



France: Overview and Implementation of Anti-Discrimination Laws

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FRANCE

OVERVIEW AND IMPLEMENTATION OF ANTI-DISCRIMINATION LAWS

Executive Summary

Several reports prepared by French independent monitoring bodies show widespread discrimination linked to origin, particularly in employment (in both recruitment and career development) and housing, despite a very comprehensive body of anti-discrimination laws in France that compys with European Union Law.

I. Anti-Discrimination Law

France has a very comprehensive body of anti-discrimination law. Provisions concerning discrimination can be found in the Constitution. A 2008 law transposes into national law three major European Union directives on the subject.¹ The 2008 law provides for a definition of direct and indirect discrimination. Both the Penal Code and the Labor Code extensively address the issue. Additional measures can also be found in other various codes and laws.

A. Constitution

The principle of nondiscrimination is contained in the Preamble to the 1946 Constitution, which prohibits discrimination on the basis of sex, race, belief, or trade union activity. This preamble has been incorporated into the current Constitution of 1958. This Constitution also contains a provision stating that “the nation ensures equality before the law of all citizens, whatever their ethnic origin, race, or religion.... Laws shall promote equal access of women and men to elective offices and functions, as well as to positions of professional and social responsibility.”²

¹ Loi 2008-496 du 27 mai 2008 portant diverses dispositions d’adaptation au droit communautaire dans le domaine de la lutte contre les discriminations [Law 2008-496 of May 27, 2008, transposing several provisions of community law in the area of the fight against discrimination], LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et reglementaires) (last visited Aug. 12, 2010). The law transposes Directive 2000/43/EU of June 29, 2000 (equal treatment between persons irrespective of racial or ethnic origin); Directive 2000/78/EU of November 27, 2000 (general legal framework on equal treatment in employment); and Directive 2002/73/EU of September 23, 2002 (equal treatment for men and women in access to employment, vocational training, promotion and working conditions).

² 1958 LA CONSTITUTION [CONST.] art. 1, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (La Constitution) (last visited Aug. 12, 2010) (translation by the author of this report).

B. Definition of Direct and Indirect Discrimination in the 2008 Law

French law prohibits both direct and indirect discrimination. Direct discrimination occurs “where a person is treated less favorably, on the basis of his/her membership or non-membership, whether genuine or assumed, in an ethnic group or a race, his/her religion, convictions, age, handicap, sexual orientation or sex, than another person is, has been, or would be treated in a comparable situation.”³ Indirect discrimination occurs “where an apparently neutral criterion or practice would result, based on one of the grounds listed above, in a particular disadvantage for a person compared with others, unless that criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”⁴

C. Penal Code

The Penal Code contains several provisions punishing acts of discrimination carried out against persons based upon their national origin, sex, family situation, pregnancy, state of health, handicap, genetic characteristics, morals, sexual orientations, physical appearance, family name, political opinions, trade union activities, or whether or not they belong (actually or supposedly) to a well-specified ethnic group, nation, race, or religion.⁵ Discrimination in the supply of goods or services, operation of an economic activity, or context of industrial relations, for example, is punishable by three years’ imprisonment and a €45,000 fine (approximately US\$57,700).⁶ The Penal Code further prohibits private defamation or insult of either a racist or discriminatory nature.⁷

In 2006, the practice of discrimination testing as a form of evidence was allowed to show discrimination in the following areas: supply of goods or services, obstructing the normal exercise of any given economic activity, and employment.⁸

D. Labor Code

The main relevant section of the Labor Code reads:

No person can be excluded from a recruitment process or from access to a training course or a period of training in a company; sanctioned or dismissed; or be the subject of a discriminatory, direct or indirect measure as defined by article 1 of Law 2008-496 of May 27, 2008, in particular with regard to remuneration, profit sharing or distribution of shares, training, reclassification, assignment, qualification, classification, professional promotion, transfer from one workplace to another or renewal of a contract due to their

³ Loi 2008-496 du 27 mai 2008 art. 1.

⁴ *Id.*

⁵ CODE PÉNAL (C. PÉN.) arts. 225-1 to 225-4 (Daloz, 2010).

⁶ *Id.* art. 225-2.

⁷ *Id.* arts. R.624-3 to R.624-6.

