

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	2021	France / Public Defender of Rights / Decision No. 2021-192	https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20854	Religion	Public Defender of Rights (Défenseur des droits)	The decision related to a public servant who, having passed an internal competitive examination, was denied appointment to the corresponding position by management. The plaintiff considered this decision to be discriminatory as being based on his Muslim religion, the management having previously reproached him for wearing a beard as well as holding the Koran and books on Islam. After an internal investigation concluded that there was "no evidence of radicalization or dangerousness" against the plaintiff, a court overturned the decision to deny appointment.	The Defender of Rights concluded that in the absence of proof of the materiality of the facts of which the plaintiff is accused, the plaintiff should, pursuant to the principle of the shift of the burden of proof provided for by Law No. 2008-496 of 27 May 2008, be considered as a victim of discrimination on the grounds of his religion.	The Defender of Rights evoked the national legal framework as well as all the facts of the case, including the judgement annulling the denial of appointment and the filing of a criminal complaint for discrimination, in order to argue that the conditions for compensation for material and moral damages were met. More specifically, the Defender of Rights argued, in view of these elements and following its own investigation, that the lack of proof of the materiality of the alleged facts made it possible to conclude that the person was discriminated against on the grounds of his religion, which should result in a shift of the burden of proof.	One of the key issues in the case was the characterisation of "discrimination on the basis of religion", and more specifically Islam, while the decision to deny the appointment was not formally motivated.	" En conséquence, en l'absence de preuve de la matérialité des faits reprochés à M. X, ce dernier doit, en application du principe de l'aménagement de la charge de la preuve, être regardé comme victime d'une discrimination en raison de sa religion eu égard au refus de nomination qui lui a été opposé, en méconnaissance notamment de l'article 6 de la loi du 13 juillet 1983 précitée ". [Nota Bene : Selon l'article 6 de la loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires : " Aucune distinction, directe ou indirecte, ne peut être faite entre les fonctionnaires en raison de leurs opinions (...) religieuses (...) ". "Consequently, in the absence of proof of the materiality of the facts of which Mr X is accused, the latter should, pursuant to the principle of the shift of the burden of proof, be considered as a victim of discrimination on the grounds of his religion with regard to the denial to appoint him, in disregard of Article 6 of the aforementioned law of 13 July 1983". [Note: According to Article 6 of Law No. 83-634 of 13 July 1983 on the rights and obligations of public servants: "No distinction, whether direct or indirect, should be made between public servants on the basis of their religious opinions (...)"]"

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