

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

France

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Executive summary

Implementation of Employment Directive 2000/78/EC

France has transposed Directive 2000/78/EC into labour-related laws, and discrimination based on sexual orientation is punishable. The burden of proof upon the victim has been reduced. However the transposition being partially conform, France has been subject to infringement proceedings for having failed to completely implement the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

In consequence, the Law n°2008-496 of 27 May 2008 has completed the Labour Code in order to abide by the terms of the Directive. According to EC requirements, this new text has allowed the introduction in the Labour Code of a definition of both notions of direct and indirect discriminations when notably based on sexual orientation and has widened the scope of discriminatory behaviours.

Freedom of movement

Aside from difficulty in determining which individuals have the right to freedom of movement by virtue of their family ties, potential barriers still exist as to the guarantee of equal treatment of partners joined by a PACS (a registered partnership) and other couples. The new law opening marriage to same sex couples will bring change with the recognition of couples already married in other States. On the other hand, because of certain agreements made by France with eleven countries, some foreigners married in France will not obtain the recognition of their marriage in their own country.

Asylum and subsidiary protection

In the French system, LGBT persons may, in theory, be granted asylum based on persecution related to their sexual orientation. These same criteria apply to transsexuals. Recently, the State Council considered that the criterion for determining the notion of 'social group' in the case of homosexuality does not lie in the attitude of the applicant but in social attitudes towards the applicant. Secondly, the Judge rules that the lack of criminal provisions penalising homosexuality does not affect the assessment of persecution, thus opting for an extensive interpretation of the notion of agent of persecution.

Family reunification

Since the adoption of the Law of 17 May 2013 opening marriage to couples of the same sex, the legal dispositions on family reunification henceforth apply to LGBT couples. This law may also have an impact upon the children of same sex couples who are not married since the legal system no longer opposes the recognition of the parentage of each member of a same sex couple. When the situation of a third country national does not fit into the conditions required for family reunification, he/she may ask for a temporary residence permit bearing the notice 'private and family life' under certain conditions.

Freedom of assembly

In France, LGBT persons are not discriminated against on the basis of their sexual orientation when creating an association whose purpose is to defend their rights. French legislation does not limit the freedom of association and assembly of LGBT persons. The authorities do not discriminate against LGBT persons when implementing the law.

Hate speech and criminal law

Several criminal laws explicitly prohibit discrimination based on sexual orientation. French legislation also considers discrimination based on sexual orientation to be an aggravating circumstance. Since August 2012, gender identity ('identité sexuelle') has been included as a new aggravating circumstance.

Since 2004, French law has also prohibited homophobic libel and slurs, the incitement of hatred or violence against a person or group of persons because of their sexual orientation and the incitement, in respect of the same persons, of discrimination under articles 225-2 and 432-7 of the Criminal Code. The law also specifically prohibits 'threats based on real or supposed sexual orientation'.

Since the election of the new President in May 2012, some significant developments have occurred in this field: an Interdepartmental Action Programme against violence and discrimination based upon sexual orientation or gender identity was adopted on 12 October 2012; The Minister of Justice issued the Circular on the criminal justice response to violence and discrimination based upon sexual orientation or gender identity on 23 July 2013; the limitation period for prosecution for press offences concerning sexual orientation, sex, gender identity has been extended recently from three months to one year.

Transgender issues

It is difficult to obtain information about transgendered people in the fields studies by the report. No statistics can be found. Concerning transsexuals, they have the right to change their civil status and forename under medical and judicial conditions.

In spite of recent liberal changes in national instructions, and local variations on this issue, the Cassation Court (*Cour de cassation*) still requires evidence of 'the reality of transgender syndrome and the irreversibility of the transformation of their appearance'.

Intersex

Legal provisions do not provide any place for intersex in the civil status. Surgery is still practiced with children after birth when the sex cannot be clearly stated on the basis of the appearance of the genitals.

Miscellaneous

France has been found guilty by the European Court of Human Rights for having refused the necessary approval for the adoption of a child by a homosexual.¹ Some institutional discrimination

¹ European Court of Human Rights (ECtHR), *E. B. v. France*, No. 43546/02, 22 January 2008, available at: [http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx#{ "itemid":\["001-84571"\] }](http://hudoc.echr.coe.int/sites/fra-press/pages/search.aspx#{) (All hyperlinks were accessed on 16 May 2014).

still exists in some areas: donating blood, parental leave.

The French government adopted a national action plan for LGBT at the end of 2012² with measures regarding training of professionals, implementation of official data to assess LGBT phobia, and combating bullying at school

Good practices

The Defender of Rights (*Défenseur des droits*) works actively in developing tools and good practices to combat homophobia in the professional world.

Note of caution: It should be noted that it is currently difficult in France to obtain data concerning discrimination homosexuals may be subject to. This is for at least two reasons. The first is the elimination in the Fillon government of the “State Secretariat in Charge of Questions of Integration and Equal Opportunity” (extant from 31 March 2004 to 28 October 2004). This secretariat centralised data concerning equality of the sexes but also was in charge of questions concerning equality in general. To obtain such data today, one must deal with several different ministries: the Ministry of Labour, Social Relations and Solidarity; the Ministry of Immigration, Integration, National Identity and Co- development; the Ministry of Housing and Cities; the Ministry of the Interior etc. One must also find the appropriate departments in these ministries, which is often no mean feat. The second reason is the fact that keeping a record of data reflecting sexual orientation has been prohibited since 1992 and is subject to penal sanction. Article 31 of the information technology and freedoms law (“loi informatique et libertés“) states in this regard that it “is forbidden to put into or keep in electronic memory nominative data which directly or indirectly reveal one's racial origins or political, philosophical, or religious opinions, one's membership to a trade union or one's mores”. The National Information Technology and Freedoms Commission (CNIL) is responsible for ensuring the law's provisions are obeyed and charges can be laid based upon articles 226-16 to 226-24 of the Criminal Code. There are thus no official statistics on the LGBT community in France. However, this situation is changing as a new statistics system within the police has been developed and will be implemented in 2014.

² France, Prime Minister (Premier Ministre)(2012), Governmental Action Programme against violence and discrimination committed because of sexual orientation or gender identity [Programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation sexuelle ou de l'identité de genre], 12 October 2012, available at: www.textes.justice.gouv.fr/art_pix/JUSD1319893C.pdf.

A. Implementation of Employment Directive 2000/78/EC

A.1. Labour law

French labour law has introduced explicit non-discrimination clauses with regard to sexual orientation and gender identity that include homosexuality and transsexualism. Concerning the civil service, only article 40 of the “General Statute of the Civil Service”, which required that civil servants be of “good morals”, could have been used to avoid hiring lesbians and gays, but this provision was repealed in 1983.

France has been subject to infringement proceedings for having failed to completely adopt three European directives into national law within the prescribed periods: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions; and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

The Law n°2008-496 of 27 May 2008 completes the Labour Code to abide by the terms of these directives and by the requirements of the European Commission, which considered that the French legislator had failed to fully implement the three directives, since it had omitted to include a definition of direct and indirect discriminations, of moral harassment and of sexual harassment in French law. Therefore this new text has allowed the introduction of a definition of both notions of direct and indirect discriminations in the Labour Code according to EC requirements. According to article 1 of the Law, there is direct discrimination where “one person is treated or would be treated less favourably than another is, has been or would be treated in a comparable situation”, especially on the ground of sexual orientation. As a response to the European Commission request, this definition includes a time dimension in the assessment of comparable positions. It allows comparison between current, past and speculative situations. The wording of law suggests the extension of the field of discriminatory treatment to series of situations actually or potentially occurring and/or having roots in the past. Beyond the stringency of the actual victim condition, it introduces comparison between hypothetical situations based on the estimation of what would have been the standard treatment in the same situation. In this regard the basis of testing is centred on the assessment of the situation of a person belonging to a potentially discriminated category, notably by reason of his/her gender or sexual orientation, in comparison to standard situations serving as benchmark (report of information n° 252 (2007- 2008), C. HUMMEL). Indirect discrimination in this field is defined as occurring when, on the ground of sexual orientation, “an apparently neutral provision, criterion or procedure has the potential for putting one group of persons at a disadvantage compared to other persons, unless it is justified by a legitimate aim and means for achieving it are appropriate and necessary”. Notions of direct and indirect discriminations appear in article L. 1132-

1 and article L. 1134-1 of the Labour Code.

A.1.1. Recruitment

Article L. 1132-1 of the Labour Code, as modified by the aforementioned law, specifies that “No person shall be rejected from a hiring process or be denied access to an internship or training programme, no employee shall be penalised, dismissed or be subject to any discriminatory measure, be it direct or indirect, as defined by article 1 of the Law of 27 May 2008, in particular concerning pay, as referred to in article L. 3221-3, profit-sharing or issuing of shares, training, reclassification, assignment, qualification, classification, promotion, transfer or contract renewal based upon his or her origin, sex, mores, sexual orientation or gender identity, etc.” In compliance with the Council Directive, the Labour Code also states that a job applicant who believes he or she is a victim of discrimination may claim direct or indirect discrimination before a judge. The burden of proof on the victim has been reduced however. The onus is no longer on the victim to provide formal proof of the discrimination he or she has been subject to but to present evidence indicating the possibility of its existence. In light of such evidence, the onus is upon the employer to prove that his decision is “justified by objective elements devoid of any discrimination”. Failing this, discrimination is found to exist. The judge shall reach a verdict after ordering any investigative measures he or she deems necessary.

According to some authors, “the reduction of the burden of proof on those who believe they are victim of discrimination, as well as the ability to invoke the existence of indirect discrimination, i.e. based upon an apparently neutral criterion, must today facilitate the judge's understanding of such behaviour and give a more realistic measurement of it, especially in the hiring process”.³ However, the analysis of relevant case law (see annex 2) shows that homophobic practices are rarely penalized in the recruiting phase due to the difficulty in providing evidence.

A.1.2. Internal company policy

In the workplace, article L. 1321-3 (par. 3) of the Labour Code requires that neither internal company policy nor regulations may adversely affect employees upon the basis of their sexual orientation or gender identity. It provides that internal company regulations “shall not contain provisions adversely affecting employees in their occupation or their work by reason of their sex, their mores, their sexual orientation, or gender identity etc.” Furthermore, no employee “may be penalised ... by reason of his or her sexual orientation or gender identity” as provided by article L. 1132-1 of the Labour Code. In case of recourse to legal proceedings for discrimination, such penalties are not legally valid according to article 1132-3. The Law of 27 May 2008 sets up a protection against retaliatory measures for those having recounted discriminatory doings or testified in support of someone claiming that he or she had been subject to discrimination.

The analysis of relevant case law (see annex 2) shows that although general regulations do not contain explicit provisions adversely affecting employees in their occupation or their work by reason

³ France, Borillo, D., T. Formond, T. (2007), Homosexuality and discrimination in private law [L'Homosexualité et discriminations en droit privé], Paris, La documentation française.

of their sexual orientation, such discriminatory internal company policies or toleration by the management of the discriminatory behaviour of colleagues can be observed in practice.

Law n°2008-496 widens the scope of discriminatory behaviours to affiliation and commitment to a trade union or a professional organisation, including the benefiting of advantages provided by it, as well as accessing employment, professional training and work, including independent work or self-employment. Additionally the injunction to discriminate is considered as discrimination.

A.1.3. Harassment

As numerous accounts testify, homophobia in the workplace mainly manifests itself as insults or even threats. These verbal assaults lead to problematic work relationships that engender stress, feelings of malaise and sometimes depression for the homosexual victims. Moral harassment is one of the ways employers and work colleagues can make life difficult for the LGBT community and is sometimes used to push them to resign voluntarily. Article L. 1152-1 prohibits moral harassment. In case of moral or sexual harassment, the burden of proof upon the employee has been reduced and that upon the employer has been increased. Once the employee in question establishes the facts allowing the presumption of harassment, the onus is upon the defence, in light of the evidence, to prove that their actions do not constitute such harassment and that their decision is justified based on objective elements devoid of any harassment. The judge shall reach a verdict after ordering any investigative measures he or she deems necessary.

Law No. 2008-496 adopted the Community definition for harassment and explicitly specifies, in accordance with the European Commission's requests, that behaviours identified as harassment may be based on race, ethnic origin, religion, beliefs, handicap, age, **sexual orientation or gender identity**. Definition of moral and sexual harassment is widened by the new law: a prohibited behaviour may consist in a remote action contrary to the necessarily repeated acts in the Labour code and moral harassment is based upon explicit grounds. In addition, protection is offered against any behaviour with a sexual connotation.

In 2012, the Constitutional Council (*Conseil constitutionnel*) declared unconstitutional the legal provision on sexual harassment, since the offence was defined in vague terms⁴. Therefore the Parliament adopted a new law which gives a new definition to sexual harassment as either: 'subjecting a person to repeated degrading or humiliating remarks or behaviour of a sexual nature that is harmful to their dignity, or creating against her/him an insurmountable, hostile or offensive, situation' or 'using any form of severe pressure with the real or apparent purpose of obtaining an act of a sexual nature, be it in favour of the perpetrator or for the benefit of a third person'⁵. In addition, the law included a new basis for grounds of sexual or moral harassment: gender identity (*identité sexuelle*)⁶.

⁴ France, Constitutional Council (*Conseil constitutionnel*), Decision No. 2012-240 QPC, Mr Gerard D., 4 May 2012, available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-240-qpc/decision-n-2012-240-qpc-du-04-mai-2012.105618.html.

⁵ France, Criminal Code (*Code Pénal*), article 222-33, available at:

www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000021796942&cidTexte=LEGITEXT000006070719.

⁶ France, Law No. 2012-954 on sexual harassment (*Loi No. 2012-954 relative au harcèlement sexuel*), 6 August 2012, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&dateTexte&categorieLien=id.

The analysis of the relevant case law (see annex 2) shows that the issue of harassment is often raised before the courts, which assess the evidence submitted in order to establish the facts. The duty to apply all necessary measures aimed at the prevention of harassment in the work place under article L 1152-4 of the Labour code⁷ is often reiterated to employers. Article L. 1152-4 of the Labour code requires employers to display in the workplace the text of article 222-33-2 of the Criminal Code⁸, which sets out the penalties for any harassment which leads to the deterioration of working conditions. However, employers are punished for the non-respect of this obligation only if it is established that he/she had knowledge of such behaviour and tolerated it

A.1.4. Dismissal and resignation

An employee's homosexuality, whether real or imagined, often constitutes a basis (be it explicit or implicit, direct or indirect) for the termination of a contract. One's being subjected to harassment and more general homophobic behaviour in the workplace by the employer, colleagues or even clients can push an employee to resign. In case of recourse to legal proceedings, the burden of proof upon the employee who sees himself/herself as a victim of discrimination relative to dismissal has been reduced. The onus upon him/her is now only to present evidence “allowing to assume the existence of discrimination”.

With regard to discrimination in recruitment and dismissal, some authors point out that the transposition of Directive 2000/78/EC is awkward from a legal standpoint. Specifically, the modalities of integrating EU law relative to proof have proved problematic. “Concerning the concept of indirect discrimination, it must be noted that (French) legislators have committed a major confusion”. As we have seen article L. 1134-1, of the Labour Code provides that “in case of conflict of rights... the employee or applicant... provides evidence allowing the assumption of the existence of direct or indirect discrimination, as defined by article 1 of the Law of 27 May 2008”. In light of such evidence, the onus is upon the accused party to prove that his or her decision is “justified by objective elements devoid of any discrimination”. “But (French) legislators have conflated what is related to the concept of indirect discrimination with that which is related to the reduction of the burden of proof. By requiring only that the party accused of direct or indirect discrimination prove that his/her decision is “justified by objective elements devoid of discrimination”, this law does not correctly transpose EU law. Indeed, in the case of indirect discrimination, Directives 2000/78 and 2000/48 require that the accused party prove that the “provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.⁹

In addition, these same authors point out the textual differences between the Directive and French

⁷ France, Labour Code (*Code du travail*), article L 1152-4, available at : www.legifrance.gouv.fr/affichCode.do;jsessionid=B7334A443950AE9FC7A6B25F55E538CB.tpdjo02v_2?idSectionTA=LEGISCTA000006177845&cidTexte=LEGITEXT000006072050&dateTexte=20140610.

⁸ France, Criminal code (*Code pénal*), article 222-33-2, available at : www.legifrance.gouv.fr/affichCode.do;jsessionid=B7334A443950AE9FC7A6B25F55E538CB.tpdjo02v_2?idSectionTA=LEGISCTA000006165282&cidTexte=LEGITEXT000006070719&dateTexte=20140610.

⁹ France, Borillo, D., Formond, T. (2007) Homosexuality and discrimination in private law [L'homosexualité et discriminations en droit privé], Paris, La Documentation Française, p. 34.

law. The French Labour Code provides that the employee or the applicant must “present evidence that allow the assumption of direct or indirect discrimination”, wording that does not exactly correspond to that of the Directive but which is drawn from a jurisprudence of the Social Chamber of the Court of Cassation elaborated in 1999 with regard to discrimination upon the basis of sex and of trade union membership. “It would have been more respectful of the obligation to transpose the Directives to simply use the Directives' own terms”.¹⁰

In addition, article L. 1152-4 of the Labour Code states that an employer commits an infraction when action is not taken to prevent harassment. Under this law the employer is therefore required to protect the victim from homophobic behaviour in the workplace.

More generally speaking, and in the framework of eliminating discrimination, Law n°2004-1486 of 30 December 2004 has created the High Authority for Equality and the Elimination of Discrimination (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE). Essentially, this law provides for the transposition of Directive n°2000/43 of 29 June 2000. In 2011 the High Authority for Equality and the Elimination of Discrimination (HALDE) was replaced by the Public defender of rights (*Défenseur des droits*). (See below).

Law n°2008-561 of 17 June 2008 has reduced from thirty to “five years since revelation of the discrimination” the period of limitation for civil proceedings in discrimination cases. This reformed provision introduced in article L.1134-5 of the Labour Code, has been widely contested by associations. In a purpose of clarification and appeasement in the implementation of the new law, Émile Blessig, Commission reporter of the National Assembly (*Assemblée nationale*), has referred to the notion of “revelation” as defined by the Court of Cassation in its jurisprudence relative to discrimination in the workplace. In a case of 22 March 2007, the Court has notably considered that “revelation” goes beyond global knowledge by the employee of the existence of discrimination and corresponds to the moment when there are sufficient elements of comparison to reveal it.

The analysis of the relevant case law (see annex 2) shows that the issue of discrimination based on sexual orientation is often raised before the courts in the context of dismissals. The key issue in this area is the concept of the burden of proof under which the employee must present sufficient evidence of discriminatory dismissal. However, evidence submitted is often judged insufficient by the courts (testimonies of other dismissed employees, general observations, etc.). Written documents containing homophobic elements, as well as several testimonies are generally judged as sufficient evidence for discriminatory dismissal to be established. The Courts also refer to the HALDE or the Public defender of rights conclusions and observations, and to the results of the Labour inspectorate investigations.

A.2. Other applications

The law n°2001-1066 of 16 November 2001 essentially transposes the Directive into the field of

¹⁰ France, Borillo, D., Formond, T. (2007) Homosexuality and discrimination in private law [L'homosexualité et discriminations en droit privé], Paris, La Documentation Française, p. 34.

employment. It must nevertheless be noted that by modifying article 225-1 of the Penal Code, the law has extended the list of types of discrimination and as a result has also extended the concept of discrimination, since by virtue of this law discrimination can also be based upon one's physical appearance, family name, sexual orientation and age. Law No. 2012-954 adopted on 6 August 2012 introduced a new criteria of discrimination alongside that of sexual orientation: gender identity (*identité sexuelle*).¹¹ This extended definition is applied generally and in all fields of application.

A.3. Eliminating discrimination with regard to housing

Law n° 2002-73 of 17 January 2002 provides in article 158 that “no person may be refused rental of a dwelling by reason of his or her origin, last name, physical appearance, sex, family status, health, disability, mores, sexual orientation...”. “In case of conflict with regard to the application of the preceding paragraph, the person to whom rental of a dwelling has been refused provides evidence allowing the assumption of direct or indirect discrimination. In light of the evidence, the onus is on the accused party to prove that their decision is justified. The judge shall reach a verdict after ordering any investigative measures he or she deems necessary.” Preparatory work on the law shows that article 158 results from the application of the Council Directive on employment.

Outside of the field of employment, it appears difficult to prove direct discrimination based upon sexual orientation. Under article 4 of the Law of 27 May 2008, the principle whereby once the employee in question establishes direct or indirect discrimination the onus is upon the defence to prove that their actions do not constitute such discrimination, does not apply before criminal courts. Such convictions are subject, as is the case for other categories of discrimination, to the less favourable regime of articles 225-1 and following of the Penal Code. This regime does not reduce the burden of proof upon the victim nor does it criminalise indirect discrimination. (See below).

A.4. The Defender of rights

The Defender of rights (*Défenseur des droits*), an independent authority created by the constitutional law of 23 July 2008, whose status is detailed by the laws of 29 March 2011 (*loi organique et loi ordinaire*)¹² and by the Decrees of 29 July 2011,¹³ regroups henceforth the missions of the High

¹¹ France, Law N° 2012-954 on sexual harassment (*Loi n° 2012-954 relative au harcèlement sexuel*), 6 August 2012, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&dateTexte=&categorieLien=id.

¹² France, Law on Defender of rights No. 2011-333 (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id; France, Law on Defender of rights No. 2011-334 (*Loi No. 2011-334 relative au Défenseur des droits*), 29 March 2011, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781252.

¹³ France, Decree N° 2011-904 relating to the procedure before Defender of Rights (*Décret n° 2011-904 relatif à la procédure applicable devant le Défenseur des droits*), 29 July 2011, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024414558; France, Decree No. 2011-905 on the organisation and running of services of the Defender of Rights (*Décret n° 2011-905 relatif à l'organisation et au fonctionnement des services du Défenseur des droits*), 29 July 2011, available at:

Authority for Equality and the Elimination of Discrimination (HALDE) created by law No. 2004-1486 of 30 December 2004, the Mediator of the French Republic (*Médiateur de la République*), the Defender of children (*Défenseur des enfants*), and the National Commission for Ethics in Police (*Commission nationale de Déontologie de la Sécurité*).

The term "Defender of rights" refers both to the institution and to its president. Mr Dominique Baudis was the first Defender of rights, from 22 June 2011 until 10 April 2014.

A.4.1. Composition and powers

The Defender of Rights is appointed by the President of the Republic for a term of six years non-renewable and non-revocable. The appointment is subject to a vote of the National Assembly and the Senate.

The Defender of rights is assisted by three panels: 'Fight against discrimination and promotion of equality', 'Security Ethics', and 'Defence and promotion of child rights'. The assistants of the Defender of rights, appointed upon her/his proposal by the Prime Minister, are the Vice-Presidents of the panels. The Vice-President of the panel 'Fight against discrimination and promotion of equality' is Ms Maryvonne Lyazid.

The panel in charge of the fight against discrimination is composed of three persons appointed by the President of the Senate, three persons appointed by the President of the National Assembly, a person appointed by the Vice-President of the State Council, and a person appointed by the first President of the Court of Cassation.

The Defender of rights has four main missions: protection of individual rights and freedoms in the context of relations with authorities; protection and promotion of the best interest and rights of the child; fight against discrimination prohibited by law and promotion of equality; ensuring compliance with ethics by persons performing security activities.

The Defender of rights is invested with investigative powers, he has the right to require the communication of all relevant documents, to interview people or conduct spot checks.¹⁴ The refusal may be punished by one year imprisonment and a €15,000 fine, these sanctions are imposed by the Criminal tribunal.¹⁵

The competent authority may object to on-site verification in the administrative offices of a public person for serious reasons related to national defence or public security. Then on-site verification can be carried out only with the authorization of the judge and under his/her authority and control. If the person responsible for private premises is opposed to the on-site verification, it can take place only with authorization of the judge of freedoms and detention of the *Tribunal de Grand instance*. In the case of an emergency, of risk of destruction or concealment of documents or because of the seriousness of the case, the on-site verification may take place with authorisation of the judge of freedoms and detention without notification. In this case, the responsible person for private premises

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024414634.

