Responding to racism in France

european network against racism
réseau européen contre le racisme
“Men are born and remain free and equal in rights”  
(Declaration of the Rights of Man and of the Citizen, 1789)

Anti-Semitism, one of the fundamental bonding elements of French nationalism, reached its climax when the French State collaborated with the Nazi occupation, organising raids and taking part in the deportation and genocide of the Jews. Although the level of anti-Semitism has decreased significantly, it nevertheless remains an integral factor in France, especially in the shape of revisionism and denial.

In the 19th century racism based on genetics was used to justify colonialism and the treatment of black people. The discriminatory and cultural stereotypes and prejudices inherited from the colonial period have led to direct and indirect discrimination becoming commonplace. French anti-racism and anti-discrimination criminal legislation is severe but is too rarely enforced.

In a social climate in decline the right and extreme right are trying to win over the electorate, portraying immigrants in the role of scapegoat. The fundamental rights of foreigners and asylum seekers without papers are a particular target.

Thousands of citizens are marginalised from the social and republican contract – access to housing, employment and educational guidance – because of the colour of their skin, their religion, their name or because they live in an area which is stigmatised. They are legally deprived of the right to vote and of access to public employment. A variety of institutions (educational, the police, the justice system and prisons) are by no means free from discriminatory or even racist practices. In fact, the widespread nature of this phenomenon reveals a serious gulf between the republican ideal of human rights and everyday reality.

The social impacts of this are devastating, causing community and religious disaffection and despair, as well as disturbances and violence in towns and cities.
THE FRENCH COMMITTEE OF ENAR

Now numbering twenty organisations, the French Committee of ENAR was established on 11 June 1999 as a French association under the 1901 law, with the aim of “combating racism and xenophobia” (Charter) and developing links between its members and within the European Network. It has a place on the Board of ENAR. An extended Board meets approximately every two months, thus maintaining the organisation’s momentum. Since it was set up it has organised and co-organised seminars and other opportunities for reflection in France and within ENAR on subjects such as “positive discrimination” (affirmative action), “A European citizenship of residence”, “Discrimination: an avoidable evil?”, racism arising as a result of EU migration policy, lobbying skills and developing and supporting the network. It is part of the campaign “Demain le monde: les migrations pour vivre ensemble” (“Tomorrow the world: migration for living together”).

OVERVIEW OF ENAR – EUROPEAN NETWORK AGAINST RACISM

ENAR promotes the cause of anti-racism and equal treatment for ethnic minorities and non-EU nationals residing in the European Union.

ENAR is a network of European NGOs working to combat racism in all EU Member States. The NGOs have formed National Coordinations (NCs), which constitute the membership of ENAR and include ethnic minorities, immigrants’ associations, information centres, advocacy groups, trade unions, faith based organisations and many others. Democratically elected representatives of each NC attend the Network’s meetings where they are consulted on policy and statutory issues. One of the representatives of each NC should belong to an ethnic minority.

ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives.
Racism and discrimination can affect people because of their membership or non-membership, genuine or alleged, of a particular ethnic group, nation, race or religion, because of their appearance or the colour of their skin, their name or because of where they live, which is often associated with social disadvantage.

Against the international backdrop of the prolonged crisis in the Middle East and the attacks of 11 September 2001, France has seen a rise in racist discourse and racist violence, especially against groups that may be identified with the Palestinian and Israeli people. Anti-Semitism and anti-Islamic racism (Islamophobia) are unfortunately on the increase.

The groups that suffer particularly from discrimination are those identified as being of “immigrant origin” (first generation immigrants and their children, most of them born in France). The communities most affected originate from the former French colonies in North Africa (Morocco, Algeria and Tunisia) and from French-speaking (and also English-speaking) sub-Saharan Africa.

However, there are other groups from countries in conflict (in particular Kurds, Pakistanis, Iraqis and Afghans) who are in transit or living long-term in France, where they may or may not be seeking asylum. They experience the extreme poverty of people with no fixed abode as well as a variety of forms of prejudice and discrimination.

Too little is still known about the situation of communities of Asian origin, who are rarely mentioned as victims of racism and discrimination. Very few complaints are lodged, but it is unclear whether this means that these groups are not subject to the same stereotypes or simply that at present they have decided not to seek recourse through the justice system.
The law on the freedom of the press (1881) sanctions:

- racist speech and writing,
- insult and defamation against a group of people

The “Pleven” anti-racism law (1972)
- extends prohibition to include racist speech or writing perpetrated against individuals,
- creates the offence of provoking discrimination, hatred or “racial violence”,
- prohibits certain racist behaviour by creating the offence of discrimination
- allows anti-racism organisations to act on behalf of the victims as the party claiming damages (provided the organisation has been established for five years)

The Labour Code
- since 2001 the areas where discrimination is prohibited are: recruitment, sanctions and dismissal, training, remuneration and promotion,
- the rules for the burden of proof have been modified: the victim does not have to prove the facts, but must provide material indications, and the employer must then prove that the measure taken was for reasons other than discriminatory ones,
- takes account of indirect discrimination, where a neutral criterion is likely to create a particular disadvantage for people of a particular origin

The “Gayssot” law (1990)
- prohibits denial discourse.

