
genderace

The use of racial anti-discrimination laws

Gender and citizenship in a multicultural context

ANNEX 1

France Country Report

June 2009

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Deliverable: D04



Contents

1. Introduction.....	46
2. Description of the sample.....	48
3. Using the resources	52
4. The experience of discrimination.....	53
4.1 Sectors	53
4.2 Grounds of discrimination	55
4.3 Alleged authors of discrimination.....	57
5. Processing complaints	58
Conclusion.....	61

1. Introduction

The objective of Workpackage 4 is to achieve a better understanding of the impact of gender on the experience of racial discrimination, the use of resources and the way complaints are processed. To address this question, we analysed 158 complaints lodged in France to the institutions authorised to receive them. An approximately equal number of complaints from women and men were collected for effective comparison.

Since adoption of the European Council Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,¹ each EU Member State has been invited to designate a body to promote equal treatment, entrusted to provide assistance to victims of discrimination in pursuing their complaints, conduct independent surveys and publish reports on any issue relating to discrimination.² The directive also stipulates that associations or organisations having a legitimate interest may engage in a judicial and/or administrative procedure on the complainant's behalf.³

In France, the body responsible for promoting equality is the Equal Opportunities and Anti-Discrimination Commission (*Haute Autorité de lutte contre les discriminations et pour l'Égalité* - HALDE).⁴ Consequently they were asked for access to their complaint files. However, since these files are strictly confidential, accessing them would require that the HALDE be involved in designing the research project in the framework of its own research programme, sign an agreement with the university concerned and also obtain prior consent from the CNIL (the French authority responsible for protection of personal data).

¹ Council Directive 2000/43/EC of 29 June 2000, OJ n°L180 of 19/07/2000.

² Article 13, Council Directive 2000/43/EC of 29 June 2000.

³ Article 7, Council Directive 2000/43/EC of 29 June 2000.

⁴ It will be referred to as the HALDE in this report.

This obstacle was avoided by analysing the deliberations the HALDE is empowered to hand down. This solution holds a double advantage since these deliberations contain the complete data sought under Workpackage 4 and are freely available because they are anonymous and found on the HALDE website.⁵ This data set was completed by the analysis of some 40 decisions that were not loaded on the site, but were transmitted by the HALDE at our request, yielding a total of 74 decisions. In addition, 19 were court judgements handed down by both criminal and civil courts.

The sample also includes files of complaints submitted to the Movement against Racism and Anti-semitism and for Friendship among Peoples (*Mouvement contre le Racisme et l'Antisémitisme et pour l'Amitié entre les Peuples* MRAP)⁶, one of France's oldest associations dedicated to fighting racism, founded at the end of World War II by former Resistance members. This group authorised access to 65 completely anonymous files.

We also approached organisations that work more on gender issues and tried to find files with cases of race discrimination. But most of them are focused on domestic violence and do not have any formal complaints.

The study does not claim to be exhaustive but intends to cover the general trends in the area of differences according to gender. As a result this presentation is a snapshot of the situation in one moment. It presents only a partial picture of racial anti-discrimination in France, as it represents solely cases known.

Sources	Total	Percentages
HALDE	74	47%
MRAP	65	41%
Juriprudence/case law	19	12%
TOTAL	158	100%

⁵These deliberations can be consulted on the following site:
http://www.halde.fr/Deliberations.html?page=article_en

⁶ This organisation will be referred to as MRAP throughout this report. In 2007 MRAP's legal service handled 4600 telephone calls and answered 3500 letters reporting a case of racial discrimination (2007 Report of the Advisory Commission for human rights, p. 206). For further information on this organisation see: www.mrap.fr.

As regards the complainants, 87 are men, 62 are women and 9 are couples or groups. These figures correspondent to the gender ratios already cited by the HALDE, which noted that women tend to lodge fewer complaints than men, all criteria combined (36%).⁷

Sex complainant	Total	Percentages
Men	87	55%
Women	62	39%
Group	9	6%
Total	158	100%

Now, let us look at this data sample in greater detail (2). We shall then study possible differences in the way women and men use these resources (3), experiences of racial discrimination (4), and the way their applications were handled (5).

