

FRA

Legal Study on Homophobia and  
Discrimination on Grounds of  
Sexual Orientation, report on  
France

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## Executive summary

### Implementation of Employment Directive 2000/78/EC

- [1]. France has transposed Directive 2000/78/EC into labour-related laws, and discrimination based upon sexual orientation is punishable. The burden of proof upon the victim has been reduced.
- [2]. The transposition however, is partially conform. France has been subject to infringement proceedings for having failed to completely transform the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- [3]. A government bill composed of various provisions adapting national law to Community law in the field of combating discrimination (Bill No. 514 filed at the National Assembly on 19 December 2007) is currently being examined by the French Parliament.

### Freedom of movement

- [4]. French legislation would appear to conform to the Directive and France has fulfilled its European obligations.
- [5]. 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.

### Asylum and subsidiary protection

- [6]. 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.

- [7]. NGOs point out however that binational PACSed couples have encountered difficulty in obtaining asylum in France. They believe that conventional protection is more and more difficult to obtain in France.

## Family reunification

- [8]. As French law does not recognise same-sex marriage, family reunification does not apply to LGBT couples.
- [9]. A residence visa may be granted to the partners in a homosexual PACSed couple because concluding a PACS constitutes an element of appreciation of personal ties to France, enabling one to obtain a residence visa. The Prefect nevertheless has discretionary power in the matter.

## Freedom of assembly

- [10]. 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.
- [11]. French legislation does not limit the freedom of association and assembly of LGBT persons.

## Hate speech and criminal law

- [12]. Several criminal laws explicitly prohibit discrimination based on sexual orientation. French legislation also considers discrimination based on sexual orientation to be an aggravating circumstance.
- [13]. Since 2004, French law has also prohibited homophobic libel and slurs.
- [14]. Finally, since 2004, the law also specifically prohibits “threats based on real or supposed sexual orientation”.

## Transgender issues

- [15]. 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.

## Miscellaneous

- [16]. 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.
- [17]. Refusal by France to grant to a young homosexual woman paternity leave.

## Good practices

- [18]. The powers granted to the High Commission for the Elimination of Discrimination and for Equality (HALDE) which have made it a recognised authority in France.
- [19]. Companies' signing a Diversity Charter.
- [20]. Creation of a “Diversity Label” to recognise companies' efforts for diversity.
- [21]. The fact that discrimination based on sexual orientation is considered an aggravating circumstance.
- [22]. **Warning:** 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 Penal Code. There are thus no official statistics on the GBLT community in France.

## A. Implementation of Employment Directive 2000/78/EC

### A.1. Labour law

[23]. French labour law has never introduced explicit discriminatory clauses with regard to homosexuals. 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.

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### A.1.1. Recruitment

- [25]. The aforementioned law introduces a new article into the Labour Code, article L. 122-45, which specifies that “No person may be rejected from a hiring process or be denied access to an internship or training programme, no employee may be penalised, dismissed or be subject to any discriminatory measure, be it direct or indirect, in particular concerning pay, as defined by article L. 140-2, 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 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 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.
- [26]. Until now, few verdicts have penalised homophobic practices in the recruiting phase. But “the reduction of the burden of proof on he / she who believes himself / herself to be the victim, 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 apprehension of such behaviours and give a more realistic measurement of them, especially in the hiring process” (D . Borillo, T. Formond, *l'Homosexualité et discriminations en droit privé*, Paris, la documentation française, 2007).

### A.1.2. Internal company policy

- [27]. In the workplace, article L. 122-35 (par. 2) of the Labour Code requires that neither internal company policy nor memoranda may adversely affect employees upon the basis of their sexual orientation. It provides that internal company policy “may not contain provisions adversely affecting employees in their occupation or their work by reason of their sex, their mores, their sexual orientation etc.” Furthermore, no employee “may be penalised ... by reason of his or her sexual orientation” as provided by article L 122-45 of the Labour Code. In case of recourse to legal proceedings, such penalties are not legally valid according to paragraph 3 of this article.

### A.1.3. Harassment

- [28]. A great deal of testimony states that in France, 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. 122-45 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.

### A.1.4. Dismissal and resignation

- [29]. 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”.

- [30]. With regard to discrimination in recruitment and dismissal, the 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 the new article, L. 122-45, 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. 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” (D. Borillo, T. Formond, *l'homosexualité et discriminations en droit privé*, Paris, La Documentation Française, 2007, p. 34).
- [31]. In addition, these same authors point out the textual differences between the Directive and French law. The French Labour Code provides that the employee or the applicant must “present evidence that allow the assumption of direct or indirect discrimination”, phrasing that not exactly that of the Directive but which is drawn from 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”(D. Borillo, T. Formond, *l'homosexualité et*

discriminations en droit privé, Paris, La Documentation Française, 2007, p. 34).

- [32]. “But it is especially with regard to the statement according to which, secondly, 'in light of the evidence, the onus is upon the accused party to prove that his/her decision is justified by objective elements devoid of any discrimination' (article L. 122-45 of the Labour Code) that the confusion is the most regrettable. This wording conflates the concept of a general regime of proof with regard to discrimination with that of a specific rule for reversing the burden of proof with regard to discrimination in cases of indirect discrimination”(D. Borillo, T. Formond, *l'homosexualité et discriminations en droit privé*, Paris, La Documentation Française, 2007, p. 34).