The Criminal Code
- proving discrimination remains very difficult
- indirect discrimination is not taken into account

The “Lellouche” Law of 2003
- establishes that racist or anti-Semitic grounds for an offence are considered as aggravated circumstances.

Furthermore, over 6.5 million jobs in the public services, state-owned companies and regulated professions are closed to foreign nationals from outside the European Union. A few professions have recently been opened to foreigners, including in social security and Transports Parisiens (Paris transport corporation).
There are four national organisations which have combating racism as a statutory aim: LICRA, Ligue des Droits de l’Homme, MRAP and SOS-Racisme. The first three are members of the French Committee of ENAR.

A number of organisations are involved at the local level in educational activities, social inclusion and co-development with the immigrants’ countries of origin. Others are active in campaigning for effective equal rights and against discrimination in schools, in the workplace and in housing (especially social housing). This work also extends to the media and to the political sphere, where the aim is to make the image French society projects of itself more representative of the diversity of its origins.

The large trade union confederations are also involved in combating racism. Some of them play an important role in raising awareness and supporting their members in cases of discrimination in the workplace.

“Education against Racism Week”, aimed at raising awareness among secondary school students about the fight against racism, is organised annually around 21 March (International Day Against Racism since 1967) by a national team whose remit it is to promote citizenship education. This team consists of the following organisations and trade unions: ANIMA’FAC - CEMEA - CIDEM - Clubs UNESCO - CNAFAL - EEDF - FASTI - FCPE - FEN - FEP-CFDT - FERC-CGT - FSU - JPA - Léo Lagrange - Les Francas - Ligue des Droits de l’Homme - LICRA - Ligue de l’enseignement - MRAP - OCCE - PEP - SGEN-CFDT - UNEF - Union Nationale Lycéenne.

Le CIDEM-Civisme et Démocratie (Citizenship and Democracy), is a national organisation established in 1984 (with 11 members) which organises information campaigns and promotes active citizenship (e.g. getting people registered on electoral rolls). Its website provides a wide range of educational and information material.
Many anti-racist NGOs have not traditionally engaged in legal processes, often this is for the simple reason that there was little law for them to refer to. However the adoption of the EU Race Directive (see section ‘EU and anti-racism’) and the development of national law, means that now more than ever litigation has the potential to lead to real change for those who are vulnerable to racism and discrimination.

As anti-discrimination is a relatively new field of law, NGOs have a role to play in raising awareness regarding its potential. Consequently the strategic litigation has come to the fore as a useful advocacy technique NGOs can both directly engage in strategic litigation and support others to do so by gathering data, assessing victims and engaging in advocacy.

“Strategic or impact litigation uses the court system to attempt to create broad social change”

The primary focus of strategic litigation is law or policy change rather than redress for an individual, though these two objectives are not mutually exclusive. Strategic litigation intends to reach beyond an individual case or victim, to create a context of enhanced protection for everyone who is vulnerable to discrimination. By changing law or setting precedents an individual case can have a ripple effect leading to change on a much broader level.

The concept of strategic litigation encompasses the selection of cases, case planning and management, as well as ensuring that favourable outcomes are implemented.

Not every NGO has the mandate or skills to engage in litigation, nor will litigation necessarily be the right strategy in many cases. Nonetheless, it is essential for all anti-racism actors to recognise the importance of strategic litigation as a tool for generating change.
PUBLIC SERVICES AVAILABLE TO VICTIMS OF DISCRIMINATION

HALDE (Haute Autorité de lutte contre les discriminations et pour l’égalité – National Authority for Combating Discrimination and Promoting Equality), set up in 2005, is a collegiate body with eleven members appointed at the highest institutional level of the State. It decides how the complaints which are lodged with it should be dealt with and adopts opinions and recommendations for the promotion of equality. It is assisted by the Consultative Committee, which is made up of individuals from civil society, some of whom are directors of the member organisations of the French Committee of ENAR. It is entitled to undertake inquiries and mediation and can also institute legal proceedings itself and report criminal offences to the authorities for action in court.

08 1000 5000 (local rate phone number) provides information about the rights of victims, anti-discrimination legislation and lodging complaints with HALDE.

Any victim, potentially supported by an organisation, can submit a complaint in writing to: Haute Autorité de lutte contre les discriminations et pour l’égalité, 11 rue Saint Georges 75009 Paris. HALDE undertakes to provide information in writing about how complaints are followed up.