2. Description of the sample

All the data presented here should be interpreted with caution as they are only approximately defined and contain limited information. This lack of data is mainly due to data protection requirements but also due to the small interest for organisations to collect socio-demographic information on the victims of discrimination.

However, the sample provides a fairly clear profile of the complainants, as to both their age and their legal and socio-economic status. To begin with, the men and women who react against discrimination are primarily of employment age; most range in age from 25-65 (42%), with a large group between 25 and 45 (31%).

⁷ 2005 Annual Report of the HALDE, p.11.

Age	Total	Percentage	Women	Men	Group
Juvenile	1	1%	0	1	0
18-25	6	4%	2	7	2
26-35	19	12%	6	13	1
36-45	30	19%	13	15	2
46-55	10	6%	3	5	3
56-65	8	5%	1	7	1
more than 65	3	2%	0	2	0
Unknown	81	51%	37	37	0
Total	158	100%	62	87	9

Furthermore, the majority of the people are French (65,19% of the total sample), both men and women alike. Two other groups hold a predominant share: those of Sub-Saharan Africa (8.23%) and North African origin (6,96%, from Algeria and Morocco).

Country of origin	Total	Men	Women
France	103 (65,19%)	51	45
Germany	1 (0,63%)	1	0
Bulgaria	2 (1,27)	2	0
Western Europe	1(0,63%)	1	0
Algeria	8 (5,06%)	6	2
Morocco	3 (1,90)	2	1
Turkey	5 (3,16%)	3	2
Sub-Saharan Africa	13 (8,23%)	9	4
Middle East	2 (1,27%)	2	0
Other	5 (3,16%)	1	3
Unknown	15	9	5
Total	158	87	62

France, as is known (see WP2, Annex 1), is quite opposed to categorising people by origin. Consequently no data are recorded on ethnic origin, neither in the MRAP files nor in the HALDE decisions. Nevertheless, the person's last name, the context of the facts and an occasional reference to origin enabled us to assign an origin to 114 cases out of 158.

These results show that French citizens of North African origin lodge the greatest number of complaints (59%), followed by French citizens from Sub-Saharan Africa (23%). This is representative of the two categories of the population who are the most frequent targets of racial discrimination in France (see Annex 1, WP2)⁸.

⁸ In this population, we also find 3% who are from Southern Asia, 2% Roma, and 1% from Southeast Asia.

Ethnicity	Total	Women	Men
Roma	3(3%)	1	3(6%)
White	1(1%)	0	1(2%)
Mixed race	1(1%)	1	0
South-East Asian	1(1%)	0	1(2%)
South Asian	3(3%)	0	3 (6%)
North African	70(59%)	29(45%)	37(79%)
Other	6(5%)	1 (2%)	5
Sub Saharan Africa	28(23%)	11	17
Turkish	1(1%)	1	0
Total	114	44	67
Unknown	44	18	20

Additionally, although for the same reason as above the complainants' religion was not encoded, cases of discrimination in our sample that are based on this motive indicate that the complaints mainly concern discrimination against the Muslim religion (27 cases out of 37 for religious motives). The other complaints concern Sikhs (7 cases), regarding prohibitions against wearing a turban in certain public places, and a complaint from a young Jewish boy who felt discriminated against because an exam was scheduled on a Friday.

Religion	Total	Women	Men
Muslim	27	12	15
Jewish	1	0	1
Sikh	7	0	7
Hindu	1	0	1
Catholic	1	1	0
Total	37	13	24
Unknown	121	49	63

Legal-social stability appears to make a person more willing to lodge a complaint, especially women (73%). In addition to the French citizens, we see that a portion of foreign-national complainants hold a long-stay residence permit (12%). On the other hand, the sample contains very few people with a temporary status (3%) or candidates for refugee status (2%). Here again, the resident status could not be refined any further because the organisations do not record this data systematically.

