

**Bridging the Divide – Integration of the
Functions of National Equality Bodies and
National Human Rights Institutions**

Country: FRANCE

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EXECUTIVE SUMMARY

1. In contrast to other European countries, in France the institution asked to promote the equality and to fight against discrimination, the French Equal Opportunities and Anti-Discrimination Commission (*Haute Autorité de Lutte contre les Discriminations et pour l'Égalité* – hereafter referred to as the "HALDE"), was not integrated into a NHRI as such, but rather into an ombudsman-style institution with responsibility for promoting the rights of citizens and others in certain specific areas, which is referred to as the "Defender of Rights" (*Défenseur des Droits* - hereinafter referred to as the "DD").¹
2. The establishment of the DD, the nature of its functions and remit, and the integration of the HALDE within this new body has generated some controversy. The Consultative National Committee of Human Rights (*Commission Nationale Consultative des Droits de l'Homme* – hereinafter referred to as the "CNCDH"), the official body charging with promoting human rights in France, was reluctant to endorse the creation of the new institution of the DD on the basis that its remit was not expressly defined by reference to the concept of human rights. Furthermore, in the initial legislative proposal providing for the establishment of the DD, HALDE was not one of the bodies which were to be integrated into the new DD. However, an amendment introduced in the Senate made provision for this integration to take place. This integration of HALDE within the framework of the DD was not driven by an underlying human rights logic, but rather by a desire to rationalise an assortment of different independent authorities.
3. The DD differs in important respects from foreign models of combined equality and human rights institutions, and also from other rights protective institutions which were nevertheless widely evoked during the preliminary work on the legislation providing for its creation. Parliament was not given an enhanced role in the constitutional governance of the new institution, unlike the case with similar ombudsman-style structures in Scandinavian countries or the "*Defensor del Pueblo*" in Spain. In general, its status and powers mark out the French DD as a very specific and unique institution.
4. Before the creation of HALDE,² the institutional framework for combating discrimination was insufficient, due to a lack of a coherent institutional architecture and an unnecessary dispersal of actors: the French ombudsman (*Médiateur de la République*), the Fund of Action and Support for the Integration and the Fight Against Discrimination (*Fonds d'action et de soutien pour l'intégration et la lutte contre les discriminations*- FASILD), the General Delegation for Employment and Vocational Training (*Délégation générale à l'emploi et à la formation professionnelle* - DGEFP), the Department of Women Rights (*Service du droit des femmes*), the Inter-Government Ministry Delegate for Handicapped Persons (*Délégué interministériel aux personnes handicapées* - DIPH), the CNCDH, the Observatory for Parity between

¹ Act of Parliament No 2011-333 of March 29th, 2011, related to Defender of Rights (DD).

² Act of Parliament No 2004-1486 of December 30th, 2004, implementing the HALDE.

Women and Men (*Observatoire de la parité entre les femmes et les hommes*), the Consultative National Committee for Travellers (*Commission Nationale Consultative des gens du voyage - CNCGV*), the Committee of Access for Citizenship (*Commission d'accès à la citoyenneté - CODAC*) etc all played a role. However, none of these institutions were in full compliance with the requirements of the Paris Principles of 1991 or the requirements of EU Directive 2000 / 43 / EC, especially as regards independence, pluralism and the capacity to intervene in disputes. (Even after the creation of HALDE and now the DD, these bodies still exist and perform a consultative role.)

5. HALDE provided a focal point through which the fight against discrimination could be conducted. However, six years after its establishment, HALDE has now ceased to exist and its functions are merged within the DD in 2011. It remains to be seen how effective this integration will be, and what impact it will have on the fight against discrimination. The merger of the HALDE within the institutional structure of the DD met with hostility from both within HALDE itself but also from civil society, where a widespread view existed that there was a need to retain an autonomous body with the specific role of fighting against discrimination. This opposition did not defeat the political push for integration, even though the decision to integrate was not taken on the initiative of the Government but rather the Senate. This defeat has left a bitter taste in the mouths of the actors committed to the fight against discrimination.
6. The merger of the HALDE in the DD can be defended on the basis that the integration of the HALDE in the DD could add strength to the fight against discrimination as it will be conducted by a more powerful body that is stated to have a special 'constitutional' status.³ This integration would end the "dilution" and dispersal of responsibility for protecting the rights of citizens among several independent authorities with similar attributes. This led to overlaps of function, and caused confusion among citizens.
7. In a more prosaic way, the gathering of a certain number of administrative bodies answers the necessity of delivering savings in times of crisis, as the reporter to the Senate of the constitutional bill of 2008, during the debate on the legal provisions related to the DD, stated without ambiguity: "we shall have to examine the possibility of including in a sole authority the maximum possible number of bodies which intervene in the field of rights and freedoms [...]...this could allow us to realize welcome savings for a period of general review of the public policies..."⁴
8. More pessimistically, the fast increase of HALDE's power and authority and its offensive strategy of combating discrimination appear to have been badly received by the political branches of government, which gradually eroded the support that was assured to it at first. The integration of HALDE within the DD

³ The legal classification of "independent constitutional body" which is set out in respect of the DD in the organic law establishing the new institution is, at first sight, a major innovation: however, it is deceptive as, according to the French Constitutional Council, the Defender of Rights could not be classified as a "public constitutional power" and instead must be treated as coming within the generic category of administrative authorities.

⁴ Jean-Jacques Hyest, general report of debates, parliamentary session of June 24, 2008.

can be viewed as a way of reining it in. Indeed, it is difficult to accept that the choice to merge the specific authorities selected to come within the DD was driven solely by the requirements of rationalisation, clarification or budgetary savings. The decisions made by the Defender of Children (*Défenseur des Enfants*) concerning foreign underage children, the opposition of the HALDE to the DNA tests for foreigners, the very critical reports of the National Committee of Business Ethics and Safety (*Commission nationale de déontologie et de la sécurité* – hereinafter referred to as the "CNDS") as well as of the General Controller for Places of Deprivation of Liberty (*Contrôleur général des lieux de privation de liberté*) had all attracted political hostility, and all are now integrated within the DD, which is widely expected to function in a less confrontational manner in line with its 'primary' identity as an ombudsman body.