

Face Equality International (FEI) Research Project

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France

No.	Question		Answer
1.	<p>a. Do people with facial disfigurements (marks, scars, etc.) have any legal protection against discrimination?</p> <p>b. Which law relates or mentions the legal protections?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>a. People with facial disfigurements do not have any direct legal protection in France against discrimination. Such protection falls rather indirectly within the scope of discrimination or is derived from the rules of ordinary law. There are certain laws that reference physical appearance or state of health, which could potentially include facial disfigurements.</p> <p>b. Firstly, the Law of 16 November 2001 (Law n°2001-1066), made discrimination an offence and defined direct and indirect discrimination, specifying the criteria and areas of intervention.</p> <p>More precisely, any distinction or difference in treatment is prohibited if it is based in particular on physical appearance or disability according to Article 225-1 of the French Criminal Code.</p> <p>Discrimination is also punishable by 3 years of imprisonment and a fine of €45,000.</p> <p>Physical appearance is defined as (i) bodily appearance and (ii) clothing appearance.</p> <p>(i) Bodily appearance: these are the physical characteristics (facial features, silhouette, build, eye colour, skin tone, body type, eye colour, skin colour, visible disability, etc.). Discrimination occurs when a person is treated unfavourably because of his or her physical appearance.</p> <p>(ii) Clothing appearance and other modifiable characteristics that constitute the "style" of a person: clothing, hairstyle, tattoos, piercings...</p> <p>Secondly, employer and employee protections are stronger and may provide more protection against discrimination on grounds of physical appearance. For example, Article L. 1132-1 of</p>

			<p>the French Labour Code, states that the employer must not exclude a person from a recruitment process, impose a sanction or take a decision against an employee due to their physical appearance. Furthermore, any act suffered by a person related to physical appearance whose purpose or effect is to violate dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment is prohibited (Article 1 of the Law n°2008-496 of the 27 May 2008). The sanctions are significant.</p> <p>Thirdly, according to the French general system of civil liability law, in particular articles 1240 et seq. of the French Civil Code, when the disfigurement occurred following an accident or act of violence, the person who suffered a permanent aesthetic injury must be compensated for the damage to their physical appearance, such as scars or any permanent alteration.</p> <p>This type of injury is assessed on a strictly personal basis by medical experts using a severity scale from 1 to 7, taking into account the specific impact on the victim's life.</p> <p>Damage assessment: The scale ranges from very slight (1/7) to very severe (7/7), enabling compensation to be adapted to the severity of the aesthetic damage. This assessment takes into account criteria such as the victim's sex, age and personal situation, to determine the real impact on his or her quality of life and self-image.</p>
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<p>2.</p>	<p>a. What is this country's legal definition of disability?</p> <p>b. When do people with a facial disfigurement fit within that definition?</p> <p>c. How does being excluded from that definition affect the protection of their rights?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>a. Disability in France is legally defined in French Law. Indeed, according to the Article L114 of French Social Action and Family Code it is: “ (i) any limitation of activity or restriction of participation in life in society suffered in his environment by a person (ii) due to a substantial, lasting or permanent alteration of one or more physical functions, sensory, mental, cognitive or psychological, a multiple disability or a disabling health disorder.”</p> <p>b. People with facial disfigurement may not automatically fit this definition as the article above refers to a limitation of activity or a restriction of participation in life due to alteration of a function. That may not include facial disfigurement because according to the French Law, facial disfigurement does not limit activity or amount to a restriction of participation in life in society.</p> <p>However, if the disfigurement affects the nose or a lip and causes dysfunctional breathing or speech, or if the person is partially blind due to sensory disfigurement, then the person could fit this definition, as this could be a substantial, lasting or permanent alteration of a physical function.</p> <p>c. People with disfigurements can qualify as disabled if they fall within the definition of disability and, as set out above, they may be entitled to the reimbursement of certain expenses incurred in relation to cosmetic damage suffered because of an accident or act of violence.</p>
<p>3.</p>	<p>Are there aspects of disability and/or disfigurement law that ensure a legal right to healthcare, education or employment?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>In France, to be recognized as a disabled person, an application must be submitted to the “<i>Maison Départementale pour les Personnes Handicapées</i>” (ie: the department for disabled people (the “MDPH”)). A medical certificate is required. This is obtained from a general or specialist practitioner and mentions the pathology motivating the application and the resulting issues.</p> <p>Once disability has been medically recognized, the person with a disability is then covered by laws in different areas.</p> <p>Healthcare:</p>

		<p>Article 41 of the Disability Act of 11 February 2005 (the “Disability Act”), states that accessibility is a right and must be available <i>"to all, and in particular to disabled people, whatever the type of disability, notably physical, sensory, cognitive, mental or psychological"</i>.</p> <p>Under this Law, all establishments open to the public, such as hospitals, must comply with accessibility rules. Accessibility standards must enable disabled people to move around as independently as possible, access premises and equipment, use facilities and services, find their way around and communicate.</p> <p>Education:</p> <p>According to several legal provisions, including Article 26 of the 1948 Universal Declaration of Human Rights, the right to education for all children, whether disabled or not, is a fundamental right.</p> <p>In France, Article L351-1 of the Education Code provides that this right requires the education system to adapt to students' particular educational needs¹.</p> <p>Employment:</p> <p>Employers have an obligation to integrate disabled persons into a work structure adapted to their disability. Disabled workers are hired first and foremost for their abilities and potential and may be eligible for assistance to help them find employment. Access to employment for disabled workers is encouraged by the Disability Act, which establishes the principle of non-discrimination and provides for a certain measures and employment aids. Every disabled worker should have access to employment according to their aptitudes and ambitions.</p> <p>Where an act carried out by an employer – such as the termination of an employee – is not compliant with the law from a civil law point of view, this act may be nullified and the employer risks having to pay damages to the employee in question.</p> <p>As mentioned above, discrimination is punished by sanctions where the criminal law is engaged.</p> <p>Exceptions</p>
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¹ See, for example: Article L351-1 of the French Code of Education (<https://eurydice.eacea.ec.europa.eu/national-education-systems/france/special-education-needs-provision-within-mainstream-education>)