¹⁴ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, articles 18, 19, 22, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

¹⁵ France, Law on Defender of rights No. 2011-334 (*Loi No. 2011-334 relative au Défenseur des droits*), 29 March 2011, article 12, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781252.

cannot object to the verification.¹⁶

The Defender of rights can favour an amicable resolution of the conflict giving some recommendations for a legal settlement, a settlement through mediation or, in certain circumstances, regulation on equity.¹⁷

The Defender of rights can submit some observations before the civil, administrative or criminal courts in order to support a claimant¹⁸; intervene in support of a civil or criminal transaction¹⁹; incite a disciplinary authority to take action against an agent²⁰; recommend to the administration imposing sanctions against a natural or legal, public or private person, subject to authorization or administrative approval, who causes the discrimination.²¹

The Defender of rights may request studies from the State Council or the Court of Auditors.²² He can be consulted by the Prime Minister or the parliamentary assemblies Presidents on all bills in his field of competence.²³ He can also contribute to the definition of the French position in international negotiations.²⁴

The Defender of rights has the power to propose reforms.²⁵

He submits an annual report to the President of the Republic, to the President of the National Assembly and to the President of the Senate.²⁶

The Defender of rights fights against all types of discrimination prohibited by French law or by an

¹⁶ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 22, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

¹⁷ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, articles 25, 26, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

¹⁸ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 33, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

¹⁹ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 28, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²⁰ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 29, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²¹ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 30, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²² France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 19, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²³ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 32, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²⁴ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 32, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²⁵ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 32, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²⁶ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 36, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

international commitment by France and in order to promote equality.²⁷ He contributes to the prevention of discrimination, provides all necessary information and assists victims, identifies and promotes best practices in order to promote the principle of equality.²⁸

A.4.2. Seizing the Defender of rights

The Defender of rights may be seized by any person if the dispute arose on the French territory including by any person who feels he or she has been the victim of direct or indirect discrimination caused by a private or public entity.²⁹

Legal representatives of the victim of discrimination and any properly declared association founded within five years of the alleged discrimination whose purpose is to eliminate discrimination and to assist its victims can also seize the Defender of rights. This association seizes the Defender of rights jointly with the person who feels they are the victim of discrimination or with their consent.³⁰

The Defender of rights may also act itself.³¹ He/She may be seized by the members of Parliament on their own initiative. Petitions can be transmitted by the President of the National Assembly, of the Senate, by the European Ombudsman or a foreign Ombudsman.³² The concerned person must be warned and should not have any objections for his/her intervention.³³

The Defender of rights may be seized by letter, online,³⁴ via his/her delegates³⁵ in prefectures, sub-prefectures, Houses of Justice and Law.³⁶ A claim may also be made to a deputy, a senator or a French representative in the European Parliament, who shall transmit it to the Defender of rights if he/she considers that it calls for his/her intervention.³⁷

²⁷ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 4, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²⁸ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 34, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

²⁹ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 5, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³⁰ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 5, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³¹ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 5, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³² France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 7, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³³ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, article 8, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³⁴ France, Uphold your rights (Faire respecter vos droits), available at :

<https://formulaire.defenseurdesdroits.fr/defenseur/code/afficher.php?ETAPE=informations>

³⁵ France, Contact your delegate (Contacter votre délégué), available at : www.defenseurdesdroits.fr/contacter-votre-delegue

³⁶ France, Who can summon the Defender and why ? (Qui peut saisir le Défenseur et pourquoi?), available at : www.defenseurdesdroits.fr/saisir-le-defenseur-des-droits/qui-peut-saisir-le-defenseur-et-pourquoi

³⁷ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29

The Defender of rights examines the complaint and may issue any recommendation in order to guarantee the rights and freedoms of the injured person, including regulation on equity. Authorities and persons concerned shall inform the Defender of rights which actions have been taken on its recommendations. If no actions have been taking or in the case of a lack of information within the time fixed, the Defender of rights may order the concerned authority or persons to take the necessary measures. If the order is not followed, the Defender of Rights establishes a special report to publish and send to the concerned person.³⁸

The Defender may propose a settlement to the claimant and the defendant. It must be approved by the public prosecutor. This settlement consists of a fine approved by the Prosecutor (€3,000 for a natural person and €15,000 for a company) and compensation for the victim.³⁹ It may sometimes entail other measures. The execution of the settlement is a cause of extinction of public action. But the plaintiff can summon directly the court that will rule only on civil interests. In the case of refusal or breach of an accepted transaction approved by the prosecutor, the Defender of rights can set in motion the public action.⁴⁰

If it appears to the Defender of rights that the evidence brought to its attention are constitutive of a crime or an offence, he shall inform the public prosecutor.⁴¹

The Defender may, after informing the person in question, decide to publish its opinions, recommendations or decisions and, where appropriate, the defendant's response.⁴²

A.4.3. Complaints to Defender of rights

In 2012, 1.7% of complaints⁴³ received by the Defender of rights concerned discrimination based on sexual orientation. Among these 1.7 % of complaints the following areas of discrimination can be distinguished. In particular, 0.3 % of complaints concerned discrimination in access to goods and services; 0.5% - discrimination at work in the private sector; 0.3% discrimination at work in the public sector; 0.2% - discrimination in housing. While 0.4 % of complaints concerned discrimination in other areas, there were neither complaints in the area of education, nor in the area

March 2011, article 7, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³⁸ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29

March 2011, article 25, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

³⁹ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29

March 2011, article 28, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

⁴⁰ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29

March 2011, article 28, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

⁴¹ France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29

March 2011, article 33, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

⁴² France, Law No. 2011-333 on Defender of rights (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29

March 2011, article 36, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

⁴³ See the number of complaints concerning discrimination based on sexual orientation in previous years in Annex 2 – Statistics.

of public services.⁴⁴

Promotion of equality

The Defender of rights contributed to the reflections of parliamentarians in the context of discussions on the bill opening marriage to couples of the same sex, he informed Parliament on the progress that the bill would bring for the protection of the rights of LGBT people, pointed out that the best interest of the child should be taken into account for any matter related to homoparentality.⁴⁵

The Defender of rights maintains a regular dialogue with civil society and sets up discussions with associations, researchers, national and international organizations in order to raise awareness to the issue of discrimination.⁴⁶

He encourages different actors who might be susceptible to contravening the principle of equality (even involuntarily) to change their practices (public services, employers, landlords, etc.). He helps them to adapt good practices, develops tools and partnerships (charters, conventions) allowing actors to ensure equality effectively.⁴⁷

In order to examine the practical consequences of legal dispositions and implemented policies and to contribute to their improvement, in 2011 the Defender of rights/High Authority for Equality and the Elimination of Discrimination (HALDE) conducted a survey on discrimination in employment focusing among other criteria on sexual orientation and gender identity.⁴⁸ The respondents were divided as to the opportunity to disclose their homosexuality in their professional environment. They pointed out that the persons who disclosed their homosexuality are regularly exposed to difficulties at work.⁴⁹

Following this survey and on the basis of the work conducted with several LGBT associations a working group on LGBT rights in employment was created in late 2011. It aims to make employers, trade unions, labour inspectors, and physicians aware of LGBT people's rights issues.⁵⁰ The survey

⁴⁴ France, Defender of rights (Défenseur des droits) (2013), 2012 Annual report [Rapport annuel 2012], available at: www.defenseurdesdroits.fr/sites/default/files/upload/raa-ddd-2012_press02.pdf.

⁴⁵ France, Defender of rights (Défenseur des droits) (2013), 2012 Annual report. Annex III. [Rapport annuel 2012. Annexe III], p. 27, available at: www.defenseurdesdroits.fr/sites/default/files/upload/raa-2012-annexe-3_discriminations.pdf.

⁴⁶ France, Defender of rights (Défenseur des droits) (2012), 2011 Annual report [Rapport annuel 2011], p. 110, available at: www.defenseurdesdroits.fr/sites/default/files/upload/ddd_raa_2011.pdf; France, Defender of rights (Défenseur des droits) (2013), 2012 Annual report [Rapport annuel 2012], p. 124, available at: www.defenseurdesdroits.fr/sites/default/files/upload/raa-ddd-2012_press02.pdf.

⁴⁷ France, Defender of rights (Défenseur des droits) (2012), 2011 Annual report [Rapport annuel 2011], p. 110, available at: www.defenseurdesdroits.fr/sites/default/files/upload/ddd_raa_2011.pdf; France, Defender of rights (Défenseur des droits) (2013), 2012 Annual report [Rapport annuel 2012], available at: www.defenseurdesdroits.fr/sites/default/files/upload/raa-ddd-2012_press02.pdf.

⁴⁸ France, Defender of rights (Défenseur des droits), International Labour Organisation (Organisation Internationale du Travail)(2012), Barometer of perception of discrimination at work: employees of the private sector and public service servants [Baromètre de la perception des discriminations au travail : regard croisé salariés du privé et agents de la fonction publique], available at: [\[www.defenseurdesdroits.fr/sites/default/files/upload/barometre_oit_-_etude_-_discriminations__a_lemploi.pdf\]](http://www.defenseurdesdroits.fr/sites/default/files/upload/barometre_oit_-_etude_-_discriminations__a_lemploi.pdf).

⁴⁹ France, Defender of rights (Défenseur des droits), International Labour Organisation (Organisation Internationale du Travail)(2012), Barometer of perception of discrimination at work: employees of the private sector and public service servants [Baromètre de la perception des discriminations au travail : regard croisé salariés du privé et agents de la fonction publique], available at: www.defenseurdesdroits.fr/sites/default/files/upload/barometre_oit_-_etude_-_discriminations__a_lemploi.pdf.

⁵⁰ France, Defender of rights (Défenseur des droits) (2012), 2011 Annual report [Rapport annuel 2011], p. 111, available at: www.defenseurdesdroits.fr/sites/default/files/upload/ddd_raa_2011.pdf.

involving 250 big companies was conducted in order to examine their diversity policies, their engagements against discrimination on the criteria of sexual orientation and gender identity and on equality of rights between married persons and unregistered partners.⁵¹

The Defender of rights and the National Commission on IT and Liberties (*Commission nationale de l'informatique et des libertés*, CNIL) developed a data collection guide for use by employers in order to enhance equality of opportunities in employment, to prevent or resolve eventual cases of discrimination identified thanks to this tool. This project was supported by the European Commission 'Progress' Programme.⁵²

The Defender tries to change discriminatory practices: during the International Day against AIDS in 2011 he called for the annulment of the ban on blood donation by gay men, the action recommended by the HALDE in 2006.⁵³

A.4.4. Complaints by associations

According to article L. 1134-2 of the Labour Code, trade unions representatives at national and local level (including the level of *départements* in mainland France and the level of *collectivité* in the overseas departments of Saint-Barthélemy and Saint-Martin), or at a company level, may initiate legal proceedings based on the principle of non-discrimination. They may act, under the conditions laid down in article 1134-1 of the Labour Code, on behalf of a job, training or internship applicant, or on behalf of an employee, without the approval of the discrimination victim, provided that he or she has received written notification and has not opposed the action within a period of fifteen days after notification by the trade union of its intention to engage in proceedings. The person concerned may become involved at any stage during the procedure.

The analysis of the recent case law (see annex 2) shows that the victim was represented by a trade union in only one case. In 2014, the 'Solidarity' trade union (*Union syndicale solidaires*) supported a Pizza Hut employee, who was the target of homophobic remarks from his manager, by questioning the board of directors on the issue⁵⁴.

Most trade unions have LGBT branches: the issue of homophobia at work is being increasingly discussed at various meetings⁵⁵. In particular, the ad hoc LGBT group created in 2011 by the 'French

⁵¹ France, Defender of rights (Défenseur des droits) (2012), Companies and LGBT people's rights [Les entreprises et la prise en compte des droits des personnes LGBT], available at: www.defenseurdesdroits.fr/sites/default/files/upload/les_entreprises_et_la_prise_en_compte_des_droits_des_personnes_lgbt.pdf.

⁵² France, Defender of rights (Défenseur des droits) National Information Technology and Freedoms Commission (Commission Nationale de l'Informatique et des Libertés)(2012), Methodological guide 'Measures to advance towards equal opportunities' [Guide méthodologique "Mesurer pour progresser vers l'égalité des chances"], available at: www.defenseurdesdroits.fr/sites/default/files/upload/promotion_de_%20legalite/progress/fiches/ldd_cnil_interactif.pdf.

⁵³ France, Defender of rights (Défenseur des droits) (2012), 2011 Annual report [Rapport annuel 2011], p. 113, available at: www.defenseurdesdroits.fr/sites/default/files/upload/ddd_raa_2011.pdf.

⁵⁴ France, Longuet, M. (2014) 'Ça va l'homosexuel ? Ça va le gay ?', un salarié de Pizza Hut victime d'homophobie', TF1, 25 February 2014, available at : <http://lci.tf1.fr/france/societe/un-salarie-de-pizza-hut-victime-d-homophobie-sur-son-lieu-de-travail-8371776.html>.

⁵⁵ France, HES Socialistes LGBT (2010) 'Discriminations liées à l'orientation sexuelle dans le monde du travail, comment agir ? Débat à Brest', 5 November 2010, available at : www.hes-france.org/pres-de-chez-vous/groupes-locaux-d-hes/le-

Democratic Confederation of Labour' (*Confédération française démocratique du travail*, CFDT) trade union holds regular meetings. In 2012, the National Federation of Construction Employees (*Fédération Nationale des Salariés de la Construction*, CGT) organized four interregional conferences on the theme 'Trade union actions to support LGBT people's rights' in Nantes, Montpellier, Lyon and Metz. These conferences brought together 144 activists and benefited from European Social Fund (ESF) financing, in the framework of the 'Winning equality of LGBT rights at work' project.⁵⁶ The National Union of Autonomous Trade Unions (*Union nationale des syndicats autonomes*, UNSA) organized a 'Working together against discrimination' conference in order to continue its work on action against all forms of discrimination.⁵⁷ The Unitary Trade Union Federation (*Fédération Syndicale Unitaire*, FSU) strongly condemned acts of vandalism committed at a gathering of LGBT associations, and attacks suffered by homosexual couples during the discussion in Parliament of the law allowing marriage for same-sex couples.⁵⁸ The CFDT, CGT, UNSA, FSU, and 'Solidarity' trade union regularly take part in demonstrations in support of LGBT people.⁵⁹

All associations, if they are duly established and registered for more than five years in the field of fighting discrimination, may initiate legal proceedings based on the principle of non-discrimination. They may act, under the conditions laid down in article 1134-1 of the Labour Code, on behalf of a job, training or internship applicant, or on behalf of an employee, provided they have received written consent from the discrimination victim.

According to article 2-6 of the Code of criminal procedure, an association, duly established and registered for more than five years in the field of fighting discriminations based on sex, mores, sexual orientation or gender identity, may exercise the civil party rights in cases of discrimination punished by articles 225-2 and 432-7 of the Criminal code and punished by articles L. 1146-1 et L. 1155-2 of the Labour code if it was committed because of gender, marital status, mores or sexual orientation or gender identity of the victim or as the result of sexual harassment.

Among the associations actually engaging on behalf of or in support of complainants we can cite SOS Homophobie, 60 Adheos, 61 Collectif contre l'homophobie, 62 Centre LGBT, 63 Fédération LGBT.⁶⁴

However, the analysis of the recent case law (see annex 2) shows that the complainants are more

groupe-de-brest-49/discriminations-liees-a-l.

⁵⁶ France, National Federation of Construction Employees (Fédération Nationale des Salariés de la Construction) (2013) 'Des conférences interrégionales sur le thème : « Actions syndicales pour gagner les droits pour les personnes lesbiennes, gays, bi et trans »', 8 January 2013, available at : www.cgt.fr/Des-conferences-interregionales.html.

⁵⁷ France, National Union of Autonomous Trade Unions (Union nationale des syndicats autonomes)(2013) ' 15 décembre : colloque UNSA « Agir ensemble contre les discriminations » ', December 2013, available at : www.unsa.org/?15-decembre-colloque-UNSA-Agir.html&decoupe_recherche=lgbt

⁵⁸ France, Prioux, G. (2013), 'Homophobie ça suffit !', *FSU*, 9 April 2013, available at : www.fsu.fr/Homophobie-ca-suffit.html.

⁵⁹ France, Figarol, N. (2014) 'LGBT : Mettre en œuvre l'égalité en luttant contre les discriminations', *CFDT*, 20 March 2014, available at : www.cfdt.fr/portail/actualites/societe/lgbt-mettre-en-oeuvre-legalite-en-luttant-contre-les-discriminations-prod_200230; France, Lévêque, E. (2013) 'Le mariage gay divise les syndicats', *L'express*, 26 January 2013, available at : www.lexpress.fr/actualite/societe/le-mariage-gay-divise-les-syndicats_1213733.html#j9jk1E1k9TWxWEfL.99.

⁶⁰ www.sos-homophobie.org

⁶¹ www.adheos.org/accompagnement-juridique-victime-homophobie

⁶² www.cch.asso.fr/

⁶³ www.centrelgbtparis.org/

⁶⁴ <http://federation-lgbt.org/>

often represented by lawyers. This statement should be assessed taking into account the *bro bono* practice when lawyers actually support associations, but this information is not mentioned in judgments.

Concerning the impact of associations' support for the victims it should be distinguished between labour and criminal proceedings.

The labour proceedings are initiated with the written consent of the concerned person under the conditions laid down in article 1134-1 of the Labour Code. This person may halt proceedings at any time.⁶⁵

An association may exercise civil party rights under the conditions of article 2-6 of the Code of criminal procedure, without a victim's consent, in some cases of discrimination based on sexual orientation or gender identity, and in cases of moral harassment.⁶⁶

A.5. Data

See annex 2.

A.6. Dismissals

The report, "Homophobie 2007" by SOS Homophobie indicated that the legislation is correctly applied by judges in many cases and that victims are treated equally by the justice system.⁶⁷ However the report deplored the fact that "despite of the large number of infractions and accounts regarding this issue, we observe a very small number of cases in which homophobic employers or colleagues are convicted". Employers often take great care to justify their actions by valid and perfectly legal reasons, rendering any legal complaint difficult. Indeed, certain resignations are considered voluntary when they are in fact forced and discrimination based upon sexual orientation is often hidden behind other grounds for dismissal. As stated by the report "the most frequent case is dismissal for misconduct: the employer uses certain generic, legal arguments which hide the reality of violent homophobia: professional unfitness, incompatibility with the style of management... But they do not hesitate to invent misconduct, mistakes or imaginary thefts, claimed oversights, sometimes even using complicit employees. And this can even go as far as libelling the victim, always very much oriented around sexuality...".⁶⁸ In the report "Homophobie 2009", the NGO SOS Homophobie points out that employers give priority to the most "visible" patterns of discrimination and too little attention is attached to "invisible" types of discrimination such as those based on sexual

⁶⁵ France, Labour code (*Code de travail*), article 1134-3, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=C10D1F4E795670F9E2E62AA897D97A2A.tpdjo04v_1?idSectionTA=LEGISCTA000006177838&cidTexte=LEGITEXT000006072050&dateTexte=20140416.

⁶⁶ France, Code of criminal procedure (*Code de procedure pénale*), article 2-6, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=C10D1F4E795670F9E2E62AA897D97A2A.tpdjo04v_1?idSectionTA=LEGISCTA000024458641&cidTexte=LEGITEXT000006071154&dateTexte=20140416.

⁶⁷ France, SOS Homophobia (SOS Homophobie) (2007), Report on homophobia [Rapport sur l'homophobie], available at: www.sos-homophobie.org/sites/default/files/ra2007.pdf.

⁶⁸ France, SOS Homophobia (SOS Homophobie) (2007), Report on homophobia [Rapport sur l'homophobie], p. 156, available at: www.sos-homophobie.org/sites/default/files/ra2007.pdf.

orientation.⁶⁹

The analysis of the relevant case law since 2008 (see annex 2) shows that employers are more often punished for discrimination based on the employees' sexual orientation. However, it appears difficult in many cases to present sufficient evidence of discriminatory dismissals. This task is facilitated if there are observations attesting to evidence of discrimination from the HALDE, Defender of rights or the Labour inspectorate.

⁶⁹ France, SOS Homophobia (SOS Homophobie)(2009), Report on homophobia [Rapport sur l'homophobie], p. 179, available at: www.sos-homophobie.org/sites/default/files/ra2009.pdf

B. Freedom of movement

B.1. The personal scope of the Directive

Firstly, it must be recalled that by virtue of article 21 of the Treaty on the Functioning of the European Union (former article 18 TEC) “every citizen of the Union has the right to move and reside freely within the territory of the Member States”. The European Court of Justice has recognised that freedom of movement is a fundamental freedom that every EU citizen must be able to exercise without discrimination.

Progressively, freedom of movement has been recognised for the family of an EU citizen exercising his or her right to freedom of movement (Regulation No. 1612/68 and then Directive 2004/38). Directive 2004/38 relative to the freedom of citizens and their family members of movement and residence within the territory of the Member States provides in article 3 that “1. This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.”

The problem is therefore the definition of what constitutes a family member of an EU citizen. In article .2.2, the Directive defines family member as:

“(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);”

The question is therefore to verify the compatibility of national law with the Directive with regard to the situation of LGBT couples.

B.2. LGBT couples not within the scope of the Directive

LGBT couples formed by two citizens of a non-member state are not within the personal scope of the Directive, insofar as neither of them is covered by the right to freedom of movement of article 21 of the TFEU (former article 18 of the TEC) unless he or she is a citizen of a non-member state bound to the EU by an international convention granting them rights relative to freedom of

movement.

LGBT couples formed by two French nationals or by a French national and a citizen of a non-member state are also outside the personal scope of the Directive when such a situation is purely internal to France where there is no extraneous element allowing the application of EU law.

This exclusion in principle would vanish if a couple were composed of a French national and a citizen of a non-member state bound to the EU by international convention granting them rights relative to freedom of movement.

B.3. LGBT couples within the scope of the Directive

LGBT couples formed by two EU citizens are not a source of conflict with regard to entry to national territory and the obtention of a residence visa as they both can exercise their right to freedom of movement individually by virtue of article 18 TCE. Circular No. 2008-024 of 18 June 2008 on the right of residence of European citizens has specified that the residence right recognised to European citizens extends to all family members including partners living in cohabitation and registered partners. However, unless they are married, these couples may encounter discrimination with regard to equality of treatment (see below).

Unless they are married couples, instances of LGBT couples formed by an EU citizen and a citizen of a non-member state is more complex regarding entry to national territory and the obtaining of a residence visa. Directive 2004/38 requires that the couple be united by “a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State”. France certainly has a form of registered partnership (the “PACS”) but this is not considered in national law as granting the same rights as marriage. Consequently, as the Committee on Petitions of the EP states in its response of 3 July 2006 to petition 0724/2005 “ a Member State which does not recognise registered partnerships under its own law will not be required to automatically grant partners registered in another Member State the right of residence as family members.” As a registered partnership equivalent to marriage does not exist in France, it is not required to apply mutual recognition of partnerships. France is thus not bound by the obligation to adopt legislation allowing the automatic granting of resident status for partners registered in another Member State of the EU.

As a matter of fact, in its response to petition 0724/2005, the Committee on Petitions of the EP underlined that “Under (article 3), the Member States must facilitate the right of residence of these partners, including spouses of a different sex, and must justify any refusal to grant entry or residence.” “In practice, EU citizens who are married or in a partnership with a national of a third country may rely on this facilitation requirement, subject to the application of the principle of non-discrimination.”

Notwithstanding its non-recognition of registered partnerships as equivalent to marriage, France is still bound by an obligation to facilitate the right of residence for these registered partners. In this context a temporary residence may be authorised even for unregistered partners as article 12 of Law

n°2007- 1631 of 20 November 2007 relating to the control of immigration and asylum in France attests: a temporary “private and family life” residence visa shall be issued to the foreign national “whose personal and family ties, notably appreciated in consideration of their intensity, their duration and their stability, the living conditions of the person, his or her insertion in French society and the nature of his or her links with his/her family, stayed in his/her country of origin, are such that refusal to grant a residence visa would disproportionately infringe his/her right to respect of his/her private and family life with regard to the rationale for refusal”.

As to the status of children of a registered partner or a non-member state citizen, the Directive provides in article 3.2 that “...the host Member State shall, in accordance with its national legislation, facilitate entry and residence for the following persons:

(a) any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen”. French law takes this obligation into account as is shown by the French legislation.

There is no known case law concerning the rights of LGBT partners in the context of freedom of movement⁷⁰

B.4. Freedom of movement in another member state with regard to registered partnership and marriage

A registered partnership known as the *Pacte Civil de Solidarité* or PACS exists in French law, as a result of the law of 15 November 1999. This registered partnership may thus allow French nationals bound by a PACS to a citizen of non-member state not bound to the EU by any international convention granting him or her the right of freedom of movement to be taken into account as registered partners in the Member States of the European Union whose national legislation recognises registered partnerships as being equivalent to marriage. (Article 2.2 of Directive 2004/38).

In the case of a Member State whose legislation does not recognise registered partnerships as being equivalent to marriage, the French/non-member state partners may nevertheless benefit from the obligation to facilitate residence, an obligation which remains the responsibility of the host Member State, as stated above with regard to French law.

Aside from difficulty related to determining who has the right to freedom of movement by virtue of their family ties, potential hurdles exist concerning guarantees of equal treatment of registered partners and other couples.

⁷⁰ Legal data sources consulted: Legifrance, Lexisnexis, Dalloz, Lextenso.

French law has recognised marriage for same sex couples since 17 May 2013.⁷¹ This law gives to same sex couples the same rights for immigration as heterosexual marriage in France. In addition, since 17 May 2013, the marriage of a same-sex couple conducted abroad before the adoption of the law may be recognized retroactively in France. By contrast, some foreigners who married in France may find themselves in a situation where their marriage in France is not recognized in their country of origin. In addition, eleven nationalities are excluded from marriage of same-sex couples because of bilateral agreements concluded by France with eleven countries (Poland, Morocco, Bosnia Herzegovina, Montenegro, Serbia, Kosovo, Slovenia, Cambodia, Laos, Tunisia, Algeria). This law will still have a positive impact on the rights of families of foreigners living in France, in particular with regards to the right to residence and asylum. The marriage of a binational couple (a French national and a person with a different nationality) now gives the right to a visa and a residence permit for the wife/husband of the French person. A marriage between a national of a Member State and a national of a third state should also give the right for the latter to a residence permit.

B.5. The principle of equality of treatment

Directive 2004/38 provides in article 24 that:

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

This principle of equality of treatment creates a requirement of equality in granting tax privileges and a requirement of equality in granting social benefits.

B.6. Granting of tax privileges

The requirement of equality in granting tax privileges is imposed by the principle of non-discrimination based on sexual orientation. Before the Finance Act 2005, this aspect was

⁷¹ France, Law No. 2013-404 opening marriage to same sex couples (*Loi No. 2013-404 ouvrant le mariage aux couples de même sexe*) 17 May 2013, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte&categorieLien=id.

problematic in French law as registered partners or partners bound by a PACS could not be eligible for joint taxation benefits similar to those of married couples before three years had passed since registration of the PACS. This mandatory period was not required however if both partners were liable for the wealth tax (ISF), in which case they could file a joint tax declaration from the beginning of their PACS commitment. Such a disadvantage regarding taxation represented a possible obstacle to freedom of movement of persons insofar as it could discourage EU citizens bound by a registered partnership to settle in France. Since 2005, partners' incomes are subject to joint taxation rules during the year the PACS is registered. The Finance Act 2005 has placed PACS partners and married couples on the same ground with regard to taxes by allowing joint taxation to apply immediately. In addition, the tax regime for inheritance matters is the same as for married couples. In the same trend, since the 1 January 2005, the condition of two years of PACS commitment has disappeared for the regime of gift taxes to apply. Since the Law of 21 August 2007 in favour of work, employment and purchasing power, estate taxes are no longer due. In general, taxes rules governing gift tax have been improved and made equal to that of married couples in terms of allowances and lower tax rates subject to a few differences.

B.7. Access to social benefits

On the other hand, France guarantees equality of treatment of homosexual and heterosexual couples with regard to social benefits. Thus, with regard to housing benefit for instance, the administration only asks whether the beneficiary lives alone or in a couple, without requesting information about the partner's sex, nor about the couple's type of union (marriage, PACS or de facto unions).

The Senate has recently rejected a bill filed by Communist Senator Isabelle Pasquet on 16 June 2009 that aimed at improving the status of the PACS. It was notably proposed to extend the right to survivor's pension to PACS couples and to allow the acquisition of French nationality for registered partners on the same basis as married couples in so far as there is a community of life with a French partner.

C. Asylum and subsidiary protection

According to the Geneva Convention of 1951 (Chapter 1, Article 1, A) a refugee is anyone who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. Council Directive 2004/83/EC of 29 April 2004 reiterates the main principles of this convention with regard to the minimum criteria required to obtain refugee status. It has allowed LGBT persons to advance. Indeed, concerning the reasons for persecution, the social group is redefined in a new way since a social group can be defined as one that is “perceived as being different by the surrounding society”. A specific social group may therefore be one whose members are characterised by sexual orientation, thus including LGBT persons.

