

A European Approach to Multicultural Citizenship
French Report – WP4 Legal challenges

**From Integration to Antidiscrimination... to Diversity?
Antidiscrimination Politics and Policies in French Workplaces**

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Introduction

As previous reports on France have shown, France, although an old immigration country, has only come to see itself as a land of immigrants recently. The assimilationist model (Brubaker 1992, Favell 1998) that used to prevail has been called into question at the end of the nineties, especially through the rise of antidiscrimination policies on the job market. This new framing of an old issue –the integration of migrants and today of their children as well in the French economy and on the job market – has critically challenged the assimilationist model. Indeed, antidiscrimination does not stress the responsibility of migrants to adapt and to integrate, but rather puts the burden of integration on the social system itself, on businesses and state institutions, now responsible for ensuring equal opportunities for migrants and their descent on the job market. The growing awareness of the failure of the French model of integration has greatly contributed to the paradigm shift from “integration” to “antidiscrimination” observed since the end of the nineties.

The French case is therefore particularly puzzling because policies to fight discriminations and to promote diversity have been, against all odds, very rapidly adopted and implemented by the private sector over the last decade. With some delay, the public sector is now adjusting to the new motto of “diversity”. The French legal framework has been, under the impetus of EU 2000 directives, thoroughly revised to prevent discrimination and to offer new legal routes for plaintiffs to claim for remedies and recognition of the discriminations they might have endured. The main public institutions, employers’ unions, workers’ unions and the management boards of big corporations have converted to the rhetoric of diversity and launched experimentations to combat ethnic discriminations in the workplace. A whole new economy of “diversity consulting” has emerged and important agreements among social partners have been signed by which employers and unions commit to promote diversity, to fight against ethnic stereotyping, and to ensure fair processes of recruitment and promotion.

How can we account for such a success, especially if we compare it with the strong resistance the State has opposed to multiculturalism in the Education (see the WP3 report on France) or in the public sphere? What is the real scope of this conversion to antidiscrimination? To what extent are religious, ethnic and cultural differences really welcomed and accommodated in the workplace today in France? Is the diversity motto only a rhetorical tool or does it translate in effective legislation, concrete remedy policies for workers who have been discriminated against, and unbiased human resources processes in French businesses? How do the various actors involved in this change of policy paradigm perceive the priorities of such policies and how do they contribute to their possible evolution over time?

To answer these questions, the report will first assess the scope of the shift from an “integration” paradigm to an “antidiscrimination” one and trace back the main steps taken by various public and private actors to combat discrimination in the workplace. It will also look into the role of the EU in this process and give an account of the main legal and institutional changes which have taken place in the last decade and have reshaped policies targeting migrants and visible minorities. Secondly, the report will give a full account of how actors promoting antidiscrimination –such as workers and employers unions, consulting agencies, big firms etc. – have promoted new approaches and elaborated various experiments. Indeed, the rise of the antidiscrimination framework has challenged previous approaches held by workers unions about immigration and racism. Similarly, corporations, under the threat of legal and financial sanctions, have used all available means to try to correct previous systemic discrimination in their recruitment and promotions processes. In this vast process of changing practices and policy frames, public and private actors have redefined their roles and

responsibilities and this section will look at the impact of these evolutions on the prevention of discrimination and the accommodation of ethnic and religious diversity. Finally, the last section will investigate the challenges which have been identified thanks to our fieldwork with various key actors of these policies. Indeed, if combating ethnic and racial discrimination – that is accepting a form of *color consciousness* in human resources (HR) processes – is more and more widely accepted as a legitimate concern and practice, the issue of religious accommodation remains a very contentious one. The wearing of headscarves on the workplace exemplifies this bone of contention and the lack of clear legal framework on this issue contributes to the development of heterogeneous, and often intolerant, practices, without leaving many resorts for plaintiffs.

1. From Integration to Antidiscrimination: A Paradigm Change?

1998 marks a crucial year in the history of public policies vis-à-vis migration related issues in France. That year, several factors combined to call into question the model which had long been the only legitimate one, that of republican integration. A left-wing government was elected, social issues were high on the political agenda, and unemployment especially among immigrants and their children was high too. Internal pressures, mainly the apparent failure of the integration model, the exhaustion of former political tools –mainly urban renewal and territorial preferential treatment policies – and the growing demands from sections of civil society combined with the legal changes embedded in the EU Amsterdam Treaty to open a window of opportunity for a paradigm change that has impacted public policies. Despite political changes at the government level, that is the return of right-wing parties in power since 2002 and subsequent ambiguities in the political discourse about immigration which are perceptible from 1998 up until today, the antidiscrimination paradigm has taken over, at least as far as the job market and the related public policies are concerned.

As Virginie Guiraudon notes, between 1973 and 1998 French migration and integration policies did not evolve very much, relying on the idea that cultural difference was bound to remain a private issue (and religion a private practice), and that the acquisition of French nationality (rather than French citizenship) was the successful outcome of the assimilation process (Guiraudon 2005 :163). This French model of integration can be summed up as follows:

- Integration is an individual process which shall not tolerate participation of immigrants in any structured ethnic communities whose institutionalization poses a threat to the unity of the Nation;
- Admission as a citizen, i.e. becoming a French national, remains the pivot of the integration process. The States maintains an open code of nationality, allowing for a rather sizeable admission of foreigners according to various procedures, and to ensure an ongoing “mixing” of populations. This also prevents the emergence and perpetuation of “minorities” with specific legal statuses as a result of confusions between the notions of citizenship and nationality.
- The concept of integration is attached to the principle of equality in that it tries to concretely reinforce the expression of equality in the social field.

In a way, the specifics of French integration policies is a permanent quest to strike an unlikely - and even, according to many observers, unattainable - balance between an active form of tolerance towards differences (including some concessions to the public expression of such differences) and the vigilant reassertion of the “principle of undifferentiation”. This

traditional intervention policy is now being confronted to the evidence of major ethnic or racial discriminations in many spheres of social life (Simon, 2006).

Since the early 1990s, various official reports and a few announcements from top Government institutions have given a voice to an emerging concern with discrimination. By placing the « principle of equality » at the very heart of the « French model of integration », the Conseil d'Etat's 1996 report started a reflection on the possible consequences of cultural diversity in the population and on the necessary adaptation of public intervention to this reality. This, in turn, brought about the conviction that illegitimate, if not downright illegal, differences in the way foreigners and indeed French citizens with actual or purported minority ethnic or racial origins are treated as well as unequal access to rights, goods and services, were a direct offence to the Republic's most fundamental values and at the same time undermined, by their very existence, any efforts towards restoring social cohesion. In 1998, the report from the Haut Conseil à l'Intégration (HCI, the independent public body in charge of giving recommendation on immigration and integration policies since 1991), shifted its approach, recommending to strengthen antidiscrimination provisions. The shift from integration to an antidiscrimination approach can be summed-up along the following lines. Where the integration approach stresses the responsibility of the immigrant to integrate, that is to assimilate to French culture and to enter the French job market, the antidiscrimination approach shift the burden to the whole society and its public institutions. The antidiscrimination paradigm does not restrict the targeted groups to immigrants or even their descendents but encompasses the categories of ethnic or racial, or so-called visible minorities. In this framework, ethnic, racial or visible minorities face obstacles and discrimination which must be removed by the various actors in charge of its economic and social participation. How has this revolution occur in French politics and policies targeting the workplace and the job market?

1.1. Exposing Ethnic Discriminations: the Social and Economic Failure to “Integrate” Migrants and their Children

The discriminations against migrants and their children and against visible minorities in general are pervasive on the French job market. Although the lack of ethnic statistics does not allow for precise data and analysis (one must rely on the nationality of the parents, and therefore also misses people of color from the French Caribbean for example) a range of indicators are today available which clearly show a systemic discrimination pattern. The quite recent unveiling of such a breach¹ in the egalitarian French model has contributed to raising awareness among the political elite and the business management as well as the population in general. Cases of “testing”² at the entrance of night club or for recruitment offers conducted by the best known French anti-racist NGO (SOS-Racisme) and by the Observatory of discriminations were widely covered by the media since 1999 and made visible a reality that the egalitarian model and the republican discourse had prevented from emerging in the public eye. In 1997 a research funded by the workers union CFDT on racism in the workplace, and conducted by sociologist Philippe Bataille (Bataille 1997) revealed the scope of the

¹ One of the first research attempting to assess the extent of ethnic and racial discriminations was conducted in 1994 in the context of a research for the European Foundation for the Improvement of Living and Working Conditions (see Rudder et al. 1994)

² “Testing” or “testage” is the French term for situational testing and consists in sending two applicants (to a job, a night club entrance etc.) who share the same characteristics (CV, outfit etc.) except for their race/color, in order to test the reaction of the employer/owner and make visible if his/her practices are discriminatory.

phenomenon and also its day-to-day dimension. The rise of a so-called Second Generation's problem has also changed radically the traditional frame of integration. Despite their French citizenship and their education and socialization in the French system, statistics on educational attainments and access to the job market bring bad news: gaps in outcomes still remain high and cannot be explained only by social or human capital differences (Simon 2003, Meurs et al. 2006).

The awareness of the articulation between an education system that tends to channel children of immigrants in the least prestigious curricula and the job market which discriminates against them has dramatically increased by the end of the nineties. As various interviewees have stated, at the end of nineties, the "second generation", the children of immigrants from former African colonies, have entered massively on the job market. The issue of ethnic discriminations therefore became much more salient, and contradicted more clearly the Republican ideal of egalitarianism. When only immigrants were discriminated against, their cultural difference, their lower professional skills and professional training could explain the fact that they occupied the lowest paid jobs in the economy. However, the same explanation could obviously not apply to their children's situation.