⁸ *Id.* art. 225-3-1.

origin; sex; lifestyle; sexual orientation; age; family situation; pregnancy; membership or non-membership, whether genuine or assumed, in an ethnic group, nation, or race; political beliefs; trade union activities; religious beliefs; physical appearance; surname [last name]; or state of health or disability.⁹

The draft law on immigration to be presented to the French Parliament at the end of September 2010 should contain a provision prohibiting discrimination based upon residence, according to the minister in charge of immigration, as residents of “sensitive” suburbs often encounter this form of discrimination.¹⁰

The Code provides that differences of treatment are authorized without constituting discrimination in the work environment, in principle, “when they respond to an essential and determining occupational requirement, provided that the objective is legitimate and the requirement proportionate.”¹¹ It further states that:

The differences of treatment on grounds of age are not discriminatory if they are objectively and reasonably justified by a legitimate aim, notably, to ensure the health or security of workers, to promote their vocational integration, to ensure their employment or their compensation in case of the loss of their employment, and when the means to realize this aim are necessary and appropriate.¹²

The provision concerning the burden of proof in discrimination cases was modified in 2001. It is no longer only the employee’s responsibility. The burden of proof now falls upon the employer to disprove any alleged discrimination.¹³ The right to bring a discrimination action to court has been extended to trade unions, provided that they have representative status either nationally or in the relevant workplace,¹⁴ and to associations fighting discrimination that have existed for at least five years.¹⁵

The Code contains several provisions requiring professional equality between men and women.¹⁶ Finally, to combat discrimination, the anonymous resume was introduced in companies of fifty employees or more.¹⁷

⁹ CODE DU TRAVAIL (C. TRAV.) art. L.1132-1 (Dalloz, 2010) (translation by the author of this report).

¹⁰ Francine Aizicovici, *La loi va intégrer la discrimination liée au lieu d’habitation dans l’accès à l’emploi*, LE MONDE.FR, Aug. 10, 2010, http://www.lemonde.fr/economie/article/2010/08/10/la-loi-va-integrer-la-discrimination-liee-au-lieu-d-habitation-dans-l-acces-a-l-emploi_1397568_3234.html (last visited Aug. 12, 2010).

¹¹ C. TRAV. art. L. 1133-1.

¹² *Id.* art. L.1133-2 (translation by the author of this report).

¹³ *Id.* art. L.1134-1.

¹⁴ *Id.* art. L.1134-2.

¹⁵ *Id.* art. L.1134-3.

¹⁶ *Id.* arts. L.1142-1 to L.1146-3.

¹⁷ *Id.* art. L.1221-7.

E. Other Provisions

In matters of housing, the right to decent housing was elevated to a constitutional right by the Constitutional Council in 1995.¹⁸ In addition, Law 2002-73 of January 17, 2002, on Social Modernization clearly prohibits housing discrimination.¹⁹ A 2007 law also made decent housing an enforceable right.²⁰

In regard to health care, all legal residents of France are covered by public health insurance (*Assurance maladie*) as a branch of the social security system. Workers and their families are affiliated with public health insurance funds determined by their social and/or professional category, while the neediest members of society are covered under Law 1999-641 of July 27, 1999, on Universal Health Insurance. The universal health coverage provides basic services to all those residing lawfully in France, irrespective of their employment situation or insurance contribution record.²¹ Unlawful residents who have been continuously in France for more than three months and are not covered by universal health insurance may have access to State Health Aid.²²

As for disabled persons, Law 2005-102 on Promoting Equal Rights and Opportunities, Participation and Citizenship for Disabled Persons reinforced their protection against employment discrimination.²³ Employers who employ twenty or more employees must employ a number of handicapped persons, victims of work-related accidents and illnesses, and war invalids equal to six percent of their work force. Failure to meet these obligations is punishable by a fine.²⁴

F. Monitoring Bodies

Several independent advisory councils or commissions have been created, each focusing on a particular aspect of immigration, integration, and/or discrimination. The *Haut conseil à*

¹⁸ Conseil Constitutionnel, Decision no. 94-359DC, Jan. 19, 1995, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 12, 2010).

¹⁹ Loi 2002-73 du 17 janvier 2002 de modernization sociale [Law 2002-73 of January 17, 2002 on Social Modernization], LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 9, 2010).

²⁰ Loi 2007-290 du 5 Mars 2007 instituant le droit au logement opposable [Law 2007-290 of March 5, 2007, making housing an enforceable right], LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 9, 2010).

²¹ Loi 99-641 du 27 juillet 1999 portant création d'une couverture maladie universelle [Law 99-641 of July 27, 1999 creating universal health coverage], LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 9, 2010).

²² CODE DE L'ACTION SOCIALE ET DES FAMILLES art. L.251-1 (Daloz, 2008).

²³ Loi 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées [Law 2005-102 of February 11, 2005 on Promoting Equal Rights and Opportunities, Participation and Citizenship for Disabled Persons], LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 9, 2010).