[33]. In addition to the law of 16 November 2001, the law of 17 January 2002, also known as the social modernisation law, also seeks to transpose the EU Directive and additionally covers questions of discrimination based upon sexual orientation with regard to employment. This law creates a new article, L. 122-51, in the Labour Code. This article 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.

- [34]. More generally speaking, and in the framework of eliminating discrimination, Law n°2004-1486 of 30 December 2004 created the High Authority for Equality and the Elimination of Discrimination (HALDE). Essentially, this law provides for the transposition of Directive n°2000/43 of 29 June 2000. (See below).

### A.1.5. Forthcoming legislation

- [35]. France has been subject to infringement proceedings for having failed to completely transform 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; Council Directive 2000/43/EC of 29

June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

- [36]. A **government bill composed of various provisions adapting national law to Community law in the field of combating discrimination** (Bill No. 514 filed at the National Assembly on 19 December 2007) is currently being examined by the French Parliament. The preamble reminds that “the European Commission considers that the French legislator has failed to fully implement the three directives, especially since it has omitted to include a definition of direct and indirect discriminations, of moral harassment and of sexual harassment in French law. The Commission also criticises the legislator for having improperly transformed those of the provisions that prevent from enjoining anyone to discriminate, and that ensure the defence of the rights of victims of discriminations”. As of today, the bill has only been reviewed by the National Assembly’s Commission on culture, family and social affairs. The government activated the urgency procedure on this bill on 5 March 2008.
- [37]. The bill aims at getting French law to comply with EC requirements in the field of combating discrimination. It transforms into French law the Community definition of both direct and indirect discriminations. It adopts the Community definition for harassment and specifies, in accordance with the European Commission’s requests, that conducts qualified as harassment can be related to race, ethnic origin, religion, beliefs, handicap, age or to **sexual orientation**. One can nevertheless observe that the French definition did not prevent such motives from being taken into account. The bill also 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.
- [38]. The bill widens the scope of discriminatory behaviours (affiliation and commitment to a trade union or professional organisation, including the benefiting of advantages provided by it, as well as access to employment, employment, professional training and work, including independent work or self-employment).
- [39]. In addition, a bill filed by UMP [Union pour un Mouvement Populaire, the current parliamentary majority] Senator Jean-Jacques Hyst on 21 November 2007 proposes to reduce from thirty to five years the period of limitation for civil

proceedings in discrimination cases. It was adopted by the Senate and now needs to be examined by the National Assembly. This provision is widely contested by associations.

## A.2. Other applications

- [40]. The aforementioned law n°2001-1066 of 16 November 2001 essentially transposes the Directive into the field of 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, last name, sexual orientation and age. This extended definition is applied generally and in all fields of application.

## A.3. Eliminating discrimination with regard to housing.

- [41]. 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.
- [42]. Outside of the field of employment, it appears difficult to prove direct discrimination based upon sexual orientation. 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 criminate indirect discrimination. (See below).

## A.4. The High Authority

- [43]. The High Authority for Equality and the Elimination of Discrimination (HALDE) was created by law n°2004-1486 of 30 December 2004. HALDE is an independent administrative authority whose general purview is to eliminate types of discrimination prohibited by French law or by an international commitment by France and to promote equality, to provide all necessary information, to assist victims and to identify and promote best practice in order to promote the principle of equality in the real world. It is invested with investigative powers.

### A.4.1. Composition and powers

- [44]. The High Authority is a collegial body made up of 11 members appointed by the President of the Republic, the Prime Minister, the Speakers of the Assemblies and of the Senate, the Economic and Social Council, as well as the Vice President of the Council of State and the First President of the Court of Cassation. Its president is appointed by the President of the Republic. The college deliberates on any question relative to the exercise of power and missions of the High Authority, especially in legal actions, the observations that the High Authority might present before courts relative to the application of Article 13 of the law of December 2004, its opinions and recommendations... The High Authority is assisted by an advisory committee made up of persons “having an activity in the field of eliminating discrimination and promoting equality”.
- [45]. The High Authority has the power to recommend any legislative or regulatory change intended to eliminate discrimination and must file an annual report to the President of the Republic, the Prime Minister and to Parliament to account for its activities.

## A.4.2. Seizing the High Authority

- [46]. The HALDE may be seized by letter by any person who feels he or she has been the victim of discrimination (this can also be done through one's Deputy of the National Assembly) or by any association under the conditions laid out by the law. The HALDE may also seize itself. The High Authority may also be seized by any properly declared association founded within five years of the alleged discrimination whose purpose is to eliminate discrimination and to assist its victims. The association may seize the High Authority “in concert with any person who believes he or she has been a victim of discrimination”, and with that person's consent or by the intermediary of a deputy of the National Assembly, a senator or a French Member of the European Parliament. The association may also automatically seize cases of direct or indirect discrimination of which it is aware, on the condition that the victim, when he or she is identified, has been informed and does not oppose the action.
- [47]. The HALDE examines the complaint and informs the complainant of their rights. If need be, it characterises the discrimination and declares itself competent to investigate the complaint.
- [48]. The HALDE's powers of investigation and information of the Public Prosecutor of the Republic.
- [49]. Very often, the main difficulty resides in establishing proof of discrimination. The HALDE has been granted real investigative powers. It demands of the accused person or company the transmission of all elements and documents necessary to assess the situation. If the accused party refuses to comply, the HALDE may seize the Judge in sitting in Chambers in order to obtain these documents. It may hold hearings and may also investigate in situ. It may propose conciliation or mediation and report its observations to the court. The HALDE requests that the perpetrator of discrimination stop the discrimination in question and may make its intervention public. Most importantly, it may inform the Public Prosecutor of the Republic when evidence of an indictable or summary offence is brought to its attention.