In the French system, LGBT persons may, in theory, be granted asylum as a result of persecution related to their sexual orientation. Thus, Directive 2004/83/EC was anticipated in part in France by Law 2003-1176 of 10 December 2003. This law, which amended law n° 52-893 of 25 July 1952 relative to the right of asylum, came into force on 1 January 2004. It draws upon texts debated at the European Union level dealing with the definition of “refugee”, the procedures for granting asylum as well as “subsidiary protection”.

C.1. The approved criteria

In France, asylum claims are examined by the French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*, OFPRA). If the claim is rejected, the asylum-seeker may appeal to the National Court for the Right of Asylum (*Cour nationale du droit d’asile*, CNDA).⁷² The solutions recommended by the OFPRA, the CNDA as well as the State Council (*Conseil d’Etat*, the highest French administrative court) reflect the way Directive 2004/83 is applied in France. These bodies examine different criteria for granting conventional protection by reason of persecution based upon sexual orientation: the legislation in force in the country of origin, the level of the society’s tolerance toward LGBT persons as well as awareness of the asylum-seeker’s sexual orientation. These criteria may be sufficient on their own but may be combined in certain cases.

C.2. Homosexuals

In general, proving the existence of a social group is not sufficient to obtain asylum; the claimant has to prove or show their belonging to the social group through previous assertive or demonstrative behaviour revealing their homosexuality. Nevertheless, according to the National Court for the Right of Asylum (*Cour nationale du droit d’asile*, CNDA) reports, violence, generalization of social disapproval, or rejection of homosexuality and prohibition of homosexuality by national legislation are crucial criteria for the identification of a social group, and may create a sufficiently significant

⁷² The CNDA replaced the Refugee Appeals Board (CRR) in 2007.

environment of fear when combined with national law. For example, the Refugee Appeals Board (*Commission de recours des réfugiés*, CRR) (replaced by the CNDA) considered that the situation of homosexuals in Mauritania, a country where homosexuality is forbidden under sharia law, allows them to be seen as a circumscribed group of persons and as sufficiently identifiable to constitute a social group, although they had neither asserted nor manifested their sexual orientation in an ostensible manner.⁷³ In this case, examining national legislation proved sufficient to grant refugee status, as well as in cases concerning Jamaica and Cameroon.

The State Council first endorsed this approach and even brought some clarifications in 2012. In one case indeed, the CNDA refused to grant refugee status to a man from Congo, since he had not given notification of his sexual orientation in his country and because the Congolese law does not prohibit homosexuality. The State Council annulled this decision because it considered that the granting of refugee status with regards to persecution due to membership in a social group based on common sexual orientation should not be subordinated to the public manifestation of the sexual orientation of the person seeking refugee status 'because the social group (...) is not established by those who compose it, or even because of the existence of objective characteristics attributed to them but by the views held by the surrounding society or institutions on these people' (State Council, 27 July 2012, *M. B.*, n° 349824⁷⁴). In addition, in the same case, the State Council stated that the fact that there is no specific criminal legislation against homosexuality in the country of origin does not affect the reality of the risk of persecution.

This State Council decision changes the CNDA approach outlining the new trend.

C.3. Transsexuals

The same criteria are applied in the case of transsexuals. This is how Mr. B., an Algerian citizen, having publicly manifested his transsexuality and having suffered persecution by elements both related and unrelated to the state, was granted refugee status by reason of belonging to a social group.⁷⁵

Beyond the existence of high risks of harm and hostility for the granting of refugee status on the ground of sexual orientation, arguments based on consequences of transsexuality such as required hormonal therapy in progress or other adequate health treatment where necessary cannot justify quashing an expulsion order if the applicant cannot prove that he could not benefit such a medical or psychological therapy in his country of origin.

In recent years, the concept of belonging to a social group has been an area of advancing

⁷³ France, Refugee Appeals Board (*Commission de recours des réfugiés*), Decision n°579547 Ms N, 1 December 2006, available at : www.cnda.fr/media/document/recueil2006_anonymise.pdf.

⁷⁴ France, State Council (*Conseil d'Etat*), Decision No. 349824, 27 July 2012, available at: http://actu.dalloz-etudiant.fr/fileadmin/actualites/pdfs/SEPTEMBRE_2012/Conseil_d_Etat_10eme_et_9eme_sous-sections_reunies_27_07_2012_349824_Publie_au_recueil_Lebon.pdf.

⁷⁵ France, Refugee Appeals Board (*Commission de recours des réfugiés*), Decision n° 496775, Mr B., 15 February 2005, available at : www.cnda.fr/media/document/recueil2005_anonymise.pdf.

..

jurisprudence that has come to enable LGBT persons to be protected by the Convention. However, acceptance of this notion remains strictly limited and many LGBT asylum-seekers have their claims rejected by reason of not belonging to a social group.

In this case, LGBT persons may be granted subsidiary protection if they can prove the existence of severe threats and/or inhuman or degrading treatment. Indeed by the terms of the provisions of article L. 712-1 of the Immigration and Asylum Code (CESEDA),⁷⁶ “subsidiary protection is granted to any person who does not meet the requirement for refugee status as defined by the preceding paragraph and who establishes that he or she is gravely threatened in his or her country by one of the following: ... b) torture or inhuman or degrading punishment or treatment.”

Subsidiary protection is only granted for a renewable period of one year, in contrast to the 10-year residence visa granted to conventional refugee. The OFPRA may refuse “to renew subsidiary protection at its term if the circumstances justifying its attribution have ceased to exist or have undergone sufficiently profound change rendering the protection unnecessary.”⁷⁷

In this way, a Bosnian citizen, Mr S., not having ostensibly manifested his homosexuality and not having been subject to legal proceedings, was not considered as belonging to a circumscribed group of persons that is sufficiently identifiable to constitute a social group in the spirit of the Geneva Convention. He nevertheless was able to establish that in his country he was at risk of reprisals from individuals by reason of his sexual orientation, and that the Bosnian authorities would not be able to offer him protection; he thereby established that he was exposed to the type of grave threat addressed by the provisions of b) of article L. 712-1 of the Immigration and Asylum Code (CESEDA). The CRR thus annulled the OFPRA's decision and granted subsidiary protection to Mr S.⁷⁸ The creation by the OFPRA of a list of safe countries of origin has, among other things, weakened protection of LGBT persons. The notion of safe countries has been inserted in French law by a Law of 10 December 2003⁷⁹ and is illustrated by a list of safe countries that is fixed by the OFPRA⁸⁰. According to the OFPRA's decision of 20 June 2005, a country is considered as such if it ensures that principles of freedom, democracy and the rule of law are respected, as well as human rights and fundamental freedoms. Pursuant to article L. 722-1 of the same Code, it is the Board of the OFPRA which establishes this list. The current list (decided on 26 March 2014) includes 17 states (Albania, Armenia, Benin, Bosnia and Herzegovina, Cape Verde, Georgia, Ghana, India,

⁷⁶ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 712-1, available at: www.legifrance.gouv.fr/affichCode.do?jsessionid=3685DFAC2DA27C753D1F17C435C8FE10.tpdjo11v_3?idSectionTA=LEGISCTA000006147795&cidTexte=LEGITEXT000006070158&dateTexte=20140228.

⁷⁷ France, Law N° 52-893 on the right of asylum (*Loi N° 52-893 relative au droit d'asile*), 25 July 1952, article 2, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000314167&categorieLien=cid.

⁷⁸ France, Refugee Appeals Board (*Commission de recours des réfugiés*), Decision n° 555672, Mr S., 12 May 2006, available at : www.cnda.fr/media/document/recueil2006_anonymise.pdf.

⁷⁹ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), art. L. 741-4, 2°, available at: www.legifrance.gouv.fr/affichCode.do?jsessionid=9B966E49143239EA26C6CF50AADB748C.tpdjo05v_3?idSectionTA=LEGISCTA000006147803&cidTexte=LEGITEXT000006070158&dateTexte=20131228.

⁸⁰ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 722-1, available at: www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006335332&cidTexte=LEGITEXT000006070158&dateTexte=20131228&oldAction=rechCodeArticle.

Kosovo, Macedonia (ARYM), Mauritius, Moldavia, Mongolia, Montenegro, Senegal, Serbia, Tanzania.). The State Council withdrew Albania and Niger from this list. It declared the political and social context in these countries insufficient to meet the requirements of stability and a safe environment laid down by law.⁸¹

This list aims to reduce the number of asylum seekers coming from countries with many people seeking asylum. Persons originating from safe countries are not entitled to a temporary benefit or residence permit, they have their claims fast-tracked and any appeal is non-suspensive, i.e. they can be deported before the CNDA (formerly the CRR) hears their appeal. Yet these countries have explicitly homophobic legislation. This is the case in Benin, Ghana, India, Mauritius, Senegal and Tanzania. NGOs report however that binational PACS couples and homosexuals still encounter difficulty obtaining asylum in France. It is impossible to obtain official statistics concerning sexual orientation. More precisely, there are no statistics in France concerning the number of persons seeking asylum on the basis of persecution based upon their sexual orientation. P. Roy (France Terre d'Asile) states that out of 200 to 300 hundred asylum claims monitored by his association, 4 are claims by homosexuals.

More generally, it can be observed that conventional or subsidiary protection is more and more difficult to obtain in France, whether the person is LGBT or not. Indeed, in 1994, 30.70% of asylum-seekers were granted protection by the OFPRA or the CRR, compared to 22.80% in 2000 and 19.11% in 2003. After a sensitive downward tendency, the number of asylum-seekers who have obtained refugee status has shown a renewal between 2007 and 2008 with an increase of 19.5%. The number of agreements granted by the OFPRA or obtained after recourse before the CNDA has concerned one in five asylum-seekers in 2006 (19.5%) and more than one in three in 2008 (36%). This positive tendency can be extended to subsidiary protection, which has known an important rise in 2008. The number of beneficiaries of subsidiary protection has changed from 706 in 2007 into 1793 in 2008.

The latest figures, for 2013, report 11,415 favorable decisions for asylum seekers, including 2,287 for subsidiary protection. Compared to the applications which were introduced by asylum seekers before the OFPRA and the CNDA, this represents 17.3% of all applications. In comparison, 10,377 decisions were positive for asylum seekers in 2010 (including 2,050 for subsidiary protection).⁸²

In the absence of statistics relating to the grounds for refusal of asylum, it is not possible to identify a trend in recent years in the granting of refugee status to homosexuals. Recent years have nevertheless been marked by the recognition, on 27 July 2012, of homosexuals as a social group, even in the absence of repressive legislation against them. On evidence of sexual orientation before the courts: one recent piece of fieldwork research within the French Court of Asylum (Cour nationale du droit d'asile, CNDA), even highlighted the shift in suspicion about evidence of persecution towards mistrust about homosexuality of asylum seekers who pretend to be so.⁸³ In its last report, the French Office for the Protection of Refugees and Stateless Persons (*Office français*

⁸¹ France, State Council (*Conseil d'Etat*), Decision No. 295443, 13 February 2008, available at: www.ofpra.gouv.fr/documents/CE295443Forum.pdf.

⁸² France, Interior Ministry (Ministère de l'Intérieur) (2014), Asylum applications [Les demandes d'asile], available at: www.immigration.interieur.gouv.fr/Info-ressources/Documentation/Tableaux-statistiques/Les-demandes-d-asile.

⁸³ France, Kobelinsky, C. (2012), 'Gay Asylum: Intimacy Case Law at the French Court of Asylum' [L'asile gay: jurisprudence de l'intime à la Cour nationale du droit d'asile'], *Droit et société*, 2012/3, n°82.

de protection des réfugiés et apatrides, OFPRA) notes increasing demands based on sexual orientation from asylum seekers coming from the following countries: Guinea, Algeria, Mauritania, Nigeria, Ivory Coast, Comoros, Morocco, Cameroun, Senegal, Bangladesh, Pakistan.⁸⁴.

⁸⁴ France, French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides) (2014), Activity report for 2013 [Rapport d'activité 2013], available at: www.ofpra.gouv.fr/documents/OFPRA_BD_28-04-2014.pdf.

D. Family reunification

According to articles L. 411-1, L. 411-4 of the Code of Entry and Residence of Aliens and the Right to Asylum (CESEDA), a foreigner residing legally in France for at least eighteen months and having a residence permit for a period of at least one year, may be joined in the framework of family reunification by his/her spouse, who must be at least eighteen years old, and by their children.⁸⁵ The notion of spouse is limited to married couples.

Since the adoption of the Law opening marriage to couples of the same sex of 17 May 2013, the mentioned article of the CESEDA can henceforth apply to LGBT couples.⁸⁶

According to article 202-1 §1 of the Civil code introduced by the Law of 17 May 2013,⁸⁷ two people of the same sex can marry when it is permitted by a law pertaining to at least one of them ('personal law'), or by the law of the State where he/she has his/her residence. This legal disposition allows for a law pertaining to one partner prohibiting same-sex marriage to be disregarded, and permits the marriage between persons of the same sex, when one of the future spouses is French or has his/her residence in France.⁸⁸

The Circular presenting the Law opening marriage to couples of the same sex of 29 May 2013 outlines that this disposition shall not apply to nationals of countries with which France is bound by bilateral agreements providing that the law applicable to conditions for marriage is the 'personal law'.⁸⁹ The Circular explains that as under article 55 of the Constitution⁹⁰ treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, they should be applied in the case of a marriage involving one or two national (s) of the countries with which these agreements have been concluded. France is bound by such bilateral agreements with Poland, Morocco, Bosnia and Herzegovina, Montenegro, Serbia, Kosovo, Slovenia, Cambodia, Laos, Tunisia, and Algeria. The Circular explains that the state registrar shall not conduct a marriage between two people of the same sex, if one of the spouses is a national of one of the mentioned countries. The question of the interaction of these agreements with EU Law, including the EU

⁸⁵ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), articles L411-1-L411-4, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=E6839A9EC5E4232CF7D37680ADB750EB.tpdjo15v_1?idSectionTA=LEGISCTA000006147766&cidTexte=LEGITEXT000006070158&dateTexte=20140127.

⁸⁶ France, Law No. 2013-404 opening marriage to couples of the same sex (*Loi no. 2013-404 ouvrant le mariage aux couples de personnes de même sexe*), 17 May 2013, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id.

⁸⁷ France, Civil code (*Code civil*), article 202-1 §1, available at: http://legifrance.gouv.fr/affichCode.do;jsessionid=A73F82D24BE27AF044512881179A8234.tpdjo02v_1?idSectionTA=LEGISCTA000027416542&cidTexte=LEGITEXT000006070721&dateTexte=20140128.

⁸⁸ France, Circular presenting the Law opening marriage to couples of the same sex (*Circulaire de présentation de la loi ouvrant le mariage aux couples de personnes de même sexe*), 29 May 2013, available at: www.textes.justice.gouv.fr/art_pix/JUSC1312445C.pdf.

⁸⁹ France, Circular presenting the Law opening marriage to couples of the same sex (*Circulaire de présentation de la loi ouvrant le mariage aux couples de personnes de même sexe*), 29 May 2013, available at: www.textes.justice.gouv.fr/art_pix/JUSC1312445C.pdf.

⁹⁰ France, Constitution (Constitution), available at: www.assemblee-nationale.fr/english/.

Charter of Fundamental Rights, has not been raised⁹¹.

The Ministry of justice outlined in its letter on 1 August 2013⁹² that certain bilateral agreements cited by the Circular of 29 May 2013 refer expressly to the 'personal law' of each spouse that defines the conditions of the marriage. In this case the same-sex marriage could not be conducted, subject of the sovereign appreciation of the court. The bilateral agreements concluded with Laos, Cambodia, Algeria and Tunisia refer only to the 'personal law' of French citizens. In this case, according to the Law department of the International Affairs Ministry, the same-sex marriage could be conducted, subject to the sovereign appreciation of the court, as flexible interpretation is possible.

However, the Court of Appeal of Chambéry confirmed on 22 October 2013⁹³ the judgment of the Tribunal of Chambéry (*Tribunal de Grande Instance*) of 11 October 2013 authorizing the same-sex marriage of a French and a Moroccan national despite the opposition of the prosecutor (additionally, gay relations are punished in Morocco). The Court of Appeal found that 'the non-application of the Law of 17 May 2013 to Moroccan nationals because of the existence of the Franco-Moroccan bilateral agreement of 1981 would lead to discrimination against them.' These foreign nationals live in France and should have access to the same legitimate rights in accordance with the new international order as nationals of countries that have not signed bilateral agreements and whose laws do not recognize gay marriage. The Court of Appeal stated that the application of the Franco-Moroccan bilateral agreement should be avoided for the benefit of the new superior international public policy principles established by the Law of 17 May 2013. Therefore, derogation to the usual principle of the hierarchy of norms must be introduced; the superiority of the Treaty on the law should not be recognized in this case. The case is actually examined by the Court of cassation;⁹⁴ the marriage took place after the Court of Appeal decision.

According to article 21 of the Law of 17 May 2013, marriage between persons of the same sex conducted before the entry into force of this Law is recognized in France in its effects for spouses and children, if other conditions required for marriage by the Civil code are observed (age, consent, monogamy, etc.). Once transcribed on the register, this marriage has its effect against third persons.⁹⁵

Other conditions required for family reunification are established by article L411-5 of the CESEDA: stable and sufficient resources for the needs of his/her family; accommodation regarded as normal,

⁹¹ According to legal data sources: Dalloz, Lexis Nexis, Lextenso.

⁹² France, Ministry of justice (Ministère de la justice)(2013), Letter [Lettre], 1 August 2013, available at: www.gisti.org/IMG/pdf/dp_459_c1-2013-ca_3-7-1.pdf.

⁹³ France, Chambéry Court of appeal (*Cour d'appel de Chambéry*), Decision no. RG: 13/02258, Ministère public c/ Mohamed Omari et René Gromier, 22 October 2013, available at: <http://actualitesdudroit.lamy.fr/Accueil/Articles/tabid/88/articleType/ArticleView/articleId/123565/emQuidem-du-mariage-dun-couple-homosexuel-binational-.aspx>.

⁹⁴ France, French Press Agency (Agence France Presse) (2013), 'French-Moroccan homosexual marriage: the prosecutor brings the case before the Court of cassation' ['Mariage homosexuel franco-marocain : le parquet se pourvoit en cassation'], 14 November 2013, available at: www.liberation.fr/societe/2013/11/14/mariage-homosexuel-franco-marocain-le-parquet-se-pourvoit-en-cassation_946947.

⁹⁵ France, Law No. 2013-404 opening marriage to couples of the same sex (*Loi no. 2013-404 ouvrant le mariage aux couples de personnes de même sexe*), 17 May 2013, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027414540&dateTexte=&categorieLien=id.

respect of essential principles of family life in France (monogamy, equality of men and women, respect of physical integrity of children and adolescents, respect for freedom of marriage, school attendance, respect for ethnic and religious differences, respect of the rule that France is a secular republic).⁹⁶ Under article L411-6 of the CESEDA, the following may be excluded from family reunification: a family member whose presence in France can constitute a threat to public order; a family member suffering from a disease listed in the International Health Regulations; a family member residing in France⁹⁷ except foreign students.⁹⁸ Polygamy is prohibited.⁹⁹

The beneficiaries of family reunification receive the residence permit (article L431-1 of the CESEDA¹⁰⁰), that could be withdrawn under certain conditions in the case of split-up (article L431-2 of the CESEDA¹⁰¹).

When the situation of the third country national does not fit into the conditions required for family reunification, he/she may ask for a temporary residence permit bearing the notice 'private and family life' under article L. 313-11, paragraphs 3, 4 or 7 of the CESEDA, unless his or her presence is a threat to public order.

Paragraphs 3 and 4 of article L. 313-11 of the CESEDA can be referred to by homosexual couples since the Law opening marriage to couples of the same sex of 17 May 2013. In particular, according to article L. 313-11, para. 3 of the CESEDA,¹⁰² an adult foreigner can ask for a temporary residence

⁹⁶ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L411-5, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=E6839A9EC5E4232CF7D37680ADB750EB.tpdjo15v_1?idSectionTA=LEGISCTA000006147766&cidTexte=LEGITEXT000006070158&dateTexte=20140127.

⁹⁷ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L411-6, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=E6839A9EC5E4232CF7D37680ADB750EB.tpdjo15v_1?idSectionTA=LEGISCTA000006147766&cidTexte=LEGITEXT000006070158&dateTexte=20140127; France, Minister of Interior (Ministère de l'Intérieur), Circular no. INT/D/06/00117/C [Circulaire no. INT/D/06/00117/C], 27 December 2006, available at: www.gisti.org/IMG/pdf/norintd0600117c.pdf.

⁹⁸ France, Constitutional Council (*Conseil Constitutionnel*), Decision no. 93-325 DC, 13 August 1993, available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1993/93-325-dc/decision-n-93-325-dc-du-13-aout-1993.10495.html.

⁹⁹ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 411-7, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=57326058AFA8E9F7C87ED26398735EC8.tpdjo02v_2?idSectionTA=LEGISCTA000006147768&cidTexte=LEGITEXT000006070158&dateTexte=20140129.

¹⁰⁰ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 431-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=57326058AFA8E9F7C87ED26398735EC8.tpdjo02v_2?idSectionTA=LEGISCTA000006147768&cidTexte=LEGITEXT000006070158&dateTexte=20140129.

¹⁰¹ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 431-2, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=57326058AFA8E9F7C87ED26398735EC8.tpdjo02v_2?idSectionTA=LEGISCTA000006147768&cidTexte=LEGITEXT000006070158&dateTexte=20140129.

¹⁰² France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 313-11, para. 3, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=299F926D08BD1206C6214784CA10AB22.tpdjo13v_3?idSectionTA=LEGISCTA000006180199&cidTexte=LEGITEXT000006070158&dateTexte=20140130.

permit bearing the notice 'private and family life' if he/she is married with a beneficiary of a residence permit 'Skills and talents' or of the European blue card or if his/her spouse has a residence permit as an employee on assignment. Under article L. 313-11, para. 4 of the CESEDA¹⁰³ a foreigner married to a French national and not living in polygamy, can ask for the same permit if his/her entry in France was regular, they share a common life (not necessarily cohabitation), and the marriage was transcribed in a French register if conducted abroad.

According to article L. 313-11, para. 7 of the CESEDA, the temporary residence permit bearing the notice 'private and family life' shall also be granted to the foreign citizen not living in polygamy, who does not fit into the preceding categories or into those required to authorize family reunification, whose personal and family ties to France, assessed notably with regard to their intensity, length of stay and stability, the living conditions of the interested person, his/her integration in French society as well as the nature of his/her ties with the family remaining in the country of origin, are such that refusing to authorise residence would disproportionately harm the person's right to private and family life with regard to the grounds for refusal, without the condition set in article L. 311-7 being required (possession of three months visa). Integration of the foreign citizen in French society is assessed taking particular account of his or her knowledge of the values of the Republic.¹⁰⁴

This last disposition applies to PACS couples and to the situation of cohabitation (*concubinage*), whether the couple are homosexual or heterosexual. Law 99-944 of 15 November 1999 enacting the PACS defines it as a contract concluded between two persons over 18, of the opposite or the same sex, to organise their common life.¹⁰⁵ Article 515- 8 of the Civil Code defines cohabitation as a de facto union, characterised by a common life revealing stability and continuity, between two persons of the opposite or the same sex who live as a couple.¹⁰⁶ Article 12 of the PACS law refers to the CESEDA and provides that 'concluding a PACS constitutes an element of assessment of personal ties to France in the sense of article 313-11 para. 7 with regard to residence visas.' This provision does not introduce 'bound jurisdiction', meaning that the Prefecture is not obliged to grant a residence visa based only upon the existence of a PACS but may impose other conditions. In its decision of 21 September 2007 The State Council reiterates that 'a foreigner entering a PACS, either with a French citizen or with any foreign resident whose status is in order, does not in itself automatically give him or her the right to a temporary residence visa; that concluding such a contract does however constitute for the administrative jurisdiction an element of the personal status of the interested person, which must be taken into account, to assess whether refusing to grant the visa requested by the applicant, taking into account the duration of cohabitation with his or her partner,

¹⁰³ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 313-11, para. 4, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=299F926D08BD1206C6214784CA10AB22.tpdjo13v_3?idSectionTA=L EGISCTA000006180199&cidTexte=LEGITEXT000006070158&dateTexte=20140130.

¹⁰⁴ France, Code of Entry and Residence of Aliens and the Right to Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L. 313-11, para. 7, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=57326058AFA8E9F7C87ED26398735EC8.tpdjo02v_2?idSectionTA=L EGISCTA000006180199&cidTexte=LEGITEXT000006070158&dateTexte=20140129.

¹⁰⁵ France, Law No. 99-944 on the PACs (*Loi no. 99-944 relative au pacte civil de solidarité*), 15 November 1999, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000761717&dateTexte=.

¹⁰⁶ France, Civil code (*Code civil*), article 515-8, available at: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=8229C6A99EF2C84B757BA5812D040073.tpdjo02v_1?idSectionTA=L EGISCTA000006136537&cidTexte=LEGITEXT000006070721&dateTexte=20140128.

would not lead to excessive invasion of privacy' .¹⁰⁷

Circular n° NOR/INTD00134/C of the Ministry of the Interior, adopted on 30 October 2004, recommends that prefects “consider the condition of stability of ties to France as satisfied when the interested parties can prove a duration of cohabitation in France equal to one year”.¹⁰⁸ This condition was reiterated in Circular NOR INTD0700005C of 16 January 2007 relative to the right to reside in France of foreign citizens having concluded a PACS. Herewith, for the State Council, the criterion of the place of cohabitation does not apply for the condition of stability of ties.¹⁰⁹ These circulars do not specify that the sexual orientation or nationality of the partners should be taken into account. It must be deduced that the principle of non-discrimination requires identical treatment of all signatories of a PACS. For example, for the State Council, the conclusion of a PACS by an Algerian and a French national of the same sex in a stable relationship for four years imposed to the prefect the obligation of deliverance of the residence permit.¹¹⁰

Issues relating to the family are evolving with the law on same sex couples. The law confirms the development of equality for same sex couples and access to the same rights as heterosexual couples, notably the right to family reunification. This law may also introduce changes for non-married couples, especially with regards to children. For instance, on 7 June 2012, the Court of Cassation declared that the recording in the French register of civil status of a foreign adoption certificate acknowledging parentage of two same sex people (not married) ‘is contrary to the essential principle of French law dealing with filiation’.¹¹¹ After the law of May 2013 this principle will not be relevant any more since the new law on marriage provides the possibility for same sex couples to adopt: there is no longer a general prohibition in French law for same sex couples to adopt a child. Therefore, judges might develop the case law on the recognition of adoptions registered abroad for non-married same sex couples. Nevertheless, one recent judgment generated concern about an issue related to the previous one:

the Court of Versailles refused on 30 April 2014 the adoption of a child by a woman who is married to the mother of the child¹¹². The couple went to Belgium for a medically assisted birth. Judges argued that to “get a medically assisted birth which is prohibited in France, then to seek adoption of the child, in accordance with foreign law but in violation of French law, constitutes fraud (...) and

¹⁰⁷ France, Nantes Administrative Court (*Tribunal administrative de Nantes*), Judgement No. 05NT00206 [Judgement no. 05NT00206], 3 March 2006; France, State Council (*Conseil d'Etat*), Decision No. 265178 (Benamieur), 21 September 2007, available at: <http://legimobile.fr/fr/jp/a/ce/ad/2007/9/21/265178>.