The number of foreign workers on the French job market is estimated to be around 1.5 million people, nearly 5.7% of the overall working population (DPM 2006). In 2005-2006, these workers were mainly from three countries: Portugal (22.8%), Algeria (12.6%) and Morocco (12.5%). The unemployment rate (according to the ILO definition) among immigrants was 18.4% in 2002 compared to 8.3% for French citizens. Migrant women are more affected than men and among immigrants, those from North Africa, sub-Saharan Africa and Turkey are more affected than the rest (from Spain, Italy, Portugal for example) (CEDRA 2005). The unemployment of immigrants has reached its peak in the nineties, and has been decreasing still the 2000, probably due to the tension on sectors of the job market such as the building trade. The need for workers has contributed to the diminishing of ethnic discrimination in this sector of the economy. However, as mentioned above, the issue of ethnic discrimination looms larger than discrimination against migrants. It encompasses in the French case discriminations against their children. Despite different educational background, the strong discrepancy between unemployment rates of children of migrants and children of French citizens suggests systemic discrimination in the access to the labour market. In 1998 20.1% of young people from Northern African origin were unemployed after having entered active economic life for 3 years, against 10.2% of young people with both parents born in France. With respect to the type of jobs children of migrants have access too, despite some intergenerational mobility; children of immigrants still have access only to low-qualified jobs, in sectors of the economy often sensitive to economic fluctuation (Meurs, Pailhé and Simon 2006). A 2004 study on young people who obtained the secondary education diploma in 1998 showed that they are also often offered jobs for which they are over-qualified: everything held constant, young men whose fathers are from North Africa have 1.3 more chance to get an unskilled job than young men whose father are French (Lainé and Okba 2005, on this "underemployment" see also Richard 2006). Their jobs are also more precarious: 39% of young men from North African descent held precarious jobs, when 21% of young men from a south European background faced the same situation (Lainé and Okba 2005). Gender also plays a role in this dynamic: the survey showed that 44% of women of North-African background were unemployed for more than a year as compared with 19% of men from the same background (Frickey *et al.* 2004 and FASILD 2006). Wage inequality has also been measured with respect to national origin: "the median wages of young people from North Africa is 16% lower compared to the median wages of young people of French origin" (FASILD 2006). Discrimination is also pervasive in more prestigious and skilled jobs: a 2006

study by the FASILD on managers whose parents are from North Africa confirms that they are generally more educated than their counterparts with a European background to occupy the same job. For example 70% of the managers who have a North African origin have a higher tertiary education diploma or more, against only 40% of the manager with a European background (Santelli 2006).

A recent situational testing conducted according to the ILO methodology was carried out in 2005-2006 to measure ethnic discrimination during recruitment processes (Cédiey and Foroni 2007). The study involved 2240 job ads and shows that when employers decided to choose between the proposed candidates (one from African descent, the other from a “French” background, called “majority candidate”) with identical curricula, they chose the majority candidate in 70% of the cases, and the minority one in only 19% of the cases. Only in 11% of the cases did the employer maintain equal treatment between candidates (for example by asking both of them for a job interview). Out of the 51% gap between majority and minority candidate, 33% (that is almost 2/3 of what the ILO defines as discrimination) happens at the first step of selection (the written application for the job).

Besides the attempts to measure discriminatory practices on the job market, the issue of how children of immigrants *feel* they are discriminated against is also of importance. A study conducted by the INSEE showed that 39% of immigrants and people from foreign descent claim to have been victim of negative treatment, most of the time in relation to their origin, the color of their skin, their name or their way of talking (Drees 2004). The calls received by the HALDE (the independent authority in charge of monitoring all types of discriminations and helping victims to obtain reparations since 2004) shows that ethnic discriminations is the most common ground for complain, and that they concern mostly access to employment, professional life and training (43% of all claims): in 2006, 4058 claims were registered by the HALDE (out of almost 31000 phone calls), out of which 35% were related to discrimination on the ground of ethnic origin.

1.2. Reforming a Worn-Out Model: the Necessity to Change the Policy Paradigm

Various factors can help explain the shift in the political response given to migration related issues since 1998. As the precedent section suggests, the demographic make up of ethnic minorities has significantly changed since the end of the 70s. The massive entry on the labour market of the second generation has thus made discriminatory practices much more salient. In the face of so much data unveiling a breach in the egalitarian motto, public authorities felt compelled to act, all the more so that the previous policy tools used to address the social problems faced by the urban youth from migrant descent appeared more and more ineffective. The story of the rise of antidiscrimination paradigm in France can be told by looking to change of governments, growing pressure from new ethnicity-based NGOs, impact of the EU antidiscrimination directives, workforce shortage in some sectors of the economy. This section will examine more specifically the internal factors that contributed to debunk the integration model. The change of policy paradigm, although it is still uncompleted, has happened simultaneously, at the **level of discourses, i.e. political ideas**, and at the **level of policy tools and public policies**. The next section will look at the specific impact of the EU.

- Political Discourses and Ideas

The critique of the integration model clearly emerged in 1998 and 1999 in various reports handed in to Socialist Prime Minister Lionel Jospin: the HCI and the CNCDH 1998 annual reports *named* the phenomenon of racial and ethnic discrimination clearly and urged the government to act upon it, while the 1999 Belorgey report, commissioned by Work and Solidarity Minister Martine Aubry recommended the creation of an independent authority in charge of antidiscrimination policies. The government took various actions that shifted the perspective from integration to antidiscrimination. First, Aubry initiated with the Minister in charge of urban planning Claude Bartolone a transformation of the former urban planning policy which used to be one of the main tools for integration policies targeting immigrants and their children so that it now takes into consideration the issue of discrimination based on ethnic origin. Second, in May 1999 Aubry initiated with all the social partners (workers unions and employers unions) a “Grenelle declaration on discrimination in the workplace”. This declaration not only *named* the social fact of ethnic and racial discrimination in the workplace but also strongly *condemned* it as a breach of the Republic’s commitment to equality of treatment for all. Racial discrimination is defined in the declaration as a complex phenomenon which cannot be reduced to social inequality or intentional racism. Meanwhile it also stressed the need for a strong and durable commitment from employers and unions to fight discriminations, a need which did not, at the time, appear quite obvious for most of them. Lionel Jospin’s as well as Aubry’s discourses during the Citizenship Forum (March 18th 2000) and even President Chirac’s October 14th 2002 speech in which he placed the combat against discriminations at the core of integration policies, sent a signal to NGOs, bureaucrats and social partners that they ought to take over seriously the issue of discriminations (Bleich 2003).

However, it should be underlined that despite a real break with former political discourses on integration or social cohesion, there was no promotion of a multicultural perspective. Indeed, the main framing of the issue is one of redressing and correcting unequal treatment. The objective is therefore to take active steps to guarantee equal treatment, that is, to effectively implement the republican promise of equality. As the declaration states: “This reaction must first consist in reaffirming and implementing principles of equality, non discrimination and secularism (*laïcité*) which constitute the Republic’s fundamental pact”.

The following years have witnessed ambivalent developments with respect to the public –and legitimate- discourse on discriminations. Indeed, on the one hand, the state has developed new policy tools and created new institutions to promote the combat against discriminations (see section below). However, the discourse of the highest political authorities has often been contradictory or fuzzy, especially on the theme of racial discrimination. Debates about positive action and ethnic statistics have been recurrent between 2000 and 2008, and no political consensus has emerged so far. Moreover, with the Right wing parties back in power in 2002, immigration policies have shifted towards a much more law-and-order approach emphasizing immigrants’ duties vis-à-vis French society (with the “integration contract established in 2002) and restricting access to nationality and citizenship (Guiraudon 2005). While since 2005 new NGOs such as the CRAN (comité representative des associations noires) and the Indigènes de la République (the Republic’s indigenous) organized on the basis of ethnic or postcolonial identities have mobilized around the issue of ethnic discrimination, while the urban riots of November 2005 also focused the media and public attention on this issue, while big corporations are more and more active in their policies to prevent discriminations in the workplace, the political discourse of the government remains blurred

and unclear. As one civil servant in charge of job training in the integration and citizenship unit of the Ministry of immigration notices in his interview, the political discourse that ought to determine clearly public authorities' priorities in these matters is quite ambivalent. Currently there is no strong political support for antidiscrimination policies that could clearly orient bureaucrats' initiatives in this domain.

The institutional framework in the centralized administration also adds to the confusion. When President Sarkozy formed his first government in 2007, he created a Ministry of "immigration, integration and national identity", a name which stirred up much public debate and also created confusion in the public administration. The bureau and agencies formerly in charge of immigrants policies are now often jointly supervised by this ministry and the one devoted to work and solidarity. Similarly, whereas the FASILD, an agency in charge of funding initiatives and researches on ethnic discriminations and the integration of migrants, stipulated "fight against discriminations" in its name since 2001³, it was replaced in 2006 by the ACSE, agency for social cohesion and equality, which does not mention the word "discrimination" in its name anymore. The hard right-wing law-and-order approach to immigration politics promoted by the Minister and the government in general tends to clash with the anti-discrimination priorities which used to guide these various administrative structures such as the DPM (Direction population migration, a bureaucratic structure in charge of the integration of migrants). The DPM was early on involved in governmental programs to promote antidiscrimination but is now in the uncomfortable position of being under the umbrella of the Minister for immigration, integration and national identity. This tension clearly echoes Christian Joppke's analysis of the recent developments of immigration policies in the EU: while we witness the development of a potent antidiscrimination framework that rests on a form of "equal opportunity liberalism", governments simultaneously promote a backlash in favor of civic integration policies for immigrants that imply a form of "disciplinary liberalism" (Joppke 2007).

Finally, while President Sarkozy himself has declared several times (while a Minister of Home affairs and a presidential candidate) that he was in favor of positive action (Simon 2007), while he also supported a territory-based positive action in some higher education schools (such as Sciences-po Paris, on this policy see Sabbagh 2004), he never managed to create a political consensus on the issue of a more systematic positive action policy in the workplace or in higher education. The lack of coherence in the political discourse on discriminations, as well as the absence of references to multiculturalist values also played a key role during the debate on the wearing of Muslim headscarves in public schools (see report WP2). Indeed, the definition of *laïcité* that was promoted to frame this specific issue and to craft a political solution has obfuscated the general issue of religious discrimination in the workplace and in the public space in general. The strong secularism that the headscarf affair has brought about prevents many public or private agents to understand or recognize the reality of religious discrimination (see section 3.2 of this report).

- Public Policies and Policy Tools to Combat Discriminations

³ The FASILD was itself the new name given to an old administrative bureau, the FAS, "Fonds d'action sociale pour les travailleurs musulmans d'Algérie en métropole et pour leurs familles" created in 1958 to address the needs of Algerian workers who worked in France (while the Algerian war had already begun). It was later transformed into the FASTIF (Social action fund for immigrants and their families) until 2001 when it became FASILD. Far from being neutral, the various designations of this administrative structure clearly reveal political changes in the way migration-related issues are framed by public authorities.

The new focus on antidiscrimination led to various policy responses and institutional innovations. Over the last decade, the policy tools elaborated to combat racial and ethnic discrimination have moved from advisory structures without litigation power or means of action to quite strong independent authorities and commissions with some types of legal power. Moreover, partnerships with private actors have multiplied, and new tools, such as a “diversity label” are currently being debated. Three main domains of policies can be delineated: the **creation of new public institutions** in charge of the issue, **agreements with social partners** to promote antidiscrimination in the workplace (a kind of soft law approach), and **diversity instruments** to encourage businesses to adopt fair recruitment and promotion processes and therefore to ensure the concrete implementation of the promises of the diversity discourse. Finally a fourth domain should be considered, that of legal changes *per se*, however, in France legal changes are mainly the by-product of European incentives, and will therefore be analyzed in the next section.

- Building an institutional response

The impetus given by Jospin’s Government in 1998 led to various actions that were not really structured: action plans and diverse initiatives were launched, there was an encouragement to revise urban policies, but a more structured bureaucratic response emerged only in 2004 with the creation of independent body in charge of antidiscrimination monitoring and action (in order to comply with European directives).