		<p>These protective principles remain subject to exceptions. Generally, in accordance with Article L. 1121-1 of the French Labour Code, the employer may infringe the rights and freedoms of the employee provided that such infringement is justified by the nature of the task to be performed and proportionate to the intended goal.</p> <p>In terms of discrimination, differences in treatment are possible <i>"when they meet a genuine and determining occupational requirement and provided that the objective is legitimate, and the requirement proportionate"</i> (Article L. 1133-1 of the French Labour Code). On this basis:</p> <ul style="list-style-type: none"> • The existence of a genuine and determining occupational requirement requires that the measure taken by the employer be work-related, necessary and relevant; • The objective of the measure must be legitimate. This is the case, when it is justified by the workers' health and safety, or by the company's reputation; • Finally, the restriction is proportionate when it is the only solution to enable the company to achieve the pursued aim. <p>Daily life:</p> <p>Disabled people may need a third party to manage their money, their assets, and the social benefits they receive.</p> <p>Article 415 of the French Civil Code provides that: <i>"Persons of full age receive the protection of their person and property that their condition or situation makes necessary [...]"</i>.</p> <p>This protection is well-established in French law, and is also guaranteed by other enshrined principles such as the respect for individual freedoms, fundamental rights, and the dignity of the person.</p> <p>Its ultimate aim is the interests of the protected person. As far as possible, it promotes the autonomy of the protected person.</p> <p>The protective measures available under French law were initially designed for only a few thousand people. By the end of 2022, however, 713,500 adults were under guardianship (<i>Références statistiques justice 2023 - 6. Le droit des personnes</i>). The number of lasting power of attorneys (<i>mandats de protection future</i>), has also been rising steadily since they were introduced on 1st January 2017, was predicted to reach 1,500 in 2022.</p>
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4.	<p>a. How effective are the legal protections? Please describe evidence available of the effect of the legal protections.</p> <p>b. What are deficiencies or areas for improvement in these legal protection measures as they apply and affect people with facial disfigurement?</p> <p>c. What evidence exists to prove that the information and resources guaranteed by law are actually available to disabled persons?</p>		<p>a. Under current law, facial disfigurement may be captured under disability law because Article L114 of French Social Action and Family Code refers to a limitation of activity or a restriction of participation in life but only due to an alteration of a function, and so not all facial disfigurements would be considered as resulting in such limitations. This law could be strengthened by providing additional criteria for establishing a disability to more broadly capture the experience of people with facial disfigurements that limit their activity or restrict participation in life without reference to an alteration of a function.</p> <p>The French Labour Code provides more protection. In response to complaints, the French Officer for Human Rights ("<i>Défenseur des Droits</i>") issued a decision on 2 October 2019, denouncing the importance of physical appearance of job applicants and employees in their employment relationship (decision n°2019-205). This decision was an opportunity to review applicable rules related to discrimination based on physical appearance, but also to make recommendations to employers. The decision defines physical appearance as "<i>all the physical characteristics and visible specific attributes of a person, which relate both to their physical and bodily integrity (morphology, height, weight, facial features, phenotype, stigma...) and to elements related to the expression of their personality (clothing, accessories, hair, beard, piercings, tattoos, make-up...)</i>". Physical appearance is protected as a form of human dignity and under the right to privacy. On this basis, International and European Laws protect</p>

			<p>employees both at the stage of recruitment and during the performance of the employment contract.</p> <p>However, differences in treatment are possible for the reasons described in respect of exceptions above.</p> <p>There is risk that the exception relating to the “company’s image” or “employer’s reputation” as a justification for a difference in treatment could be used to limit the applicability of these protections to facial disfigurement, but this should be mitigated by the October 2nd, 2019 decision denouncing the importance of physical appearance in respect of job applicants.</p> <p>A 17 April 2023 decision from the European Committee on Social Rights of the Council of Europe found that France had failed to adopt effective measures to ensure access for people with disabilities. Other organizations and reports have also found that France’s approach or existing regulation fail to provide reasonable access to people with disabilities (see here and here). These reports are not specific to facial disfigurement and instead cover a variety of accessibility considerations for people with disabilities generally.</p> <p>b. In 2023, the Caron-Déglise interministerial mission report on maltreatment recommended that legal and social protection be based on the rights of the most vulnerable people to be heard and supported. To ensure that the rights of particularly vulnerable people are effective, regardless of where they live or where legal protection measures are applied, the report recommends: (i) shared, evolving tools to assess the difficulties encountered by people in practice, with a view to preserving their self-determination, (ii) better organization of the missions of social, medico-social, health and legal protection professionals.</p> <p>Facilitating access to rights for the physically disabled is a fundamental right.ⁱ The creation of the MDPH has made it possible to offer people a single point of contact and information, capable of assessing their needs in a comprehensive manner and offering them the corresponding rights and benefits. MDPH therefore plays an essential role in providing disabled people with access to their rights, a role that needs to be strengthened in a context of increasing activity.</p> <p>Their information systems are currently being modernized, and several simplification measures are aimed at reducing their workload and hence processing times, to encourage consultation on complex situations for which no solution has been found.</p>
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¹<https://handicap.gouv.fr/faciliter-lacces-aux-droits>