¹⁰⁸ France, Ministry of Interior (Ministère de l'Intérieur), Circular No. NOR/INTD00134/C [Circulaire no. NOR/INTD00134/C], 30 October 2004, available at: <http://droitdesetrangers.blogspot.fr/2005/12/nouvelle-circulaire-sur-ladmission-au.html>.

¹⁰⁹ France, State Council (*Conseil d'Etat*), Decision no. 257927, 24 February 2006, available at: www.easydroit.fr/jurisprudence/Conseil-d-Etat-6eme-et-1ere-sous-sections-reunies-du-24-fevrier-2006-257927-publie-au-recueil-L/J43903/.

¹¹⁰ France, State Council (*Conseil d'Etat*), Decision No. 265178, 21 September 2007, available at: www.easydroit.fr/jurisprudence/Conseil-d-Etat-10eme-sous-section-jugeant-seule-21-09-2007-265178-Inedit-au-recueil-Lebon-2651/J228349/.

¹¹¹ France, Court of Cassation (*Cour de cassation*), Decision No. 11-30262, 7 June 2012, available at: www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000025993709&fastReqId=299836449&fastPos=1.

¹¹² France, Dupont, G. (2014), 'First refusal of adoption for a couple of women who had a child through a medically assisted birth' [« Premier refus d'adoption à un couple de femmes ayant conçu un enfant par PMA »], *Le Monde*, 2 May 2014, available at: www.lemonde.fr/societe/article/2014/05/02/la-justice-refuse-l-adoption-a-l-epouse-de-la-mere-d-enfant-concu-par-pma_4410560_3224.html. The Judgment is not available on the web

prohibits the adoption of the child illegally conceived”. The court explained also that authorizing adoption within couples of women would create a “distinction with couples of men, since gestational surrogacy is prohibited”. The two women appealed this judgment. However, one lawyer highlights that until this date judgments have been rather favorable to adoption in such cases¹¹³. As a matter of fact, this question (Is the adoption of a child of a medically assisted birth legal?) depends on the assessment by judges, which opens the possibility for judges to provided differing decisions.

¹¹³ France, Laguens, A.S. (2014), 'Medically assisted birth. Justice refuses adoption to a couple of women: it is not automatic' [« PMA. La justice refuse l'adoption à un couple de femmes : ce n'est pas automatique »], *Le Nouvel Observateur*, 2 May 2014, available at: <http://leplus.nouvelobs.com/contribution/1196762-pma-la-justice-refuse-l-adoption-a-un-couple-homosexuel.html>.

E. Freedom of assembly

In France, LGBT persons suffer no discrimination based upon their sexual orientation when founding an association to assert their rights. Any difficulties encountered by LGBT associations are more related to their means of action.

The close ties between freedom of association and freedom of demonstration should be noted as these are two sides of the same fundamental freedom to express opinions as a group. This was recognised by the Constitutional Council in its decision of 16 July 1971, as a fundamental principle recognised by the laws of the Republic.¹¹⁴ The life of an association inherently includes demonstrations.

These constitute the best means for these associations to raise awareness of their interests. The most visible demonstration is the Pride March (formerly Gay Pride), organised annually since 1981 in Paris, but also in all large provincial cities. In 1996 another march, Existrans, was created with the aim to defend the rights of transsexuals. In addition, LGBT associations organise marches to support LGBT persons in other countries (Turkey, Russia, Iran, Egypt...). Finally, these associations have created various festivals and cultural events or specific days and weeks such as the International Day Against Homophobia on 17 May and the remembrance of homosexual deportation.

The proposed law planning to give access to marriage for same sex couples raised opposition within society: between October 2012 and May 2013 many demonstrations took place in Paris and large cities to call for the rejection of this proposed law¹¹⁵.

E.1. Overview of national legislation

It should be noted that French legislation with regard to association and demonstration is egalitarian, meaning that it does not treat people differently on the basis of their sexual orientation and that all persons wishing to form an association are subject to the same regime.

E.1.1. Conditions relative to forming an association and organising a demonstration.

Associations are governed by the law of 1 July 1901 relative to partnership agreements and its application decree of 16 August 1901, both of which are still in effect. These texts are applicable in Metropolitan France with the exception of the departments of the Haut-Rhin, the Bas-Rhin and the

¹¹⁴ France, Constitutional Council (*Conseil constitutionnel*), Decision No. 71-44 DC, 16 July 1971, available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1971/71-44-dc/decision-n-71-44-dc-du-16-juillet-1971.7217.html.

¹¹⁵ France, FrenchDailyPeople (2013) 'France: the opposition to gay marriage has radicalized' ['France : le mouvement d'opposition au mariage homosexuel se radicalise'], 20 April 2013, available at : <http://french.peopledaily.com.cn/International/8215515.html>.

Moselle where associations are governed by articles 21 and 79 of the Local Civil Code; in overseas departments; in overseas territories; in New Caledonia and in the departmental collectivities of Mayotte and Saint-Pierre-et-Miquelon.

The relevant provisions are the following:

Article 2: “Associations of persons shall be formed freely and without prior authorisation or declaration, but they do not have legal status unless they conform to the provisions of Article 5”.

The criterion of sexual orientation or identity is not taken into account.

Article 3: “Any association founded upon an illicit cause or objective, contrary to laws, good morals, or whose purpose poses a danger to national integrity and to the republican form of government is null and void”.

The notion of good morals, elusive and ever-changing, has not been used in case law to restrict either freedom of association or demonstration of homophobes or pro-homosexuals.

Article 5: “Any association seeking to obtain the legal capacity provided for by Article 6 must be made public by its founders.

Prior declaration shall be made to the Prefecture of the department or to the Sub-Prefecture of the district in which the association has its seat. It shall publish the name and object of the association, its seat and the names, professions, domiciles and nationalities of those who, in whatever capacity, are responsible for its administration or management. Two copies of the association's charter shall be appended to the declaration. A receipt shall be given for this within 5 days...”

Demonstrations in public places are governed by the Code of interior security¹¹⁶.

The relevant provisions are the following:

Article L211-1: ‘...all types of processions, parades and assemblies of persons, and, generally speaking, all demonstrations on in public places are subject to prior declaration...excepting those that represent local customs' (carnivals, religious processions, etc.).

Article L211-2: 'The declaration shall be made at the Town Hall or at the Town Halls of the different communes where the demonstration shall take place, three clear days at least and fifteen clear days at most prior to the date of the demonstration. For Paris, the declaration is made at the police prefecture. It is made to the state representative in the department for communes served by the state police.

The declaration states the surnames, forenames and domiciles of the organisers and is signed by three of them, electing domicile in the department. It states the purpose of the demonstration, the

¹¹⁶ France, Code of internal security (*Code de la sécurité intérieure*), available at: www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000025505133&idSectionTA=LEGISCTA000025508382&cidTexte=LEGITEXT000025503132&dateTexte=20120618.

location, the marshalling date and time and, when appropriate, the planned route'.

The departments of the Haut-Rhin, Bas-Rhin and the Moselle are governed by a local civil code that specifies the authorisation process for associations and demonstrations. This implies that the Prefectural Authority has real control, whereas in fact the declaration is just a formality. However, the declaratory regime allows the prohibition of a demonstration in cases of manifest risk to public order.

E.1.2. The conditions of dissolution of associations and demonstrations.

For both regimes of authorisation the dissolution of an association is governed by article 7 of the law of 1901: 'In case of nullity as in Article 3, dissolution of the association is pronounced by the Court of First Instance, either at the request of any interested person or at the request of a public ministry. The latter may commence proceedings and the court, as part of the penalties provided for by Article 8, may order provisionally and notwithstanding appeal, the closing of association premises and may prohibit association members from meeting.

The Law of 22 March 2012¹¹⁷ annulled the disposition stating that 'in cases of infringement of the provisions of Article 5, dissolution may be pronounced at the request of any interested party or by the public ministry'. In other words, a failure to comply with the rules on administrative declaration regarding creation or modification of an association can no longer be punished by the judicial dissolution of the association. Nevertheless, in cases of failure to declare the creation or the modification of an association this may lead to administrative or civil sanctions: unenforceability to third parties, removal of subsidies when the association receives these¹¹⁸.

In addition to judicial dissolution, administrative authorities (Government or Prefects) may prohibit an association in some limited cases: the legal provision which lists reasons why associations might be prohibited mentions in particular those which incite to discrimination (art. L.212-1 of the Code of Internal Security, *Code de la sécurité intérieure*). However, the grounds of discrimination the article refers to do not include sexual orientation or gender identity (only racist and anti-religious grounds are mentioned).

Nevertheless, one law introduced in 2006 introduced the possibility to dissolve an association whose aim is to support a sports club when members have committed acts of incitement to discrimination, including discrimination on grounds of sexual orientation.¹¹⁹

Dissolution of a demonstration is governed by Article L211-4 of the Code of interior security: 'If

¹¹⁷ France, Law N° 2012-387 on simplifying the law and reducing administrative procedures (*Loi n° 2012-387 relative à la simplification du droit et à l'allégement des démarches administratives*), 22 March 2012, article 127, available at:

www.legifrance.gouv.fr/affichTexte.do;jsessionid=F603B57E33C2A76BA5D8AB4E6A4AA83E.tpdjo12v_2?cidTexte=JORFTEXT00002553296&dateTexte=20120323.

¹¹⁸ France, Association regulated by the law of 1901 (L'association régie par la loi du 1er juillet 1901), (2012), available at: www.associations.gouv.fr/636-l-association-regie-par-la-loi-du.html#.U4RhBv1_s3s.

¹¹⁹ France, Sport Code (*Code du sport*), article L.332-18, available at:

www.legifrance.gouv.fr/affichCode.do;jsessionid=F88C86D6F57CF25B5C47F187F7F4E296.tpdjo01v_3?idSectionTA=LEGISCTA000006151577&cidTexte=LEGITEXT000006071318&dateTexte=20140419.

the authority vested with police powers concludes that a planned demonstration is of a nature to trouble public order, it may prohibit it by means of an order of which it immediately informs the signatories of the declaration of election of domicile... If a competent Mayor has not issued an order of prohibition, the state representative in department may order a ban under dispositions of the General code of local authorities.

It should be noted that French laws dealing with non-discrimination do not strengthen the right of freedom of association and demonstration of LGBT persons.

E.1.3. Infringement of LGBT persons' freedom of assembly

There are no national statistics relative to limitations of the rights to association and demonstration of LGBT or anti-LGBT persons. The Interior Ministry does not record demonstrations with regard to this criteria. Moreover, it is not always possible to identify the purpose of the demonstration.

E.1.3.1. Cases of refusal or prohibition observed for pro-LGBT demonstrations:

During one of the first Existrans marches, after following an authorised route and despite the presence and protests of elected officials from Paris City Hall, police officers shut down the demonstration. In recent years (at least since 2008), the Existrans marches have not been subject to bans.¹²⁰

The route of the Pride March is still only allowed through the “southern” parts of Paris. Access to central or prestigious streets (Avenue des Champs Elysées, Rue de Rivoli) has never been granted to the organisers of the march. The same problem has been encountered in Moselle, where the city of Metz has opposed its passage through pedestrian-only streets, something that has never been a problem for other types of demonstrations.

On 25 April 2004, during the National Day of Remembrance of the Victims and Heroes of Deportation, the commemoration of the deportation of homosexuals has been banned or disturbed in certain municipalities such as Grenoble, Lille, Montpellier, Nîmes, Orléans or Reims for instance (a military band launching into a fanfare during the minute of silence (Lille), threats of arrest (Montpellier), forbidding the laying of a wreath (Grenoble)...). And yet the government recommendations of 9 April 2001, 27 February 2002 and 23 April 2003 explicitly state that associations founded to commemorate this deportation “may join in the homage France pays every year to the victims of Nazism” and may “lay a wreath”¹²¹. LGBT associations are increasingly involved in official commemorative deportation ceremonies, at least in big cities such as Lille, Paris, Lyon, Strasbourg, etc.¹²² Some cities, like Nice, exclude LGBT associations from these

¹²⁰ www.existrans.org.

¹²¹ France, Minister of Veterans (Ministre des Anciens combattants), Circular N°556A [Circulaire n°556A], 8 April 2005.

¹²² France, France 3 Television (2012), 'Lille: homosexuals with other deportees' [Lille : les homosexuels avec les autres déportés], 29 April 2012, available at: <http://nord-pas-de-calais.france3.fr/info/lille--les-homosexuels-avec-les-autres-deportes-73669824.html>.

commemorations and only authorize them to lay a wreath after the official ceremony.¹²³ Nevertheless, it is difficult to account for the respective figures of these cities without official data on this. No disturbances such as the ones mentioned above have occurred in recent years (media have not reported any since 2011).

E.1.3.2. Cases of refusal or prohibition observed for anti-LGBT demonstrations:

In 1999 the demonstration organised by the collective 'Génération anti- PACS' gathered 100,000 people in Paris and was comprised mainly of pro-marriage heterosexual persons. During this demonstration insults and homophobic behaviour was observed.

The Bill on gay marriage provoked important demonstrations of its supporters and even more important manifestations of its opponents in 2012 and 2013 in Paris and in Provence. The latter were organized by the association 'Manif pour tous' and by the Institution Civitas representing traditional Catholics. Demonstrators repeat that they are not homophobic but focus on the 'best interest of the child'.¹²⁴

In April 2013 the Paris police department prohibited the march that the opponents of gay marriage 'Les Veilleurs' planned to organize. As they wanted it to take place on Avenue des Champs Elysées, it was prohibited as threatening the public order. This movement continues to organize demonstrations after the adoption of the law on gay-marriages. 52 participants of its demonstration were questioned by police in December 2013 for the non-declaration of a demonstration, as in June 2013.¹²⁵

The government is examining the question of possible dissolution of an extreme right movement 'Le printemps français' that was created to fight against the law opening marriage to homosexual couples by splitting from 'La Manif pour tous' on the basis of article L212-1 of the Code of interior security.¹²⁶

The Bill on the family that should be presented to the Council of Ministers in April and discussed in Parliament during the second quarter, was removed by the government on 3 February 2014 after the manifestation organized by the 'Manif pour tous' on 26 January 2014 in Paris and in Lyon. This bill did not contain any dispositions neither on medically assisted procreation, nor on surrogacy. Nevertheless, the opponents of the Bill on family referred to the fact that in 2012 a significant proportion of socialist deputies (126 of 296) voted for the amendment to the Law opening marriage to gay couples that introduced the right of married women to medically assisted procreation and

¹²³ France, Nice Matin (2010), 'Nice, homosexuals excluded from deportation ceremony' ['Nice, les homosexuels écartés de la cérémonie de la deportation'], 26 April 2010, available at: www.nicematin.com/article/cote-dazur/nice-les-homosexuels-ecartes-de-la-ceremonie-de-la-deportation.134068.html.

¹²⁴ www.lamanifpourtous.fr/fr/

¹²⁵ France, de Mallevoüe, D. (2013) '52 "watchers" arrested by police' ['52 « veilleurs » interpellés par la police'], *Le Figaro*, 15 December 2013, available at: www.lefigaro.fr/actualite-france/2013/12/15/01016-20131215ARTFIG00182-52-veilleurs-interpelles-par-la-police.php?pagination=15.

¹²⁶ France, Code of internal security (*Code de la sécurité intérieure*), article L212-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=D66296DAC7C589E38DBB7DADC455E020.tpdjo03v_3?idSectionTA=LEGISCTA000025508340&cidTexte=LEGITEXT000025503132&dateTexte=20120501.

contested the announced Bill in the name of the protection of the child.¹²⁷

E.1.3.3. Is a change in legislation necessary?

National legislation does not impose limits on the freedom of association and demonstration of LGBT persons. However, it does not protect them specifically against discrimination based upon sexual identity. Ultimately, there is no need to change the current legislation about association and demonstration since there is no discrimination in the legal provisions nor in their implementation.

E.2. The State's Duties of Protection

Even if the organisers of a demonstration must provide security, the exercise of police powers falls to the State.

The draft law opening marriage to same sex couples raised strong opposition, particularly marked by a return of Catholic families to the streets (their last major mobilization was about opposition to the Savary law on reducing the independence of private schools in 1984). Many events thus took place between September 2012 (the announcement of the proposed law) and the adoption of the Law in May 2013, organized in large part by a movement that was created for the occasion: La Manif pour tous (The Demonstration for everyone). Some intellectuals and politicians have also publicly expressed their opposition to this reform. The main argument put forward by the opponents was the defence of the best interest of the child. Finally, while the government did not back down on the principle (which was one of the campaign promises of the President), it rejected in January the introduction of medically assisted birth (*procréation médicalement assistée*, PMA) into the Law. Once the legislation was passed, some mayors have said they would not apply the law, referring to a 'conscience clause'. The Constitutional Council rejected such a possibility.¹²⁸ Since the adoption of the law, the networks opposed to it have continued to fight against what they call the 'gender theory'. On January 26, a demonstration against the President, the purpose of which was not precisely identified but included opposition to marriage for all and the "gender theory", was attended by 17,000 people according to the police (160,000 according to the organizers). A week later, on February 2, the 'Manif pour tous' gathered 80,000 people in the streets according to the police (500,000 according to the organizers) to oppose the introduction of "gender theory" in schools (an academic programme which aims at fighting against gender stereotypes and promoting gender equality has been the target of criticism from some parents and associations who claim that it was not the role of school to deal with sex issues)¹²⁹. The demonstrators also rejected PMA for homosexuals even though the Government did not plan to legislate on this issue.¹³⁰

127 France, Rovan, A. (2014) 'Under pressure, the government retreats the bill on family' ['Sous pression, le gouvernement recule sur le projet de loi famille'], *Le Figaro*, 3 February 2014, available at: www.lefigaro.fr/politique/2014/02/03/01002-20140203ARTFIG00360-sous-pression-le-gouvernement-recule-sur-la-famille.php.

128 France, Constitutional Council (*Conseil constitutionnel*), Decision No. 2013-353 QPC, Mr Franck and others, 18 October 2013, available at: www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-353-qpc/decision-n-2013-353-qpc-du-18-octobre-2013.138338.html.

129 France, Education Ministry, Ministry for Women's Rights (Ministère de l'Éducation Nationale, Ministère des droits des femmes), ABCD for gender equality [ABCD de l'égalité], available at: www.cndp.fr/ABCD-de-l-egalite/accueil.html.

130 France, French Press Agency (Agence France Presse, AFP) (2014), 'At least 100 000 supporters of the Manif pour tous

F. Criminal law

In the French legal arsenal, several laws explicitly condemn discrimination founded on sexual orientation.

Firstly, law No. 2001-1066 of 16 November 2001, relative to fighting discrimination, and which in particular amends articles 225-1 and 225-2 of the Criminal Code¹³¹ on punishable discrimination, makes discrimination based upon sexual orientation an offence. Article 225-1 defines types of discrimination against natural persons and companies and article 225-2 specifies the conditions in which these types of discrimination constitute a criminal offence. These are: refusal to provide goods or services; obstruction to normal economic activity; refusal to hire, penalizing or dismissal of a person; subordination of the goods or services provision on one of the criteria of discrimination listed in Article 225-1 or Article 225-1-1 of the Criminal Code; subordination of a job offer, a request for an internship or a training period to the criteria of discrimination listed in Article 225-1 or Article 225-1-1 of the Criminal Code; refusal to accept a person for training referred to under Article L. 412-8 2 ° of the Code of Social Security.¹³² Furthermore, Article 225-4 of the Criminal Code¹³³ states that legal persons may be declared criminally responsible (in accordance with the conditions of Article 121-2), for offences defined in Article 225-2. In addition, whether these types of discrimination are committed against a natural person or a company, they are punishable by a prison sentence of 3 years and a €45,000 fine.¹³⁴ If the discriminatory refusal to provide goods or services is committed in a public place or in order to prohibit access to it, the penalty is increased to five years' imprisonment and a €75,000 fine.¹³⁵ According to article 432-7 of the Criminal Code,¹³⁶ the offence of discrimination is punishable by a prison sentence of 5 years and a €75,000 fine when committed by a person holding public authority or discharging a public service mission in the exercise or on the occasion of the exercise of their functions or mission. The punishable action consists in this case in the refusal to award the benefit of a right provided by law or in the limitation

in Paris and Lyon' [‘Au moins 100 000 partisans de la Manif pour tous ont défilé à Paris et Lyon’], 3 February 2014, available at: www.leparisien.fr/societe/en-direct-la-manif-pour-tous-de-retour-dans-la-rue-a-paris-et-a-lyon-02-02-2014-3551707.php.

¹³¹ France, Criminal code (*Code pénal*), articles 225-1 and 225-2, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?idSectionTA=LEGISCTA000006165298&cidTexte=LEGITEXT000006070719&dateTexte=20130220.

¹³² France, Code of Social Security (*Code de la sécurité sociale*), article L. 412-8 2 °, available at: www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006073189&idArticle=LEGIARTI000006743161&dateTexte=&categorieLien=cid.

¹³³ France, Criminal code (*Code pénal*), article 225-4, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?idSectionTA=LEGISCTA000006165298&cidTexte=LEGITEXT000006070719&dateTexte=20130220.

¹³⁴ France, Criminal code (*Code pénal*), article 225-2, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?idSectionTA=LEGISCTA000006165298&cidTexte=LEGITEXT000006070719&dateTexte=20130220.

¹³⁵ France, Criminal code (*Code pénal*), article 225-2, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?idSectionTA=LEGISCTA000006165298&cidTexte=LEGITEXT000006070719&dateTexte=20130220.

¹³⁶ France, Criminal code (*Code pénal*), article 432-7, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?idSectionTA=LEGISCTA000006181759&cidTexte=LEGITEXT000006070719&dateTexte=20130220.

of the normal exercise of an economic activity.

Secondly, Law No. 2003-239 for domestic security of 18 March 2003 and Law No. 2004-204 of 9 March 2004 on adapting justice to criminality (article 132-77 of the Criminal Code)¹³⁷ makes discrimination based upon sexual orientation an aggravating circumstance in cases provided by law (in the case of murder, torture or acts of barbarity, violence resulting in manslaughter, violence causing mutilation or permanent disability, violence leading to a total incapacity to work for more than eight days, violence causing incapacity to work not exceeding eight days, rape or other sexual assault, theft, extortion, threat to commit a crime or an offence under certain conditions, etc.). This aggravating circumstance is retained if the offence is preceded, accompanied or followed by speech, written support, use of pictures or objects or actions of any kind that are detrimental to the honour or reputation of the victim or group of persons which includes the victim because of their real or supposed sexual orientation or gender identity.

Law No. 2006-396 of 31 March 2006 on equal opportunities is dedicated to the practice of discrimination testing (article 225-3-1 of Criminal code¹³⁸): to overcome the difficulty of proving discriminatory behaviour before judges, the law admitted as a method of proof the practice of testing. The law provides that the offence of discrimination is constituted even if it is committed against one or several persons who have requested goods or services or a contract only in order to prove the existence of discriminatory behaviour, when the evidence of this behaviour has been found. Especially in the field of employment, testing might be an effective way to prove discrimination. In this case, the test is to respond to job offers by sending applications that are quite similar and differ only in one feature: the variable to be tested.

The Defender of Rights (*Défenseur des droits*) also uses testing to identify discriminatory behaviour¹³⁹. Testing is implemented by accredited officials of the Defender of Rights. They record in a specific report (*procès-verbal*) the behaviour of persons whose reaction is tested. When the Defender of Rights identifies discriminatory behaviour, it might first warn about this and make recommendations; and after other testing confirming the discrimination, it might bring the case before the Prosecutor¹⁴⁰.

Additionally, under article 24 §9 of the Law on the freedom of the press of 29 July 1881, the incitement of hatred or violence against a person or group of persons because of their sexual orientation or the incitement, in respect of the same persons, of discrimination under articles 225-2 and 432-7 of the Criminal Code, is punished by one year's imprisonment and/or a €45,000 fine.¹⁴¹

¹³⁷ France, Criminal code (*Code pénal*), article 132-77, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?cidTexte=LEGITEXT000006070719&dateTexte=20130220.

¹³⁸ France, Criminal code (*Code pénal*), article 225-3-1, available at: www.legifrance.gouv.fr/affichCode.do;jsessionid=6259A4525D36DBD16D0FEDB16D3E9134.tpdjo15v_1?idSectionTA=LEGISCTA000006165298&cidTexte=LEGITEXT000006070719&dateTexte=20140204.

¹³⁹ France, Law on Defender of rights No. 2011-333 (*Loi organique No. 2011-333 relative au Défenseur des droits*), 29 March 2011, art. 22 and 37, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id.

¹⁴⁰ France, Defender of Rights (*Défenseur des droits*) (2014), Blind dogs: the Defender of Rights tests taxis [Chiens d'aveugle: le Défenseur des droits teste les taxis], available at: www.defenseurdesdroits.fr/connaître-son-action/la-lutte-contre-les-discriminations/actualites/chiens-daveugles-le-defenseur.

¹⁴¹ France, Law on the freedom of the press (*Loi sur la liberté de la presse*), 29 July 1881, article 24, available at:

These dispositions were introduced by the Law creating the High Authority for the Elimination of Discrimination and for Equality (HALDE) No. 2004-1486 of 30 December 2004¹⁴². The court may also pronounce the removal of eligibility and of the right to exercise a judicial function or be an expert in a court, to represent or assist a party in a court. This removal of eligibility can last for a period of five years. The Law of 30 December 2004¹⁴³ also introduced in the Law on the freedom of the press dispositions incriminating homophobic slander and insult¹⁴⁴. Under article 32 of the Law on the freedom of the press, homophobic slander is punished by one year's imprisonment and/or a fine of €45,000. Homophobic insult not preceded by provocation is punished by six months' imprisonment and a fine of €22,500, according to article 33 of the Law on the freedom of the press. In this case, charges may be brought by the Public Ministry¹⁴⁵. These decisions may be made public by the court.