²⁴ C. TRAV. art. L.5212-2.

l'intégration (High Council for Integration) created by ministerial decree in 1989 is charged with making any useful recommendation regarding “all questions related to the integration of foreign residents or persons of foreign origin.”²⁵ The *Commission nationale consultative des droits de l'homme* (National Consultative Commission on Human Rights, CNCDH), originally created in 1984, addresses all topics related to human rights, including nationality, immigration and asylum, and racism and discrimination.²⁶ In March 2005, another high authority was added, the *Haute autorité de lutte contre les discriminations et pour l'égalité* (High Authority Against Discrimination and for Equality). The Authority fights any form of discrimination including that regarding sex, ethnic origin, sexual orientation, religion, age, or handicap. It is tasked with receiving and providing advice to victims of discrimination and promoting equality by organizing awareness campaigns and training programs. It also investigates, mediates, and makes recommendations in relation to the claims of alleged victims of discrimination.²⁷

II. Implementation of Anti-Discrimination Legislation

Several recent reports prepared by the monitoring bodies listed above have highlighted the extent of discrimination linked to origin, in particular in the domains of employment, both in recruitment and career development, and housing.²⁸ Finally, Ministry of Justice statistics show that there are few criminal convictions for discrimination. French law prohibits the gathering of statistics showing the ethnic or racial origin of a person as contrary to Article 1 of the Constitution.²⁹

A. National Consultative Commission on Human Rights (CNCDH)

The 2009 CNCDH Report on Combating Racism, Anti-Semitism and Xenophobia, citing a European Agency for Fundamental Rights report that was published in December 2009, notes that:

In the twenty-seven European countries, it is discrimination in obtaining work and discrimination at work that are the most often mentioned and considered the most important by the persons surveyed. It is equally the case in France where more than

²⁵ Decret 89-912 portant creation d'un Haut Conseil a l'integration as amended [consolidated version of Decree 89-912 creating the High Council for Integration], *available at* the High Council official website, http://www.hci.gouv.fr/article.php3?id_article=22 (last visited on Aug. 12, 2010).

²⁶ Loi 2007-292 du 5 mars 2007 relative à la Commission nationale consultative des droits de l'homme [Law 2007-292 of March 5, 2010 on National Consultative Commission on Human Rights], *as amended*, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 12, 2010).

²⁷ Loi 2004-1486 du 30 décembre 2004 portant creation de la Haute autorité de lutte contre les discriminations et pour l'égalité [Law 2004-1486 of December 30, 2004 on Creating the High Authority against Discrimination and for Equality], LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 12, 2010).

²⁸ For a discussion of earlier reports, *see* NICOLE ATWILL, LAW LIBRARY OF CONGRESS REP. NO. 2008-00770, IMMIGRATION AND DISCRIMINATION LAWS: FRANCE 7 (Apr. 2008).

²⁹ Conseil Constitutionnel, Decision 2007-557DC, Nov. 15, 2007, LEGIFRANCE, <http://www.legifrance.gouv.fr/> (Les autres textes législatifs et réglementaires) (last visited Aug. 17, 2010).

1,000 persons of North and Sub-Saharan African origin, whatever their citizenship be, whether born or not in France, were surveyed. Within the five years preceding the survey, 39 percent of the persons surveyed felt that they were discriminated against while searching for work, 22 percent were discriminated against at work, 25 percent while searching for housing and 16 percent in a café or restaurant.³⁰

France recently submitted its report on the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination to the Committee on the Elimination of Racial Discrimination.³¹ The report notes the French government's awareness of the extent of discrimination in the employment domain based on origin. The report lists numerous initiatives taken by the government for combating such discrimination.³²

The CNCDH also submitted a note to the attention of the Committee on the Elimination of Racial Discrimination in preparation of its periodic review of France.³³ The note addresses the situation of the migrant Roma and "travellers" in France and discrimination in the employment and education domains, among others.³⁴

Regarding the discrimination of migrant Roma and "travellers" the CNCDH wrote:

[T]he Roma in France must be distinguished from the "travellers" a larger category that does not have an "ethnic" connotation. The issues are quite different if one considers the French "travellers" who are itinerant or sedentary to various degrees and the migrant Roma, citizens or not of the European Union.... A recent study of the CNCDH on Roma and "travellers" has revealed that they often are victims of multiple forms of discrimination, notably in the domains of housing, health care, or education. These findings are largely corroborated by the results of recent studies conducted by the European Agency for Fundamental Rights, and also by the European Commission Against Racism and Intolerance of the Council of Europe that highlight a particularly preoccupying situation in most of the 47 Member States of the Council of Europe, including France.

³⁰ Virginie Giraudon, *Le Racisme au Travail*, in COMMISSION NATIONALE CONSULTATIVE DES DROITS DE L'HOMME, LA LUTTE CONTRE LE RACISME, L'ANTISÉMITISME ET LA XÉNOPHOBIE, ANNÉE 2009, at 239, available at the website of La Documentation Française, <http://www.ladocumentationfrancaise.fr/rapports-publics/104000267/index.shtml> (last visited Aug. 12, 2010) (translation by the author of this report).