The focus on employment and the workplace led to various actions to train public and private actors on discrimination related issues with a special focus on the ANPE (National Employment Agency) which tended to endorse employers’ commands to screen out non-white candidates for job ads instead of guaranteeing equal treatment. This first set of public actions also targeted workers unions’ managers and human resources managers through specific training programs. A plan of patronage/mentoring (*parrainage*) existed since 1994 and was given a new impulse to develop mentoring of young people of “immigrant descent or living in deprived neighborhood” as they try to enter the job market. The employers union (MEDEF) took part in that initiative with a program called “our suburbs have talents”, and it has progressively expanded its reach. In 1996 this program benefited 4000 young adults with a success rate (access to employment in less than 6 months) of 52.7%. In 1999 20 000 young adults entered the program, and in 2008, 700 mentors have enrolled in the program in the Parisian region.

In 1999 a study group on discriminations (GIP-GED then called GELD) was also created and mandated by the government to study the various forms of discrimination. The main action taken within this framework was the creation in 2000 of a hotline “114” to receive complaints of discriminations. However, once the hotline was created, there was no administrative support to actually treat the complaints. Hence, complainants and victims were referred to CODACs (Local commission for access to citizenship), a decentralized structure in charge with “listening” people’s queries about their rights and access to citizenship, the job market, public services, and so on which was created in 1999 by the Minister of Home affairs. However, the CODACs themselves could not process complaints, press charges or litigate hence they referred victims to NGOs such as SOS Racism which were supposed to help them figure out their cases. Between May 2000 and January 2002, the 114 hotline received almost 40 000 calls, that led to over 10 000 referrals to CODACs. This institutionalization process was reinforced by the translation into French law of EU 2000 directives on discriminations especially through a 2001 law to fight against discriminations.

Despite some dysfunctions (there was a long wait before the head of the GELD was nominated by President Chirac, and therefore a delay before the group could actually begin to work) which have led some to qualify the GELD as a “half-measure” typical of public authorities’ reluctance to clearly embrace the antidiscrimination framework (see Hargreaves 2004), the GELD paved the way to the creation in 2004 of the HALDE (High authority to fight against discrimination and for equality)⁴ to comply with EU directives.

The HALDE, inspired in part from its Belgian counterpart, constitutes the main institutional innovation in public policies relating to antidiscrimination: it has extended powers of an almost-judicial form –such as requiring the disclosure of data from an employer suspected of discrimination- and issues recommendations which do not have legal binding powers but do have, because of the moral authority the HALDE represents, as well as its capacity to go to court in the name or along with plaintiffs, some influence over employers or public services behavior. Moreover, the HALDE monitors the implementation by parties of the conclusions it has issued by holding them to an obligation to report. In case of criminal offence, the HALDE can forward the complaint to a criminal court. It also acts as a mediator to encourage amicable settlement of disputes. In the new landscape of antidiscrimination politics, the HALDE clearly represents, for all actors involved the stick that can strike perpetrators and cause businesses an “image risk” in the media. Moreover, the HALDE also issues recommendations directed at public services, reminding them of their duties and of the legal framework (for example when they deliver services or goods) and requiring them to conform to the law. Last but not least, the HALDE replaced the 114 hotline and now receives calls from alleged victims of discriminations, and also has a research pole and another one in charge of equality policies. The HALDE follows an all encompassing scheme: it is competent for all grounds of discrimination (e.g. all the grounds defined by French law, a list a little bit more exhaustive than the European one⁵ as well as “by any international engagement ratified by France”) and for all forms of discrimination (access to goods and services, and employment related discrimination). Finally, the HALDE organized large advertisement campaigns on discrimination which have contributed to its quick recognition by NGOs and public opinion in general.

In the French context, the HALDE represents a clear choice to encourage litigation as an effective mean to combat discrimination. This choice breaks with previous more “sociological” conceptions of inequalities according to which State action is the privileged mode of redistribution and reparation for injustices. However, this choice also carries with it a lack of interest for other means of public action such as ethnic monitoring to promote positive action measures. Indeed, public authorities, when they designed the HALDE, had the knowledge of foreign experiences such as the British one where ethnic monitoring is part of the antidiscrimination scheme. However, due to resistances to the collection of ethnic or racial statistics, as well as a strong opposition to positive action measures, these options were dismissed. The fact that the president of the HALDE, nominated by President Chirac, is personally opposed to ethnic statistics is just one indication of the current limits of the HALDE’s strategy to combat discrimination.

⁴ Loi 2004-1486, December 30th 2004 creating a High Authority to combat discrimination and promote equality

⁵ The French law prohibits discrimination “on the grounds of origin, gender, family/marital status, physical appearance, surname, state of health, disability, genetic characteristics, lifestyle, sexual orientation, age, political opinions, religious beliefs, union activities and real or supposed membership or non-membership to an ethnic group, nation or ‘race’”.

In 2006, almost 31000 calls were received by the HALDE and 4058 claims were registered. The first ground of discrimination is racial/ethnic origin (35%) and the first domain is employment (42.8%). The average claim handling time was 113 days in 2006.

Measures ordered by the HALDE Council	2005	2006
Court proceedings	1	48
Reminder of the law	-	42
Recommendations	29	151
Referrals to the public prosecutor's office (Art.12)	14	42
Mediation	1	33
Settlement involving the payment of a fine	-	20
Rejected claims	62	8
Total	107	344
Out of court settlements		
The parties reach a settlement after the claim has been lodged	59	197
Rejected claims		
Transfer to the public prosecutor's office (Art 40)	16	4
Referrals to other bodies	138	533
Claims rejected before submission to the Council		
Inadmissible or unfounded claims	41	918
Claims abandoned by the claimant	18	207

The efficiency of the HALDE's powers is perceived differently by the various actors of antidiscrimination policies. Lawyers use the HALDE mainly as a way to impose the disclosure of data by the accused party and to gather convincing elements of discriminatory practices. However, they believe that the absence of real legal power to fine or take disciplinary action weakens the HALDE's position. It is an ally, not a judge, and does not have the power of law on its side. NGOs use the HALDE as an easier route into the judicial system –the HALDE offers legal expertise and can do penal transaction with criminal courts if needed. French judges are rather suspicious of this new institution which presents itself as a 'quasi court' when it in fact does not have power to impose sanction. However, the HALDE does training program for future judges and tries to establish trustful relationships with criminal courts. Finally, businesses are afraid of the HALDE: its power to ruin a reputation is however more feared than its potential power to impose sanctions or fines. But even the HALDE's "bashing and shaming" strategy has been recently challenged. Indeed, the HALDE ordered a situation testing with a view to use the results to blame and shame major firms. However the methodology of the testing proved to be inaccurate and provoked sharp criticisms from the firms. The media coverage of the affair contributed to the discredit of the HALDE.

Despite these shortcomings, the HALDE is today the keystone of the antidiscrimination institutional landscape. Moreover, current restructuring might lead to a monopole of the HALDE on antidiscrimination actions. Indeed, the FASILD was transformed into the ACSE in 2006 and one of our interviewee suggested that the ACSE might be refocused on integration programs targeting immigrants with the antidiscrimination chapter *de facto* transferred to the HALDE. The question remains if the HALDE has the budget and the abilities to meet the needs it has contributed to create. Many interviewees pointed that the

HALDE is understaffed, still struggling to be recognized by magistrates and slow to respond to the claims it registers.

- Creating incentive through negotiated agreements

While developing an institutional framework, public authorities launched a series of negotiations with social partners to fuel antidiscrimination strategies in the workplace. From an initial focus on racial discrimination, the collective agreements moved towards taking into account simultaneously various grounds of discrimination. Some framework-agreements are signed between big businesses or an entire branch of the economy, representatives of the State, workers unions and state agencies such as the FASILD. However, collective agreements have also developed between social partners, with no implication of State authorities, or in the framework of big corporations, between the management and workers' representatives. For corporation agreements, only certain grounds of diversity are chosen as priorities for action for human resources policies and unions' commitment. Generally these grounds are gender, ethnicity, age and disability. Agreements typically set general principles to guide new practices inside the firm, launch new types of recruitment processes and training programs. On the overall, these broad agreements tend to raise awareness but tend also to be limited to a moral commitment to combat discriminations and promote diversity. They generally do not carry with them any type of concrete obligations or mechanisms to enforce their implementation. Below is a list of various agreements recently signed.

- September 2004: PSA Peugeot-Citroën (main automobile company) signed a collective agreement on diversity and social cohesion
- December 2004: Eaux de Paris (Parisian water company) signed a collective agreement on equal pay between men and women (*égalité professionnelle*) and diversity
- July 2005: AXA (insurance company) on fundamental rights concerning diversity and equal pay
- October 2005: Casino (chain of supermarkets) signed a collective agreement on the promotion of equal opportunity, diversity, fight against discriminations and to promote social cohesion in the firm.
- January 2005: 4 main Workers Unions (CFDT, CFTC, CGT, UNSA) signed a Charter for equal treatment, non discrimination and diversity.
- February 2005: framework agreement to prevent discriminations and to promote diversity in the temping sector and their patrons. It was signed by the Union of temping agencies (SETT), the Minister of Employment and social cohesion, the Minister delegate to equal opportunities and the FASILD.
- October 2006: Cross-sectors national agreement between the main workers unions and employers unions to promote diversity in firms which covers all the grounds of discrimination included in French legislation.
- March 2007: To implement the Cross-sector national agreement, the workers union CFDT launches a campaign "1000 agreements for diversity" to encourage their local branches to promote the implementation of the national agreement at the firm level.
- July 2007: Framework agreement on diversity for the Chemical industrial sector.

- Building a diversity toolkit

Besides collective agreements between social partners, another type of tool has been developed which promotes the idea of diversity through different means. The first step was the elaboration of a Diversity Charter by the private sector, under the impetus of a report released in 2004 by the Montaigne Institute, a right-wing think tank, and written by Yazid Sabeg and Laurence Méhaignerie, titled "Those who have been forgotten by equal opportunities". This report, widely covered by the media suggested the elaboration of a diversity charter, an idea quickly taken over by a handful of big corporations. The elaboration

of the Charter was confided to the IMS, a NGO working for big corporations and providing them with expertise on social responsibility, sustainable development and diversity. In October 2004, 40 CEOs signed the Charter, today more than 3000 firms have signed it.

The Charter is signed by the head of the firm and is mostly a complement to the existing legal obligations. It is organized with 6 articles on 1) awareness raising about non discriminatory practices for human resource managers, 2) compliance with antidiscrimination provisions at all steps of human resources management, 3) attempt at representing the diversity of French society, including its ethnic and cultural diversity, 4) communication to partners and patrons about committing to non discrimination, 5) including diversity issues in collective negotiations with workers' representatives and 6) including in the annual report a chapter on non discrimination and diversity to show the results. As the content of the Charter shows, it is mainly addressing human resources processes and awareness raising issues. The only other country to adopt a Charter following the French example is Germany in 2007 with today 240 signatures from firms.