In October 2011, a number of members of Parliament from the political left tabled a proposition of law regarding the limitation period for prosecution for press offences concerning sexual orientation, sex, gender identity or disability. The law was promulgated on 27 January 2014. In fact, this reform aims to align this limitation period with that for press offences concerning origin, race, or religion. Indeed, the law provides an exception for these offences by extending the limitation period from three months (limitation period applicable under the ordinary law) to one year.¹⁴⁶ It is noted that one of the members of Parliament who brought this proposal is the current Prime Minister, Mr Ayrault.

Decree No. 2005-284 of 25 March 2005¹⁴⁷ introduced dispositions punishing non-public incitement to hatred, violence or discrimination as defined by articles 225-2 and 432-7 of Criminal code (5th class *contravention*) and non-public slander and insult (4th class *contravention*), committed by reason of the sexual orientation of the victim (articles R.624-3, R.624-4¹⁴⁸ and R.625-7 of the

www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312.

¹⁴² France, Law N° 2004-1486 creating the High Authority for the Elimination of Discrimination and for Equality (*Loi n°2004-1486 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité*), 30 December 2004, article 20, available at: www.legifrance.gouv.fr/affichTexte.do;jsessionid=41F7976856F7171453C7EE276768869D.tpdjo13v_3?cidTexte=JORFTEXT000000423967&categorieLien=id.

¹⁴³ France, Law N° 2004-1486 creating the High Authority for the Elimination of Discrimination and for Equality (*Loi n°2004-1486 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité*), 30 December 2004, article 21, available at: www.legifrance.gouv.fr/affichTexte.do;jsessionid=41F7976856F7171453C7EE276768869D.tpdjo13v_3?cidTexte=JORFTEXT000000423967&categorieLien=id.

¹⁴⁴ France, Law on the freedom of the press (*Loi sur la liberté de la presse*), 29 July 1881, articles 32 and 33, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312.

¹⁴⁵ France, Law on the freedom of the press (*Loi sur la liberté de la presse*), 29 July 1881, article 48 6°, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312; France, Law N° 2004-1486 creating the High Authority for the Elimination of Discrimination and for Equality (*Loi n°2004-1486 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité*), 30 December 2004, article 22, available at: www.legifrance.gouv.fr/affichTexte.do;jsessionid=41F7976856F7171453C7EE276768869D.tpdjo13v_3?cidTexte=JORFTEXT000000423967&categorieLien=id.

¹⁴⁶ France, Law on the freedom of the press (*Lois sur la liberté de la presse*), 29 July 1881, article 65-3, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312.

¹⁴⁷ France, Decree No. 2005-284 (*Décret n° 2005-284*), 25 March 2005, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000257363.

¹⁴⁸ France, Criminal code (*Code pénal*), articles R.624-3 and R.624-4, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006165419&cidTexte=LEGITE

Criminal Code).¹⁴⁹

Henceforth any association properly declared for a minimum of five years at the time of the incident in question, aiming in its charter to fight violence or discrimination based upon sexual orientation or to assist victims of such discrimination, may present itself as a civil party in affairs related to homophobic and transphobic evidence.¹⁵⁰

Nevertheless this provision mentioned in the Code of Criminal Procedure only referred explicitly to the way of life (*'moeurs'*). A law adopted in August 2012 changed the terms of the law and introduced 'sexual orientation' and 'gender identity' (*'identité sexuelle'*) in addition to 'way of life'.¹⁵¹ This law aimed to define “sexual harassment” but introduced more broadly an extension to 'gender identity' (*'identité sexuelle'*) for all crimes and offences referring to sexual orientation in the Criminal Code.

The Circular of the Minister of Justice on the criminal justice response to violence and discrimination based upon sexual orientation or gender identity issued on 23 July 2013 points out the development of this phenomenon in French society¹⁵². According to the Interdepartmental Action Programme against violence and discrimination based upon sexual orientation or gender identity adopted on 12 October 2012¹⁵³, and also an IFOP survey,¹⁵⁴ one in four homosexuals was physically assaulted in the past ten years, and one in two has already been verbally assaulted.

However, the small number of convictions on the national criminal record in response to these acts does not reflect the reality of the phenomenon. This can be explained, according to the Minister of Justice, by persisting difficulties in proving the homophobic character of assaults, leading to the abandoning of this aggravating circumstance. It also appears that many victims remain reluctant to file a complaint.¹⁵⁵ These difficulties are also mentioned by the association SOS Homophobie that

XT000006070719&dateTexte=20140204.

¹⁴⁹ France, Criminal code (*Code pénal*), articles R.625-7, available at: www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006165460&cidTexte=LEGITEXT000006070719&dateTexte=20140204.

¹⁵⁰ France, Code of criminal procedure (*Code de la procédure pénale*), article 2-6, available at: www.legifrance.gouv.fr/affichCode.do?jsessionid=FAF56DFE47EA0EF4937C9775AF71E208.tpdjo04v_2?idSectionTA=LEGISCTA000024458641&cidTexte=LEGITEXT000006071154&dateTexte=20140128; France, Law on the freedom of the press (*Loi sur la liberté de la presse*), 29 July 1881, article 48-4, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722&dateTexte=20080312.

¹⁵¹ France, Law No. 2012-954 on sexual harassment (*Loi no. 2012-954 relative au harcèlement sexuel*), 6 August 2012, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026263463&dateTexte&categorieLien=id.

¹⁵² France, Minister of Justice (Ministre de la Justice), Circular on the criminal justice response to violence and discrimination committed because of sexual orientation or gender identity [Circulaire portant sur la réponse pénale aux violences et discriminations

commises à raison de l'orientation sexuelle ou de l'identité de genre], 23 July 2013, available at: www.textes.justice.gouv.fr/art_pix/JUSD1319893C.pdf.

¹⁵³ France, Prime Minister (Premier Ministre), Governmental Action Programme against violence and discrimination committed because of sexual orientation or gender identity [Programme d'actions gouvernemental contre les violences et les discriminations

commises à raison de l'orientation sexuelle ou de l'identité de genre], 12 October 2012, available at: www.textes.justice.gouv.fr/art_pix/JUSD1319893C.pdf.

¹⁵⁴ France, French Institute for Public Opinion (Institut français d'opinion publique) (2011), Survey on Homophobic assaults [Enquête « Les agressions à caractère homophobe », 28 February 2011, available at: www.ifop.com/media/poll/1440-1-study_file.pdf.

¹⁵⁵ France, Minister of Justice (Ministre de la Justice), Circular on the criminal justice response to violence and discrimination committed because of sexual orientation or gender identity [Circulaire portant sur la réponse pénale aux violences et

notes in its reports that, however, in certain cases this aggravating circumstance was even introduced by the prosecutor when it was not envisaged by the victim or his or her lawyer. In other cases, this circumstance, abandoned by the prosecutor, was reintroduced by the judge.¹⁵⁶

Nevertheless, the association SOS Homophobie states that police seem still reluctant, and even ignorant, when having to use the possibility to mention the aggravating circumstance at the time of the filing of the complaint. According to the 2009 Report on Homophobia, nine out of 35 complaints reported to the association have received such a qualification.¹⁵⁷ The same tendency was noted in the 2011 Annual Report on Homophobia¹⁵⁸ while the 2013 Annual Report points out a lot of refusals to register complaints of victims of homophobia and transphobia.¹⁵⁹ However, the General Rules for use of the national police state clearly that police must have absolute respect for persons, whatever their sexual orientation.¹⁶⁰ Article 113-13 of these General Rules prohibits writing, printing, posting or publication of newspapers, periodicals, pamphlets or publications having a discriminatory character prejudicial to human dignity (racist, xenophobic, homophobic, etc.) in police premises. The Circular of the Minister of Justice of 23 July 2013 aims to improve the judicial response to the issue of respect for LGBT people's rights and envisages a number of actions: information and support of victims, reinforcement of cooperation with associations working in this field, development of alert mechanisms, of cooperation between prosecutors and the Public defender of rights, etc.¹⁶¹

The Interdepartmental Action Programme against violence and discrimination based upon sexual orientation or gender identity adopted on 12 October 2012¹⁶², in collaboration with associations, also focuses on measures to adopt in this field. It aims at the improvement of data and complaint collection, of victim support, awareness raising, prevention of homophobic violence in schools, etc. The Action Programme also points out the necessity to reinforce the training of police and *gendarmes*. Currently training is organized by the association Flag! with the support of

discriminations commises à raison de l'orientation sexuelle ou de l'identité de genre], 23 July 2013, available at: www.textes.justice.gouv.fr/art_pix/JUSD1319893C.pdf.

¹⁵⁶ France, SOS Homophobia (SOS Homophobie)(2009), 2009 Annual report [Rapport annuel 2009], available at: www.sos-homophobie.org/sites/default/files/ra2009.pdf

¹⁵⁷ France, SOS Homophobia (SOS Homophobie)(2009), 2009 Annual report [Rapport annuel 2009], p. 34, available at: www.sos-homophobie.org/sites/default/files/ra2009.pdf.

¹⁵⁸ France, SOS Homophobia (SOS Homophobie)(2011), 2011 Annual report [Rapport annuel 2011], p. 90, available at: www.sos-homophobie.org/rapport-annuel-2011.

¹⁵⁹ France, SOS Homophobia (SOS Homophobie)(2013), 2013 Annual report [Rapport annuel 2013], p. 99, available at: www.sos-homophobie.org/sites/default/files/rapport_annuel_2013.pdf.

¹⁶⁰ France, General Rules for the national police (*Arrêté portant règlement général d'emploi de la police nationale*), 6 June 2006, article 113-2, available at: www.legifrance.gouv.fr/affichTexte.do;jsessionid=F9AEDB61796872D8E4FD43F326222B9F.tpdjo02v_1&dateTexte=?cidTexte=JORFTEXT000000609541&categorieLien=cid.

¹⁶¹ France, Minister of Justice (Ministre de la Justice), Circular on the criminal justice response to violence and discrimination committed because of sexual orientation or gender identity [Circularaire portant sur la réponse pénale aux violences et discriminations

commises à raison de l'orientation sexuelle ou de l'identité de genre], 23 July 2013, available at: www.textes.justice.gouv.fr/art_pix/JUSD1319893C.pdf.

¹⁶² France, Prime Minister (Premier Ministre), Governmental Action Programme against violence and discrimination committed because of sexual orientation or gender identity [Programme d'actions gouvernemental contre les violences et les discriminations

commises à raison de l'orientation sexuelle ou de l'identité de genre], 12 October 2012, available at: www.textes.justice.gouv.fr/art_pix/JUSD1319893C.pdf.

SOS Homophobie, but it is not regular.¹⁶³ In order to collect statistics and figures on homophobia a computer package, Pulsar, was set up in *gendarmerie* in 2012, the installation of the equivalent software for the police is planned for 2014.¹⁶⁴

While legal provisions have taken into account discrimination on the grounds of sexual orientation since the beginning of the century, an effective development has come with the election of the current President, Mr Hollande. At least in the form of a political will to tackle homophobic behaviour which has raised the development and the implementation of a national LGBT action plan. Indeed, this plan provides, in particular, training for police officers and judges. This addresses criticisms from associations pointing out the lack of skills of police officers when facing a complaint from an LGBT victim. In addition, statistics will allow to compare figures for complaints and figures for judgments, and to assess the reality of homophobic trends within society.

¹⁶³ France, SOS Homophobia (SOS Homophobie)(2013), 2013 Annual report [Rapport annuel 2013], p. 99, available at: www.sos-homophobie.org/sites/default/files/rapport_annuel_2013.pdf.

¹⁶⁴ France, SOS Homophobia (SOS Homophobie)(2013), 2013 Annual report [Rapport annuel 2013], p. 100, available at: www.sos-homophobie.org/sites/default/files/rapport_annuel_2013.pdf.

G. Transgender issues

It is difficult to obtain information on transgender persons. There are no official statistics.

Transsexuals have the right to change the gender stated on their birth certificate. This right appears in no law, but in jurisprudence. In 1992, France was found guilty by the European Court of Human Rights on 25 March (*B. v. France*) of violating Article 8 of the European Convention on Human Rights. Seized by a complaint by Miss B., a transsexual woman, the European Court found that French law, by requiring constant revelation of her official gender, placed the complainant in a situation that was incompatible with her right to privacy.

Following this European verdict, the Plenary Assembly of the Court of Cassation amended its jurisprudence relative to transsexualism. It now allows the birth certificate to be amended after a sex change in the name of privacy rights: “the principle of the right to privacy justifies that the civil status of the transsexual person indicate the sex he or she appears to be”.¹⁶⁵

Transsexuals also have the right to change their forename. Changing the gender stated in one's civil status automatically gives one the right to change one's forename if one so wishes.

Like any person, a transsexual has the right to the respect of his or her family life, as protected by article 8 of the ECHR. He or she may marry in his or her new gender, a right which has never been prohibited in France since transsexual persons have the right to change their name and gender on civil records.

Finally, a transsexual may be granted visiting rights to an ex cohabiting partner's children.¹⁶⁶

For other issues, it is difficult to obtain reliable statistical data. The High Authority for the Elimination of Discrimination and for Equality (HALDE) has been seized several times regarding questions related to transsexuals. See for example proceedings n° 2008/29 18 February 2008¹⁶⁷: Clarisse XXXXX was immediately excluded at work, and then dismissed following the announcement of her change of gender. The time between her revealing her transsexualism and her dismissal was so short, as established by the HALDE, that it revealed that her employer's attitude and her dismissal were based upon Clarisse XXXXX's sex change. The HALDE decided to present its observations before the Montpellier Labour Court, which annulled the dismissal on the same basis as considerations developed by the High authority. The employer has appealed against the decision.

An analysis of case law shows that any discrimination based upon a person's transsexualism is

¹⁶⁵ France, Court of Cassation (*Cour de cassation*), Decision No. 91-12373, 11 December 1992, available at: <http://legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007030252&fastReqId=452261302&fastPos=1>.

¹⁶⁶ France, Appeal Court of Aix-en-Provence (*Cour d'appel d'Aix-en-Provence*), Decision No. 2002-190443, 12 March 2002..

¹⁶⁷ France, High Authority Against Discrimination and for Equality (*Haute Autorité de lutte contre les discriminations et pour l'égalité*), Deliberation No. 2008-29, 18 February 2008, available at: www.transidentite.fr/fichiers/ressources/emploi/HALDE_Deliberation_2008-29_Clarisse.pdf.

equivalent to discrimination on the basis of sex, which is contrary to the Directive on the equality of men and women. As a result, the dismissal may be considered null and void by virtue of Articles L. 1132-1 and L. 1132-4 of the Labour Code modified by Law n°2008-496 of 27 May 2008. The solution seems to be accepted as a doctrine in France.

According to government order No. 2010-125 of 8 February 2010, transsexuality is no longer classified as psychiatric ailment¹¹ for the medical care contrary to the World Health Organization's classification based on the DSM (Diagnostic and Statistical Manual of Mental Disorders). France is the first country to take such an initiative. It does not suppress the psychiatric control, still combined with a medical monitoring, but extracts early troubles of gender identity from the list of "long term psychiatric conditions" (ALD 23) to insert them in the category of "long term affections", relating to "severe" or "invalidating pathologies"¹² (ALD 31), as it was proposed by the French National Authority for Health (*Haute Autorité de santé*, HAS). There is no specific category of care for transsexual individuals but the process remains attached to the assumption of a pathology and leaves it to medical discretion to dispense patient care and authorize the undertaking of medical, psychiatric and financial support. The advantage is mostly symbolic. The procedure of medicalization and the aspects relating to the financial responsibility still impose a heavy burden on individuals. However it opens doors for the launch of a reform of the healthcare process in the field of transsexuality and a global approach of the individual undertaking. In its recent report of November 2009 the National Authority for Health (HAS) calling for such a reform suggested to reform the care system for transgender health issues and simplify the procedure required to carry out surgical sex reassignments.¹⁶⁸ It proposed to set up a general care scheme similar to the one existing in case of rare illnesses. Such a reform is aimed at developing a coherent and transparent care system allowing the labelling of one or more reference centres with a multidisciplinary team and a network of regional focal places in France. The reference centre is in charge of the elaboration of a national protocol on diagnosis and care to be approved by the HAS that must clarify the global process in terms of actors, minimum observation period before surgical reassignments, types of surgery and medical treatment provided by the health care system. In this context, health care is ensured till the end of required surgery and psychological support. The HAS recommends establishing a differential diagnosis for people who request gender reassignment (only hormonal treatment or surgical operation): the view of the psychiatrist on the patient will determine their entry into the medical process. This psychiatric diagnosis is used to potentially identify other behaviour such as transvestism ('travestisme fétichiste') or schizophrenia.

One Ministerial Instruction was provided to the Supreme Court (*Cour de cassation*) and Court of appeals (*Cour d'appel*) on 14 May 2010.¹⁶⁹ This document first recalls the judgment about transsexuals issued in 1992 after the condemnation of France by the European Court of Human Rights, and reports two judicial phenomena:

First, seemingly contrary to the judgment of 1992, some judges at first instance admit the change of

¹⁶⁸ France, High Health Authority (*Haute autorité de santé*) (2009), Current situation and future prospects for medical care of transsexualism in France [Situation actuelle et perspectives d'évolution de la prise en charge médicale du transsexualisme en France], available at: www.has-sante.fr/portail/upload/docs/application/pdf/2009-12/rapport_transsexualisme.pdf.

¹⁶⁹ France, Minister of Justice (Ministre de la Justice), Circular about requests for changing sex in civil status records [Circulaire relative aux demandes de changement de sexe à l'état civil], 14 May 2010, available at: www.textes.justice.gouv.fr/art_pix/JUSC1012994C.pdf.

gender in civil status when people follow a hormonal treatment or when they had recourse to plastic surgery;

Secondly, some judges apply for an additional expert opinion when applicants submit medical certificates.

To put an end to the variety of practices, the Instruction enjoins judges to respond positively to requests for change of civil status when hormonal treatment results in a final physical or physiological transformation, associated with, if any, plastic surgery (prostheses or removal of mammary glands, facial cosmetic surgery), which lead to an irreversible change of sex without requiring the removal of genitals. The Instruction adds that judges should accept the change of civil status and avoid additional expert opinions when people already have certain medical certificates.

The problem remains that it is only an instruction with no binding legal effect. The requirement of objective evidence of change remains widespread. Again recently, in two cases, the Court of Cassation required medical-surgical evidence of irreversible change of sex.¹⁷⁰ In both cases indeed the Court repeated the principle already expressed in June 2012: 'To justify a request for rectification of sex contained in their birth certificate, a person shall establish, in the light of what is commonly accepted by the scientific community, the reality of transgender syndrome and the irreversibility of the transformation of their appearance'.¹⁷¹

The notion of irreversibility, poorly defined and difficult to prove, leads to very frequent application of medical expertise. In its opinion about transgender people issued in June 2013,¹⁷² the National Consultative Commission for Human Rights (*Commission nationale consultative des droits de l'homme*, CNCDH) highlights high variations in case law on this: while some courts systematically order one or more expert opinions (medical, psychiatric or endocrinological), other courts consider that attestations from qualified doctors recognized for their expertise in this area are sufficient. Therefore, there is great inequality among transgender people depending on the jurisdiction where the requests are submitted which finally leads to legal uncertainty. On the grounds of this observations, the CNCDH calls for the suppression of medical conditions and recommends moving the change of sex in civil status partially from a judicial process to an administrative one (“*déjudiciarisation*”). In other words, CNCDH considers that judges should no longer require any transgender syndrome nor hormonal treatments or surgical treatment. Concerning the evolution of the process, the CNCDH suggests first entrusting registry officers to receive declarations from transgender people attesting good faith of the applicant, and secondly to foresee the control of the request by the judge, given that refusal should only be possible in cases of manifestly fraudulent requests.

Recently, a Court of appeal granted a married man with three children the right to change his sex in

¹⁷⁰ France, Court of Cassation (*Cour de cassation*), Decision No. 108, 13 February 2013, available at: www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/108_13_25451.html.

¹⁷¹ France, Court of Cassation (*Cour de cassation*), Decision no. 10-269477, June 2012, available at: www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechExpJuriJudi&idTexte=JURITEXT000025993720&fastReqId=991283953&fastPos=5.

¹⁷² France, National Consultative Commission for Human Rights (Commission nationale consultative des droits de l'homme, CNCDH) (2013), Opinion on gender identity and change of the reference to sex in the civil register [Avis sur l'identité de genre et sur le changement de la mention de sexe à l'état civil], 27 June 2013, available at: www.cncdh.fr/fr/actualite/la-cncdh-souhaite-retablir-la-dignite-des-trans.

the civil status records while he was married.¹⁷³ The Court of first instance rejected his request on the basis of the prohibition of marriage for same sex couples. On appeal, judges decided otherwise on the basis of another interpretation: the judgment regarding the sex change in civil status records had no impact on the marriage certificate and the birth certificates of his children. Indeed, it applied only for the future.

Despite the ministerial Circular of May 2010, which aims to facilitate the change of sex in civil status records, the Court of Cassation (Cour de cassation) still requires medical-surgical evidence of irreversible change of sex, and judges have various attitudes towards this issue (see Annex 1 Case law). In addition, while some judges do not expect more than a certificate from the surgeon who operated on the claimant, others require another medical examination. This attitude obviously creates legal uncertainty and extends the judicial time delays. Thus, the sex change in civil status records is therefore subordinated to medical assessment. In particular, psychiatrists play a central role since their assessment is a condition to enter the gender reassignment process¹⁷⁴. The recent opinion of the CNCDH to separate medical aspects and civil status remained unfulfilled.

¹⁷³ France, Court of Appeal of Rennes (*Cour d'appel de Rennes*), Decision No. 11/08743 16 October 2012.

¹⁷⁴ France, National Consultative Commission for Human Rights (Commission nationale consultative des droits de l'homme), Opinion about gender identity and change of sex in civil status records [Avis sur l'identité de genre et sur le changement de la mention de sexe à l'état civil], 27 June 2013, available at: www.cncdh.fr/sites/default/files/27.06.13_avis_sur_lidentite_de_genre_et_sur_le_changement_de_la_mention_de_sexe_a_letat_civil.pdf.

H. Intersex issues

1) Are intersex people specified (or is the ground of ‘intersex’ included) under national non-discrimination legislation and/or in legal cases/jurisprudence and/or in non-discrimination policies?

Please specify:

A) Is discrimination on ground of ‘intersex’ covered by the **law**? Please choose (one or more) of the following four answering options:

No.

B) Is intersex discrimination covered under national non-discrimination **policies**? If so, how? Please provide evidence, links and references to policies in this area.

There is no non-discrimination policies with regard to this issue.

C) Is it allowed in the respective EUMS that children remain without a gender marker/identification on their birth certificates, and if so, until which age and under which conditions? Please provide detailed information and references.

Any birth on French territory must be declared to the officer of civil status of the municipality where the child is born, three days after the birth. According to the Civil Code (art. 57), the birth certificate must indicate the sex of the child. One Ministerial Instruction for Judges and Registrars gives details about the procedure to be adopted with children whose sex is undetermined.¹⁷⁵ This instruction appears in the review procedure of an Instruction developed in 1955 which brought together in one document the multiple laws and regulations, instructions and court decisions relating to family law, the rights of individuals and civil status. In fact, this text has become the standard work on civil status for the use of prosecutors and officers of civil status. Subsequently, when the sex is undetermined at birth, the latest updated version of the Instruction, which is the one adopted in 2011, states that indicating 'indeterminate sex' in the birth certificate should be avoided. This refers to established case law according to which ‘any individual, even though he/she has organic anomalies, must necessarily be referred to one of the two sexes, male or female’.¹⁷⁶ The Instruction specifies that ‘parents should be advised to check with their doctor to find out what the sex is most likely to be, where appropriate, based upon predictable results of medical treatment’. When it is possible, this sex is indicated in the birth certificate, and ‘if necessary’ the indication will later be ‘judicially revised in the event of an error’.

In exceptional cases, if the doctor feels unable to immediately give any indication about the likely

¹⁷⁵ France, Minister of Justice (Ministère de la Justice), Instruction about particular rules for various acts of civil status concerning birth and filiation [Circulaire relative aux règles particulières à divers actes de l’état civil relatifs à la naissance et à la filiation], 28 October 2011, available at: www.textes.justice.gouv.fr/art_pix/JUSC1119808C.pdf.

¹⁷⁶ France, Appeal Court of Paris (*Cour d’appel de Paris*), Decision, 18 January 1974, Dalloz, p. 196; France, Dijon First Instance Court (*Tribunal de Grande Instance de Dijon*), Decision, 2 May 1977, Gazette du Palais, vol. 2, p. 577; France, Saint Etienne First Instance Court (*Tribunal de Grande Instance de Saint Etienne*), Decision, 11 July 1979, Dalloz p. 270.

sex of a new born child, the Instruction states that ‘if the sex can be determined definitively within one or two years after appropriate treatment, it may be admitted with the consent of the prosecutor, no mention of the sex of the child should initially be recorded in the birth certificate. In such a case, all necessary measures should be taken to ensure that, eventually, the birth certificate can be effectively complemented by judicial decision’.

2) Are surgical and medical interventions performed on intersex people in your country?

A) If so, please specify:

(a) the legal basis (or: legal grounds) for such interventions

There are no specific legal grounds apart from requirements with regards to civil status.

(b) the medical protocols or procedures applicable in such situations. On what medical ground(s)¹⁷⁷ could such interventions take place?

In France the drafters of the brochure distributed by the Public Assistance-Paris Hospitals (*Assistance publique – Hôpitaux de Paris* APHP) consider that the length of the penis is normally over 2.5 cm at birth.¹⁷⁸ Beyond that, it is a boy (except for individuals with XX chromosomes but who have congenital adrenal hyperplasia (*hyperplasie congénitale des surrénales*)), below this, there is no certainty. At a critical size smaller but high for XY chromosomes, administration of a high dose of testosterone should reveal whether the body responds (penis grows or not). In other cases, the choice is made to reduce the organ, then to make female sex organs. The option is justified by the fact that the functionality of organs is assessed only in terms of their ability to engage in heterosexual intercourse and it is easier to make a functional vagina than a suitably sized penis.¹⁷⁹ Today in France, the six acts listed in the Common Classification of Medical Acts (*Classification commune des actes médicaux*, CCAM) into the paragraph related to 'correction of sexual ambiguities' only refer to feminisation.¹⁸⁰ Judges have recently agreed with the medical approach stating that the child had presented ‘particularly insufficient male sexual organs’.¹⁸¹

The High Authority for Health (*Haute autorité de santé*, HAS) developed in 2011 a national protocol for the management of a congenital adrenal hyperplasia (*hyperplasie congénitale des surrénales*).¹⁸²

¹⁷⁷ Other than those necessary to sustain the physical health of the person, for example in a life threatening situation at birth.