- [50]. Certain articles of the Law for Equal Opportunity (law n° 2006-396 of 31 March 2006) have considerably strengthened the power of this “independent administrative authority”. In the case of an instance of discrimination, the HALDE may conduct, within well-defined limits, searches of premises without the owner's consent. Furthermore, the HALDE addresses the court charged with investigating cases of discrimination, and its testimony is now compulsory and no longer optional in such cases. Agents of the HALDE, sworn-in and specially entitled by the Public Prosecutor of the Republic, may now write citations for acts of discrimination that have been proved by the testing method legalised by article 225-3-1 of the Penal Code. It is possible to offer a settlement, approved by the Public Prosecutor of the Republic, to the perpetrator of the discrimination. This settlement consists in a fine (€3,000 for a natural person and €15,000 for an artificial person). It may sometimes entail other measures. When the HALDE observes an act of discrimination it may, according to the perpetrator's profession request that the public authority responsible for the perpetrator use the powers of suspension and sanctions it possesses.

### A.4.3. Complaints to HALDE

- [51]. The HALDE has been seized several times with regard to complaints concerning the homophobic behaviour of employers, public administrations or the discriminatory character of legislation. In 2005, 38 complaints dealing with discrimination based on sexual orientation were received by the HALDE (2.7% of all complaints received by the HALDE) while in 2006, 61 such complaints were received (1.50% of all complaints received by the HALDE). The High Authority has not published studies or statistics concerning discrimination based exclusively upon sexual orientation.
- [52]. It was seized on 30 September 2005 with regard to a complaint by a male couple who was allegedly refused rental of a hotel room by reason of their sexual orientation. The HALDE found this amounted to a discrimination offence as defined and punished by articles 225-1 and 225-2-1 of the Penal Code. However, 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 agreed, the College of the High Authority requested the President to empower the Mediation Centre to appoint a mediator (case n°32, proceedings n°2005-91 of 19 December 2005).

- [53]. Another precedent-setting complaint is that of a civil servant who was a victim of discriminatory moral harassment by reason of his sexual orientation. This harassment came from both his subordinates and some colleagues without any steps being taken by the victim's management to bring an end to this gravely damaging behaviour. In the investigation of 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, the High Authority requested that the minister responsible for the administration in question seize the relevant authority. The minister in question informed the High Authority that an inquiry was underway (HALDE report 2006 p. 95).
- [54]. In addition, the HALDE actively intervenes to uncover discrimination and utilises the discrimination test, created by the equal opportunity law of 2 April 2006, and the automatic seizure provided by the powers granted to it by the law of 30 December 2004. The HALDE has also undertaken different actions to raise the awareness of French companies of the fight against discrimination in order to share its recommendations with them and to better know their practices. It encourages them to sign agreements such as the Charter of Diversity for Companies in which companies commit themselves to combating all forms of discrimination and to implementing practices in favour of diversity. According to the HALDE, half of the companies in the CAC 40 have signed this charter. NGOs regret that in this context identity and sexual orientation issues are still too seldom addressed by companies.
- [55]. NGOs fighting homophobia recognise the utility of the HALDE in the fight against homophobia. For instance, the association "SOS Homophobie" feels that if the number of workplace-related reports of homophobia it receives has declined, "without jumping to conclusions, it is possible to see an impact of the HALDE's actions, even if, in practice, not all victims of lesbophobia seize it. Employers may be thinking twice about showing their homophobia" (Rapport sur l'homophobie 2007, SOS homophobie , p. 70).

#### A.4.4. Complaints by associations

- [56]. The law of 16 November 2001, amended by the law of 2002 which integrated an article, L. 122-45-1, into the Labour Code which enables different types of legal persons to go to law provided they obtain the consent of the victim.
- [57]. According to article L. 122-45-1 of the Labour Code, trade unions, at a national level, a French administrative department level when overseas departments are concerned or at a company level may file a charge based upon article L. 122-45, under the conditions it provides, on behalf of a job, training or internship applicant, or on behalf of an employee without providing proof of consent of the person in question, provided that he or she has received written notification and has not opposed the action within a period of fifteen days after receipt of notification of the trade union's intention to file charges. The person in question may become involved at any time in support of the trade union's charges.
- [58]. Associations, properly constituted and founded a minimum of five years for the elimination of discrimination may file any charges related to article L. 122-45 (Labour Code), under the conditions laid out therein, on behalf of a job, training or internship applicant, or on behalf of an employee, provided they receive written consent from the person in question. The person in question may intervene at any time in the charges filed by the association and may halt proceedings at any time.
- [59]. A lot of associations can engage on behalf themselves or in support of complaints. As said by the ministry, almost 160 associations could do it.
- [60]. In France, associations must be at least five years old to take legal action in order to combat discriminations. The European Commission considers this rule to be excessively restrictive, whereas France argues that it reinforces the protection of the people subject to discriminations as they can thus benefit from the help of experienced association

## A.5. Data

- [61]. It appears difficult to fill in the table provided in appendix 2 insofar as the data we have obtained are not exhaustive and contain a certain number of gaps in terms of specifics (see point 7 for an analysis of recent and accessible jurisprudence).