Despite its success the Charter remains, similarly to collective agreement, a soft tool with no concrete implications. As the vice-president of the ANDRH (the human resources managers association) states, "*some sign the Charter and do something some sign it and do nothing!*" The Charter is mostly a declaration of intent which might stay no more than a rhetorical tool used to communicate and market a positive image of the firm. More recently, various actors of the employment sector (ANDRH, diversity consultants, representatives of the ACSE, HALDE, IMS, workers unions, researchers and NGOs activists) have met to elaborate an ISO norm certified by the national independent agency for certification (AFNOR) and the International organization for standardization, and a "diversity label" also independently certified. The label is the hottest issue in the current context of the French presidency of the European Union as President Sarkozy has required that the label be ready for June so as to be announced publicly at the European level. The government intends to position France as a European "leader" in the field of antidiscrimination and would like to use the label as a future export/promotion product. What is more, already 300 firms have declared that they will attempt at obtaining the label the year it is certified, demonstrating the enthusiasm for this type of policy tool.

However, so far, many debates surround the content of the label as well as its name. The HALDE has notified the committee in charge of elaborating the label that the notion of "diversity" has no legal basis and therefore cannot be the object of a certified label. Moreover, issues of ethnic statistics –that could contribute to strengthen the quantitative and concrete objectives that a firm should meet in order to obtain the label- are still a bone of contention between various political and judicial actors and cannot be included in the label as of today, a lack that might weaken its effects. Designing a label is part of an effort to move from commitments to general principles to a more effective type of practices inside firms: it aims at making antidiscrimination provisions *operational*. However, as suggested by the HALDE memo as well as by our interviewees, there is still much controversy on the content of the term "diversity", as well as its usefulness in the combat against discrimination (an issue covered in section 2.2. of this report as well). Moreover, because a gender equality label already exists for firms, no equal pay provisions have been included in the diversity label, leaving aside issues of gender discrimination as well as of intersectionality between gender and other grounds of discrimination. Finally, the label also implies economic stakes: so far the independent agency AFAC-AFNOR is considered as the most probable candidate to deliver

the certification. However, big consulting agencies such as VIGEO are already contesting this monopole and asking for a share of this promising market.

1.3. The Crucial Role of the EU

The role of the EU in the transformation of antidiscrimination politics in France is absolutely key and has taken two forms: that of legal importation and of financing innovative projects. Indeed, the 2000 directives have implied major changes in the French legislation, but have also challenged judges and lawyers' attitudes vis-à-vis discrimination cases. The other impact of the EU that appears crucial is the funding of EQUAL projects which have enabled some human resources managers to convince their hierarchy that surveys and actions should be taken to prevent discriminations in their firms. These external pressures and incentives have therefore largely contributed to the shift in policy frame that has occurred since the end of the nineties in France.

- Imposing Legal Changes

The legislator has amended French law on several occasions between 2001 and 2008 to put the penal and labor codes in conformity with European requirements with respect to antidiscrimination. Various laws have therefore transposed the 2000 Council directives (2000/73 and 2000/48), as well as the Parliament 2002/73 directive on equal treatment between men and women, then later the consolidated Parliament directive 2006/54 on gender equality. The main laws transposing EU legislation are the November 16th 2001 law on combating discrimination (Law 2001-1066), the January 17th 2002 law (Law 2002-73) on social modernization (addressing harassment).

The labor code, and French legislation in general, was designed around the core notion of *equal treatment*, and only few provisions concerning discriminations and possible reparations existed. Under the pressure from international organizations (as well as the development of the European Court of Justice's jurisprudence in matters dealing with gender equality since 1976) French law did address the question of discrimination, beginning with article L.122-45 of the Labor Code, adopted in 1982. The Labor code was amended several times and now includes the sharing of the burden of proof required by European law (directive 97/80). However, this change was not immediately accepted by national judges. Two major decisions from the Cour de Cassation (higher court exercising formal review, it influences how judges interpret the law in civil, penal and labor jurisdictions) in 1999 on gender discrimination and 2000 on discrimination on the ground of union activities have urged judges to adopt this new regime of the burden of proof. Another change implied by the transposition of EU law is the adoption of the notion of indirect discrimination in the Labor code. The penal code has followed a similar evolution, but the burden of proof is not shared and the intent to discriminate must be proved (in order to maintain the principle of presumption of innocence). However, judges' willingness to accept or refuse concrete elements of proof is influenced by the changes in civil procedure and might therefore loosen the burden which still rests on the plaintiff.

A recent analysis of over a sampling of 500 judicial decisions about discrimination cases (Lanquetin and Grévy 2006) has shown that discrimination cases are mainly sued on the ground of union activities (over 300 decisions for civil jurisdictions out of 450 cases, and over

20 cases in front of criminal court for a total of over 30 cases). The second most common ground is gender (with 50 decisions in civil jurisdictions). Cases on the ground of race or origin are rare and mostly appear in front of criminal courts. Because most of the cases deal with discrimination during the recruitment process (before the person enters into a contractual relationship) the victim cannot seize the civil labor jurisdiction (Conseil des prud'hommes) which has been on the contrary a main site of judicial activity for discrimination on the ground of union membership. Most of the decisions use the concept of direct discrimination, using concrete comparison (with comparative panels of workers) rather than the hypothetical comparator also available in the EU and national legislation. Statistical data are not used *per se*, only data collected to establish the comparator (often a small sample of colleagues) and to calculate the amount of the wages that ought to be given back for example ("triangle method"). Indeed, most of the cases in front of civil jurisdictions relates to career paths (promotion, evaluation, mutation etc., make over 250 cases out of a total of 450), then comes firing and remuneration. No civil court case of discrimination at the recruitment stage was found.

These changes in the legislation are dramatically transforming the landscape of prosecution on the ground of discrimination. New routes are opened for plaintiffs, fines are being imposed to compensate workers who lost wages and it is much easier to prove discrimination, and condemn it, than it used to be. However, some limits remain: some forms of discrimination, such as on the ground of union activities, is plainly understood by judges who clearly perceive the breach in the principle of equal treatment, however, other grounds (such as pregnancy) are not quite understood yet by the judges, and other, such as race or origin, are just lacking. This lack questions the capacity of private actors, NGOs and victims to really use the new legislation. Antidiscrimination law is as good as the actors that can seize it and use it. For some lawyers involved in discrimination cases, it is only a matter of time before cases dealing with race or origin arrive in front of civil courts. Already one case was judged in which Renault was condemned for racial discrimination of two of its employees in April 2008. Another case is pending involving 22 employees of Bosh who are suing their employer for racial discrimination. For others, the traditional focus of NGOs on criminal courts and penal sanctions may continue to slow down this process.

- EQUAL Funding

As interviews suggests, EQUAL projects, through the funding they have provided to various actors willing to commit to the antidiscrimination agenda, have been absolutely crucial in the rapid adoption of antidiscrimination action plans, as well as the development of a national expertise on the subject. Indeed, most of the actors who have paved the way for collective agreements and firm agreements have taken part, in some way or another, in an EQUAL project, and in general this participation has enabled them to train on the job as diversity or antidiscrimination experts.

A first regional project was launched as early as 1998. ASPECT received European funding (with structural funds from the European Social Fund). Following the report by Philippe Bataille on racism in the workplace, a CFDT member wished to launch a research-action project on discrimination issues. Under the umbrella of an NGO which does consulting and research, Ismcorum, ASPECT encouraged local negotiation in firms between workers union and the management to take action to fight against systemic discrimination and ensure faire recruitment and promotion processes. This project launched Ismcorum as a specialist on discrimination issues and encouraged the NGO to apply for EQUAL funding in 2000 and

2004. In 2000, through EQUAL funds various projects emerged bringing together private and public actors and creating networks which have proved important in the development of antidiscrimination policies. Ismcorum carried on its research-action program with an EQUAL project titled LUCIDITE. It brought together national funding through the FASILD, and the DPM, and regional heads of major workers unions as well as the biggest employers of the region. LUCIDITE was followed by another EQUAL project in 2004-2008 called AVERROES which “go national” as some of the regional actors involved in the former project have a national perimeter of activity.

Another public/private joint project called LATITUDES and focusing on the intermediate work agencies (temping agencies, public service for employment...) also enjoyed EQUAL funds with a 2001. Indeed, as providers of candidates for firms temping agencies or civil servant working in the public service for employment (ANPE) are at the intersection of all the risks of discrimination. When their patrons ask them to send only BWR “blue white red” candidates (the color of the French Flag) or BBY “blond with blue eyes”, they are trapped in between contradictory orders: to do the job the best they can by placing many candidates (which implies sending the type of candidate required by the employer) or to respect the law and to refuse to discriminate. Adecco, a main temping agencies business was therefore one of the first private firm to initiate and participate in an EQUAL project. According to the person in charge of the implementation of LATITUDES, the European money enabled the creation of a unit dedicated to antidiscrimination in Adecco’s human resource services and clearly gave her and her colleagues in charge of this issue legitimacy in front of their hierarchy. The European funds (which amounted to 1.9 millions euros, half coming from Europe and the other half from French public authorities), combined with a lawsuit on the ground of racial discrimination helped convinced the CEO of the importance of building an antidiscrimination policy. Another partner of this project, IMS, an NGO specialized in big businesses’ social responsibility, also assesses the crucial role of EQUAL’s money: *“without Europe, our unit ‘non discrimination and diversity’ would simply not exist”*.

The LATITUDE project was coupled with another EQUAL project focusing on the public service of employment, ESPERE, and managed by the DPM and the FASILD. It was then followed by another EQUAL project called ELMER, promoted by IMS and finishing in 2008. ELMER broadens the scope beyond temping agencies to bring together big businesses interested in promoting human resources training and action plans to “clean” their recruitment and training processes. Among the firms involved are the national railway transportation firm SNCF, Unilever, Ikea, Eaux de Paris, EDF (national electricity company), GDF (national gas company). As EQUAL projects follow one another, the scope and the aims evolve from raising awareness, creating specific unit in charge of antidiscrimination, to elaborating specific human resources tools, training all human resources managers in big companies and building consistent diversity policies.

From our interviews it appears that the transnational exchanges implied in all EQUAL projects were most of the time unsatisfactory for the French participants. Due to the various national situations with respect to immigration and immigration related diversity issues, it was hard for participants to exchange on their national experience. When “younger” immigration countries were involved, such as Portugal, comparisons seemed almost impossible. When countries with a clearly different model were involved such as Denmark, a similar problem emerged as Denmark has a politics of “chosen” immigration which cannot be compared with the French case. Hence, the incremental process by which the various actors involved (NGO members, human resource managers, or civil servants at the DPM) built their knowledge on

the issue appears similar to a local on-the-job training. As one of Ismcorum manager in charge of EQUAL projects recalls, *“EQUAL is important through its funding over several years to carry on big projects rather than for the expertise it gives us, we built the expertise from the ground”*.