³¹ Office of the United Nations High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, 77th session (2-27 August) Reports Submitted by State Parties under Article 9 of the Convention, France, 17th, 18th and 19th periodic reports, CERD/C/FRA/17-18, available at http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD-C-FRA-19_fr.pdf (in French; last visited Aug. 12, 2010).

³² *Id.* at 42.

³³ Office of the United Nations High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, 77th session (2-27 August) Commission nationale consultative des droits de l'homme, Note à l'attention du Comité des Nations Unies pour l'élimination de la discrimination raciale en préparation de l'examen du rapport de la France, July 21, 2010, available at http://www2.ohchr.org/english/bodies/cerd/docs/ngos/CNCDH_France77.pdf (in French; last visited Aug. 12, 2010).

³⁴ *Id.*

The CNCDH has pointed on several occasions in the past to the absence of social policies regarding these particularly vulnerable groups. It suggests putting into place legislation better adapted to the needs of the Roma and “travellers,” notably in receiving them, monitoring their needs, and in housing. In addition specific measures are also necessary to avoid the stigmatization and marginalization of these categories of persons, to insure the education of their children and to promote better integration into French society.³⁵

B. High Authority Against Discrimination and for Equality (HALDE)

In its annual report for 2009, the HALDE highlights the substantial increase in the number of discrimination complaints recorded.³⁶ A total of 10,545 complaints were filed in 2009, a 21% increase compared to 2008 and a 69% increase compared to 2007. Forty-nine percent of the complaints were linked to employment, of which 75% concerned career development and 25% recruitment. Two-thirds concerned the private sector, and the other third the public sector.³⁷

The HALDE annual report further states that, in 2009, origin continued to be the main cause of discrimination in the domain of employment: 28.5% of complaints cite origin, 18.5% state of health or handicap, 6.5% sex, 6% labor union activities, 5% age, and 2.5% pregnancy.³⁸

As for the percentage of complaints in other non-employment domains, the HALDE statistics show the following percentages: supply of goods and private service, 10%; functioning of public services, 10%; education, 6%; and housing, 5.5%.

The HALDE report also reminds the Ministry of Education that the right to education is a fundamental right guaranteed by the Education Code, whether or not the parents reside lawfully in France. Schools should not verify the residence status of the parents as they have done in the past.³⁹

C. High Council for Integration (HCI)

In January 2008, the HCI presented a report on the housing of immigrants to the French Prime Minister.⁴⁰ The report shows that immigrants have been victims of systematic discrimination in the area of access to social housing. The Council noted that everything contributes to steering immigrants into certain types of housing in certain “sensitive” suburbs

³⁵ *Id.* (translation by the author of this report).

³⁶ Haute Autorité de Lutte contre les Discriminations et pour l’Egalité, Rapport Annuel HALDE 2009, available at <http://www.halde.fr/-Rapports-annuels-.html> (last visited Aug. 12, 2010).

³⁷ *Id.*, Sommaire, at 3, 4.

³⁸ *Id.*, Sommaire, at 3, 4, 10.

³⁹ *Id.*, Sommaire, at 15.

⁴⁰ HAUT CONSEIL À L’INTÉGRATION, ETUDES ET INTEGRATION, AVIS SUR LE LOGEMENT DES PERSONNES IMMIGRÉES, LA DOCUMENTATION FRANÇAISE, available at <http://www.ladocumentationfrancaise.fr/rapports-publics/084000269/index.shtml> (last visited Aug. 12, 2010).

and renders difficult their access to social housing in other suburbs. The Council added that “it is in this sense that one can speak of systematic discrimination.”⁴¹

In addition, the report states that the findings of several discrimination tests illustrated that immigrants have also been discriminated against in access to private housing. This has occurred in direct discussions between the owner of the property and the immigrant who desires to rent but also occasionally between immigrants and real estate companies. According to the Council, the motivation of the owner of the property includes “fear that the rent will not be paid, fear of the risk of damages or noise for the neighborhood, and fear that the property will lose some of its value, without forgetting plain racial discrimination.”⁴²

D. Ministry of Justice Criminal Statistics on Discrimination

The Ministry of Justice criminal statistics show few criminal convictions for discrimination. There were 559 in 2004, 711 in 2005, 744 in 2006, 790 in 2007, and 828 in 2008.⁴³

Prepared by Nicole Atwill
Senior Foreign Law Specialist
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⁴¹ *Id.*, Sommaire, at 31.

⁴² *Id.*, Sommaire, at 32.

⁴³ Ministère de la Justice [Ministry of Justice] statistics, <http://www.justice.gouv.fr/index.php?theme=TJPE&type=STATI&ordre=2> (official website).