Residence status	Total	Men	Women	Group
Citizen	103(65%)	51	45(73%)	7
Unlimited Resident Permit	19 (12%)	12	7(11%)	0
Temporary resident	4 (3%)	3	1(2%)	0
Short-term Resident	2(1%)	1	1(2%)	0
Applicant for refugee status	3(2%)	2	1(2%)	0
Unknown	28(18%)	18	7(11%)	2
Total	158	87	62	9

The rare information on educational level (49 cases in the sample) show that a majority of these complainants have an upper education level (41%), and 4% have a doctorate, others (22%) have finished secondary or primary school, or professional education (18%).

Regarding employment, the few data available in this area (60 cases) nevertheless show that the complainants are of employment age, most are employees (34 cases) or workers (22 cases), but also management level employees (12 cases), teachers (5 cases) or healthcare professionals (8 cases).

Although this profile is a rapid sketch based on data containing occasional gaps, it nevertheless enables us to draw some initial conclusions about the characteristics of people who lodge discrimination complaints. They are young, primarily male, a majority French citizens and of North African or Sub-Saharan Africa origin. We can also add that they are educated and working. This sketch, however, will certainly help us understand how this population uses the resources available to react to a situation of discrimination.

3. Using the resources

It was foreseen to collect data that would have shown which steps the people took to exercise their rights and whether they were assisted by a network. Indications in this area are nevertheless somewhat scanty. We have very little information about whether a lawyer was present or not. Nevertheless we do know that when MRAP is involved, the complainants can make use of lawyers working on behalf of the association.

The sample also shows that associations are the entities involved more frequently with the complainants (47%). We can highlight the low participation of trade unions (10 cases) even though a predominant number of complaints lodged concern the employment sector. It appears that trade unions are more heavily involved in prevention of discrimination. If a case is reported to them, their strategy generally consists in transmitting it to the HALDE or to NGOs, and to be kept informed of the follow-up.⁹

The complainants most often apply to the HALDE which, despite being fairly new, seems to be well-known among the complainants, likely due to its media campaigns.¹⁰ Complaints are also submitted to police commissariats, either just to the police (18 cases) or supplemented by a complaint submitted to the HALDE or an association (5 cases).

We should nevertheless point out that the HALDE's submission methods act as a serious filter for potential complainants. Victims of discrimination cannot visit the HALDE offices, but must submit their complaint in writing, either through the mail or

⁹ We should nevertheless note that the General Confederation of Labour (*Confédération Générale des Travailleurs - CGT*) has launched several legal proceedings against racial discrimination, including the "Boch Vénissieux" case, which was heard by the *Produ'hommes* court of Lyon, concerning 24 employees of various origins who felt they suffered from discrimination in their job posting and career path (National Human Rights Advisory Commission – CNCDH - Report, 2007, p. 197).

¹⁰ The HALDE has seen an increase in the number of complaints lodged with its services: from 1410 complaints in 2005, to 4058 in 2006 (Annual Report, p. 10), to reach 6222 in 2007 (Annual Report, p. 10).

by completing an online form on the HALDE web site. Thus it is less surprising to see in the profile sketched above a majority of French citizens who have been educated in this language. The recent development of local HALDE offices throughout the country should make it easier for a larger portion of the population to submit a complaint. Indeed, the victims of discrimination can visit these offices where they can report the complaint orally.

We should also add that a recent Eurobarometer has clearly shown that French people do not know their rights concerning discrimination. Only 29% answered positively to the following question: “Do you know your rights if you are victim of discrimination or harassment?”¹¹ It is obvious in this case that even law is absolutely necessary, it is not enough: it must also be known and properly implemented.

4. The experience of discrimination

4.1 Sectors

Complaints in the area of employment are by far the most frequent (47%). They primarily concern working conditions, mainly complaints regarding career path/denied promotion and lay-offs (37%), followed by access to jobs (16%). We also noted two cases of multiple discrimination based on trade union membership.

Complaints from women are predominant here (56% compared to 38% from men). We should stress two particularities in women's complaints: refusal to hire a woman on the double motive of physical appearance and origin, especially in receptionists jobs, and cases of harassment based on words and behaviour that are both sexist and racist.