This section has analyzed the response given by public authorities, jointly with social partners, to the issues of migration related diversity in the workplace. It should be underlined that in France the issue is first and foremost about the discriminations faced by migrants' children on the job market. The political discourse and public policies addressing this issue have clearly evolved since 1998 from an “integration paradigm” to an antidiscrimination one. The policy tools have evolved and gone from broad declarations of good will to a stronger institutionalization as well as the elaboration of more complex instruments to ensure concrete implementation. However, the values and normative content that drive these policies remain unclear. The political will has not been a constant one and debates over words (antidiscrimination/diversity) reveal a broader uncertainty at the normative level. The legal challenges have been addressed mostly via the transposition of European directives. These new legal provisions introduce a clear shift in French law, and their effective implementation remains to be assessed over time. The next section looks at how these changes in the frames of political discourses and political action impact how actors have seized and develop the issue of ethnic discrimination and diversity in the workplace.

2. Changing Practices: How Diversity Enters French Workplaces

The new antidiscrimination frame promoted by national public authorities as well as European institutions requires a shift in actors' practices as well. Indeed, due to the previous legal framework, as well as to the history of the French anti-racist movement, traditionally NGOs or unions did not focus their actions on discrimination issues or strategies to obtain legal remedies. Besides, in firms, the subject of ethnic discrimination, due to the strong integrationist model defended by the state, was largely taboo. However, the past couple of years have witnessed major changes in private actors' practices with respect to ethnic discriminations in the workplace. Many of these new strategies are identified under the label “diversity”, a shift in meaning from antidiscrimination that ought to be closely examined. This section thus focuses on two types of actors: NGO and workers unions who are trying to make sense of the new frames and tools at their disposal, and human resources (HR) managers and diversity consultants who are taking over the emerging new market of diversity in firms.

2.1. NGOs and Unions: Strategies of Adjustment

- Workers' Unions: a Difficult Adaptation?

Whereas some workers' unions such as the CFDT were at the forefront of the realization of the pervasiveness of racial discrimination in the workplace, especially through the research they sponsored in 1997, their influence today has weakened as if they had not managed to fully get the measure of the policy change. All the workers' unions are taking part in the collective agreement processes which are currently happening at the firm or the branch levels. The CFDT for example is trying to promote this approach with its program “1000 agreements for diversity” launched in 2007. Local union representatives taking part in EQUAL projects

have also clearly promoted antidiscrimination in their firms or region. However on other fronts, such as litigation or changing practices, the strategies of the main unions are less clear.

The first bone of contention is an internal one. With the unveiling of racial discriminations union representatives were confronted with a reality they had long occulted despite their mission to protect workers' rights. Breaking the taboo inside unions has been as hard a task as breaking it among HR managers. The reluctance of union representatives to seize the issue of ethnic discrimination has been noticed by many of our interviewees. Moreover, the reappraisal of former strategies implied by the massive legal changes has been very difficult as well. The CFDT has promoted a strategy by which it contributes to *create* a kind of soft law through collective negotiation, rather than to *use* the litigation route (Pélisse 2007). Today the CFDT has never joined a plaintiff in a lawsuit on the ground of discrimination in the workplace, although it has had opportunities to do so. The CGT has cultivated a more radical identity and therefore did not use litigation as one of its favored tool either. However, since 1997 it has converted to a new strategy making use of litigation for discrimination on the ground of union activities. Indeed, because of the breakdown of workers solidarity in factories, some CGT representatives have become much more isolated when confronted to the discriminatory practices they tend to face. Whereas before the whole team would go on strike to ensure that their union representative would get the promotion s/he deserve, the change in management techniques as well as the fear of unemployment have put an end to this type of solidarity. Therefore, union representatives have become more vulnerable to discrimination. Since 1997 the CGT has thus engaged, jointly with lawyers, in a litigation strategy which has proven very successful for the plaintiffs. However, it has not so far applied this strategy to ethnic and racial discriminations. It is unclear why: some are concerned with the difficulty to give concrete elements of proof in the absence of ethnic statistics, others say that it should not be a problem to use surnames for example (a ground forbidden in French antidiscrimination law). In any case, the conversion to a litigation oriented approach is a difficult one for unions representatives considering how their collective identity has never promoted this type of individualist redress strategy. Finally, unions are also confronted to a new form of competition with diversity consulting agencies or NGOs specialized in social responsibility, such as VIGEO, an organization founded by former CFDT leader Nicole Notat.

- NGOs: Old and New Paths

Historically, the antiracist movement in France has not made the most of the legal tools it had at its disposal to combat discrimination in the work place. Prominent antiracist NGOs such as SOS-Racisme or the MRAP (Movement against racism and for friendship between peoples) have focused their efforts on criminal sanction of racist speech rather than civil litigation on the ground discriminatory practices. This choice reflects the history of antiracist legislation in France: the 1972 anti-racist statute prohibited racial discrimination but mostly condemned racist speech and helped enshrined further strict refusal of any type of racial classification. This approach is intimately linked with the history of anti-Semitism and the French participation to the Holocaust during the Vichy Regime (Bleich 2004, Suk 2007). This history has shaped the way in which racial discrimination has been framed (as a criminal offence with intent), the way social movement have mobilized (mainly around issues of symbolic condemnation of racist individuals and racist discourses), as well as the way the State has, up until the end of the nineties, handled this issue (mainly with symbolic politics and formal equality discourses).

Hence, traditional antiracist NGOs were not quite ready for the change that occurred at the level of political discourse. However, through the "114" hotline, as well as their consultative participation to many of the new institutions created by public authorities, they have been in a

position to help victims in new ways. Hence SOS-Racism's Paris antenna received calls from alleged victims and begun providing legal counseling. In a more proactive vein, SOS also began organizing testing at nightclubs entrances, especially since it was recognized as early as 2002 by the French judges (as well as in the 2006 law on equal opportunities) as a legal mean to prove discrimination. They now organize a yearly "testing night" throughout France. The MRAP also developed awareness raising campaign to break the taboo of racial discriminations and developed local legal assistance bureaus for victims. There still is a need for these NGOs to invest in civil lawsuits rather than criminal ones, especially since the burden of proof remains on the victim in the penal system and discrimination is therefore harder to prove. Today these NGOs are taking part, sometimes jointly with the HALDE in judicial actions. They advocate for anonymous CVs in firms over 50 employees and promote diversity audits inside firms to improve their HR processes.

Beside these traditional actors, new ones have emerged with different perspective on how to fight against racial discrimination. In 2005 a NGO organized around ethnic identity and color called the CRAN (Representative council of Blacks associations) was founded. This emphasis on Blackness, on an identity based on color, as the basis for collective action against discriminations was a premiere in France. Indeed, traditional antiracist association never put forward any specific ethnicity. On the contrary they tend to underscore their adhesion to the color-blind republican model. Hence, the founding of the CRAN marked a shift in collective mobilization as well. The CRAN has been much more active than SOS or the MRAP to urge for positive action and ethnic statistics. They do not offer legal advice and focus their action on lobbying campaigns on discrimination on the ground of race and color in the work place, in the media and in politics.

Other new actors who have contributed to the dissemination of the antidiscrimination paradigm are recently created NGOs, ethnic-community based, who offer services to job seekers from ethnic minority groups. They offer counseling, mentoring as well as a network of companies seeking to hire people from ethnic minorities to increase their diversity. One of the first agencies of this type was the AFIP (association to encourage professional integration), which was initially based on territorial criteria: it aimed at helping the youth from deprived neighborhood. However, similarly to public policies, it has evolved to address the specific needs of young graduated from minority groups who are looking for job. Another example is the NGO Africagora: it offers job services, training and mentoring for mostly Black young adults. An "employment diversity forum", sponsored by public agencies such as the ANPE and private businesses, now takes place annually and aims at providing a space for young graduates from minority groups to meet with companies. Contrary to former antiracist NGOs who were part of leftist movements and focused on protecting rights and denouncing racism, these new organizations do not put forward political affiliation (but tend to be right-wing identified) and are mostly concerned with concrete integration of the youth from visible minorities into the job market. They are new ethnicity-based intermediaries of the job market, and they are necessary insofar as companies trying to expand their traditional job searches are confronted with their lack of network in these communities.

2.2. Converting Firms to Diversity: Consultants and HR Managers find a new *raison d'être*

- Elaborating Arguments for Diversity

Since the beginning of the 2000s and thanks to EQUAL projects, major French companies have implemented diversity training programs. What is the content of these trainings and

action plans? What are they aiming at and by which normative values are they underpinned? Firms' managers are a crucial link in the antidiscrimination policy chain. Legal changes may become effective through NGOs legal mobilization and victims claiming their rights in Court. However, it might take more than the fear of judicial sanction for firms to change their behavior. Human resources managers and consultants devoted to diversity have undertaken the task to convince companies' hierarchies and management that a proactive stance must be taken in favor of "diversity". It therefore appears necessary to closely examine the values issues at stake as well as their possible success and failures in accommodating diversity in the workplace. Various arguments in favor of diversity have been developed which carry with them different values and priorities with respect to accommodating difference. These are: **legal obligation, economic incentive, employees' productivity and a respectful workplace.**

- Finding the Right Framing

A variety of approaches articulated along the lines of "diversity", "antidiscrimination" and "equal treatment" can be found in French big corporations which have undertaken the task to set up programs on diversity and also often created specific diversity position in their human resources unit. Diversity unit often bring together various grounds of discrimination – disability, age, gender, sexual orientation and "diversity of origins". The names of these units carry with them some priorities for the firm. In one of the main temping agencies network which was a partner in the LATITUDES project, the unit – created in 2001 thanks to EQUAL funds- is called "Combat against discrimination" because, according to one of its managers, the denial was so strong inside the company that the name of the unit ought to be clear, rather than a fuzzy "promotion of diversity" title. In other companies on the contrary, "diversity" is put forward as a positive way of taking about antidiscrimination, a way which does not make employees feel guilty, and a word that can appeal better to managers. Moreover, for some NGOs with a diversity consulting activity such as the IMS, "diversity" goes further than antidiscrimination or the guarantee of equal treatment. Whereas the HALDE has recently criticized the use of the term "diversity" to characterize the future label, arguing that "diversity" is not a legal concept and has no legal basis, human resources managers and diversity consultants defend "diversity" as a more positive word than "antidiscrimination", and define it as going "beyond" what the law requires. It also avoids pointing at managers or executives as "racists".

Some consultants –although they are rare- also link diversity with a form of respect of cultural differences and differences in general which echoes the ideal of multiculturalism. However, this reference to multiculturalism remains marginal, if not contentious, among the diversity HR managers and consultants we interviewed. In most cases diversity is framed as "more" than antidiscrimination, but no connection is made with a broader framework of values. Finally, it often takes time for antidiscrimination to emerge as a subject and a specific approach: it is often confused by employees, especially when businesses start adopting this approach, with former integration programs, social cohesion objectives or antiracist motto.