## A.6. Dismissals

- [62]. There have been relatively few cases concerning dismissal based upon sexual orientation. NGOs point out however that since the Directive and the laws which implement it came into force, the situation has changed greatly. The report, “Homophobie 2007” by SOS Homophobie indicates that the legislation is correctly applied by judges in many cases and that victims are treated equally by the justice system. However the report deplores 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 “Homophobie 2007” by the NGO SOS Homophobie, “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...” (p. 156).

## B. Freedom of movement

### B.1. The personal scope of the Directive

- [63]. Firstly, it must be recalled that by virtue of article 18 of the TCE “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.
- [64]. Progressively, freedom of movement has been recognised for the family of an EU citizen exercising his or her right to freedom of movement (Regulation n°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.”
- [65]. 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:
- [66]. “(a) the spouse;
- [67]. (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;
- [68]. (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);
- [69]. (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b);”

- [70]. 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.

- [71]. 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 18 of the TCE unless he or she is a citizen of a non-member state bound to the EU by international convention granting them rights relative to freedom of movement.
- [72]. 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.
- [73]. 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.

- [74]. 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. However, these couples may encounter discrimination with regard to equality of treatment (see below).

- [75]. 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 obtention 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.
- [76]. However, in its response to petition 0724/2005, the Committee on Petitions of the EP stressed the fact 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.”
- [77]. 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. France fulfils this obligation and even goes beyond by recognising even unregistered partners as paragraph 17 of article 12bis of the ordinance of 2 November 1945 relative to conditions of entry and residence of foreign nationals in France attests: “According to the terms of these provisions, a temporary “private and family life” residence visa shall be issued to the foreign national “whose personal and family ties are such that refusal to authorise residence would disproportionately infringe his/her right to respect of

his/her private and family life with regard to the rationale for refusal”.

- [78]. 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:
- [79]. (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.
- [80]. There is no known case law concerning the rights of LGBT partners in the context of freedom of movement ( cf bases de données Lexisnexis, Dalloz, Lextenso)

#### **B.4. The existence in French Law of a registered partnership for French nationals exercising their freedom of movement in another Member State.**

- [81]. 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).

- [82]. 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.
- [83]. 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.

## B.5. The principle of equality of treatment

- [84]. Directive 2004/38 provides in article 24 that:
- [85]. “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.
- [86]. 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.”
- [87]. 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

- [88]. The requirement of equality in granting tax privileges is imposed by the principle of non-discrimination based upon sexual orientation. This aspect is problematic in French law as registered partners or partners bound by a PACS may certainly benefit from a regime of joint taxation similar to that of married couples but only after three years of mutual commitment. This mandatory period is not required however if both partners must pay wealth tax (ISF), in which case they may file a joint tax declaration from the beginning their PACS commitment. Such a disadvantage regarding taxation could constitute an obstacle to freedom of movement of persons insofar as it could discourage EU citizens bound by a registered partnership to settle in France, because they would not be able to file a joint tax declaration unless they prove that their reciprocal commitment is over 3 years old or that they are subject to the wealth tax.

## B.7. Access to social benefits

- [89]. On the other hand, France guarantees equality of treatment of homosexual and heterosexual couples with regard to social benefits. Thus, with 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).

## C. Asylum and subsidiary protection

- [90]. 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”. Directive 2004/83/EC of the Council 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.
- [91]. 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 the 1st of 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.

- [92]. In France, asylum claims are examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). If the claim is rejected, the asylum-seeker may appeal to the Refugee Appeals Board (CRR), replaced in 2007 by the National Court for the Right of Asylum (CNDA). The solutions recommended by the OFPRA, the CRR as well as the Council of State (Conseil d’Etat, the highest French court) reflect the way Directive 2004/83 is

applied in France. These bodies examined 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

- [93]. The CRR 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 (CRR, 1 December 2006, 579547, Ms N.). In this case, examining national legislation proved sufficient to grant refugee status.
- [94]. The same solution was used for the case of a LGBT asylum-seeker from Sierra Leone, a country where homosexuality is illegal, who had publicly asserted his sexual orientation. His belonging to a social group was thus recognised on the basis of these two criteria. (CRR, 18 May 2006, 559666, Mr J.)
- [95]. In the case of a Russian of Ingush descent whose homosexuality was widely known to a large portion of the Ingush population, the primary criteria were the awareness of his sexual orientation and the local Ingush population's attachment to tradition and conservative religious values (CRR, 31 May 2006, 543182, Mr I.).
- [96]. The solutions chosen by the CRR concerning whether LGBT persons belong to a social group are an offshoot of decisions taken by the OFPRA. On 16 April 1999, the Recourse Commission (Commission des recours) of the OFPRA had already recognised that Algerian homosexuals were persecuted and that they belonged to a social group: “in the prevailing conditions in Algeria, persons who assert their homosexuality and intend to show it in their public behaviour are thereby risking criminal charges... as well as police surveillance and bullying; that in these conditions the fears that X might reasonably have because of his behaviour

in case of his return to his country must be considered as resulting from his belonging to a social group in the spirit of Article 1 A 2 (of the Geneva Convention)”.

