

Sexual harassment law in France first developed in 1992 focused on quid pro quo harassment. It used to prohibit only acts of sexual nature linked to an abuse of authority but, as a result of European law, the legal framework currently has expanded to prohibit sexual harassment as a form of discrimination. Recent legislative reforms in 2015 and 2016 have improved the sanctions and the tools for preventing sexual harassment as a professional risk at work. President's Macron's program for equality between men and women unveiled in November 2017 definitely inscribes sexual harassment as a type of violence against women following the *#balance ton porc* movement and pending legislation extends the scope of the law to street harassment.

### I- **Definition of sexual harassment : a progressive expansion of its scope under the EU influence**

The EU Commission, in an official Recommendation of 1991 invited Member States to « protect the dignity of women and men at work considering unacceptable behavior with sexual connotation or behavior linked to sex which affect women and men at work and is contrary to the principle of equal treatment, regardless of the fact it is perpetrated by supervisors or colleagues. »<sup>1</sup>

The reform of the French Criminal Code in 1992<sup>2</sup> was the first to introduce a narrow definition of sexual harassment as « the act of harassing using orders, threats and coercion in an attempt to obtain sexual favors, perpetrated by a person abusing his/her authority.»<sup>3</sup> It was not until 2002 that the reference to abuse of power was eliminated both in the French criminal and the labor codes and sexual harassment was then described simply as « the act of harassing another person to obtain sexual favors ».<sup>4</sup>

The European Directive 2002/73/CE of September 23 2002 then offered a specific definition of sexual harassment: « where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment»,<sup>5</sup> adding that « harassment and sexual harassment within the meaning of this Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited.»

After the Constitutional Council declared the definition of sexual harassment unconstitutional because it considered it too vague in criminal law<sup>6</sup>, the French legislator took advantage of this opportunity to expand the current definition both in the Criminal Code<sup>7</sup> and the Labor Code<sup>8</sup> in 2012 in two directions:<sup>9</sup> « **sexual harassment consists of (1) repeated words or behavior with sexual connotations that violate the dignity of a person due to their degrading or humiliating nature or create an intimidating, hostile or offensive situation for the person, or (2) conduct assimilated to sexual harassment, consisting of any serious form of pressure, even where there is no repetition, used with the real or apparent aim of**

<sup>1</sup> Recommendation of November 27 1991 (92/131/CEE),

<sup>2</sup> Law n° 92-684 of July 22 1992

<sup>3</sup> Art. 222-33 Penal Code. Law n° 98-468 June 17 1998 added : « use of « serious pressure to obtain sexual favors »

<sup>4</sup> Law n° 2002-73 Jan. 17 2002 on social modernization

<sup>5</sup> Directive 2002/73/CE, article 1(2), now in Recast Directive 2006/54/CE July 5 2006

<sup>6</sup> Constitutional Council, Decision n° 2012-240 QPC (judicial review) of May 4 2012

<sup>7</sup> Article 222-33 of the Penal Code

<sup>8</sup> Articles L1153-1 à L1153-6, Labor Code (protection of employee and witnesses); articles L1154-1 et L1154-2 (procedure in front of labor court) ;article 6ter law n°83-634 du 13 juillet 1983 for civil servants

<sup>9</sup> Law n° 2012-954 of August 6 2012

**obtaining an act of a sexual nature, whether for the benefit of the person engaging in the conduct or a third party.»** The definition now covers sexual harassment creating hostile « situations » but still does not refer to « hostile « environments», contrary to EU law.

The new definition is distinct from the definition of harassment<sup>10</sup> as a form of discrimination linked to a prohibited ground of discrimination (such as sex), included in the law of 2008, transposing European law to combat discrimination.<sup>11</sup> This distinction between discrimination and harassment is confirmed in the guidelines of the Ministry of Justice following the adoption of the 2012 law.<sup>12</sup>

In 2015, the law introduced the notion of sexist act in employment (agissement sexiste)<sup>13</sup> defined as « any act linked to the sex of a person, with the purpose or has the effect of violating her/his dignity or creating an intimidating, hostile, degrading, humiliating and offensive environment. »

## **II- Sanctions and enforcement of sexual harassment law :**

In the Criminal code, sexual harassment is a misdemeanor that can lead to 1 year of incarceration or 15 000 euro fine. Aggravating circumstances can lead to 3 years of incarceration and 45 000 euro fine.<sup>14</sup> Since a law of 2016,<sup>15</sup> the employer must take into account sexist acts within the realm of professional risks covered in the prevention policies he/she must implement<sup>16</sup> and include it in the company codes of conduct.<sup>17</sup> Civil law remedies are also available and employers can be liable under the new class action suit against discrimination which covers harassment based on a prohibited ground.<sup>18</sup>

President Macron in a speech on Nov. 25 2017 made the commitment that equality between women and men would be one of the country's major national causes with three priorities : « cultural education and battle for equality, more support for victims and a reinforcement of criminal sanctions concerning sexual violence ». So the Minister of Justice and the Minister in charge of equality between women and men introduced a bill on March 21 2018 to reinforce the struggle against sexual and sexist violence. It extends the statute of limitation in cases of sexual crimes against minors (20 to 30 years) ; it decides 15 is the age of sexual consent ; it extends the definition of sexual harassment to cover single, non repeated verbal or non verbal concerted acts committed by several individuals against a single victim to cover cyber sexual violence ;<sup>19</sup> it creates a new violation for street harassment (« outrage sexiste et sexuel », sexist ou sexual indignation) : the act of imposing a verbal or non verbal act with sexual ou sexist connotation that either affects the dignity of the person because of its degrading and humiliating nature or creates an intimidating, hostile or offensive situation ». <sup>20</sup> It can lead to fines from 750 euros up to 3000 euros or impose rehabilitation training.

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<sup>10</sup> French law also prohibits moral harassment (bullying): art.1152-1 of Labor Code, art. 222-33-2 Penal Code

<sup>11</sup> Law n° 2008-496 of May 27 2008

<sup>12</sup> Taubira Guidelines (circulaire) n°2012-15 August 7 2012 mentions that the goal is to protect victims « who are mostly women »

<sup>13</sup> Law n° 2015-994 of August 17 2015 (known as Rebsamen Law)

<sup>14</sup> If the worker took more than 8 days of sick leave; the victim is less than 15 years old; the victim is particularly vulnerable because of his/her age, her health, a mental or physical infirmity, a pregnancy, apparent or known.

<sup>15</sup> Law n°2016-1088 of August 8 2016 (Law El Khomri)

<sup>16</sup> Article L. 4121-2 of the Labor Code : awareness raising campaigns and training ; article L. 4612-3 du code du travail : health and security employee representatives must be involved in the prevention

<sup>17</sup> Article L. 1321-2 of the Labor Code

<sup>18</sup> Law n° 2016-1547 Nov. 18 2016 on the modernization of Justice (art. 62)

<sup>19</sup> Article 222-33-2-2 of the Penal code

<sup>20</sup> See proposed Art. 611-2 Penal Code, pending ; public debates in the National Assembly, May 14 and 15 2018