In all the big corporations that have taken part in the first EQUAL programs or launched early on diversity training plans, employees showed a strong resistance to antidiscrimination and diversity training. Various consultants and HR managers recall that employees use to physically show their disagreement with the content of the training program (looking out of the window during sessions), challenge the legislation (arguing that it didn't make sense), refuse the idea that they should also impose to their patrons not to discriminate (in the case of temping agencies for example). Tensions was palpable on many occasions; however the situation has rapidly evolved and today consultants' interviews suggest that training programs

provoke better feedback, especially from managers. As the vice-president of the national association of human resources managers (ANDRH) declared in his interview, in only a couple of years HR managers have gone from denying that discriminations existed or that diversity was a legitimate HR subject, to embracing it and changing their practices. In 2002 the ANDRH created a special section dedicated to antidiscrimination –then renamed in 2004 diversity- which now constitutes a key player in the elaboration of the diversity label.

-The Fear of Legal Sanction

In front of this denial and resistances, diversity managers and consultants have had to develop arguments. The type of rhetoric they choose to put forward depends partly on the situation in the firm. One of the initial bones of contention with employees in temping agencies was the refusal to discuss “values” with clients who were requiring the agency to discriminate between candidates. Managers considered that protesting against their clients’ wishes in the name of non discrimination was stepping out of the business relations. They also had no economic incentive to do so as part of their pay depends on how many job applicants they manage to find a job to. Faced with this situation, the antidiscrimination unit at Adecco strongly insisted on the legal argument: *“you don’t like it but it’s all the same, it’s the law”*. This line was all the more efficient that the company was put on trial for a case of discrimination widely covered by the media in 2001. Other companies such as EDF on the contrary “make reference” to the legislation but only as an element of information. The emphasis on law also varies among consulting agencies. Whereas for the consulting NGO Ismcorum, the European and French legal framework is crucial to make employee understand what discrimination is about, for other diversity consultant the legal pitch is not an efficient one and they focus on economic incentives. In any cases, the fear of judicial sanctions and of an “image risk” for the companies, embodied by the power of the HALDE to intervene and to pronounce sanctions, is a crucial factor for the rapid adoption of the diversity motto

-Economic Incentives

Economic actors have also accepted the diversity motto all the more easily that it has been packaged in an business friendly way. As one diversity consultant notices: *“you have to frame it in terms of added value for the firm, social responsibility just doesn’t work”*. There are several ways to emphasize the economic argument. One is to argue that discrimination breaks with the principle of economic competition and therefore introduce an economic bias. This argument is seldom used and considered to reflect a form of “ultra liberalism”. Another way to argue in favor of diversity from an economic point of view is to emphasis changes in the ethnic and cultural composition of firms’ clientele, as well as the need to be more connected with global trends for firms with a worldwide perimeter of activities. Diversity increases economic performance because it helps “penetrating new markets” and “improving innovation capacities” as well as “adapting to change”. Along this line, the common practice of “cloning” –recruiting someone because s/he is/look like you and has the same training and CV) is now widely condemned by HR managers. Cloning reduces the pool of applicants and therefore the potential diversity in the firm. It is also said to decrease the creativity of employees.

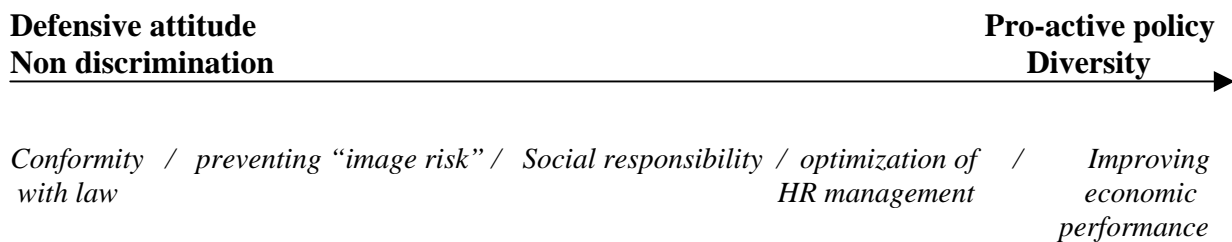
Finally, economic incentive takes the form of demographic pressure. Indeed, the demographic changes expected as the baby-boomers are replaced by a smaller generation of workers have helped convinced HR managers to change their recruitment practices. Of course, the visible emergence of antidiscrimination issues in the public sphere, and the salience they gained during the November 2005 uprising in the suburbs, constitutes the backdrop against which managers’ adaptation must be understood. Nevertheless, the necessity to lower the turn-over

among workers, to attract the skilled ones and to be able to keep them in one's business is clearly the most cited reason for the rapid conversion of corporations' management to the diversity motto. For example, the diversity message has been all the more well received that in some sectors of the economy where discrimination was pervasive (such as the building sector) there has been a shortage in skilled workers. As one human resource manager remarks "*shortage makes you smart*".

- A respectful workplace

Alongside the economic incentive, HR managers and diversity consulting agencies sometimes emphasize the need to take positively into account differences among employees. Managing diversity therefore also implies a "cultural change" and an openness towards others which leads to respect their difference. The notion of "inclusiveness" (taken directly from English) designates this type of politics of recognition in the workplace. As the argument goes, if workers are comfortable at work because their identity is respected and valued, their productivity will improve. This approach promotes trainings to fight against stereotypes (on cultural difference, sexual orientation, gender, disability and so on) and a "cultural change" to create an inclusive workplace. With its emphasis on difference as a positive input for a business, it might be the most akin to multiculturalism applied to the workplace. However, "welcoming" differences might also be limited to a strategy to reduce turn-over among the workforce: the examples used to encourage French businesses to adopt diversity management emphasize the reduction of turn-over costs or medical leave costs (related to harassment for example) that diversity programs implemented by the British Royal Mail or the Austrian TNT have allowed. In other words, the articulation between the diversity discourse in the workplace and a broader discourse on cultural difference in society is not clearly visible today in France.

Interestingly, diversity consultants often organize into a hierarchy the various reasons why a business should adopt a "diversity management". For example, the IMS suggests a positive evolution "from risk to opportunity" as follows:



Despite this supposed line of continuity and progress, the economic argument that diversity is good for business, might water down the initial intent of these policies (i.e. to combat discriminations). Detached from broader principles –such as multiculturalism, social cohesion or equal treatment- diversity can become a communication strategy which at best implies training against cultural stereotypes for employees, and at worst contributes to the ethnicization of some lines of work, a risk –which is already a reality in the cleaning industry for example - pointed by several interviewees. Interestingly enough, the European commission, through its training programs on antidiscrimination, contributes to this caesura between antidiscrimination and diversity management. Indeed, the national trainings proposed to NGOs and unions focused on antidiscrimination whereas the training proposed to businesses was typically entitled "diversity management". Moreover, the rapid success of the diversity (economic) motto among HR managers, compared with its very slow acceptance

among workers unions' representatives, explains that so far antidiscrimination issues have entered the workplace mostly through a revision of HR processes and the strategic management of diversity. "Cleaning" recruitment and promotion tools, professionalizing HR practices, therefore constitute the main strategy to achieve a more diverse workforce.

- Changing Practices: "Cleaning" Human Resources Processes and Other Initiatives

Diversity management typically uses business and HR processes such as designing strategies, setting objectives and evaluating results. Hence, businesses are encouraged to do a first audit of the diversity of their workforce and of their recruitment and promotion processes, then to fix objectives and to design a strategy to reach them. Diversity management therefore touches upon several fields. The diversity label enumerates six of them: the culture of the firm, HR processes, the firm's communication and training policies, relationship with social partners, relationships with partners on a given territory and mechanisms of evaluation. Today, the transformation of HR processes is clearly the most important step taken by businesses as they want to implement diversity management. Consultants, NGOs etc. device HR tools to help business "clean" their recruitment processes, eliminate hidden biases for every HR operation. The ISO norm "HR processes and diversity" specifically focuses on this dimension of diversity and gives guidelines to implement diversity management. The type of questions that used to be asked during job talks, the networks used to find applicants, the way performance and productivity are measured, are therefore put under a new type of scrutiny. In some firms, such as Eaux de Paris, all managers are trained thanks to fictional case studies, to react in non-biased ways to certain sets of situations implying cultural, religious, age, gender or disability differences. Businesses are also encouraged to measure their policies thanks to indicators in order to evaluate their progresses with respect to the promotion of diversity.

Some tools such as "self-testing" (sending fake applications, from "majority" candidates and "minority" candidates, not in order to prove discrimination in front of a court but in order to measure the extent of discriminatory biases in recruitment practices) are also used by big corporations, such as Casino, as part of the diversity management toolkit. Another tool is the abilities method, or simulation recruitment tests which has been developed by firms such as IKEA⁶ and consists in placing applicants in concrete work situation to measure a set of 26 abilities, rather than focusing on their school training and diplomas.

Beyond the revision of HR processes, some firms have implemented positive actions programs such as promoting more women in jobs where they are underrepresented (case of EDF), proposing mentoring programs for female managers (Michelin) or giving the same parental leave and benefits to heterosexual and homosexual employees (Eaux de Paris). With respect to racial and ethnic differences, positive action measures include programs which try to address the key issue of the articulation between school training and employability. Indeed, racial discrimination is closely combined with the systemic relegation of children from immigrant descent in the worst schools, the less prestigious courses and universities. Therefore, they often end up with the least employable skills and the worst diplomas which contribute to their relegation in unskilled jobs. To break with this downward spiral, some industries have elaborated comprehensive policies which consist in 1) outreach towards children in disadvantaged neighborhood as early as secondary education (before the choice of courses has already decided their future employability), 2) communication on the existence of

⁶ It was first elaborated in France by the National agency for employment (ANPE) in order to respond to a local situation in which a whole industrial sector had problems recruiting employees with specific industrial skills. Rather than expanding the search for skilled workers geographically, the ANPE proposed to define the necessary skills in broader terms and to put applicants in concrete situation to measure their abilities to perform these skills.

specific schools to acquire the necessary skills for that industry, 3) matching a mentor with an aspiring student, 4) payment for the expenses linked with the recruitment in prestigious and selective schools (train trip, hotel room during exams etc.), 5) granting scholarship during the several years of undergraduate school, 6) helping the beneficiary to find internships and finally 7) helping him get a job in that industry. Such a program, called CERCLE, has been implemented in the Telecommunication sector and the first promotion of beneficiaries will graduate in 2008. However, such comprehensive policies are still rare in France.

Another initiative which goes beyond the sole revision of HR processes to promote an inclusive workplace is the recent proposition from the ANDRH to secularize holidays which remain so far determined by Christian celebrations (Easter, Christmas etc.). Hence, workers could take a number of days off that would not have to correspond to the specific Christian celebrations. Another proposition from the ANDRH is to create in corporations over 500 employees gender equality and diversity commissions that could deal with discrimination or harassment claims and propose mediation instead of going to court. EDF has already implemented this type of internal complaints commissions.