### C.3. Transsexuals

- [97]. 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. (CRR, 15 February 2005, 496775, Mr B.).
- [98]. In recent years, the concept of belonging to a social group has been an area of advancing 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.
- [99]. In this case, LGBT persons may be granted subsidiary protection if they can prove the existence of grave 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<sup>1</sup>), “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.”
- [100]. 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<sup>2</sup>.”
- [101]. 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

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<sup>1</sup> CESEDA (Code de l’entrée et du séjour

<sup>2</sup> Title IV of article 2 of the law of 25 July 1952, amended.

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 sexuality, 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. (CRR, 12 May 2006, 555672, Mr S.).

- [102]. Subsidiary protection was granted to Mr. B., a Gabonese national, on the same basis. He was granted subsidiary protection by reason of two arbitrary arrests and ill-treatment suffered at the hands of his family. Contesting the OFPRA's decision which granted him subsidiary protection in order to seek conventional asylum, his claim was rejected on the grounds that homosexuals in Gabon do not constitute a social group as defined by article 1, A, 2 of the Geneva Convention. (CRR, 3 July 2006, 497803, Mr B).
- [103]. The creation by the OFPRA of a list of safe countries of origin has, among other things, weakened protection of LGBT persons. 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. This list is, since the decision of 16 May 2006, made up of 17 states (Albania, Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Macedonia, Madagascar, Mali, Mauritius, Mongolia, Niger, Senegal, Tanzania and Ukraine). Persons originating from these countries 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 "PACSeD" 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.

[104]. 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.

## D. Family reunification

- [105]. In France, family reunification only covers the asylum-seeker's spouse and minor children (article L. 411-1 of the CESEDA, the Immigration and Asylum Code) and is therefore not available to a partner whether or not a PACS has been signed. Because French law does not authorise same-sex marriage, family reunification does not apply to LGBT couples.
- [106]. Moreover, when marriage is taken into consideration when determining foreign citizens' rights it is as defined by French law and not as defined by the persons in question (thus excluding same-sex marriages contracted abroad).
- [107]. Law 99-944 of 15 November 1999 enacting the PACS defines it as a contract between two natural persons of the age of majority, of the opposite or the same sex to organise their common life. Article 515-8 of the Civil Code defines cohabitation as a de facto union, characterised by a common life exhibiting stability and continuity, between two persons of the opposite sex or the same sex who live as a couple.
- [108]. With regard to foreigners' rights, couples are ranked: married couples have more rights than PACSed ones, who have more rights than those in a de facto union<sup>3</sup>.
- [109]. The current article, L. 313-11, 7° of the Immigration and Asylum Code (CESEDA) states that: "Unless his or her presence is a threat to public order, the temporary visa bearing the notice "private and family life" shall be granted... 7° to the foreign citizen not living in polygamy, who does not fit into the preceding categories or into those which grant the right to family reunification which include personal and family ties to France, assessed particularly with regard to their strength, duration and stability, the living conditions of the interested person, his insertion into French society as well as the nature of his or her ties with 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 laid out in article L. 311-7 being

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<sup>3</sup> Editions Législatives, Dictionnaire Permanent – Droit des étrangers. Update n° 35 (text deadline : 1 March 2007), page 1148.

required. Insertion of the foreigner into French society is assessed taking particular account of his or her knowledge of the values of the Republic”.

- [110]. This article is applied whether the couple is homosexual or heterosexual. It is also applied to married and PACSed couples. Indeed, article 12 of the PACS law refers to the CESEDA and provides that “concluding a PACS constitutes an element of appreciation of personal ties to France in the sense of article 313-11 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 set other conditions<sup>4</sup>.
- [111]. 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”. 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. 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.
- [112]. Present important and relevant case law: No relevant case law was found despite inquiries to associations and legal institutions specialised in foreigners' rights. It would seem not to exist or to be inaccessible.

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<sup>4</sup> Administrative jurisdictions reiterate “that a foreigner's contracting a PACS, either with a French citizen or with any foreign resident whose status is in order, alone does not 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, would not lead to excessive invasion of privacy;” (for an example, see the judgement of the Nantes Administrative Court n°05NT00206 of 3 March 2006).

## E. Freedom of assembly

- [113]. 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.
- [114]. 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. The life of an association inherently includes demonstrations.
- [115]. 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.

### E.1. Overview of national legislation.

- [116]. 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.

- [117]. 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 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.
- [118]. The relevant provisions are the following:
- [119]. 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”.
- [120]. The criterion of sexual orientation or identity is not taken into account.
- [121]. 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”.
- [122]. 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.
- [123]. Article 5: “Any association seeking to obtain the legal capacity provided for by Article 6 must be made public by its founders.
- [124]. 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...”

