effet, l'organisation d'un marché de Noël par la commune à l'occasion duquel des commerçants, des artisans et des associations, occupent le domaine public afin de vendre, pour leur compte, des biens à des promeneurs ne constituent pas un service public, en l'absence notamment d'une activité d'intérêt général et de prérogatives de puissance publique mises à disposition de ces personnes. D'autant que le fait que ce marché se déroule sur le domaine public est sans effet sur son éventuelle qualification juridique de service public. Ainsi, en l'absence d'une telle qualification, les principes de neutralité et de laïcité ne pouvaient nullement s'appliquer aux commerçants disposant d'une autorisation d'occuper un chalet, qui disposaient ainsi, comme tout usager du droit de manifester leur conviction." "The principles of neutrality and secularism of the public service are applicable to all public services, including those provided by private law bodies. In order for these principles to be applicable, therefore, there must be an activity that can be qualified as a public service. The Council of State, in its study of 19 December 2013 carried out at the request of the Public Defender of Rights, and the Observatory of Secularism, and in its opinion of 29 May 2018 on the application or non-application of the principle of neutrality to external providers of public administration or public services, recalled the principles for identifying public services. Firstly, the existence of a public service may result from constitutional guarantees or have been provided for by legislative provisions. Secondly, in the absence of a specific legal qualification, the identification of a public service presupposes an investigation into whether activities of general interest are carried out under the control of the administration and whether the individuals in charge of them are endowed with the powers of public authority for this purpose. In this case, these three criteria are not met. The organisation of a Christmas market by the municipality at which traders, craftspeople and associations sell goods in public for their own profit to passers-by does not constitute a public service, particularly in the absence of an activity in the public interest and the exercise of public authority rights made available to these people. All the more so as the fact that this market takes place in public has no effect on its possible legal qualification as a public service. As such, in the absence of such a qualification, the principles of neutrality and secularism could in no way be applied to traders with a permit to occupy a hut, who, like any other user, had the right to show their religious conviction."

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