The second sectors is housing (16%) where a greater number of complaints come from men (17% compared to 13% from women) - these refusals to rent premises also involve

¹¹ See Eurobarometer Special n °263, Discrimination in European Union.

social housing. Another 14% of the complaints concern the education sector, where they mainly concern access for foreigners to certain diplomas or complaints related to religious practices, such as the young Sikh men who were not allowed to wear their turban at secondary school based on the 2004 law on secularity ("*laïcité*") which forbids conspicuous religious symbols in primary and secondary schools. Here again, complaints from men are predominant (18% compared to 10%).

Lastly, we note a large number of cases involving refused access to goods and services, especially in the public sector¹² (14% compared to 4% in the private sector), and a good number concern women wearing headscarves. Examples include a case of denied access to a French class under a contract for integration of foreigners, or admittance refused to a naturalisation ceremony or a chambers, or else mothers wearing headscarves were not allowed to accompany young children on a school outing. In the private sector, a woman wearing a headscarf was not allowed to rent a hotel room, another was not admitted to a driving school course. The perpetrators of these acts feel they are applying the 2004 law on secularity correctly which, we should recall, only forbids religious symbols in primary and secondary schools.¹³ The HALDE's conclusion is that consequently they cannot be prohibited in other places.¹⁴ Very few complaints involve other sectors: 1 complaint against the police, 2 against the justice system and 3 concerning admittance to public areas.

Sectors	Total	Men	Women	Group
Housing	25 (16%)	15 (17%)	8 (13%)	2
Education	22 (14%)	16 (18%)	6 (10%)	7
Employment	75 (47%)	33 (38%)	35 (56%)	0
Public health services	4 (3%)	2 (2%)	2 (3%)	0
Private goods and services	7 (4%)	2 (2%)	5 (8%)	0
Public goods and services	17 (11%)	15 (17%)	2 (3%)	0
Police	1 (1%)	0	1 (2%)	0
Justice system	2 (1%)	1 (1%)	1 (2%)	0
Access to public spaces	3 (2%)	2 (2%)	1 (2%)	0
Other	2 (1%)	1 (1%)	1 (2%)	0
TOTAL	158	87	62	9

¹² It includes public goods and services (11%) and Public health services (3%).

¹³ Act n° 2004-228 of 15 March 2004, JO n°65 of 17 March 2004.

¹⁴ For example, see deliberations n°2006-131 and 132 of 5 June 2006, n°2008-193 of 15 September 2008.

4.2 Grounds of discrimination

The ethnic origin, or "racial", motive is clearly predominant (56%), and this mainly among men (64% compared to 42%)¹⁵.

Religion is the second most frequent motive (21%). These cases primarily concern job discrimination¹⁶ or refusal to provide goods and services, and affect women and men equally.

Lastly, 13% of the complaints are based on nationality. The HALDE distinguishes between discrimination based on origin and that based on nationality. However, it excludes from its scope complaints regarding questions of foreigners' rights to enter or remain in the country. In the absence of general European standards on nationality-based discrimination, the HALDE refers to the law of 2004 which created it. This law stipulates that each person has the right to equal treatment regardless their national origin, their membership or non-membership, true or supposed, of a given ethnic group or race.¹⁷

On this basis, the HALDE thus deemed there was indeed discrimination in cases of failure to recognise diplomas of foreign doctors or discriminatory administrative handling, such as subjecting eligibility for a large-family card ("*carte famille nombreuse*")

¹⁵ This corresponds to the HALDE statistics for this motive represented 39.6% of complaints in 2005, then 35% in 2006 and 27% in 2007 (see above-mentioned Annual Reports).

¹⁶ On this subject it is worthwhile mentioning the so-called "Roissy baggage handlers" case where authorisations to sites considered as sensitive, such as airports and ports, were withdrawn from staff of the Muslim faith, or considered as Muslims. This led to loss of a job for several of these staff members.