Finally, the focus on the revision of HR processes raises several questions. Indeed, as previously noted the articulation between diversity as a strategy which is good for business and the commitment to non discrimination in a multicultural society is almost non existent. Diversity indicators and measures are only loosely linked with norms and values that could infuse society more generally. Moreover, the focus on recruitment or HR processes misses the structural articulation between the education system and the inequalities it produces and discriminations on the job market. To really guarantee non discrimination would therefore logically entail more comprehensive programs than just unbiased recruitment. Besides, the fact that antidiscrimination in the workplace is mostly promoted by HR managers means that big corporations are indeed adapting their practices but that small businesses with no HR structure are harder to reach and less exposed to antidiscrimination policies. Public authorities and employers unions are beginning to address this issue which is crucial in a country where 75% of the workforce is employed in SMEs. Finally, among the “good practices” encouraged in the framework of diversity management is the individualization of performance evaluation. For a long time limited to executives and managers, individual evaluation is now promoted as a way to guarantee non discrimination in promotion processes. However, the individualization of evaluation could also lead to the atomization of the workforce, an intense competition among workers and a weakening of workers solidarities.

This section has looked into the various actors involved in concretely implementing antidiscrimination in the workplace. It has examined the discourses and framing they use to make sense of diversity management and legitimate this new issue, as well as the tools they have elaborated to concretely enact the promise of a more diverse and non discriminatory workplace. Whereas new NGOs focusing on ethnic recruitment as well as diversity managers and consultant have embraced diversity as a new motto, traditional antiracist NGOs as well as workers unions seem to have a harder time incorporating this subject in their political priorities. This asymmetrical situation partly explains why the “business friendly” framing of diversity – that diversity enhances productivity and economic performance – has so far dominated the various forms of implementation of antidiscrimination policies in the workplace. This has also translated in a focus on a revision of HR processes to prevent discrimination rather than broader social change articulated to a multiculturalist approach.

3. From Discourses to Implementation: Obstacles and Challenges Facing Diversity Policies

During fieldwork we have identified several issues as bones of contention or challenges which have arisen in the midst of the global conversion in favor of diversity. If some private actors have fully embraced diversity, the State itself is lagging behind. The issue of measuring ethnic diversity, in a context in which ethnic statistics are most of the time forbidden, is currently mobilizing managers and activists who are asking for a way to concretely measure and evaluate their policies. Finally, if some type of diversity, such as age or racial diversity, is considered positively, religious diversity, and the accommodation it may demands, is welcome much more coolly by employers.

3.1. The State: an Employer Resisting Antidiscrimination Policies?

The issue of diversifying the civil service has arisen with some delay compared to the rapid conversion of the private sector to diversity. Despite an under representation of children of migrants in public administrations, the implementation of policies promoting antidiscrimination has been lagging behind policies addressing businesses, and has given rise to controversies (Calvès 2005). Indeed, the State apparatus is supposedly open to all and selects its public servants on the sole criteria of merit, through a system of exams, national competitions (*concours*) which are perceived to be a totally neutral and unbiased mode of selection. However, the pervasive under representation of people from migrant descent in many offices raises the question of the possible biases which prevent their access to the civil service.

Some actions were taken in 1998, notes sent by the minister of justice to communicate to the ANPE for example, and with the *Préfets* in 2001, about the issue of a more diverse recruitment for the civil service. In 1999, the then minister of home affairs Jean-Pierre Chevènement noted that the police should be more “representative” of the population it has to protect. However, 2004 marks the first real assessment of the situation with the Versini Report on “diversity in civil service”. The report also stresses the need for a bureaucracy that would better “represent” the nation. Hence, the peculiarity of the issue of diversity in the civil service is that it is framed, quite similarly to the debate about the political sphere, as an issue of representativeness: diversity is a requirement to improve the function of representation carried out by the public administration (Eberhard, Meurs and Simon 2007). However, the aims of a diversity policy in the civil service remain more heterogeneous than this first argument suggests. Indeed, including children of immigrants in the civil service is also supposed to promote a democratization of public institutions, to combat discriminations or social exclusion, to “diversify” the civil service, and to anticipate the plummeting of numbers that demographic changes are about to bring.

However, the French ideology of the civil service and the organization of its recruitment processes constitute major obstacles to the implementation of effective antidiscrimination policies. Concerning the ideology it should be underlined that the French public administration is not “in the service” of the population, but aims at defining and incarnating the public interest. The central role of the State and the commitment the State requires from its servants contributes to blur the idea that the civil service should indeed represent the population both in descriptive and substantive ways. Moreover the civil service completely ignores and opposes the use of the notion of “race”. Faithful to the official color-blindness of the Constitution and of the State, civil servants tend to reject the idea of racial categorization

or the relevance of race for the civil service. With respect to the recruitment processes, one of the main obstacles to the racial diversification of the civil service is the myth that national exams guarantee meritocracy. Indeed, to access civil service, candidates must typically go through a series of written exams (taken nationally or regionally) which often stress the mastering of “general culture” or other type of knowledge which is not central to the office that will be occupied but typically rewards social and cultural capital and therefore tends to exclude people coming from lower social status or different cultural background.

To tackle this issue new forms of recruitment are under study. A program of “external” recruiting has been implemented for some offices and a program called PACTE (Access Path to civil service) has been put into place in 2005 for the lowest category of civil servants jobs (C category). It targets individuals under 26 years old who have not completed their secondary education. It enables them to do internship in the civil service while they get a specific training. After two years the candidate can apply to be appointed to a permanent post without having to pass a national exam. The PACTE program is clearly an acknowledgment that national exams might, instead of guaranteeing meritocracy, constitute an obstacle to a fair recruitment, and therefore prevent the civil service to accomplish its mission of social promotion and social inclusion. However, so far, the PACTE program is totally marginal: it represents only 0.1% of the recruitments in the State civil service: 115 offices were open in 2005 and 421 in 2006.

Hence, whereas various State administrations have contributed to the development and the diffusion of antidiscrimination policies, whereas successive governments have stressed in their discourses and initiatives the necessity to combat discriminations, whereas new institutions such as the HALDE have been created, the civil service is one of the site of resistance to the actual implementation of antidiscrimination measures. However, the HALDE has on many occasions denounced discriminatory treatments given by public administrations to some of their clients, and researches are currently under way to try to assess the discriminatory impact of the civil service’s modes of recruitment. More time is therefore needed to evaluate the extent of the resistance of public institutions to the necessary transformation that they must face to diversify themselves.

3.2. The Right Tools for the Right Policies? The Debate on Ethnic statistics

Since mid-19th century, the national census has been registering individuals’ place of birth (country of origin) and nationality. This distinction echoed the French assimilationist model according to which individuals’ nationality (Frenchmen/foreigner) was the only categorization that made sense: the purpose of these statistics mainly served to manage immigration policies, and there was no such thing as a Frenchmen who would also identify as Algerian and be considered French-Algerian (Simon 2008). Patrick Simon notes: “In fact, the primacy of the division by nationality in statistics extended from the census to almost all quantitative surveys and administrative files. Thus, until the end of the 1980s, immigrant populations were almost always classified in the binary categories of French and foreigners; details on the main nationalities were sometimes provided (...)At the same time public debates bring up immigrants and talk about “Blacks,” “Arabs,” “Maghrebians,” or “youth descendants of immigrants.” The gap between the statistical categories and the terms used in everyday discourse is huge” (Simon 2008).

Since the mid-90s, a recurrent heated public debate has developed on racial categorizations. The principle of color-blindness applied to statistical data implies a strong anti-classification principle (Suk 2007), in other words it entails a “choice of ignorance” (Simon 2008).

However, since the end of the nineties, a recurrent heated debate has been antagonizing demographers, public opinion, NGOs and politicians on the issue of ethnic statistics. The rejection of ethnic statistics on the part of the political elite and some demographers as well as anti-racist NGOs is based on the argument that “race” does not exist –and cannot therefore be measured–, that the Constitution is colorblind and therefore forbids racial classification, and, finally, that racial classification, such as the one used during the Vichy regime for Jews, are intrinsically racist. The other side, on the contrary, insists that the refusal to use ethnic statistics amounts to a blindness towards pervasive racial and ethnic discriminations, and that in order to build effective antidiscrimination policies one must craft the right tools, which include a proper way of measuring the discriminated groups.

The first debate occurred in 1998 and targeted the upcoming national census. Census categories were not amended and color-blindness was reaffirmed strongly. The debate was reopened in 2004 in a totally different context: between 1999 and 2004 discrimination has become a social problem with political tools and a legal framework. Hence, two sides are opposing but now both argue about the relevance of ethnic statistics for antidiscrimination policies purposes. Whereas opponents to ethnic statistics believe that other means, such as “testing” methods or small sample surveys, are enough to elaborate efficient antidiscrimination policies, proponents believe that only a coherent system of ethnic categorization and ethnic data monitoring can sustain, especially on the long-term, antidiscrimination policies. According to Patrick Simon, the main issues raised by both debates are 1) the legitimate use of the public statistical apparatus (i.e. how will “ethnic file” be used by the State, the police and so on?), 2) ethno-racial categorization contributes to the essentialisation of identities and to forms of communitarianism as well as 3) a hardening of ethnic groups’ boundaries, 4) ethnic statistics might not be really useful to combat ethnic discriminations (Simon 2008). The idea that ethnic statistics will lead to affirmative action programs and quotas has also fueled the debate. Indeed, during the nineties the mere idea that one could use quota or implement affirmative action was described as unconstitutional and contradictory with the Republican principle of equality. Hence, the political objectives that ethnic statistics could help achieve are in themselves controversial.

Interestingly enough, the debate has now grown out of the restricted sphere of academia to include the main actors of antidiscrimination policies: governmental agencies bureaucrats, HR managers, antiracist NGOs etc. Their various positioning on the issue reflect the current state of affairs with antidiscrimination policies. In other words, the debate on ethnic statistics crystallizes the tensions that characterize the field of antidiscrimination politics. On one hand some antiracist NGOs such as SOS-racisme, marked by their own history of strong commitment to color-blindness, vocally oppose the use of ethnic statistics in the name of their dedication to the Republican motto, whereas many HR managers, and most prominently the ANDRH, faced with legal constraints of ensuring non discrimination on the ground of ethnicity or race demand efficient tools to monitor the ethnic setting-up of their workforce. Holding the middle ground, civil servants in charge of antidiscrimination policies tend to contend that the current situation offer viable alternative to measure ethnic diversity which are sufficient for antidiscrimination purposes. Nevertheless, the situation is quickly changing, and after months of violent debates, the ANDRH believe that the political elite’s opinion is rapidly evolving in favor of a consensual tool to measure ethnic diversity. However, despite this confidence in what the future holds for HR managers, the legal issues surrounding ethnic statistics (in particular the position of the Constitutional Council) are still opened to restrictive interpretations. Moreover, all HR managers are not on the same page. For example, the diversity manager at EDF summed-up his position saying: “*I don’t care about picking Reds and Blacks*”, indeed, the antidiscrimination framework implemented at EDF consists in

individualized tracking of employees' career paths. It therefore entails no comparison between ethnic groups, only between one individual's situation and the rest of the workforce.