- [125]. Demonstrations on the public way are governed by the decree law of 23 October 1935 regulating measures relative to strengthening the maintenance of public order amended by the orientation and programming law n°95-73 of 21 January 1995 relative to security.
- [126]. The relevant provisions are the following:
- [127]. Article 1: “...all types of processions, parades and assemblies of persons, and, generally speaking, all demonstrations on the public way are subject to prior declaration...”
- [128]. Article 2: “The declaration shall be made at the commune's Town Hall or at the Town Halls of the different communes on which territory 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 and communes of the department of the Seine, the declaration is made at the police prefecture. It is made to the Prefect or to the Sub-Prefect for communes served by the state police.
- [129]. 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 location, the marshalling date and time and, when appropriate, the planned route”.
- [130]. 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 Prefectoral 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.

- [131]. 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. In case of infringement of the provisions of Article 5, dissolution may be pronounced at the request of any interested party or by the public ministry”.

- [132]. Dissolution of a demonstration is governed by Article 3 of the Decree Law of 1935: “If 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.”
- [133]. “The Mayor may, under the conditions stated by the law of 5 April 1884, either order a ban or annul an existing one”.
- [134]. 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

- [135]. There are no national statistics relative to limitations of the rights to association and demonstration of LGBT or anti-LGBT persons. Out of 100 prefectures in France that were contacted, only a dozen replied to us before the deadline.
- [136]. In the majority of cases, they had no data to send to us. The Ministry of the Interior, Overseas and Territorial Collectivities, the Ministry of National Defence, the Ministry of Culture and of Communication, and the Ministry of Justice did not reply to our inquiries. Of approximately thirty LGBT associations contacted, only three got back to us before the deadline.

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

- [137]. 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.
- [138]. 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.
- [139]. 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 state explicitly 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”.

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

- [140]. Anti-LGBT movements don't advertise themselves: no association is declared nor is any march organised. One can observe a great deal of discontent and incidents but these are generally individual initiatives. One exception should be noted: during the demonstration organised by the collective “Génération anti-PACS” in 1999, which gathered 100 000 people in Paris and was comprised mainly of pro-marriage heterosexual persons, insults and homophobic behaviours were observed.

### E.1.3.3. Is a change in legislation necessary?

- [141]. 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.
- [142]. Considering the fact that we have found no anti-LGBT associations or demonstrations we can only suppose that such practices are banned by the authorities.

## E.2. The State's Duties of Protection

- [143]. Even if the organisers of a demonstration must provide security, the exercise of police powers falls to the State. On this point, the figures we have received appear contradictory. The associations told us that the police presence seemed very strict and well-staffed, yet the Prefecture of Loire-Atlantique showed more modest figures (15 police officers during the 2007 Pride March in Nantes). One can assume that the police presence varies according to the types of demonstrations organised. Indeed, the figures reported by the Prefecture of Loire-Atlantique were those for the Pride March while the figures reported by SOS Homophobie (3 coach-loads of Gendarmes for 15 demonstrators) were for a demonstration organised to criticise the attitude of Egyptian authorities towards LGBT persons, during an official visit by the Egyptian president.
- [144]. Protection is assured when a third party “goes too far”. Certain associations have nonetheless felt an attitude of contempt from the police.

## F. Criminal law

- [145]. In the French legal arsenal, several laws explicitly condemn discrimination founded on sexual orientation. Firstly, law n°2001-1066 of 16 November 2001, relative to fighting discrimination, and which in particular amends articles 225-1

and 225-2 of the Penal Code on punishable discrimination, makes discrimination based upon sexual orientation an offence. Article 225-1 defines types of discrimination against natural persons and article 225-2 specifies the conditions in which these types of discrimination constitute a criminal offence. These are:

- [146]. refusal to provide goods or services;
- [147]. obstruction to normal economic activity;
- [148]. refusal to hire, penalising or dismissal of a person;
- [149]. exclusion from offers of employment or training, from offers of goods or services on the basis of one of the criteria of discrimination listed in Article 225-1;
- [150]. refusal to accept a person for training or retraining, especially with regard to victims of workplace accidents.
- [151]. Furthermore, Article 225-4 of the Penal Code states that artificial persons may be declared criminally responsible, (in accordance with the conditions of Article 121-2), for offences defined in Article 225-2.
- [152]. Thus, whether these types of discrimination are committed against a natural or artificial person, they are punishable by a prison sentence of 3 years and a €45,000 fine.
- [153]. Additionally, Law n°2003-239 for domestic security of 18 March 2003 makes discrimination based upon sexual-orientation an aggravating circumstance (Article 132-77 of the Penal Code). The 2007 Report on Homophobia by the association SOS Homophobie states that “homophobia as an aggravating circumstance seems to have been embraced by the justice system in cases involving homosexuals. In certain cases, this circumstance can even be introduced by the prosecutor when it was not envisaged by the victim and his or her lawyer. In 2006, all over France, several perpetrators of homophobic assaults were tried and some were even sentenced to prison. We applaud the courts' strict application of the Penal Code” (p. 59).
- [154]. Gaps have been found in the law on the press of 29 July 1881. Homophobic statements could not be punished based on Article 24, paragraph 8, of this law relative to provoking discrimination, hate or racial hate. This gap in French law