¹⁷ Article 19, al.1 of Act n° 2004-1486 of 30 December 2004 concerning the creation of the high authority against discrimination and for equality (consolidated), Journal Officiel, Lois et Décrets n° 304, 31/12/2004.

to nationality conditions. There are very few differences between women and men in this area.¹⁸

Lastly, we note 4 complaints submitted by French citizens from overseas territories, relating to difficulties in access to housing or education. Here, it seems that the discrimination was based on skin colour since the people in question were French nationals.

A final remark concerns complaints based on gender motives, which reflect a quite particular profile. To begin with, there are very few of these, representing approx. 6% of the complaints submitted to the HALDE. Furthermore, half of these were submitted by men,¹⁹ and concern discrimination in matters of insurance.²⁰ This is truly a French singularity.

However, it should be highlighted that when it comes to multiple discriminations based on race and gender, these cases concern mainly women. It can be concluded that discrimination analysis brings to light the existence of particularly disadvantaged sub-groups, such as women belonging to ethnic minorities groups. The complaints the HALDE provided at our request, which cover multiple motives including gender, are particularly revealing. Out of some 20 cases registered, we found 9 cases of multiple discrimination based on race and gender. They all concern women and the employment sector, arising from bars to hiring or harassment. An efficient encoding system and legal experts more aware of this issue would surely increase the number of multiple discrimination cases.

¹⁸ For a more detailed analysis of this issue, see J. Y Monfort, "Pratiques administratives : le regard de la HALDE" (*Administrative practices: the HALDE's point of view*), in E. Saulnier-Cassia and Tchen V.(dir.), *Unité du droit des étrangers et égalité de traitement*, pp. 97-106.

¹⁹ 2005 Report, p. 10. It should be noted that the distribution by gender of complaints based on this criteria was no longer published in the HALDE's 2006 and 2007 reports.

²⁰ Report on Activities 2007, p.10.

Grounds for the complaint

Ground(s) of discrimination	Total	Men	Women	Group
'Race' or ethnic origin	88 (56%)	56 (64%)	26 (42%)	6
Religious beliefs	32(20%)	18 (21%)	13 (21%)	1
Nationality/citizenship	22(13%)	10 (11%)	11 (18%)	1
Overseas	4(3%)	1 (1%)	3 (5%)	0
Sex and « race »/origin	9(6%)	0	8 (13%)	1
Multiple grounds	3(2%)	2 (2%)	1 (2%)	0
TOTAL	158	87	62	9

4.3 Alleged authors of discrimination

In the field of employment, managers and employers are the main discriminatory agents followed by providers of public goods and services and employees in the private sector. We can note a much larger presence of male victims as regards access in the public sector but otherwise there is no major differences between men and women.

Author of discrimination

Alleged author of discrimination's relationship to complainant	Men	Women	Group	Total
Superior/employer	30	31	5	66
Colleague	4	0	1	5
Property owner	3	1	0	4
Neighbour	1	1	1	3
Passer-by	0	2	0	2
Law enforcement agents	4	4	0	8
Private goods or services provider	10	7	1	18
Public goods or services provider	35	14	0	49
Personal relations	0	0	0	0
Unknown	0	2	1	3
Total	87	62	9	158

5. Processing complaints

47% of the complaints in the sample were submitted to the HALDE and 41% to MRAP. We can thus see the tools and methods each agency tends to choose to solve conflicts. It should be noted that these two agencies do not have the same powers available to them.

To deal with complaints submitted by individuals, the HALDE has the power to conduct an inquiry (right to communication of all information, hearings, on-site verifications,...) and has several means of action, ranging from mediation to the criminal settlement agreement (settlement fine). Solutions also include intervening before the victim's court of referral, reporting the facts to the Public Prosecutor, or formulating recommendations addressed to the persons or public authorities concerned in order to suggest changes to legal reforms or changes to administrative practices.

The sample shows that this last possibility is employed most frequently and the HALDE also ensures a follow-up to evaluate the actual implementation of measures it recommends for both private and public actors.

On the other hand, MRAP tends to use criminal proceedings, which explains the large portion in the overall sample of complaints submitted to court. It intervenes by joining a civil action and assisting the victims in their proceedings. Use of the civil proceeding seems to be less frequent, likely because this means is still not well known.

