



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	France
Title:	Bill relating to the modernization of the Justice system of the 21st century
Date:	18 October 2016
Expert:	Sophie LATRAVERSE
<u>Context</u>	
Issue at stake:	Various reforms of the justice system including the unification of the legal protection against discrimination on all grounds covered by French law and the creation of a class action in matters of discrimination
Ground of discrimination:	All grounds
Source:	Legislation
Field:	Employment, access to goods and services, access to social protection, social benefits, education and health
Applicable law:	The Law n° 2008-496 of 27 May 2008, Articles 60, 61 and following and 87 and following of the Bill

Content

On 12 October 2016, the National Assembly has definitively adopted the Bill relating to the modernization of the Justice system of the 21st century, which aims at introducing measures of simplification of the justice system.

This Bill covers a number of matters, among which the implementation of a mediation procedure before administrative courts with the contribution of the Defender of Rights (article 5), the unification of the legal protection against discrimination on all grounds covered by French law (article 86) and the creation of a class action in matters of discrimination (article 60 par 1 and 2, article 61 and following, and article 87 and following).

Members of Parliament of the opposition announced their intention to file an action before the Constitutional Council before promulgation of the Bill. This procedure can delay promulgation of the bill for a period of maximum two months, i. e. after the Decision of the Council.

Unification of the legal protection against discrimination:

Further to the development of the protection against discrimination, Law 2008-496 of 27 May 2008 only afforded civil protection against direct and indirect discrimination in access to goods and services, social protection, social benefits and education for the grounds provided by EU Law, i.e. sex, race and ethnic origin. In addition, the list of prohibited grounds covered was drafted differently between the Labour Code, the Law n° 2008-496 of 27 May 2008 and the Penal Code.

Article 86 of the Bill amends Articles 1 and 2 of the Law n° 2008-496 of 27 May 2008 by providing that all discrimination grounds enumerated at Article 225-1 of the Penal Code afford the same protection regarding discrimination in employment, access to goods and services, social protection, social benefits, education and health.

In addition, it thereby extends the list of prohibited grounds mentioned in the Law n° 2008-496 of 27 May 2008, and creates two new grounds: gender identity, in substitution of sexual identity, and the capacity to express oneself in another language than French (a ground intended to protect persons speaking a minority language in France).

The class action recourse:

The Class action must be preceded by a formal letter of demand requesting correction of the discrimination. It can be initiated to request interruption of the discriminatory measure and/or an action in liability with a request for damages to the benefit of all members of the group (Article 62).

In matters of discrimination in general, it must be instituted by an NGOs acting since at least five years in the domain of disability or discrimination (Articles 63 and 86 creating an Article 10 to the law of 27 May 2008), and in matters of employment, it must be initiated by a trade union (Article 87).

The procedure does not separate judgment on the merits from the decision determining whether the situation is representative of a collective situation allowing for a class action. At the time of enforcement of the judgment and determination of damages, members of the group could give mandate to the association to represent them.

Victims can pursue a separate action if they do not wish to be represented by the group (Article 71).

Key points of analysis:

Unification of the legal regime:

In the process of unifying the description of grounds protected against discrimination, the choice of retaining the list of the Penal Code has eliminated the ground of 'convictions'. Furthermore, the protection against discrimination on the ground of religion, evolves from "religion" to "specific religion" ("*religion déterminée*").

Class action:

Lawyers' associations, the Bar association, the Defender of Rights and many representatives of discriminated groups consider that the exclusivity given to associations could jeopardize access of this action and its efficiency.

Internet link source:

<http://www.assemblee-nationale.fr/14/ta/ta0824.asp>.