It is not yet known how effective HALDE may be since its resources have been cut and it has no local representation. The fact that cases are only dealt with in writing is difficult for many victims, as often their primary need is to be heard and understood, a process which may be the only way to determine the facts of a case.

It is still possible to initiate legal proceedings in parallel by lodging a complaint, either in person at a police station or in writing to the public prosecutor.

With regard to discrimination in the workplace, cases may be referred to the labour inspectorate or a complaint may be brought before an industrial tribunal.

Because of the complicated nature of these processes, the work carried out by organisations with the victims is essential.
National NGOs working on anti-racism are already seriously overburdened in their work to confront racism and discrimination. Why then should they also be concerned with what is going on in other European countries, and in the institutions of the European Union itself?

Developing an understanding of racism in Europe is essential for two key reasons. Firstly, to promote learning and knowledge about what racism is and how to combat it and secondly to generate common tools across the European Union to combat racism. Experience over the last ten years has demonstrated that national governments can be convinced to take action at a European level, where they may not have been prepared to move forward alone.

Racism has a distinctly European dynamic. Europe’s colonial history underlines its role in fostering both historical and contemporary forms of racism; and the 20th century does not cast a positive light on the European legacy. Despite this long history Europe began to take racism seriously relatively recently. Europe has a responsibility both to the people living within its borders, as well as internationally to take a leading role in promoting a vision of a world free from racism.

In 1997, Article 13 of the Amsterdam Treaty gave the European Union a legal base on which to develop ‘appropriate measures to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’. Using these powers the European Union adopted the Race Equality Directive in June 2000 (and later that year the Employment Equality Directive).

While the Race Directive was due to be fully implemented by July 2003, at the beginning of 2006 some Member States have failed to implement it. This reality raises questions about the continuing commitment of EU Member States to combat racism and discrimination. However the Directive does have direct effect, which means that individuals can assert it before national courts, even where it has not been implemented.
The Race Directive gives protection against discrimination in employment and access to a range of good and services, including social protection, health, social security and education. It puts forward a number of important definitions including: direct and indirect discrimination, harassment, and victimisation. Other significant aspects of the Directive are that it allows for positive action measures, the sharing of the burden of proof, and the establishment of equality bodies.

The principles enshrined in the Race Directive need to become core elements of anti-discrimination law and practice across the European Union. Strategic litigation is a tool to ensure that this happens. To this end, it expressly allows for NGOs to engage in proceedings in support of or on behalf of victims.

While Article 13 of the Amsterdam Treaty provided the context for developments in the field of anti-discrimination, Article 29 of the Treaty on European Union included reference to preventing and combating racism. While the European Commission proposed a Framework Decision against racism and xenophobia (racism as a crime) in 2001, developments in this policy area have been disappointing; the Council has failed to adopt the Framework Decision. In addition the European Union has competence in other policy areas that either directly or indirectly impact on the fight against racism, including: social inclusion, migration and asylum, and education.

The European Union is also involved in a range of other activities, including awareness raising (through the ‘For Diversity. Against Discrimination’ campaign) and funding of anti-racism projects. In 1997 the EU Monitoring Centre on Racism and Xenophobia (EUMC) was established. While the Centre is likely to be expanded to become a Fundamental Rights Agency in 2007, it will continue to focus on the problem of racism in Europe.
LINKS AND SOURCES OF INFORMATION IN FRANCE

Civil service: www.service-public.fr/
Documentation Française: www.ladocumentationfrancaise.fr/
HALDE: www.halde.fr/
CERGORS (Université Paris I): Observatoire des discriminations (Discrimination monitor): http://cergors.univ-paris1.fr/
URMIS (Université-CNRS): www.unice.fr/urmis-soliis/
Demain Le Monde (Tomorrow the World): www.demain-le-monde.org/
Les Semaines d’éducation contre le racisme (Education Against Racism Weeks): www.laligue.org/laligue/rubriques/champs/edu/citoyen/racism/06sem.htm

KEY LINKS AND SOURCES OF FURTHER INFORMATION AT EUROPEAN LEVEL

EU Monitoring Centre on Racism and Xenophobia: www.eumc.eu.int
European Commission - anti-discrimination and relations with civil society: www.europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm
European Network Against Racism (ENAR): www.enar-eu.org
European Roma Information Office: www.erionet.org
European Union: www.europa.eu.int
‘For Diversity. Against Discrimination’: www.stop-discrimination.info
Strategic Litigation of Race Discrimination in Europe: from Principles to Practice: www.migpolgroup.com/documents/2498.html
Strategies on Litigation Tackling Discrimination in EU Countries: www.solid-eu.org
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following link: http://www.enar-eu.org/en/publication/national_leaflets/

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