Another issue is the need for ethnic statistics for litigation purposes. Indeed, some argue that ethnic monitoring of the workforce would certainly help prove *systemic* discrimination, a notion however seldom referred to by the French judge. Others believe that discrimination can easily be proven on the ground of surname instead of race using a sample of career paths method (triangle method). According to this view, it isn't the absence of ethnic statistics that prevents using litigation as a way to obtain compensations. Finally, the debate over ethnic statistics reveals much more than a debate over the right tools for antidiscrimination: it also unveils an uncertainty about the normative and political objectives of these policies. Indeed, in the absence of a political or normative commitment to multiculturalism, as well as a recurrent blindness vis-à-vis the pervasiveness of racism in the workplace and society in general, antidiscrimination consists in a set of constraints and incentives which final objective remains obscure. The difficulty to settle pragmatically the issue of ethnic monitoring reveals the tension created by the importation of antidiscrimination norms in a Republican model which has resisted for so long any type of color-conscious policies.

3.3. Finding a Place for Religion in the Workplace without Any Guidelines

Racial and ethnic discriminations are now clearly identified in the workplace as “wrong” and as a problem that businesses must find a remedy for. However, the situation is quite different for the issue of religious discrimination. Indeed, when asked what criteria are less easy to grapple with in the workplace, interviewees systematically answer sexual orientation and religion. If the former gives rise to resistances on the part of managers and employees because it implies an intrusion into colleagues' private lives, the latter provokes another type of prevarication. Indeed, religion is rarely identified as a ground of discrimination that should be treated similarly as other grounds. Because it often entails bodily practices (such as the Muslim headscarf), or the adjustment of time and space (pauses and places for prayer, accommodation to enable the practice of Ramadan) that were previously absent, and therefore never dealt with, managers find themselves most of the time clueless to manage religious accommodation requests which then often end up in “explosive situations”.

Religion shares with the other, more legitimate and better understood, grounds of discrimination many characteristics: the collective accommodations it requires may be compared with gender –think about restrooms- or accommodations for the disabled –elevators etc. Its dimension of personal choice can also be compared to the participation to union activities, which is also protected from discrimination by French law. However, it is treated distinctively by the persons in charge of diversity and antidiscrimination policies. Indeed, in a context in which secularism has been tightly interwoven with national identity⁷ and in the aftermath of the headscarves affair (which led to an increase in the numbers of women requesting to wear the Muslim headscarf in the workplace), a majority of managers is tempted to define the workplace as a secular place (*laïc*) when it is in fact a private realm, and to consequently refuse any display of religious belief. Some also compare religion with union membership to argue “*you cannot ask for prayer time the same way you cannot use the breaks to do union politics with your colleagues*”. Religion in that case is considered a private belief which is a personal private choice that should not interfere with businesses activities. For others, on the contrary, the workplace must adapt to religious practices and multicultural coexistence. Hence, faced with the same situation, for example the claim to wear one's

⁷ See WP2 French report on the main debates concerning multiculturalism in France.

headscarf in the workplace, managers give very different responses: while some negotiate in order for the worker to accept not to wear her headscarf, other on the contrary try to convince her colleagues and managers that she should be allowed to wear it as long as it does not threaten the organization of the business activities.

The great variety of responses to religious issues in the workplace can be explained by the fact that 1) it is a new situation in most of the cases and managers do not yet have any clear guidelines on how to respond, 2) antidiscrimination policies are not underpinned by a multiculturalist commitment that would delineate the common values to guide reasonable accommodations (a legal notion that does not yet exist in France except for disability) and 3) managers and consultants believe that the antidiscrimination European directives and the French legislation remain quite obscure on that point. Indeed, they argue that the directives protect religious *belief*, not religious *practices*. Hence, demands for the wearing of religious attire, prayer places, prayer break, halal food or accommodation during the Ramadan are met with heterogeneous responses depending on the manager or the corporation own interpretation of the legitimacy of these claims. This situation generates great confusion and the ANDRH has recently decided to address this issue and organized a conference in 2007 on this theme. The ANDRH encourages a balance between a definition of secularism according to which expression of religious belief must be protected and granted, and the necessities of running a business. Hence, if religious practices do not interfere with the organization of the business and its productivity they should be admitted in the workplace. However, other major organizations such as workers unions or the employers union (MEDEF) still have not defined any official position on this issue. This political vacuum, as well as the absence of a precise jurisprudence leave the door open to systemic discrimination on the ground of religion, especially towards Muslim workers.

Conclusion

Since 1999, major changes have altered the ways institutions, private actors, NGOs or unions understand ethnic discrimination and fight against it. The influence of the European union has been a crucial one, both in legal and financial terms, but internal transformation of public authorities' political priorities (from migrants' integration to antidiscrimination), as well as NGOs mobilization have also contributed to this global shift. However, tensions and uncertainties remain. Many believe that France has taken the lead on antidiscrimination issues in Europe with the elaboration of devices such as a diversity label, but the shift from antidiscrimination to diversity suggests that the norms and objectives which underpin this major transformation are ambivalent in some ways. The articulation between policy tools and normative concerns remain unclear. Despite legal changes, the ambiguity of political as well as managerial discourses on diversity points to the lack of precise normative commitment. In other words, diversity in the workplace is a legitimate policy, however it is not bridged with broader concerns about the social good, public interest or the definition of common values. One could say that antidiscrimination policies have introduced a breach in the Republican model, but have not lead to the transformation or the replacement of its normative core (equality, color-blindness, non recognition of differences etc.).

Indeed, interviewees often do not link antidiscrimination and for example multiculturalism. As one HR manager exclaimed when asked about multiculturalism: "*Well, I don't know what it is! I mean, I know but it has nothing to do with it!*" Hence, for most actors, antidiscrimination can fit the previous egalitarian framework, using the notion of equal treatment, and does not need to be articulated with other normative frameworks such as multiculturalism. For other, it would even be dangerous to do so as entering a model of

recognition of identities would surely entail doing away with the previous commitment to compensate social and economic inequalities through redistribution policies. The fact that these two paradigms for political action are still often opposed in France denotes that the normative underpinnings of antidiscrimination are still unclear. Finally, it is quite striking that the success of antidiscrimination policies in France has not lead to a reassessment of the place that multiculturalism, as a normative and political ideal, could occupy in the French model.

Methodology

The fieldwork consists of qualitative data and primary/secondary sources. We looked into earlier studies, existing statistical and survey data (mostly from INSEE and INED), and policy papers from various public and private institutions (HCI, DIV, DPM, HALDE, ACSE, IMS, Adecco...).

We also conducted qualitative interviews between one and two hours long (n=12) with the main actors involved (including both state actors, employers and employer associations, employees and their trade unions, immigrant associations and NGOs active in the field, and lawyers). See list below.

Finally we also conducted ethnographic fieldwork at various events: a two days training program in antidiscrimination for NGOs and Unions organized under the auspices of the European Commission by a French research/consulting agency (Ismcorum), a half-day training for HR managers organized in the same framework, as well as a half-day presentation by the social responsibility consulting agency VIGEO on their first “diversity audit” for the construction firm Vinci. At each of these events we had informal interviews with various actors, especially NGO and workers unions’ members as well as diversity consultants and members of institutions such as the HALDE.

List of interviewees

State actors	- Director for training and work policies, ACSE - Chief officer, job and job training bureau, DPM, Ministry of Employment and social relations/Ministry of Immigration.
Workers Union	- Head of the antidiscrimination unit at the CFDT
RH Managers	- Manager of the antidiscrimination unit at Adecco - HR Director at Eaux de Paris / ANDRH - Human Resources/Diversity Manager at EDF
Employers association	- Head of the “diversity pole”, IMS
Diversity Consulting	-Consultant for Aequalis and member of the consultant committee of the HALDE -Consultant for VIGEO -Consultant for VIGEO
Research-action consulting	-Consultant for Ismcorum
Lawyer	-Lawyer working for the CGT

List of Abbreviations

ACSE : Agence pour la Cohésion Sociale et l’Egalité – Public administration in charge of social cohesion and equality. Replaced the former FASILD.

ANDRH: Association nationale des directeurs de ressources humaines –national association of human resources managers.

ANPE: Agence nationale pour l’emploi – national employment bureau, public agency in charge of matching job offers and demands.

CEDRA: Centre d’études sur les discriminations, le racisme et l’antisémitisme. Centre to study discriminations, racism and antisemitism, French focal point for the RAXEN network.

CFTC: Confédération Française des travailleurs chrétiens – Christian workers union

CFDT : Confédération Française Démocratique du Travail – Workers Union

CGT: Confédération Générale du Travail – Workers Union

CNCDH : Comité national consultatif des droits de l’homme. Independent consultative committee on human rights which monitors crimes related to human rights issues and their treatment by the judicial system. It hands in an annual report to the government.

CODAC: Commission d’accès à la citoyenneté – Commission for access to citizenship

DIV : Direction interministérielle à la ville – Public administration in charge of urban planning policies

DPM : Direction Population Migration – Public administration in charge of migrants issues especially those related to the job market and job training

FASILD: Fond d’Aide et de Soutien pour l’Intégration et la Lutte contre les Discriminations – public administration in charge of financing actions and researches promoting immigrants’ integration, replaced by the ACSE in 2006.

HALDE: Haute Autorité de Lutte Contre les Discriminations et pour l’Egalité – New independent authority, created in 2004 following the EU directives and in charge of monitoring discriminations and helping victims to prosecute perpetrators.

GELD: Groupe d’études et de lutte contre les discriminations. Study group to combat discriminations

HCI: Haut Conseil à l’intégration – High council for integration, independent authority in charge of giving recommendations to the government with respect to integration policies.

IMS-Entreprendre pour la cité (IMS): Employers association specialized in social responsibility and diversity. Promoter of the Charter for Diversity

INSEE: Institut National de la Statistique et des Etudes Economiques

INED : Institut National d'Etudes Démographiques

MEDEF : Mouvement des entreprises de France – Main French Employers Union

MRAP : Mouvement contre le racisme et pour l'amitié entre les peuples – movement against racism and for friendship between peoples

PACTE : Parcours d'accès aux carrières de la fonction publique territoriale/hospitalière/d'Etat) – access path to territorial, national and health civil service.

SOS-Racisme : Antiracist NGO

UNSA : Union nationale des syndicats autonomes – independent unions national umbrella.

VIGEO: Consulting agency specialized in social responsibility headed by former CFDT leader Nicole Notat.

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