An analysis of the complaints shows that on occasions MRAP transmits or reports certain cases to the HALDE, knowing that the latter will be able to use its powers of inquiry to investigate the complaint. Thus, to a certain extent, a culture of collaboration between the NGOs and the HALDE appears to be taking shape.

In addition to legal proceedings per se, the HALDE also resorts to mediation to solve conflicts when the parties agree, especially in sectors such as employment or housing, where the parties are still in contact. MRAP on the other hand is more reluctant to use this tool.

Occasionally the organisations also remind the parties of the law without taking further action (16 cases). The alleged perpetrator is made to understand how serious the matter is, leading to an end of the discriminatory behaviour.

Methodology complaints	Total	Women	Men	Group
Recommandations	37	19	12	6
Mediation or conciliation	25	10	15	0
Civil proceeding, including employment Tribunals	38	8	27	3
Criminal proceeding	41	17	24	0
Legal advice	16	10	6	0
Redirected claims	6	3	3	0
Total	163²¹	67	87	9

Out of the decisions taken, 34% were in favour of the complainant, some leading to the perpetrator being found guilty and sentenced to pay a fine (11%). It should be noted that some 18% of the cases were decided against the complainant.

Decisions handed down generally improved the complainant's condition in his/her environment (36%) although some had the effect of leading the complainant to change environment (9.5%) or, in very few cases, return, but with no improvements in conditions (6%).

Nonetheless these results are to be interpreted with caution in so far as few details are available (50% of the replies) concerning both the final decisions and actions taken as a result.

²¹ In some complaints, two decisions are taken for the same case; that is why the total is 164 here instead of 158 cases.

Another parameter enters into play: a large portion of the HALDE complaints analysed are found on the web site; the HALDE does not publish all of its decisions on the site. Thus, a possible "showcase effect" should be taken into account regarding decisions made public as examples of the HALDE's work.

To conclude, we cannot affirm that there are differences in the way complaints from men or women are handled. Identical tools are employed to solve the conflicts they submit. Given the present state of these practices, in a legal area still under development, the most apparent aspect is the time it takes for the actors to grasp and use these new concepts and means of action.

Particularly striking is the type of complaints lodged. While the European directives introduced a broad definition of discrimination, in particular including indirect discrimination and incitement to discrimination, the complaints submitted massively concern direct discrimination, in other words explicit and deliberate discrimination (75.3%). On the other hand, indirect forms of discrimination, based on measures apparently neutral, yet which end up barring a person or group of persons from a service or a right, are very rare (5.7%). Here again, a likely explanation is the novelty of this concept. This also appears to be the case for other types of discrimination introduced by European law, such as instruction to discriminate (2.5%) and victimisation (0.6%). Harassment, however, is the subject of 8.6% of the complaints.

Types of discrimination

Types of discrimination	Men	Women	Group	Total
Direct discrimination	66	46	7	119 (75.3%)
Indirect discrimination	7	2	0	9 (5.7%)
Harassment	6	7	1	14 (8.9%)
Instruction to discriminate	4	0	0	4 (2.5%)
Victimisation	0	1	0	1 (0.6%)
Other	4	6	1	11 (7%)
TOTAL	87	62	9	158

Conclusion

An analysis of the sample enabled us to form a picture of the most apparent differences between women and men as regards their experience of racial discrimination, their use of the resources and the nature of the complaints concerning gender discrimination.

This analysis also showed a lack of recording and systematic analysis of gender-based data, as well as indication of cases possibly based on several forms of discrimination. If such data were introduced, in particular in the system to enter data on complaints submitted to the HALDE, this would generate more in-depth information on cases of multiple discrimination. It would also help develop a work culture in this area - in particular based on inter-service coordination, and lay the groundwork for specific processing methods better adapted to such cases.

The GENDERACE Team is responsible for the content of the report which does not necessarily reflect the view of the Commission, nor can the Commission accept responsibility for the accuracy or completeness of information it contains.