



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

NEWS REPORT

Country:	France
Title:	Law n° 2017- 86 of 27 January 2017 relating to Equality and Citizenship
Date:	6 February 2017
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Context	
Issue at stake:	Various provisions relating to the promotion of equality and improvement of the overall legal regime of protection against discrimination
Ground of discrimination:	All grounds, including gender
Source:	Legislation
Field:	Employment, access to goods and services, access to social protection, social benefits, education and health.
Applicable law:	Law n° 2008-496 of 27 May 2008 Code of Civil procedure Penal Code Law on the freedom of the press of 29 July 1881 Labour Code Code of education Law n° 2016-1547 of 18 November 2016 relating to the modernization of the Justice system of the 21st century

Content

In this Bill, Government intended to pursue a public policy in favour of access to social rights and improve the overall regime of protection against discrimination.

In this context, it adopted a number of provisions in various areas that can be enumerated as follows:

- Article 37: Reform of the penal legal regime of repression of provocation to discrimination provided by the law on the freedom of the press of 29 July 1881, to simplify the conditions of prosecution at article 54-1, allowing the judge to modify the legal characterization of the infraction at the time of judgment.
- Article 38: Creating aggravating circumstances to all offences and crimes in cases of racism, homophobia and sexism which give rise to aggravated sanctions in all cases.
- Article 42: Providing for the admissibility of situation testing evidence in civil cases, which is presently only admissible in penal cases.
- Correction of inconsistencies resulting from the legislative process adopting the bill relating to the modernization of the Justice system of the 21st century:
 - o Article 41: Correction of the suppression of the reference to beliefs and indirect discrimination on the ground of religion in the Labour Code by replacing the term "in relation to a determined religion" by "religious convictions".
 - o Article 60: Allowing NGOs to join class actions initiated by trade unions

alleging discrimination in the field of employment.

- Article 47: Creating a right of access to school catering without discrimination at article L131-12 of the code of education, in order to impose the right to alternative menus on religious grounds or for health reasons.
- Article 48: Abrogating the law 69-3 relating to the status of travelers; this provision thereby puts an end to the derogatory status of travelers which limited their right to choose a town of elective residence and required them to carry special interior passports and to report regularly to local authorities.
- Articles 54 and 54 bis: Creating an obligation on Government to submit a report to Parliament before 31 March 2017 on the situation of jobs and professions that are forbidden to non-nationals.
- Article 61 bis: Creating an obligation for all hiring committees of organizations of over 300 employees to follow a training to correct discriminatory biases and implement transparent processes.
- Article 61 ter: Special scheme supporting access to employment of persons living in underprivileged suburbs.
- Article 63: Creating a fund to participate in the financing of class actions in discrimination cases, funded by costs taxed upon defendants.

On 26 January 2016, further to the recourse prior to the adoption of the law by a number of right wing senators, the Constitutional Council rendered decision n° 2016-745 DC relating to the constitutionality of a number of provisions of the law.

It has quashed the provisions relating to the correction of the suppression of the reference to beliefs and indirect discrimination on the ground of religion by reason of a grammatical error that made the legislation illegible.

In addition, it has quashed the provision creating a fund to finance class actions because the source of financing was to be funds collected through an aggravated sanction imposed when civil parties brought their claim before the penal judge. The Council found that this specific award which depended on the forum before which the claim was being presented, created an unjustified unequal treatment and quashed the provision.

Key points of analysis:

This is the second legislation against discriminations that was passed in 2016 and it will be followed by a last bill to be passed by this government before the spring national elections on equality overseas. It was passed to promote the strong support of this government against discrimination despite its positions with respect to anti-terrorist measures and the state of emergency, and it was used incidentally to correct various errors resulting from the legislative process in adopting previous legislation.

The last bill against discrimination overseas, which should be adopted in February, will offer a new opportunity to correct the legislative error of the law of 18 November 2016 regarding the grounds of convictions and religion.

Internet link source:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033934948&dateTexte=&categorieLien=id>;
<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-745-dc/decision-n-2016-745-dc-du-26-janvier-2017.148543.html>.