had to be repaired. For this reason, by recommendation of the Senate, a law was enacted to complete the existing legislation, particularly the law of 1881. The law in question is law n°2004-1486 which created the High Authority for the Elimination of Discrimination and for Equality (HALDE) (see above). Title III of this law adds discriminatory statements of a homophobic nature to the list of provocations to discrimination (Article 20 of the law). In addition, it is now possible to punish a person for homophobic libel or slander (Article 21 of the law). In this case, charges may be brought by the Public Ministry (Article 22 of the law). Moreover, any association, properly declared for a minimum of five years at the time of the incident in question, aiming by 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 with the consent of the person(s) when an offence has allegedly been committed against persons considered individually.

- [155]. Finally, the law of 9 March 2004 adapting the justice system to the evolution of crime amends Article 222-18-1 of the Penal Code, thus allowing specific incrimination for a threat based upon real or supposed sexual orientation. This is punishable by 2 to 7 years of imprisonment and fine of €30,000 to €100,000, according to the category of threat as described in Article 222-17 of the Penal Code.

## G. Transgender issues

- [156]. It is difficult to obtain information on transgender persons. There are no official statistics.
- [157]. Transsexuals have the right to change the sex 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 man who had become a woman, The European Court found that French law, by requiring constant revelation of her official sex, placed the complainant in a situation that was incompatible with her right to privacy.

- [158]. 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”(11 December 1992, JCP 1993, II, 21991).
- [159]. - Transsexuals also have the right to change their forename. Changing the sex stated in one's civil status automatically gives one the right to change one's forename if one so wishes.
- [160]. - Like any person, a transsexual has the right to the respect of his or her family life, as protected by article 8 of the E.C.H.R. He or she may marry in his or her new sex, a right which has never been prohibited in France.
- [161]. Finally, a transsexual may be granted visiting rights to an ex cohabiting partner's children. (V. CA Aix-en-Provence, 12 March 2002.)
- [162]. 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 2008: 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.
- [163]. An analysis of case law shows that any discrimination based upon a person's transsexualism is 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 Article L. 122-45 of the Labour Code. The solution seems to be accepted as a doctrine in France.
- [164]. The High Authority for the Elimination of Discrimination and for Equality has requested to present its observations before the Montpellier Conciliation Board as part of the current proceedings.

## H. Miscellaneous

### H.1. Homosexual adoptions.

- [165]. 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 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)).
- [166]. 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)
- [167]. 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 (CPAM) and then by the court of social security affairs in Nantes on 20 March 2006.
- [168]. 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.

## I. Good practices

- [169]. 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 goal.
- [170]. The HALDE is currently working on a “Diversity Label” which would reward the exemplary practices of some companies, administrations, or associations in matters of diversity.

Warning: 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 Penal Code.

[171]. There are thus no official statistics on the GBLT community in France.

## Annex 1 – Case law

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

Case title	Unknown
Decision date	15 December 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Agen Court of Appeal, Cour d'appel d' Agen
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 by reason of her alleged homosexuality.
Main reasoning/argumentation (max. 500 chars)	Article 225-2 of the Penal Code prohibits discrimination based on sexual orientation, particularly when it is an obstacle to participating in an economic activity.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The accused were sentenced by the first two courts to a fine of 300 euros each and 500 euros as per Article 475-1 of the CPP and to one euro of damages to the victim.

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

Case title	Bouville c. société Lidl
Decision date	3 April 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Cour d'appel; Court of Appeal Rouen
Key facts of the case (max. 500 chars)	The dispute deals with the dismissal of M.B. following an altercation with a fellow colleague due to the homophobic behaviour of the latter.
Main reasoning/argumentation (max. 500 chars)	M.B. justifies the common existence of insults and teases link to his homosexuality. In these conditions, although he did not get any bad assessment for his behaviour under his employment contract, violence used against M.H cannot constitute an actual and serious ground of dismissal.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Breach of article L 122-14 of French "Code du travail"
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Conviction of Lidl company for dismissal without any actual and serious reason to pay 12 000 euros of damages.

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

Case title	Case n°32, proceedings n°2005-91
Decision date	19 déc. 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	High Authority for the Elimination of Discrimination and for Equality (HALDE)
Key facts of the case (max. 500 chars)	Complaint by a male couple who were allegedly refused rental of a hotel room by reason 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 Penal Code.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
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 agreed, the College 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	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	High Authority High Authority for the Elimination of Discrimination and for Equality HALDE (report 2006 p. 95).
Key facts of the case (max. 500 chars)	The complaint is that of a civil servant who was a victim of discriminatory moral harassment by reason of his sexual orientation. This harassment came from both his subordinates and some colleagues without any steps being taken by the victim's management to bring an end to this gravely damaging behaviour the High . In the investigation of 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)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Authority requested that the minister responsible for the administration in question seize the relevant authority. The minister in question informed the High Authority that an inquiry was underway.

**Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	There is no case law concerning the rights of LGBT partners in the context of freedom of movement ( cf bases de données Lexisnexis, Dalloz, Lextenso)
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**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
Reference details (type and title of court/body; in original language and English [official translation, if available])	CRR, 21 October 2005, 495394
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 creates a party that defends homosexual rights, which leads to legal pressure and harassment, including police brutality and being charged with two fallacious crimes. This leads him to flee to France before returning to Russia at the expiration of his visa. Continued persecution leads 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 (by reason 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 (max. 500 chars)	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
Reference details (type and title of court/body; in original language and English [official translation, if available])	CRR, 12 mai 2006, 555672, M.S. Published : 6/10/2006
Key facts of the case (max. 500 chars)	M.S, a Bosnian national, is the child of a mixed couple, his father being Bosnian and his mother a Serb. Beaten by Serbian soldiers in Tarevci, and victim of serious abuse in a detention centre, M.S. was also persecuted in Gradacac, in Bosnia-Herzegovina, by reason 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 (by reason 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 Penal 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 that the Bosnian authorities cannot provide protection. Therefore, he is at risk of one of the serious threats defined by Article L712-1, 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.

Case title	M.B., Gabon
Decision date	3 July 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	CRR, 3 juillet 2006 497803
Key facts of the case (max. 500 chars)	M.B., a Gabonese national, was granted subsidiary protection by reason of two arbitrary detentions as well as ill-treatment by his family. He now requests convention 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 doesn't hesitate to tread upon homosexual rights and that judges and police officers see homosexuality as a criminal deviance and 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 conventional 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.

Case title	M.A. Algeria
Decision date	22 February 2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	CRR, 22/02/2000, 343157
Key facts of the case (max. 500 chars)	M.A. is an Algerian national who is “widely known” to be homosexual, by reason 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 appeals to the CRR to obtain refugee status.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The CRR esteems 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 (max. 500 chars)	La CRR annuls the OFPRA's decision and grants M.A. refugee status in the sense of the Geneva Convention.

Case title	M.E. Algeria
Decision date	22 May 2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	CRR, 22/05/2000, 340068
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 conventional 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 by reason 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 esteems 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 (max. 500 chars)	The CRR rejects the claim and confirms the Interior Ministry's decision.

**Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter E, Freedom of assembly, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter F, Hate speech, case 1**

Case title	Vanneste Christian
Decision date	25 January 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Douai Appellate Court
Key facts of the case (max. 500 chars)	Homophobic statements made by UMP Deputy Christian Vanneste during an interview in the newspaper, “La Voix du Nord”.
Main reasoning/argumentation (max. 500 chars)	Restricted to Article 10 of the ECHR Utilised the law of 30 December 2004
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Unknown
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Fines: 3000 euros 7500 euros damages paid to the associations constituted as civil parties 1000 euros payment of costs for publishing the court's verdict in several periodicals

**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 [official translation, if available])	Tribunal correctionnel de Lyon
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
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Unknown
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The accused was sentenced to 5 years in prison by the Tribunal correctionnel de Lyon

Case title	François Chenu
Decision date	8 October 2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	Cour d'Assises des mineurs de la Marne
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)	Unknown
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Unknown
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	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 by reason 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.

Case title	Unknown
Decision date	3 April 2003
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunal correctionnel de 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 of whom two were minors. The youths surprised the victim masturbating and proceeded to kick, punch and beat him with a stick.
Main reasoning/argumentation (max. 500 chars)	Unknown
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Unknown
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The accused were sentenced by the Tribunal correctionnel de Lyon to sentences ranging from 3 to 6 months' probation. (Summary hearing)

**Chapter G, Applicability of legislation on trans gender issues, case 1**

Case title	
Decision date	
Reference details (type and title of court/body; in original language and English [official translation, if available])	
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1**

Case title	
Decision date	12 mars 2002
Reference details (type and title of court/body; in original language and English [official translation, if available])	Court of Appeal Cour d'appel d'Aix en Provence
Key facts of the case (max. 500 chars)	
Main reasoning/argumentation (max. 500 chars)	A transsexual may be granted visiting rights to an ex cohabiting partner's childrenFor
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

**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 n° 2008/29
Decision date	18 February 2008:
Reference details (type and title of court/body; in original language and English [official translation, if available])	High Authority for the Elimination of Discrimination and for Equality
Key facts of the case (max. 500 chars)	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.
Main reasoning/argumentation (max. 500 chars)	
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	

## Annex 2 – Statistics

[175]. 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 Penal Code. There are thus no official statistics on the GBLT community in France.

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

	2000	2001	2002	2003	2004	2005	2006	2007
	total complaints of discrimination on ground of sexual orientation : High thority (HHALDE)						38	61
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								

**Chapter B, Freedom of movement of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007
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								
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### Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.								
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 sexual orientation								

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

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC								
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner								

### Chapter D, LGBT partners benefiting family reunification

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.								
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
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
Number of demonstrations against tolerance of LGBT people.								

**Chapter F, Homophobic hate speech**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)								

Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)								
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, even if no sanctions other than symbolic were imposed)								

**Chapter F, Homophobic motivation of crimes as aggravating factor**

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing								

**Chapter G, Transgender issues**

	2000	2001	2002	2003	2004	2005	2006	2007
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 on homophobia and/or discrimination on the ground of sexual orientation**