¹⁷⁸ France, Public Assistance-Paris Hospitals (Assistance publique – Hôpitaux de Paris), Girl or boy? the development of genitals [Fille ou garçon ? Le développement des organes génitaux], available at: http://hopital-necker.aphp.fr/wp-content/blogs.dir/24/files/2012/05/FilleGarcon_LivretInfo.pdf; France, Mirlesse, V. (2004) 'Fetal genital pathology' ['Pathologie génitale fœtale'], *EMC - Pédiatrie*, Vol 1, n° 2, May 2004, p. 203.

¹⁷⁹ France, Mirlesse, V. (2004) 'Fetal genital pathology' ['Pathologie génitale fœtale'], *EMC - Pédiatrie*, Vol 1, n°2, May 2004, p. 208.

¹⁸⁰ France, Common Classification of Medical Acts [Classification commune des actes médicaux, CCAM], Version 33, February 2014, available at: www.ameli.fr/accueil-de-la-ccam/trouver-un-acte/consultation-par-chapitre.php?add=8.7.1.

¹⁸¹ France, Court of Appeal of Versailles (*Cour d'appel de Versailles*), Decision N° 7799-99, 22 June 2000.

¹⁸² France, High Authority for Health (Haute autorité de santé, HAS) (2011), *Congenital adrenal hyperplasia due to 21-hydroxylase deficiency*, National Protocol for diagnosis and care [Hyperplasie congénitale des surrénales par déficit en 21-hydroxylase. Protocole national de diagnostic et de soins

Since 1995, screening for this is systematic. For people with chromosomes XX, with 'virilisation of external genitals', a surgical treatment should be carried out in the first months after birth according to the protocol.

B) If the aforementioned surgeries or medical interventions are carried out in the respective EUMS, is the **fully informed consent of the parties** concerned required by law or by protocol – and who are those interested parties considered to be (parents/guardians etcetera)?

General legal provisions require the fully informed consent of patients for any medical intervention, including surgery (art. 1111-4 of the Public Health Code.)¹⁸³ The same article rules that the consent of minors or adults under guardianship must be systematically sought if 'they are able to express their will and to participate in the decision'. It specifies also that 'in cases where the refusal of treatment by the person holding parental authority or the tutor may result in serious consequences for the health of the minor or major under guardianship, the doctor delivers the necessary care'.

(a) if this fully informed consent is required, is any explicit reference made to a certain age of consent? (under national law and/or medical protocol)?

As seen before, the protocol about the management of congenital adrenal hyperplasia due to 21-hydroxylase deficiency mentions surgical treatment in the first months after birth. There is no reference to any form of consent but the protocol explains that 'Patients and parents should be accompanied psychologically in the surgical project'.¹⁸⁴

(b) is the fully informed consent sought from the intersex person him/herself or are parents/guardians/legal representatives of the intersex person granted the right to consent on the persons' behalf?

Usually, regarding the legal constraints to give a sex at the latest within two years after birth, the intersex person is not consulted about the intervention. Only parents are entitled to consent to the medical intervention. As mentioned before, if the doctor deems necessary the intervention, she/he has the right to deliver 'necessary care'.

pour les maladies rares], available at: www.has-sante.fr/portail/upload/docs/application/pdf/2011-05/ald_hors_liste_-_pnds_sur_lhyperplasie_congenitale_des_surrenales.pdf.

¹⁸³ France, Code of Public Health (*Code de la santé publique*), art. L. 1111-4, available at:

www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006685767&cidTexte=LEGITEXT000006072665.

¹⁸⁴ France, High Authority for Health (Haute autorité de santé, HAS) (2011), Congenital adrenal hyperplasia due to 21-hydroxylase deficiency, National Protocol for diagnosis and care [Hyperplasie congénitale des surrénales par déficit en 21-hydroxylase. Protocole national de diagnostic et de soins pour les maladies rares], p. 16, available at: www.has-sante.fr/portail/upload/docs/application/pdf/2011-05/ald_hors_liste_-_pnds_sur_lhyperplasie_congenitale_des_surrenales.pdf.

I. Miscellaneous

I.1. Homosexual adoptions

The European Court of Human Rights has found France guilty of discrimination for refusing approval for adoption of a child by a schoolteacher on the basis of her homosexuality. The Court found that such discrimination, relative to the respect of privacy and family life, can only be justified by “particularly serious and convincing reasons”. “In this case, no such reasons exist, as French law allows adoption of a child by a single person, thus opening the possibility of adoption for a single homosexual person”, stated the judges who ruled 10 to 7 against France. (ECHR 22 January 2007 (E.B. v. France)).

In 2002, the Strasbourg court dismissed the complaint of a French homosexual man who complained of the same situation. The judges found that while France had a “certain margin of appreciation” as it is a subject that must balance the “both the interests of the complainant and those of the children which may be adopted.” (ECHR 26 February 2002 Frette v. France)

The HALDE has condemned the undue consideration given to sexual orientation during an investigation to assess characteristics of the claimant’s family before granting adoption approval. The procedure ended with a refusal by the Departmental Council to grant adoption to the female applicant who is engaged in a civil union with another female partner. The Council recommended to reconsider the claimant’s situation and to introduce a reference to prohibited discrimination grounds in article L. 225-4 of the Code of Social Action and Families (Deliberation n°2008-79 of 28 April 2008). In line with the jurisprudence of the European Court of Human Rights and the deliberation of the HALDE (Deliberation n°2009-350 of 5 October 2009), the Administrative Court of Besançon annulled the refusal by the Departmental Council to grant adoption approval to a homosexual schoolmistress living in couple (Administrative Court of Besançon, 10 November 2009, Mlle B. c/Département du Jura). In both cases, discrimination was hidden behind the unfounded or contested argument of claimant’s partner’s lack of involvement. If these positive decisions only concern one partner’s situation and not adoption by same-sex couples in general, a bill filed by socialist Senator Jean-Pierre Michel on 16 December 2009 proposes to allow applicants in civil union to access adoption in the same conditions as married couples (Bill No 168). In addition, despite impossibility for homosexual partners to access adoption as a couple, homo-parental couples are allowed to use the delegation of parental authority (article 377 of the Civil Code), which can benefit a partner in a civil union who is not the adoptive parent.¹⁸⁵

The new law opening marriage to same sex couples changes this situation since the spouse can now adopt the child of their spouse. This was confirmed in October 2013, since judges allowed a woman to adopt the biological child of her wife.¹⁸⁶ On the other hand, the new law should affect two

¹⁸⁵ France, Court of Cassation (*Cour de cassation*), Decision No. 04-17090, 24 February 2006, available at: <http://legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007052082&fastReqId=339271295&fastPos=1>.

¹⁸⁶ France, Lille First Instance Court (*Tribunal de grande instance de Lille*), Judgment, 18 October 2013.

judgments from the Court of Cassation of June 2012. These judgments refused to grant requests for enforcement (*exequatur*) (to make a foreign judgment applicable under French law) two plenary adoption judgments rendered abroad. According to the Court of Cassation, it was "contrary to a fundamental principle of French law of filiation, the recognition in France of a foreign judgment for which the civil status record requires it to be mentioned that a child is of two parents of the same sex".¹⁸⁷

Apparently, according to the location in France where couples of married women ask for a full adoption (*adoption plénière*) (in other words according to prosecutors), when one of them was inseminated abroad, some prosecutors are opposed by asserting a 'fraud in law' ('*fraude à la loi*')¹⁸⁸. Judges, who are entitled to decide full adoption, will soon render their judgment.

The Rennes appellate court refused, on 30 January 2008, to grant a young homosexual mother the right to paternity leave. 31-year-old Elodie had requested paternity leave for Basile, 3 and-a-half, the child that her partner Karine, 32 years old, had given birth to after an artificial insemination in Belgium. This leave was refused by the Health Insurance body (*Caisse primaire d'assurance maladie*, CPAM) and then by the court of social security affairs in Nantes on 20 March 2006. Paternity leave, according to the work site, concerns 'an employee, who is the father of a new born child (who) may request paid leave of a duration of 11 to 18 days'. This type of leave is generally the CPAM's responsibility. It differs from parental leave which is for a man or a woman who, following a birth or an adoption, may request leave for a maximum of one year, renewable twice, during which the employee is not paid.

The Court of Cassation confirmed the approach of the court of appeal of Rennes on 11 mars 2010.¹⁸⁹ by declaring that 'it follows from Articles L. 331-8 and D. 331-4 of the Code of Social Security (*Code de la sécurité sociale*), the benefit of paternity shall be open to, due to the existence of a legal filiation, the father of the child' adding 'that these texts exclude any discrimination based on sex or sexual orientation, and do not affect the right to a family life'.

Nevertheless, in recent years, some local initiatives, private and public, opened the right to paternity leave to women in couples with a woman who has just given birth. Some large companies grant paternity leave to same sex couples and one Departmental council (*Conseil général*) granted it also in October 2012.¹⁹⁰

¹⁸⁷ France, Court of Cassation (*Cour de cassation*), Decision No. 11-30261 and 11-30262, 7 June 2012, available at: <http://legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000025993694&fastReqId=1064074396&fastPos=1>.

¹⁸⁸ France, Dupont, D. (2014), 'Gay couples: Justice blocks adoptions of children born after Medically Assisted Birth' ['Couples gays : la justice bloque des adoptions d'enfants nés par PMA'], *Le Monde*, 24 February 2014, available at: www.lemonde.fr/societe/article/2014/02/24/couples-gays-la-justice-bloque-des-adoptions-d-enfants-nes-par-pma_4372118_3224.html.

¹⁸⁹ France, Court of Cassation (*Cour de cassation*), Decision No. 09-65.853, 11 March 2010, available at: www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000021967805&fastReqId=2104620141&fastPos=1.

¹⁹⁰ France, Kovacs, S. (2012) 'Paternity leave for a same sex couple' ['Un congé parental pour un couple homosexuel'], *Figaro (press)*, 8 October 2012, available at: www.lefigaro.fr/actualite-france/2012/10/08/01016-20121008ARTFIG00493-un-conge-parental-pour-un-couple-d-homosexuelle.php.

I.2. Institutional homophobia

It should be noted that gay people are still prohibited from donating blood. This prohibition was introduced in 1983 and was renewed in the current regulation about blood donation.¹⁹¹ To be more specific, the Ministerial Order does not mention homosexuals but excludes from blood donations a 'man who has had sex with another man'. This exclusion is permanent, and intervenes upstream of individualized questionnaires administered by the health professional in charge of receiving donors.

One recent report from a Member of Parliament (*député*) submitted to the Health Minister recommended removing this provision.¹⁹² Firstly, it suggests adopting a single standard of exclusion, applicable regardless of sexuality (homosexual or heterosexual), but based on the types of sexual behaviour of individuals. Secondly, it suggests individualising the application of the exclusion criteria, so that it would come into play at the stage of the interview with the potential donor.

When questioned about these recommendations at the Parliament, the Minister replied that the Government was first concerned by the health of the receiver. For this reason he argued that the regulation might change after the current examination of the Council of Europe upon this issue, and the recommendations of the National Consultative Committee for Ethics (*Comité consultatif national d'éthique*, CCNE), which has been consulted.¹⁹³

¹⁹¹ France, Health Minister (Ministre de la Santé) (2009), Ministerial Order setting the selection criteria for blood donors [Arrêté fixant les critères de sélection des donneurs de sang], 12 January 2009, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020104647.

¹⁹² France, Member of Parliament Veran, O. (2013), Report on the Blood sector in France [La filière du sang en France], available at: www.sante.gouv.fr/IMG/pdf/Rapport_Veran_filiere-sang.pdf.

¹⁹³ France, Social Affairs and Health Minister (Ministre des affaires sociales et de la santé) (2013), Answer to the question of Ms Barbara Romagnan N° 33725 [Réponse à la question de Mme Barbara Romagnan n°33725] 6 August 2013, available at: <http://questions.assemblee-nationale.fr/q14/14-33725QE.htm>.

J. Good practices

The Charter of Diversity in the Workplace seeks to encourage companies to better reflect in their staff the diversity of the French population, and to make non-discrimination and diversity a strategic goal¹⁹⁴.

A “Diversity Label” has been created in December 2008 to reward exemplary practices of some companies, administrations, or associations in matters of diversity. The French association of normalization (AFNOR) may choose to deliver such a label in the field of human resources management after it has received the opinion of a committee of labelling composed by State and trade-union representatives and human resources managers (Decree n°2008- 1344 of 17 December 2008). According to the last figures from August 2012, 380 organisations were certified (85 percent of them are companies with more than 50 employees).¹⁹⁵ On its website, AFNOR offers a free test to organisations to assess their situation with reference to the requirements of the Diversity Label¹⁹⁶. The process to obtain the certification is not free. There is no known impact of the Label on companies from the specific LGBT perspective (Nevertheless this label raises awareness about discrimination issues within the company, and leads managers to better prevent discriminatory behaviour of employees). In 18 May 2009, a survey has been begun under auspices of the HALDE to assess human resources management’s practices committed to guaranty the equality of treatment in the areas of recruitment process and career paths.

In 2008, the HALDE launched an awareness-raising campaign targeted at young people. It has led to the creation of a blog on a website with 4.1 million users that has mainly been consulted by teenagers and young adults. This project allowed the organisation of a song lyrics writing competition that ended with the recording of a song in a professional studio and its broadcasting by way of internet. If not focused on the sole ground of sexual orientation, this approach is part of a general strategy of improvement of the understanding and knowledge of discriminatory behaviours.¹⁹⁷ This strategy may also be characterized by the request made by the HALDE to the Ministry of National Education to commit to preventing stereotypes in school curricula and books.¹⁹⁸

The successor of the HALDE, the Defender of Rights (*Défenseur des droits*, DDD), issued in 2013 certain good practices to prevent homophobia at work and to create an inclusive environment for LGBT employees (*Prévenir l’homophobie au travail et créer un climat inclusif pour les salariés et*

¹⁹⁴ France, Charter of Diversity in the Workplace (Charte de la diversité en entreprise), available at: www.charte-diversite.com/charte-diversite-texte-engagement.php.

¹⁹⁵ www.afnor.org/profils/centre-d-interet/dd-rse-iso-26000/archives-actualites/le-label-diversite-un-engagement-concret-et-efficace-en-faveur-de-la-prevention-des-discriminations.

¹⁹⁶ France, AFNOR, Test and diagnostic online ‘Diversity Label, is your company ready?’ [Tests et diagnostics en ligne ‘Le label Diversité, Votre entreprise est-elle prête ?’], available at: www.boutique-certification.afnor.org/tests-et-diagnostics-en-ligne/label-diversite-votre-entreprise-est-elle-prete.

¹⁹⁷ France, High Authority for Equality and the Elimination of Discrimination (Haute autorité de lutte contre les discriminations et pour l’égalité) (2009), 2008 Annual Report [Rapport annuel 2008], p. 61, available at: www.ladocumentationfrancaise.fr/var/storage/rapports-publics/094000212/0000.pdf

¹⁹⁸ France, High Authority for Equality and the Elimination of Discrimination (Haute autorité de lutte contre les discriminations et pour l’égalité) (2009), 2008 Annual Report [Rapport annuel 2008], p. 61, available at: www.ladocumentationfrancaise.fr/var/storage/rapports-publics/094000212/0000.pdf

agents LGBT).¹⁹⁹ The starting point for this document is the observation that few companies are aware and mobilised to carry out actions to combat homophobia at work. Yet the report highlights that the commitment of employers to combatting homophobia is crucial. After recalling that employees who publicly assume their sexual orientation at work are less stressed, the DDD gives recommendations to companies to reinforce the combat against homophobia. First, companies must inform internally about their commitment against homophobia, let all employees know about it, and inform the public about it: the positioning of the company about this issue must be very clear. In a second part, the DDD recommends setting concrete measures within the company: an assessment of the level of awareness of employees about discrimination on the grounds of sexual orientation, the use of an appropriate language, with neutral words such as 'partner', to give the same rights to people in a civil union (PACS) as to married people. Finally, in order to sustain this commitment, the DDD enjoins companies to raise awareness of the employees about this issue by providing training and putting in place sanctions in cases of homophobic behaviour. Another point is to encourage partners of the company to adopt the same positioning.

The law of 12 May 2009 has introduced article 515-7-1 in the Civil Code, which provides for the recognition in France of foreign registered partnerships. In this context, it is referred to the law of the country of registration to rule the effects of the civil partnership. In addition, a bill filed by socialist Senators Richard YUNG, Monique CERISIER-ben GUIGA, Claudine LEPAGE on 25 November 2008 proposes to generally recognize unions concluded in another EU country, whatever the sexual orientation of the persons concerned may be.

According to a circular of 28 September 2007, diplomatic and consular agents were allowed to reject a registration request for a civil partnership between a French citizen and a foreign national on the ground of public order in countries where law prohibits civil partnerships for both same-sex and opposite-sex couples. Several associations considered this text as amounting to a discriminatory difference of treatment on the ground of nationality and sexual orientation since homosexuality was proscribed in a large range of countries. The State Council judged that there was illegal discrimination between French nationals and mixed-nationals couples and ordered that the contested clauses of the circular be not executed.²⁰⁰State Council

Until recently, it was difficult in France to obtain data concerning discrimination homosexuals may be subject to. It was therefore impossible to clearly identify the reality of the problem. But the situation has been changing since the French government adopted a national LGBT action plan at the end of October 2012.²⁰¹ The first interim review of the Plan was issued in May 2013.²⁰² From

¹⁹⁹ France, Defender of Rights (Défenseur des droits) (2013), Good practices: to prevent homophobia at work and to create an inclusive environment for LGBT employees [Bonnes pratiques : Prévenir l'homophobie au travail et créer un climat inclusif pour les salariés et agents LGBT], available at: www.defenseurdesdroits.fr/sites/default/files/upload/fiches-thematiques/discri-bonnes-pratiques-homophobie.pdf.

²⁰⁰ France, State Council (*Conseil d'Etat*), Decision No. 310837, 18 December 2007, available at: <http://legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000018259598&fastReqId=1775505714&fastPos=1>

²⁰¹ France, Governmental Programme for actions against violence and discrimination on the grounds of sexual orientation and gender identity [Programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation sexuelle et de l'identité de genre], 31 October 2012, available at: www.gouvernement.fr/gouvernement/homophobie-et-discriminations-a-raison-de-l-identite-de-genre-un-programme-d-actions-go.

²⁰² France, Interim Review. Governmental Programme for actions against violence and discrimination on the grounds of

2014, the Government will publish figures about homophobia. For this purpose, the Government has initiated a reform of the statistical system of the Interior Ministry and Justice Ministry to obtain an accurate and reliable representation of crimes and offences on the grounds of sexual orientation or gender identity: facts and court decisions.

Training modules for prevention and detection of homophobic violence were introduced in June 2013 for police officers, judges, and lawyers. A hearing outline should be provided to police officers to help in registering complaints from victims of homophobic offences.²⁰³

A web portal called PHAROS allows victims/any person to report the existence of illegal content on the internet,²⁰⁴ including homophobic remarks. The platform brings together police and gendarmerie officials and is integrated into the Central office for the fight against criminality relating to communication and information technologies (Office Central de Lutte contre la Criminalité liée aux Technologies de l'Information et de la Communication, OCLCTIC). It also deals with investigations in this field that require European or international cooperation.

sexual orientation and gender identity [Bilan intermédiaire. Programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation sexuelle et de l'identité de genre], 16 May 2013, available at: http://issuu.com/najatvb/docs/2013-05-16_-_pag_lgbt_-_bilan_interm_diaire?e=7584497/2472248

²⁰³ France, Women's Rights Ministry (Ministère des droits des femmes)(2014), Progress report about the Governmental Programme for actions against homophobic violence and discrimination [Bilan d'étape du programme d'actions gouvernemental contre les violences et les discriminations homophobes], available at: <http://femmes.gouv.fr/decouvrez-le-bilan-detape-du-programme-dactions-gouvernemental-contre-les-violences-et-les-discriminations-homophobes/>.

²⁰⁴ France, Internet reporting (Internet signalement), available at : www.internet-signalement.gouv.fr.

Annex 1 – Case law

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	Decision No. 437/05
Decision date	15 December 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Cour d'appel d' Agen [Agen Court of Appeal]
Key facts of the case (max. 500 chars)	A nurse was refused entry to the home of an elderly couple she was sent to care for because of her alleged homosexuality.
Main reasoning/argumentation (max. 500 chars)	Article 225-2 of the Criminal Code prohibits discrimination based on sexual orientation, particularly when it is an obstacle to participating in an economic activity. This was the case here, as the attitude of the accused resulted in the loss of a client for the independent nursing practice for which the victim worked.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of discrimination based on sexual orientation obstructing economic activity.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The accused were sentenced by the first instance court to a fine of €300 each and €500, as per Article 475-1 of the CPP, and to one euro of damages to the victim. The Public Prosecutor appealed this decision asking to increase the fine for one of the accused who openly threatened the victim. The Court of appeal confirmed the decision of the first instance court arguing that the punishment was proportional with the seriousness of the offence, and that the accused had never been convicted before.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 2

Case title	Bouville c. scté Lidl
Decision date	3 April 2007
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel, Rouen [Court of Appeal, Rouen]
Key facts of the case (max. 500 chars)	An employee (M.B.) was dismissed for gross misconduct (he threw a broom at the head of a colleague during a fight). He argued that their dispute was due to the homophobic behaviour of the victim of the assault (M.H.). The first instance court decided that there was no gross misconduct, but that the dismissal was based on real and serious grounds.
Main reasoning/argumentation (max. 500 chars)	M.B. used in his defence the common existence of insults and taunts linked to his homosexuality. In these conditions, taking into account the fact that he had not had any unfavourable assessment of his behaviour under his employment contract, for the Court of appeal the violence used against M.H cannot constitute actual and serious grounds for dismissal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The breach of the principle of non-discrimination at work established by article L. 1132-1 of the Labour Code
Results (sanctions) and key consequences or implications of the case	Conviction of Lidl for unfair dismissal with an order pay €12,000 damages.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 3

Case title	Case No. 32, proceedings No. 2005-91
Decision date	19 December 2006
Reference details (type and title of court/body; in original language and English translation, if available)	Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) [High Authority for the Elimination of Discrimination and for Equality]
Key facts of the case (max. 500 chars)	Complaint by a male couple who were refused rental of a hotel room because of their sexual orientation.
Main reasoning/argumentation (max. 500 chars)	The HALDE found this amounted to a discrimination offence as defined and punished by articles 225-1 and 225-2-1 of the Criminal Code.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of discrimination based on sexual orientation consisting in the refusal to supply a good or service (articles 225-1 and 225-2-1 of the Criminal Code).
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Insofar as the complainants had confirmed they would renounce legal action if presented with an official apology, the High Authority contacted the hoteliers to offer them an amicable settlement, whereupon the hoteliers agreed to mediation. The two parties being in agreement, the panel of the High Authority requested the President to empower the Mediation Centre to appoint a mediator.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 4

Case title	Deliberation No. 2006-154
Decision date	19 June 2006
Reference details (type and title of court/body; in original language and English translation, if available)	Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) [High Authority for the Elimination of Discrimination and for Equality]

Key facts of the case (max. 500 chars)	The complaint is that of a civil servant who was the victim of discriminatory moral harassment because of his sexual orientation. This harassment came from both his subordinates and certain colleagues, without any steps being taken by the victim's management to bring an end to this gravely damaging behaviour. The investigation highlighted the responsibility of the subordinates for the harassment, as well as that of management, which, while not entirely passive, found no better solution than simply transferring the victim.
Main reasoning/argumentation (max. 500 chars)	Under the Law of 13 July 1983 on the rights and obligations of civil servants, there must not be any direct or indirect distinction between civil servants because of their sexual orientation. They must not be subject to moral harassment leading to the degradation of working conditions or threatening their rights, dignity, physical or mental health, or professional future. Even if in this case the repeated transfers aimed to protect the victim, the administration could not ignore their symbolic significance: it was a penalty for the victim as the perpetrators of the alleged acts stayed unpunished. Specific support should be provided to the victim in the form of measures to stop the harassment that should be adopted.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The clarification of the provisions of the law of 13 July 1983 prohibiting the consideration of the fact that the civil servant is the subject of discriminatory harassment in order to take a decision to transfer him/her.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The HALDE recommended the mediation between the civil servant and the administration. It also recommended to the Minister for the Budget and State reform to take the necessary steps to identify the perpetrators of discriminatory harassment and to ensure they are punished accordingly. The minister in question informed the High Authority that an inquiry was underway.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 5

Case title	Deliberation No. 2009-324
Decision date	14 September 2009
Reference details (type and title of court/body; in original language and English translation)	Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE) [High Authority for the Elimination of Discrimination and for Equality]

Key facts of the case (max. 500 chars)	An employee complained that he had been victim of discriminatory moral harassment due to his sexual orientation. This harassment came from both his line manager and some colleagues after he revealed his homosexuality during a professional dinner. The senior management did not take any steps to bring an end to the offensive remarks and behaviour. In particular, the employee had to put up with rumours of paedophilia and suffered a nervous breakdown before he was dismissed.
Main reasoning/argumentation (max. 500 chars)	Under article L. 1152-1 of the Labour Code, no employee shall suffer repeated acts of bullying leading to the degradation of working conditions or threatening their rights, dignity, physical or mental health, or professional future Under article L. 1152-4 of the Labour Code, the employer shall take all necessary steps to prevent acts of harassment. The HALDE considered that the causal link between the revelation of his homosexuality by the employee and the dismissal procedure undertaken by the employer, as it had been brought out by the HALDE's investigation, indicated discrimination based on sexual orientation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of discrimination based on sexual orientation in the work place.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The implementation of a training programme on homophobia and non-discrimination and the communication of the deliberation to the board of directors were requested.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 6

Case title	SARL Kaliop
Decision date	3 June 2009

Reference details (type and title of court/body; in original language and English [official translation if applicable])	Cour d'appel de Montpellier [Court of appeal of Montpellier]
Key facts of the case (max. 500 chars)	Dismissal of the applicant after he revealed to his employer and colleagues his intention to engage in sexual conversion therapy. The HALDE intervened before the first instance Employment Court which decided that the dismissal must be declared null and void.
Main reasoning/argumentation (max. 500 chars)	For the Court of appeal the employer did not provide objective elements of proof which were devoid of discrimination prohibited by the Labour code.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Discrimination based on the transsexualism of a person amounts to gender discrimination.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of appeal stated that such a dismissal must be declared null and void. Considering this discriminatory context, the breach of contract by the employer renders the dismissal void.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 7

Case title	Deliberation No. 2008-190
Decision date	15 September 2008
Reference details (type and title of court/body; in original language and English [official translation if applicable])	Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE) [High Authority for Equality and the Elimination of Discrimination]
Key facts of the case (max. 500 chars)	Since there was a discrepancy between the claimant's physical appearance and her social security number (which includes a code for Female/Male) during the adjustment and sexual conversion period, she had to reveal her transsexualism to her employer. This disclosure had the consequence of provoking mockery and moral harassment that forced her to resign.

Main reasoning/argumentation (max. 500 chars)	For the HALDE, a body of evidence shows that the employee's transsexualism set off the deterioration of working conditions, leading to the resignation. The existence of discrimination was established.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The HALDE investigation shows that transsexual people often become victims of discrimination during the period of adaptation and gender reassignment. The Social security code may be construed as discriminatory, based on sexual discrimination.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The HALDE recommended that the employer offer the claimant fair compensation for the damages incurred. It recommended that the government implement a regulatory or legislative measure to ensure coherence between physical appearance and identity in administrative and official documents during the sexual conversion phase. It encouraged the National Health Insurance Fund (CNAM) to draft written directives so that the change in civil status is taken into account whenever dealing with the social security status of a transsexual person.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 8

Case title	Decision No. MLD 2012-110 www.defenseurdesdroits.fr/sites/default/files/upload/decisions/MLD%202012-110.pdf
Decision date	1 January 2012
Reference details (type and title of court/body; in original language and English translation)	Défenseur des droits (DDD) [Public Defender of Rights]
Key facts of the case (max. 500 chars)	The DDD received several complaints regarding the discriminatory nature of the legal and contractual provisions relating to authorizations of absences for family events because of the sexual orientation of employees. Article L. 3142-1 of the Labour Code indeed provides that employees are granted exceptional leave for certain specifically listed family events: in particular, the article reserves four days of leave for people who are married, and does not mention people who make a civil union (PACS).

Main reasoning/argumentation (max. 500 chars)	<p>The DDD considers that permissions for absence under Article L. 3142-1 of the Labour Code fall within the scope of Directive 2000/78/EC and must therefore comply with the principle of prohibiting discrimination based on sexual orientation.</p> <p>The DDD finds that in allowing for exceptional permission for absence of four days in cases of marriage of an employee without extending this right to employees bound by a civil union, the Labour Code establishes a difference in treatment based solely on the basis of marital status. This criterion is neutral in so far as it applies to all employees bound by a PACS, regardless of their sexual orientation. However, it results in a particular disadvantage for homosexuals since they did not have at that time the legal possibility to get married.</p> <p>These provisions are therefore likely to constitute indirect discrimination on grounds of sexual orientation unless the inclusion of this criterion is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.</p> <p>The DDD concludes that there is indirect discrimination on the grounds of sexual orientation.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The DDD applies the concept of indirect discrimination to condemn an apparently neutral provision regarding sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The DDD recommends that the Minister of Labour, employment, vocational training and social dialogue change article L. 3142-1 of the Labour Code

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 9

Case title	M. X versus Crédit agricole mutuel de Paris Ile-de-France (bank) www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000027367726
Decision date	24 April 2013 (No. 11-15204)
Reference details (type and title of court/body; in original language and English translation, if official)	Cour de cassation [Court of Cassation]

Key facts of the case (max. 500 chars)	An employee hired in 1976 was dismissed for misconduct in 2005. After this dismissal, he reached a settlement with the employer. He later took his employer to the employment courts to sue for the discrimination he believed he was the victim of, in view of the lack of his career advancement for reasons related to his sexual orientation. The Court of Appeal decided in his favour, the employer appealed in cassation.
Main reasoning/argumentation (max. 500 chars)	To prove he was victim of discrimination on the grounds of his sexual orientation, the employee compared his situation to that of other employees hired on the same date, all of whom had made favourable progress in comparison to his career. The employer argued that the lack of progress was due to the employee's refusal to move to the provinces, a necessary condition for promotion in the company. On the basis of the findings of the Court of Appeal, the Court notes that 'after inclusion on the list of suitable sub-directors, the employee had applied fourteen times unsuccessfully to be a deputy director or equivalent position, he responded to proposals for international positions, and a proposal for a position in a subsidiary in Paris; he is the only one of his 1989 intake not to have advanced well, despite the fact that his inclusion on the list of suitable candidates was extended twice, in 1995 and 2000, and he was among the most qualified candidates'. The Court of cassation also highlights that the Court of Appeal noted that 'several witnesses reported a homophobic atmosphere in the years 1970-1990 in the business', Therefore, the Court of cassation approves the Court of Appeal which infers that these elements suggested the existence of discrimination <u>on the grounds of sexual orientation of the employee.</u>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court of cassation approves the use of various indices by the trial judge to prove discrimination on the grounds of sexual orientation: comparison with other employees of the company, homophobic atmosphere in the company.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of cassation confirms the Court of appeal ruling which condemned the bank for discrimination on the grounds of sexual orientation.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 10

Case title	M. X versus ITS (Company)
Decision date	6 November 2013 (No. 12-270)

Reference details (type and title of court/body; in original language and English translation)	Cour de cassation [Court of Cassation]
Key facts of the case (max. 500 chars)	One month after he revealed his homosexuality to his supervisor, M X, employed as a network technician in ITS, had been removed from an important case, and two weeks after his wrongful removal from this case he was dismissed for serious misconduct. The first instance judges, while considering that the dismissal was without real and serious cause, rejected the application for annulment of the dismissal for discrimination on the grounds that the employee reported no connection, measure or decision, or attitude suggesting the existence of direct or indirect discrimination against him.
Main reasoning/argumentation (max. 500 chars)	The decision is censured by the Court of Cassation which criticizes the judges who did not establish whether the items reported by the employee could suggest the existence of discrimination.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In this case, the Court of cassation notes the role of the trial court dealing with a dispute relating to discrimination. When an employee believes themselves to be a victim of discrimination, he/she must present evidence suggesting the existence of discrimination. In view of these elements, it is up to the employer to prove that their decision is justified by factors unrelated to any discrimination. Then it is for judges to check and verify the evidence produced by each party and form their own decision after ordering all investigative measures, if necessary.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The judgment of the Court of Appeal is annulled and the case returns to another Court of Appeal.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 11

Case title	Mr. B versus BNP Paribas (bank)
Decision date	27 May 2010 (No. 08/10800)

Reference details (type and title of court/body; in original language and English if official)	Cour d'appel de Paris [Paris Court of appeal]
Key facts of the case (max. 500 chars)	Mr. B. alleged that his dismissal from the bank, BNP Paribas, during his trial period was due to the revelation by the administration that he was living with another man. Mr. B. took the case to the Paris Employment Court (<i>Conseil des prud'hommes de Paris</i>) demanding damages and to be reinstated. He also filed a complaint alleging discrimination based on sexual orientation before the Prosecutor. The Labour inspectorate checked Mr. B's allegation of discrimination based on his sexual orientation and concluded that such discrimination did not take place. The HALDE made the same conclusion on 9 January 2008. The Employment Court, in its decision of 5 March 2008, awarded damages to Mr. B., but dismissed his allegations of discrimination and harassment. The Paris Court of Appeal dismissed all requests by Mr. B. Under the Court's decision discrimination was not established.
Main reasoning/argumentation (max. 500 chars)	According to the Paris Court of Appeal, the appointments to which Mr. B. was called by his managers during his trial period fall within the normal exercise of the power of management by his employer. There was no will to harass or to discriminate against him. The evidence for discrimination based on sexual orientation was not established. Nor was it established that his managers knew about his sexual orientation. The investigations conducted by the Labour inspectorate and by the HALDE did not reveal any evidence of such discrimination.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The judges based their decision on discrimination and harassment on the investigations conducted by the HALDE and the Labour inspectorate. As the evidence allowing the presumption of discrimination and harassment was not established by these bodies, the Court of Appeal considered a new investigation unnecessary.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Paris Court of appeal confirmed the decision of the Employment Court in the absence of evidence of discrimination and harassment. Investigations conducted by the Labour inspectorate and the HALDE were judged sufficient and a new investigation was not ordered.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 12

Case title	BL/GM Antonio V./c SA THEVENIN (Company)
Decision date	23 February 2010 (No. 09/00130)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel de Dijon [Dijon Court of Appeal]
Key facts of the case (max. 500 chars)	Antonio V. contested his dismissal at the Employment Court of Chalon sur Saône (<i>Conseil de prud'hommes de Chalon sur Saône</i>) demanding damages for harassment and discrimination. According to the claimant, he was a victim of homophobic talk. On 10 November 2008 the Employment Court awarded him professional fees, but refused his request concerning moral harassment and discriminatory measures. The Court of Appeal confirmed the decision of the Employment Court. According to the Court of Appeal, the evidence showing the existence of direct or indirect harassment or discrimination against the appellant was not established.
Main reasoning/argumentation (max. 500 chars)	The evidence showing the existence of harassment was not established. The only evidence of discrimination based on sexual orientation is the certificate attesting that director and president of the company had used homophobic words towards Antonio V. in assessing his competences. However, the certificate was produced by another dismissed employee who contested his dismissal before the Employment Court. Thus, for the Court, this testimony should be read with caution. As other evidence of discrimination was not established by the appellant, his request was dismissed.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of the burden of proof in the area of discrimination and harassment at work: the Court of Appeal notes that if an employee believes they have been a victim of discrimination, he/she must present evidence suggesting the existence of discrimination. This evidence must be sufficient. The testimony of another dismissed employee whose trial with the same employer is pending does not fulfil this condition.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Under the Employment Court and the Court of Appeal, the evidence showing the existence of harassment or direct or indirect discrimination against the appellant was not established.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 13

Case title	Laurent B. c/ SAS SITEL FRANCE and Société CLIENTLOGIC (Companies)
Decision date	10 January 2012 (No. 10/04996)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel de Versailles [Court of Appeal of Versailles]
Key facts of the case (max. 500 chars)	Laurent B. left his job after sending a letter of resignation to his employer citing harassment and intimidation he had suffered in the workplace (verbal assaults based on his sexual orientation from his superior and colleagues, refusal to promote him, etc.). He took the case to the Employment Court of Boulogne Billancourt (<i>Conseil des prud'hommes de Boulogne Billancourt</i>) asking for severance pay and damages for discrimination. By its decision of 7 October 2010 the Employment Court awarded part of the damages (€50000) requested for discrimination and dismissed other requests. The Court of Appeal of Versailles awarded him damages for wrongful dismissal, severance pay, and €15000 damages for discrimination.
Main reasoning/argumentation (max. 500 chars)	The Court of Appeal judged the evidence of discrimination based on sexual orientation sufficient: numerous mails from the victim's colleagues and superior containing homophobic elements, the letter attesting to the refusal to promote the victim to a post in Morocco due to his homosexuality.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of the burden of proof in the area of discrimination at work: the Court of Appeal notes that if an employee believes themselves to be a victim of discrimination, he/she must present evidence suggesting the existence of discrimination. This evidence must be sufficient. The written evidence such as mails and letters containing homophobic elements were judged sufficient.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The damages for discrimination were awarded by the Employment Court (€50000) and by the Court of Appeal of Versailles (€15000).

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 14

Case title	Tony B. c/ SARL LE NOUVEAU CONSOMMATEUR (Magazine)
Decision date	17 January 2012 (No. 10/13916)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel d'Aix-en-Provence [Court of Appeal of Aix-en-Provence]
Key facts of the case (max. 500 chars)	Tony B. was dismissed for gross misconduct from the magazine <i>Le nouveau consommateur</i> . The Toulon Employment Court (<i>Conseil des prud'hommes de Toulon</i>) dismissed his requests concerning payment of salary and various allowances in a judgment of 5 July 2010. Tony B. appealed this judgment alleging specifically moral harassment based on his sexual orientation resulting in reducing his role in the company that led him to be dismissed. The Court of Appeal rejected the argument of moral harassment and confirmed the decision of the Employment Court.
Main reasoning/argumentation (max. 500 chars)	According to the Court of Appeal, the claims concerning harassment based on sexual orientation are not corroborated by any objective and detailed evidence. Thus, the request must be rejected.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of the burden of proof in the area of discrimination and harassment at work: in this case the employee did not present evidence suggesting the existence of discrimination.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Appeal rejected the argument of moral harassment as lacking objective and detailed evidence and did not award any damages.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 15

Case title	Julien P. c/Association Fédération Laïque des associations Socio-Educatives du Nord (NGO)
Decision date	17 February 2011 (No. 10/00312)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel de Douai [Court of Appeal of Douai]
Key facts of the case (max. 500 chars)	Julien P. was dismissed in 2007 after revealing his homosexuality during lunch at the work place where some homophobic comments were made about another employee who had been dismissed previously. The HALDE, in making its observations before the Employment Court of Lille (<i>Conseil des prud'hommes de Lille</i>) attested to the repeated evidence of moral harassment leading to degradation of the victim's working conditions, damage to his rights, his dignity and health. The HALDE observed that the president of the association did not take any measures aiming to stop the harassment and it concluded that the dismissal was discriminatory. The Employment Court of Lille considered in its decision of 21 January 2010 that the dismissal was lawful but awarded €10,000 for discrimination. The Court of appeal considered that the dismissal was unlawful. It awarded €10,000 to the victim for discrimination.
Main reasoning/argumentation (max. 500 chars)	The Court of appeal notes that the managers of the association stigmatised the victim's sexual orientation and spread a rumour that he was a paedophile. This evidence was established by several testimonies. Thus, discrimination and harassment are proven, the Court of appeal confirms the decision of the HALDE and of the Employment Court on this point.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of the burden of proof in the area of discrimination and harassment at work: the Court of Appeal notes that if an employee believes himself/herself to be a victim of discrimination, he/she must present evidence suggesting the existence of discrimination. This evidence must be sufficient. Several testimonies were judged as sufficient. The courts followed the HALDE's observations.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of appeal confirmed the Employment Court decision on the point that discrimination and harassment were established. For the Court of appeal a dismissal in such conditions is wrongful.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 16

Case title	Société Toupargel SAS (Company) c/ L.
Decision date	8 October 2013 (No. 12-04238)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel d'Amiens [Court of appeal of Amiens]
Key facts of the case (max. 500 chars)	An employee hired in 2009 was dismissed in 2011. She went to the Employment Court of Amiens (<i>Conseil des prud'hommes d'Amiens</i>) contesting her dismissal. The Employment Court in its decision of 5 September 2012 considered that this dismissal was without real and serious cause. Before the Court of appeal the employee asked for her dismissal to be declared void due to discrimination based on her sexual orientation. The Court of appeal confirmed the Employment Court decision that her dismissal was not void, but without real and serious cause.
Main reasoning/argumentation (max. 500 chars)	The letter of dismissal was based on objective facts concerning the execution of the employee's contract without any link to her sexual orientation. The employee did not establish any evidence of discrimination based on her sexual orientation. The transcription of the client's words is not sufficient and does not establish discriminatory dismissal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of the burden of proof in the area of discrimination at work: in this case the employee did not present sufficient evidence of discriminatory dismissal.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of appeal confirmed the Employment Court decision that the employee's dismissal was not void or based on her sexual orientation.
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Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 17

Case title	SAS L'Essentiel (Company) c/ Frédéric R.
Decision date	19 September 2012 (No. 11/02719)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel de Montpellier [Court of appeal of Montpellier]
Key facts of the case (max. 500 chars)	Frédéric R. contested his dismissal before the Employment Court of Montpellier (<i>Conseil des prud'hommes de Montpellier</i>), asking for damages for dismissal without real and serious cause and for dismissal based on his sexual orientation. In its decision of 11 February 2011 the Employment Court awarded €6654 damages for dismissal without real and serious cause, and €2000 for non-material damages. The request concerning discrimination on the grounds of sexual orientation was rejected. The Court of Appeal also rejected the request concerning discrimination and awarded €11000 for dismissal without real and serious cause and for non-material damages.
Main reasoning/argumentation (max. 500 chars)	For the Court of Appeal the evidence of discrimination based on sexual orientation brought by Frédéric R. is not sufficient: the employee essentially quotes the situation of another employee subordinated to the same manager, but who was in Paris and who has his trial on moral harassment pending before the Court of appeal. Evidence of discrimination does not result either from appointments with the employee nor from exchanged letters. The observation of the homophobic behaviour of the manager is general and does not contain any concrete elements.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of the burden of proof in the area of discrimination at work: in this case the employee did not present sufficient evidence of discriminatory dismissal.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Appeal confirmed the Employment Court decision to reject the request concerning discrimination on the grounds of sexual orientation.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 18

Case title	Guillaume C. c/SAS Chateaufort (Company)
Decision date	11 June 2009 (No. 08/06832)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel de Bordeaux [Court of appeal of Bordeaux]
Key facts of the case (max. 500 chars)	Guillaume C. alleged he was a victim of homophobic bullying at his work place. Bullying by his colleagues based on the victim's sexual orientation led to medically attested depression of Guillaume C. In 2006 he was fired because of his inaptitude. The victim went to the Employment Court of Bordeaux (<i>Conseil des prud'hommes de Bordeaux</i>) asking inter alia for damages resulting from moral harassment leading to his inaptitude. The Employment Court in its decision of 4 November 2008 considered that Guillaume C. was a victim of moral harassment. This decision was confirmed on appeal.
Main reasoning/argumentation (max. 500 chars)	Evidence of discrimination based on his sexual orientation was established and the employer could not contest it. Breaching the Labour code: the employer sanctioned only one person for bullying the victim and did not apply any measures aiming at the prevention of harassment in the work place.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The concept of the burden of proof in the area of discrimination at work: the employee established the evidence allowing the presumption of harassment, but the employer could not prove that these actions do not constitute such harassment and that the decision is justified based on objective elements devoid of any harassment.</p> <p>The duty to apply all necessary provisions aiming at the prevention of harassment in the work place under article 1152-4 of the Labour code was reiterated to the employer.</p>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court of appeal considered moral harassment due to discrimination based on sexual orientation to be established and confirmed the Employment Court decision.</p>

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 19

Case title	Valerie D. c/SAS CORA (Company)
Decision date	27 November 2009 (No. 09/00548)
Reference details (type and title of court/body; in original language and English translation)	Cour d'appel de Douai [Court of appeal of Douai]
Key facts of the case (max. 500 chars)	<p>Valerie D. was subject to bullying by her colleagues based on her sexual orientation. Following such provocation, she threatened and insulted one of her colleagues with a knife. As a consequence, she was fired for gross misconduct in 2008. These acts were established during the police investigation. The judge approved the Prosecutor's proposition of a suspended sentence to 2 months' imprisonment. In 2008 Valerie D. went to the Employment Court of Dunkerque (<i>Conseil des prud'hommes de Dunkerque</i>) contesting her dismissal as being without real and serious cause, alleging discrimination and harassment. The Employment Court in its decision of 29 December 2008 rejected her requests and confirmed the dismissal for gross misconduct. This decision was confirmed by the Court of Appeal.</p>

Main reasoning/argumentation (max. 500 chars)	The Court of Appeal notes that the medical certificate establishes depression suffered by Valerie D. resulting from her colleagues' homophobic behaviour and moral harassment. It notes that the employer has the duty to guarantee the safety of all employees. However it was not established that the employer knew about such homophobic behaviour targeting Valery D. or had tolerated it. The Court concludes that in any case the discriminatory behaviour cannot justify the assault.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court weighed up the discrimination in the work place and the response to such discrimination. It concludes that a criminal assault cannot be a legitimate response to discriminatory behaviour. In order to sanction an employer who does not respect the duty to guarantee the safety of all employees, one has to establish that employer knew of evidence of discrimination or harassment.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Appeal approved the Employment Court decision rejecting requests contesting the dismissal as being without real and serious cause.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 20

Case title	-
Decision date	27 October 2012 www.defenseurdesdroits.fr/sites/default/files/upload/raa-2012-annexe-3_discriminations.pdf
Reference details (type and title of court/body; in original language and English translation)	Tribunal correctionnel [Criminal court]
Key facts of the case (max. 500 chars)	The owner of some land refused to sell it to a couple of two women and used openly homophobic words. The case was reported by the Public defender of rights (decision No. 2011-54 of 7 March 2011) to the prosecutor who referred it to the criminal court (<i>tribunal correctionnel</i>).

Main reasoning/argumentation (max. 500 chars)	The evidence of a homophobic attitude was established by several testimonies.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of discrimination based on sexual orientation in access to goods.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	In a Criminal court judgment dated 27 October 2012 the owner was sentenced to an €800 fine, payment of €300 in respect of damages, and €200 for legal costs.

Chapter A, interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 21

Case title	Decision No. MLD 2012-111 http://www.defenseurdesdroits.fr/sites/default/files/upload/decisions/MLD-2012-111.pdf
Decision date	27 July 2012
Reference details (type and title of court/body; in original language and English)	Défenseur des droits [Public Defender of Rights]

Key facts of the case (max. 500 chars)	The Public defender of rights was called upon by a woman who obtained a legal change of her marital status after sex reassignment surgery. She asked her university to take into account the change of sex and name when issuing her diploma in order to avoid the risk of discriminatory refusal to hire her. This request was met after the Public defender of rights intervened.
Main reasoning/argumentation (max. 500 chars)	The Public defender of rights referred to case law since the Court of cassation decision of 11 December 1992, under which the principle of respect for privacy justifies the indication of the apparent sex in marital status. The discrimination of transgender persons is prohibited by articles 8 and 14 of the European Convention on Human Rights.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A change in marital status leads to the right to obtain a diploma according to their new status.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Public defender of rights drew the attention of the Ministry of Higher Education and Research to the question, and the circular providing that 'anyone who has benefited from a change in marital status (name, sex, etc.) can obtain a diploma according to their new status' was adopted. ²⁰⁵

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	M K – Russian Federation
Decision date	21 October 2005 No. 495394

²⁰⁵ France, Ministry of Higher Education and Research (Ministère de l'enseignement supérieur et de la recherche) (2012), Circular No. 2012-0015, 22 August 2012, available at: [www.enseignementsup-recherche.gouv.fr/pid20536/bulletin-officiel.html?cid_bo=61360&cbo=1].

Reference details (type and title of court/body; in original language and English [official translation, if available])	Commission des recours des réfugiés (CRR) [Refugee Appeals Commission] (now - Cour nationale du droit d'asile (CNDA) [National Court of Asylum].
Key facts of the case (max. 500 chars)	M.K., a Russian National, was a victim of assaults and insults during his military service, this persecution was linked to his homosexuality, despite its decriminalisation in Russia. In 2000, he created a party that defends homosexual rights, which led to legal pressure and harassment, including police brutality and being charged with two fallacious crimes. This led him to flee to France before returning to Russia upon the expiration of his visa. Continued persecution led him to flee his country definitively in 2002.
Main reasoning/argumentation (max. 500 chars)	M.K. declares he was the victim of persecution due to his belonging to a social group (because of his homosexuality) which is a motive for persecution laid out in Article 1, A, 2 of the Geneva Convention. He wishes to be granted protection following rejection of his claim by the OFPRA.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CRR finds that M.K. had sought to 'manifest his homosexuality' and had been subject to 'criminal charges in his country, which were made fallaciously, and that he had been a victim of police brutality'. The CRR therefore considered that he belonged to a 'circumscribed group of persons that is sufficiently identifiable to constitute a social group' in the sense of Article 1, A, 2 of the Geneva Convention. According to the CRR M.K.'s situation falls within the scope of the Geneva Convention (in the sense of Article 1, A, 2).
Results (sanctions) and key consequences or implications of the case	The CRR annulled the decision of OFPRA's general director and granted M.K. refugee status.

Case title	M. S., Bosnia-Herzegovina
Decision date	12 May 2006 No. 55567 Published : 6 October 2006
Reference details (type and title of court/body; in original language and English translation)	Commission des recours des réfugiés (CRR) [Refugee Appeals Commission] (now - Cour nationale du droit d'asile (CNDA) [National Court of Asylum].
Key facts of the case (max. 500 chars)	M.S, a Bosnian national, is the child of a mixed nationality couple, his father being Bosnian and his mother a Serb. He was beaten by Serbian soldiers in Tarevci, and was the victim of serious abuse in a detention centre, M.S. was also persecuted in Gradacac, in Bosnia-Herzegovina, because of his mixed origin and homosexuality. In order to escape this persecution, he fled to Republika Srpska, where he was beaten by police because of his Bosnian origin. He has fled his country and cannot return without fear of harm.
Main reasoning/argumentation (max. 500 chars)	M.S. declares he was the victim of persecution based on his ethnic origin and his belonging to a social group (because of his homosexuality), which are motives of persecution laid out in Article 1, A, 2 of the Geneva Convention. He therefore seeks protection following a rejection of his claim by the OFPRA.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CRR finds that M.S. had not sought to 'ostensibly manifest his homosexuality' and had not been 'subject to criminal charges in his country', where the provisions of the Criminal Code prohibiting homosexual acts had been repealed in March 2003. The CRR therefore found that he did not belong to a 'circumscribed group of persons that is sufficiently identifiable to constitute a social group' in the sense of the Geneva Convention.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The CRR found that M.S.'s situation did not fall within the scope of the Geneva Convention. However M.S. is at risk of reprisals from individuals on the basis of his homosexuality, and the Bosnian authorities cannot provide protection. Therefore, he is at risk of one of the serious threats defined by Article L. 712-1, b) of the Immigration and Asylum Code (CESEDA), which concerns subsidiary protection. The CRR thus annulled the OFPRA's decision and granted subsidiary protection to M.S.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 3

Case title	M.B., Gabon
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Decision date	3 July 2006 No. 497803
Reference details (type and title of court/body; in original language and in English)	Commission des recours des réfugiés (CRR) [Refugee Appeals Commission] (now - Cour nationale du droit d'asile (CNDA) [National Court of Asylum].
Key facts of the case (max. 500 chars)	M.B., a Gabonese national, was granted subsidiary protection because of two arbitrary detentions, as well as ill-treatment by his family. He now requests Geneva Convention based asylum on the basis that homosexuals constitute a persecuted social group in Gabon.
Main reasoning/argumentation (max. 500 chars)	M.B. claims that although homosexuality is not a criminal offence in Gabon, the authoritarian regime acts against homosexual rights and that judges and police officers see homosexuality as a criminal deviance and a threat to society. He also claims that the majority of the public holds homophobic opinions. M.B. claims to belong to a social group whose members are collectively persecuted by police and therefore requests Geneva Convention based asylum.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CRR considers that neither their investigations, nor the explanations offered behind closed doors by the claimant before the Board prove that homosexuals constitute a social group in Gabon in the sense of article 1, A, 2 of the Geneva Convention. This being the case, it cannot be established that M.B. is at risk of persecution based only upon his sexual orientation nor that the events of which he was a victim fall within the scope of the Geneva Convention.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The claim was rejected.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 4

Case title	M.A. Algeria
Decision date	22 February 2000 No. 343157
Reference details (type and title of court/body; in original language and English translation)	Commission des recours des réfugiés (CRR) [Refugee Appeals Commission] (now - Cour nationale du droit d'asile (CNDA) [National Court of Asylum].
Key facts of the case (max. 500 chars)	M.A. is an Algerian national who is 'widely known' to be homosexual, because of his actions as an activist for the homosexual community. He has been subject to intimidation, pressure and death threats by his country's authorities. Fearing for his life, he fled his country to seek refuge in France.
Main reasoning/argumentation (max. 500 chars)	M.A. seeks refugee status by virtue of the Geneva Convention, judging that his belonging to a social group, i.e. the homosexual community, is a motive for persecution as laid out in Article 1, A, 2 of the Convention. Following the rejection of his claim by the OFPRA, he appealed to the CRR to obtain refugee status.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CRR finds that homosexuals who wish to exhibit their homosexuality through their public behaviour in Algeria are at risk of criminal charges as well as intimidation and pressure. In this sense, M.A.'s fears are considered to be the result of his belonging to a social group in the sense of Article 1, A, 2, of the Geneva Convention, and that seeking refugee status is justified.
Results (sanctions) and key consequences or implications of the case	La CRR annulled the OFPRA decision and granted M.A. refugee status in the sense of the Geneva Convention.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 5

Case title	M.E. Algeria
Decision date	22 May 2000 No. 340068
Reference details (type and title of court/body; in original language and English translation)	Commission des recours des réfugiés (CRR) [Refugee Appeals Commission] (now - Cour nationale du droit d'asile (CNDA) [National Court of Asylum].
Key facts of the case (max. 500 chars)	M.E. is an Algerian student who received threatening letters condemning his homosexuality. Attributing the letter to Islamist groups, he did not expect to benefit from any state protection. He nevertheless asked for protection and thus admitted his homosexuality to Algerian authorities. Once in France he requested territorial asylum- a request rejected by the Ministry of the Interior, convinced that upon returning to his country he would be persecuted by Algerian authorities and by Islamists, he sought Geneva Convention based asylum.
Main reasoning/argumentation (max. 500 chars)	M.E. believes that his country's authorities are not able to protect him from the threats he receives from Islamist groups. Moreover he feels he is a victim of discrimination on the part of the authorities because of his homosexuality. Because he feels that his country's authorities cannot guarantee his safety, he seeks refugee status by virtue of the Geneva Convention.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CRR considers that there is no proof that the letters were sent by Islamist groups. The court establishes that there is no proof that his request for protection had been refused and finds that the military authorities only noted his homosexuality but took no repressive measures. According to the CRR's investigation, M.E. did not publicly affirm his homosexuality and had not been charged with any crime. Therefore the fears of persecution are unfounded and the claimant does not fall within the scope of the Geneva Convention.
Results (sanctions) and key consequences or implications of the case	The CRR rejects the claim and confirms the Interior Ministry's decision.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 6

Case title	M. B. www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT0000262
Decision date	27 July 2012 No. 349824
Reference details (type and title of court/body; in original language and English translation)	Conseil d'Etat [State Council]
Key facts of the case (max. 500 chars)	The applicant, a homosexual from the Democratic Republic of the Congo (DRC) was granted subsidiary protection but denied refugee status by the National Court for Asylum Rights (<i>Cour nationale du droit d'asile</i> , CNDA). The CNDA considered, firstly, that it was not established that he had expressed his sexual orientation and, secondly, that homosexuality is not punishable under the Criminal Code of the DRC.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>In its Judgment, the State Council provides a definition of 'social group' inspired by the outcome of the 2004 Directive. It is 'made up of people who share an innate character, a common history and an essential feature of their identity and their conscience, they cannot waive this, an identity perceived as being different by the surrounding society or institutions'. How homosexuals are perceived in the country is essential in considering whether they belong to a particular social group that may be persecuted because of their sexual orientation. The State Council therefore recommends taking into account societal or institutional views on homosexuals.</p> <p>In addition, the granting of refugee status because of persecution due to belonging to a social group based on common sexual orientation should not be subordinated to the public manifestation of the sexual orientation of the person seeking refugee status, 'since social group (...) is not established by those who compose it, or even because of the existence of objective characteristics attributed to them, but by the societal or institutional view on these people'.</p> <p>In conclusion, the State Council considers that the absence of specific criminal legislation against homosexuality in the country of origin does not affect the reality of the risk of persecution.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The State Council considers that the criterion for determining the notion of 'social group' does not lie in the attitude of the applicant but in social attitudes towards him. Secondly, it rules that the lack of criminal provisions penalizing homosexuality does not affect the assessment of persecution, thus opting for a wide interpretation of the notion of agent of persecution.</p>
<p>Results (sanctions) and key consequences or implications of the case</p>	<p>The decision of the CNDA is annulled and the case is resubmitted to the CNDA.</p>

Chapter E, Freedom of assembly, case 1

<p>Case title</p>	<p>-</p>
<p>Decision date</p>	<p>13 March 2012</p>
<p>Reference details (type and title of court/body; in original language and English translation)</p>	<p>Tribunal correctionnel de Lyon [Criminal Tribunal of Lyon].</p>

Key facts of the case (max. 500 chars)	Two men attacked 4 girls under the age of 18 participating in a gay pride march in Lyon in 2010 because of their supposed homosexuality (they were carrying a flag during the demonstration). In fact, the victims were not homosexual and were just supporting the demonstration.
Main reasoning/argumentation (max. 500 chars)	The Tribunal considered that violence was committed because of the victims' supposed sexual orientation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Homophobia was taken into account as an aggravating factor of violence.
Results (sanctions) and key consequences or implications of the case	Two men were sentenced to 18 months and 12 months imprisonment.

Chapter F, Hate speech, case 1

Case title	Vanneste Christian
Decision date	12 November 2008 No. 07-83398
Reference details (type and title of court/body; in original language and English translation)	Cour de cassation [Court of Cassation]
Key facts of the case (max. 500 chars)	UMP Deputy Christian Vanneste made some homophobic statements during an interview in the newspaper, 'La Voix du Nord' (for example, “homosexuality is inferior to heterosexuality”, “their behaviour is sectarian”, etc.). The first instance court condemned him to pay a fine and ordered its decision to be published.
Main reasoning/argumentation (max. 500 chars)	The Court of cassation stated that 'although the contentious views expressed follow on from the debates and voting on the Law of 30th December 2004, on the creation of the HALDE, may have upset certain homosexual persons, their content does not exceed the limits of the freedom of speech'.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Christian Vanneste could not benefit from his political immunity as his homophobic statements were not linked with performance of his parliamentary duties and were not made in the National Assembly. However, the limits of the freedom of speech must be strictly interpreted.
Results (sanctions) and key consequences or implications of the case	The Court of Cassation quashed the judgement of the Douai Court of Appeal dated 25 January 2007 in respect of all provisions, since it dismissed the Deputy’s appeal and found him guilty of homophobic insults without due consideration given to the freedom of press and speech.

Chapter F, Hate crimes, case 1

Case title	Patrick S.
Decision date	1 February 2002
Reference details (type and title of court/body; in original language and English translation)	Tribunal correctionnel de Lyon [Lyon Criminal tribunal]
Key facts of the case (max. 500 chars)	On 20 May 2001, Patrick S., a young homosexual from St. Etienne, was mugged by an assailant with a handgun in Gerland (a cruising area near Lyon). The victim filed charges and his assailant was arrested a month later. The assailant was a recidivist who had received a two-year prison sentence in 1999 for assaulting a homosexual
Main reasoning/argumentation (max. 500 chars)	Unknown (Legal data bases do not contain this first instance judgment)
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Unknown (Legal data bases do not contain this first instance judgment)
Results (sanctions) and key consequences or implications of the case	The accused was sentenced to 5 years in prison by the Lyon Criminal tribunal

Chapter F, Hate crimes, case 2

Case title	François Chenu
Decision date	8 October 2004

Reference details (type and title of court/body; in original language and English translation)	Cour d'assises des mineurs de la Marne (Criminal Court Circuit for Juveniles, la Marne) Thematic study France
Key facts of the case (max. 500 chars)	Three young men, associated with the skinhead movement, beat to death a young homosexual man they had met near a known cruising area. After beating him, they admitted to leaving his body in a lake in a nearby park in Reims. The parents of one of the accused, who was 16 years old at the time of the crime, appeared before the court for destruction of evidence: they had burned the victim's identity papers and wallet.
Main reasoning/argumentation (max. 500 chars)	The murder was committed because of the sexual orientation of the victim. It constitutes an aggravating circumstance of the crime.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of aggravating circumstances of murder.
Results (sanctions) and key consequences or implications of the case	The sentences handed down were those requested by the Prosecutor during the trial: 20 years in prison for two of the accused, 15 years in prison for the third because of his being a minor at the time of the crime. The parents of one of the accused were sentenced to two years in prison for the father and two years in prison with an added 6 month suspended sentence for the mother.

Chapter F, Hate crimes, case 3

Case title	Unknown
Decision date	3 April 2003
Reference details (type and title of court/body; in original language and English translation)	Tribunal correctionnel de Lyon [Criminal court of Lyon]

Key facts of the case (max. 500 chars)	A 36-year-old man was violently assaulted in a wood near Saint-Fons (near Lyon) by 5 youths, two of whom were minors. The youths caught the victim masturbating and proceeded to kick, punch and beat him with a stick. <small>Thermain, 2012, France</small>
Main reasoning/argumentation (max. 500 chars)	Unknown (Legal data bases do not contain this first instance judgment)
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Unknown (Legal data bases do not contain this first instance judgment)
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The accused were sentenced by the Criminal Court of Lyon to sentences ranging from 3 to 6 months' probation. (Summary hearing)

Chapter F, Hate crimes, case 4

Case title	-
Decision date	15 November 2012
Reference details (type and title of court/body; in original language and English translation)	Cour d'assises de Rouen (Rouen Criminal Court Circuit)
Key facts of the case (max. 500 chars)	A 25-year old homosexual man was assaulted, raped, severely burned and left in the forest in 2009. His car was also completely burned.
Main reasoning/argumentation (max. 500 chars)	The Court considered that the crimes were committed because of the victims' supposed sexual orientation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Attempted murder and torture were recognized to be committed because of the sexual orientation of the victim.
Results (sanctions) and key consequences or implications of the case	Three offenders were sentenced to prison: 4 years for one person who failed to provide assistance to a person in danger and failing to attempt to prevent a crime; 15 years and 20 years for two others for attempted murder and torture committed because of the sexual orientation of the victim.

Chapter F, Hate crimes, case 5

Thematic study France

Case title	-
Decision date	6 April 2011
Reference details (type and title of court/body; in original language and English)	Cour d'assises des mineurs de la Marne (Criminal Court Circuit for Juveniles, la Marne)
Key facts of the case (max. 500 chars)	A 21-year old homosexual man was beaten and killed in June 2007 in Reims by 4 skinheads.
Main reasoning/argumentation (max. 500 chars)	Upon the request of the plaintiffs, the Court upheld the classification of the crime as one committed for racist and homophobic reasons.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Murder committed for racist and homophobic reasons.
Results (sanctions) and key consequences or implications of the case	4 offenders were condemned to sentences ranging from 14 years' imprisonment to life imprisonment.

Chapter F, Hate crimes, case 6

Case title	-
Decision date	28 September 2011
Reference details (type and title of court/body; in original language and English)	Cour d'assises de Cher (Criminal Court Circuit, Cher)
Key facts of the case (max. 500 chars)	Two men kidnapped and buried alive a gay couple in 2009.
Main reasoning/argumentation (max. 500 chars)	The reason for the gay couple's murder was mercenary, according to the court.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The homophobic motivation was not upheld by the court. Thematic study France
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The offenders were sentenced to 30 years' imprisonment.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 1

Case title	
Decision date	18 May 2005
Reference details (type and title of court/body; in original language and English translation)	Cour de Cassation [Court of Cassation]
Key facts of the case (max. 500 chars)	The Court of Appeal of Aix-en-Provence, in a judgement in 2002, decided to annul the acknowledgement of paternity of M. Y., a male transsexual, on the grounds that it was contrary to the biological facts, and to grant visiting rights to the claimant in respect of the best interest of the child.
Main reasoning/argumentation (max. 500 chars)	A transsexual may be granted visiting rights to an ex-partner's child if it is conformed to be in the best interest of the child, as stated in article 3.1 of the Convention on the rights of the child.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The concept of paternity applied to transsexuals and the scope of their rights (visiting rights, in particular).
Results (sanctions) and key consequences or implications of the case	The Court of cassation confirmed the judgement of the Court of Appeal of Aix-en-Provence dated 12 March 2002 that annulled the acknowledgement of paternity of a male transsexual, who was nevertheless granted visiting rights.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 2

Case title	Decision No. 12-11.949
Decision date	13 February 2013
Reference details (type and title of court/body; in original language and English [official translation, if	Cour de cassation [Court of Cassation]
Key facts of the case (max. 500 chars)	The first instance tribunal rejected the request to change the gender in civil status records, arguing that having only the certificate confirming hormonal treatment is not sufficient to rectify it.
Main reasoning/argumentation (max. 500 chars)	To justify a request for rectification of gender contained in their birth certificate, a person shall establish, in the light of what is commonly accepted by the scientific community, the proof of transgender syndrome and the irreversibility of the transformation of their appearance. In this case, neither proof of transgender syndrome, nor the irreversibility of the transformation of appearance can be justified by certificates.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Court of Cassation requirement of medical-surgical evidence of irreversible change of sex
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The request to change the gender in civil status records founded only on medical certificates concerning hormonal treatment was rejected.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 3

Case title	
Decision date	7 June 2012
Reference details (type and title of court/body; in original language and English [official translation, if	Cour de cassation [Court of Cassation]
Key facts of the case (max. 500 chars)	The applicant went to the first instance tribunal with the request to change his gender and name in civil status records. He provided numerous medical certificates including a certificate made in Thailand on medical-surgical intervention. The tribunal asked for an examination, but the applicant refused to be submitted to it. The first instance tribunal rejected both requests. The court of appeal accepted to change his name, but refused to change the gender in civil status records.
Main reasoning/argumentation (max. 500 chars)	To justify a request for rectification of gender contained in their birth certificate, a person shall establish, in the light of what is commonly accepted by the scientific community, the proof of transgender syndrome and the irreversibility of the transformation of their appearance. In this case, the certificate established in Thailand was judged insufficient. The applicant refused to be submitted to an examination. Thus, neither the existence of transgender syndrome, nor the irreversibility of the transformation of appearance could be proved.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Court of Cassation requirement of medical-surgical evidence of irreversible change of gender.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The request to change the gender in civil status, founded on a medical certificate established in Thailand judged as insufficient, was rejected taking into account the refusal to be submitted to an examination. The request to change the name was accepted.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 4

Case title	Decision No. 11/08743
Decision date	16 October 2012
Reference details (type and title of court/body; in original language and English [official translation, if	Cour d'appel, Rennes [Court of appeal, Rennes]
Key facts of the case (max. 500 chars)	A married man who has three children decided to change his gender. He underwent the treatment and interventions that led to his irreversible transformation to a woman. He went to the first instance court of Brest (<i>Tribunal de grande instance de Brest</i>) in order to change his gender in his birth certificate and in his marriage certificate. The first instance tribunal rejected his request on the basis of the prohibition of marriage for same sex couples.
Main reasoning/argumentation (max. 500 chars)	For the Court of appeal, the fact that the applicant became a woman is incontestable. Therefore, the refusal to change the gender in the civil status records would be a breach of Article 8 of the European Convention on Human Rights. Accordingly, the new gender and the new name will be entered in her birth certificate. However, the Court of appeal rejected the request to make the same changes in the marriage certificate as it would be contrary to the public order (prohibiting of marriage for same sex couples).
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court of first instance rejected 2 requests on the basis of the prohibiting of marriage for same sex couples. On appeal, judges decided otherwise on the basis of another interpretation: the judgment regarding the gender change in civil status records had no impact on the marriage certificate and the birth certificates of her children. Indeed, it applied only for the future.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The mention of the new gender and of the new name has to be made in the birth certificate, but not in the marriage certificate.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 5

Case title	Decision No. 11/08613
Decision date	17 December 2012
Reference details (type and title of court/body; in original language and English [official translation, if	Cour d'appel, Douai [Court of appeal, Douai]
Key facts of the case (max. 500 chars)	A man went to the first instance court of Lille (<i>Tribunal de grande instance de Lille</i>) in order to change his gender and his name in his civil status records. The request was rejected.
Main reasoning/argumentation (max. 500 chars)	For the Court of appeal, the applicant's dysphoria syndrome is clinically evident. The hormonal treatment over 4 years led to irreversible changes in his physical state. The applicant has the physical appearance of a woman, the social behaviour of a woman and is considered as such by family and friends. Under these conditions, the request is justified.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The clinically evident dysphoria syndrome, 4-years hormonal treatment, physical appearance and social behaviour are sufficient to justify and satisfy the request.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The request to change the gender and the name in the civil status records was satisfied without medical-surgical evidence of irreversible change of gender.

Chapter G, Name change and/or sex change of transgender people, relevant case law, case 6

Case title	Decision No. 09/02179
Decision date	2 September 2012
Reference details (type and title of court/body; in original language and English [official translation, if	Court of appeal, Nancy (Cour d'appel, Nancy)
Key facts of the case (max. 500 chars)	A man went to the first instance court of Nancy (<i>Tribunal de grande instance de Nancy</i>) in order to change his gender and his name in his civil status records. The request was rejected as only having the hormonal treatment does not justify the irreversible nature of the physical transformation.
Main reasoning/argumentation (max. 500 chars)	The fact that the person belongs to the female gender in the eyes of others, given her social behaviour and appearance, does not prove the irreversible change of gender. Whereas the change of civil status does not necessarily require a surgical gender reassignment operation, the irreversibility of the process of gender change must be established. The medical certificates produced confirm that the hormonal treatment that had been followed for 5 years led to such an irreversible process of gender change.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The 5 years of hormonal treatment justify the irreversible process of gender change.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The request to change the gender and the name in the civil status records was satisfied as the 5 years of hormonal treatment was judged as justifying the irreversible process of gender change.

Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1

Case title	Proceedings No. 2008/29
Decision date	18 February 2008
Reference details (type and title of court/body; in original language and English, if official)	Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE) [High Authority for Equality and the Elimination of Discrimination]
Key facts of the case (max. 500 chars)	When the claimant informed his employer about his intention to change his sex, the employer expressed his disapproval: in particular, he said that he “did not want to impose ‘that’ (‘ça’) on his employees.” Clarisse XXXXX was immediately suspended from work, and then dismissed following the announcement of her change of gender.
Main reasoning/argumentation (max. 500 chars)	The time between her revealing her transsexuality and her dismissal was so short, as established by the HALDE, that it revealed that her employer's attitude and her dismissal were based upon Clarisse XXXXX's sex change.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The HALDE referred to Directive 2006/54 and to the decision of the European Court of Justice <i>P. c/ S and Cornwall County Council</i> of 30 April 1996, to state that any discrimination based on transsexuality amounts to discrimination on grounds of sex, which is contrary to the Directive.
Results (sanctions) and key consequences or implications of the case	The HALDE supported the claimant in the judicial procedure. In conclusion, the Employment Court annulled the dismissal and ordered damages from the employer.

Annex 2 - Statistics

It should be noted that it is still currently difficult in France to obtain data concerning discrimination homosexuals may be subject to. This is for at least two reasons. The first is the abolishing by the Fillon government of the 'State Secretariat in Charge of Questions of Integration and Equal Opportunity' (operational from 31 March 2004 to 28 October 2004). This secretariat centralised data concerning equality of the sexes, but was also in charge of questions concerning equality in general. To obtain such data today, one must deal with several different ministries: the Ministry of Labour, Social Relations and Solidarity; the Ministry of Immigration, Integration, National Identity and Co-development; the Ministry of Housing and Cities; the Ministry of the Interior etc. One must also find the appropriate departments in these ministries, which is often no mean feat. The second reason is the fact that keeping a record of data reflecting sexual orientation has been prohibited since 1992 and is subject to criminal sanctions. Article 31 of the Information technology and freedoms act (*loi informatique et libertés*) states in this regard that it 'is forbidden to put into or keep in electronic memory nominative data which directly or indirectly reveal one's racial origins, or political, philosophical, or religious opinions, one's membership to a trade union or one's mores'. The National Information Technology and Freedoms Commission (CNIL) is responsible for ensuring the law's provisions are obeyed and charges can be laid based upon articles 226-16 to 226-24 of the Criminal Code. There are thus no official statistics on the LGBT community in France.

However, this situation is changing as a new statistics system within the police has been developed and will be implemented in 2014.

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	20	200	200	2008	2009	2010	2011	2012
Total complaints of discrimination on the grounds of sexual orientation: High Authority (HALDE)	38	61	113	240	270	288	198	1362
Total confirmed findings of discrimination (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education,								
National number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination								
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment,								

Chapter B, Freedom of movement of LGBT partners

	2	2	2	2	2	2	2	2
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)								
Number of LGBT partners who claimed their right to residence but were denied this right								

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

	2	2	2	2	2	2	2	2
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to								
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of								

Chapter C, Asylum and subsidiary protection, protection of LGBT partners

	2	2	2	2	2	2	2	2
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status								
Number of LGBT partners of persons enjoying refugee/subsidiary protection status								

Chapter D, LGBT partners benefiting family reunification

	2	2	2	2	2	2	2	2
Number of LGBT partners of third country nationals residing in your country								
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification								

Chapter E, LGBT people enjoyment of freedom of assembly

Due to a lack of data provided by associations and institutions, our statistics only show the number of Pride marches and 'Existrans' marches organised in France between 2000 and 2007. Concerning anti-LGBT demonstrations, we could obtain no official statistics as no organised movement exists.

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2012-2013
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	13 Pride marches + 1 Existrans	12 Pride marches + 1 Existrans	15 Pride marches + 1 Existrans	15 Pride marches + 1 Existrans	17 Pride marches (including 1 in Saint Denis de la Réunion) + 1 Existrans	17 Pride marches + 1 Existrans	16 Pride marches + 1 Existrans	15 Pride marches + 1 Existrans	15 Pride marches + 1 Existrans	16 Pride marches + 1 Existrans	1 Existrans + 1 gay pride in large cities (Paris, Lyon, etc.) + 2 demonstrations for marriage for same sex
Number of demonstrations against tolerance of LGBT people.											7 demonstrations against the law opening marriage to same

Chapter F, Homophobic hate speech

Data provided by the Ministry of justice: data are based on all convictions including homophobic speech (the data regarding prosecutions are not available before 2012, due to a new computer system)

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Number of criminal court cases regarding homophobic hate speech initiated (number)								22	41
Number of convictions regarding homophobic hate speech (please indicate range of)		6	11	17	13	12	11	17	No
Range of sanctions issued for homophobic hate speech									
Number of non-criminal court cases initiated for homophobic statements									
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff,									

Range and type of sanction pronounced (based on cases regarding only homophobic hate speech)

Type of sanctions / year	2005	2006	2007	2008	2009	2010	2011	2012
Prison sentences pronounced (quantum of detention in month)		0	1(0.3 month)	0	0	1(0.3 month)	1(0.3 month)	1(3 month)
Suspended prison sentence pronounced		2	1	2	0	0	1	2
Fine (average fine in euros)		2 (no data)	2(300€)	6 (850€)	8(329€)	6 (400€)	4 (5000€)	8(1350€)
Alternatives sentences		1	0	2	0	1	0	0

Chapter F, Homophobic motivation of crimes as aggravating factor

The data are not available before 2004.

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of criminal court decisions in which homophobic motivation was used as an	3	32	44	47	44	58	44	43	51

Chapter G, Transgender issues

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of name changes effected due to change of gender									
Number of persons who changed their gender/sex in your country under the applicable legislation									

Chapter I, Statistics relevant to the impact of good practices

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment / physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are used by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of

										gender reassignment
FR			✓	✓	✓	✓	✓			Requirements set by case law, legal and medical procedures uneven throughout the country The question of forced/automatic divorce must not raise since the law of 17 May 2013 opened marriage to same sex couples
H U							✓		✓	No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case <i>Lydia Foy</i> (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
L U										No provisions in force, praxis varies.
L V							✓		✓ Change of name is possible after gender reassignment	Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified).

										Amendments to the law were proposed but not adopted.
M T	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
N L	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
R O				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
U K										Change of name requires no formalities
U K	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²⁰⁶	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓	✓		✓	
HU			✓	✓	

²⁰⁶ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ²⁰⁶	All areas of RED*		
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR		✓		Law No. 2012-954 of 6 August 2012 relating to sexual harassment prohibited the discrimination on autonomous ground of gender identity changing the Labour Code, the Criminal code and the Code of criminal procedure.
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓ = applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ²⁰⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	

²⁰⁷ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ²⁰⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
FR	?	?	✓	✓	✓		As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France. Some foreign laws ascribe different effects to its registered partnerships than the ones ascribed by the PACS. Therefore, partnerships registered abroad provide legal effects as long as they comply with the legal regime of the PACS. ²⁰⁸ Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. Since the adoption of the Law of 17 May 2013 opening marriage to couples of the same sex, the legal dispositions on family reunification henceforth apply to LGBT couples. When the situation of a third country national does not fit into the conditions required for family reunification, he/she may ask for a temporary residence permit bearing the notice 'private and family life' under certain conditions. Under article 314-11 8° of CESEDA, a refugee and his/her spouse have the right to obtain the residence permit. The spouse has this right under condition that the marriage was celebrated before the granting of the refugee status or if the marriage is in force and effective (communauté de vie effective) since at least one year
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.

²⁰⁸ France, Assembly of French People Abroad (Assemblée des Français de l'étranger), Oral question from the Senator M. Yung to the Minister of Foreign Affairs, 'Current implementation of the article 515-7-1 of Civil Code' ['Etat d'application de l'article 515-7-1 du Code civil'], 14 December 2012, available at: www.assemblee-afe.fr/etat-d-application-de-l-article.html.

Country Codes	Free movement ²⁰⁷		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.