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Legal implications and criminal penalties

Sexist behaviour (Article L131-3 of the General Civil Service Code)

“No civil service employee shall be subjected to sexist behaviour, defined as any behaviour related to a person’s sex, the purpose or effect of which is to undermine their dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.”

Sexist or sexual abuse (Article 621-1 of the Criminal Code)

“Sexist harassment is defined as the act of [...] subjecting a person to any remark or behaviour of a sexual or sexist nature which either infringes upon their dignity due to its degrading or humiliating nature, or creates an intimidating, hostile or offensive situation for them.”

- Principle: a 4th-class offence = **a maximum fine of €750**.
- However, it constitutes a 5th-class offence = **a maximum fine of €1,500** in the following cases:
 - By a person who abuses the authority conferred by their position;
 - Against a minor under the age of fifteen;
 - Committed against a person whose particular vulnerability, due to their age, illness, infirmity, physical or mental disability, or pregnancy, is apparent or known to the perpetrator;
 - Committed against a person whose particular vulnerability or dependence, resulting from their precarious economic or social situation, is apparent or known to the perpetrator;
 - By several persons acting as perpetrators or accomplices;
 - In a vehicle used for the public transport of passengers or in a place intended to provide access to a means of public transport for passengers;
 - On the grounds of the victim’s actual or supposed sexual orientation.

Insults (Sections 29 and 33 of the Act of 29 July 1881 on freedom of the press and Article R. 625-8-8 of the Criminal Code)

‘Any offensive expression, term of contempt or invective that does not allege any specific act constitutes an insult.’

Insults may be racist, sexist or homophobic in nature.

It may be public or private:

- Public abuse: may be heard or read by the public (comments heard in the street, between motorists for example, comments published in a newspaper or on a website, comments posted on social media and accessible to any internet user);

Public abuse is punishable by a fine of €12,000 (in general cases) and a sentence of one year’s imprisonment and **a fine of €45,000 in the case of racist, sexist, homophobic or ableist abuse**.

- Non-public insult: an insult directed at a person without any third party being present (for example, in a text message) or uttered in front of a small group of people sharing the same interests, whether or not the victim is present. If the insult was posted on an account

accessible only to a limited number of friends selected by the person making the remarks, it constitutes a non-public insult.

A non-public insult is punishable, where it has not been preceded by provocation, by a fine of up to €38 (in general cases) and a fine **of up to €1,500 in the case of a racist, sexist, homophobic or ableist insult.**"

Discriminatory defamation (Article R. 625-8 of the Criminal Code):

Any allegation or imputation of a fact **that undermines the honour or reputation** of the person to whom it is attributed, directed at a person or group of persons on the grounds of their origin or their membership, or lack thereof – whether real or supposed – of a specific ethnic group, nation, so-called race or religion.

Non-public incitement to discrimination, hatred or violence (Article R. 625-7 of the Criminal Code)

'Non-public incitement to **discrimination, hatred or violence** against a person or group of persons on the grounds of their origin or their real or supposed membership or non-membership of a specific ethnic group, nation, so-called race or religion is punishable by **the fine prescribed for fifth-class offences (€1,500).**

The same penalty shall apply to non-public incitement to hatred or violence against a person or group of persons on the grounds of their sex, sexual orientation or gender identity, or their disability, as well as to non-public incitement, in respect of those same persons, to the forms of discrimination provided for in Articles 225-2 and 432-7."

The following therefore constitutes discrimination:

- any distinction made between individuals on the grounds that they have **been subjected to, or have refused to be subjected to, acts of sexual harassment,**
- any distinction made between individuals on the grounds that they have **been subjected to, or have refused to be subjected to, acts of hazing** as defined in Article 225-16-1, **or have witnessed** such acts.

The persons concerned may be an unnamed group of people (followers of a religion, people of a certain nationality, etc.), or one or more specific individuals identified by name.

The incitement is considered private if it has been read or heard only by a few people who are connected to one another: on a social media platform restricted to a few friends, during a work meeting, etc.

Discrimination (Articles 225-1 to 225-4 of the Criminal Code)

Discrimination is unfavourable treatment which must generally fulfil two cumulative conditions: it must be based on a criterion defined by law (gender, age, disability, origin, opinions, etc.) and relate to a situation covered by the law (access to employment, a service, housing, etc.).

There are currently **26 legal grounds** on which discrimination is prohibited:

- Actual or presumed origin
- Membership or non-membership, whether real or perceived, of an ethnic group, a nation or a so-called race
- Surname
- Age
- Gender
- Sexual orientation
- Gender identity
- Disability
- Genetic characteristics
- Political views
- Philosophical views
- Trade union activities
- Beliefs or membership, or non-membership, whether real or supposed, of a particular religion
- Moral conduct
- Being a whistleblower, facilitator or person associated with a whistleblower
- Marital status
- Pregnancy
- Physical appearance
- State of health
- Loss of independence
- Place of residence
- Particular vulnerability resulting from economic circumstances
- Bank account details
- The ability to communicate in a language other than French

The general situations affected by discrimination are as follows:

- Access to employment
- Career progression
- Disciplinary action
- Dismissal
- Remuneration
- Employee benefits
- Access to private goods and services (housing, credit, leisure)
- Access to public goods and services (schools, healthcare, civil registration, social offices)
- Access to places open to the public (nightclubs, prefecture, shops, town hall)
- Access to social protection
- Education and training (conditions for enrolment, admission, assessment, etc.)
- Unequal treatment, reprisals or retaliatory measures linked to the exercise of the right to strike or to acting as a whistleblower, etc.

Discrimination may be **direct** if the contested decision is based on one of these criteria defined by law (e.g. a job advert excludes women with children). It may be **indirect** if an apparently neutral rule has the effect of treating people unfavourably on the basis of one of these same criteria (e.g. a bank only accepts French identity cards as proof of identity, which amounts to discrimination against foreign nationals).

Discriminatory harassment is a form of discrimination and is defined as: ‘any conduct linked to [a prohibited ground] and any conduct of a sexual nature, suffered by a person and having the purpose or effect of undermining their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment’

The perpetrator faces a penalty of up to **3 years’ imprisonment and a fine of €45,000**. The penalty may be increased **to up to 5 years’ imprisonment and a fine of €75,000** if the discriminatory refusal to provide goods or services takes place **in a venue open to the public**.

Inciting others to commit certain offences (Article 24 of the Law of 29 July 1881 on freedom of the press, as amended by Law No. 2021-1109 of 24 August 2021 – Article 38)

‘Any person who, by any of the means set out in the preceding article (Article 23: writings, printed matter, drawings, engravings, paintings, emblems, images or any other medium of the written word, speech or images sold or distributed, offered for sale or displayed in public places or at public gatherings, either by means of placards or posters displayed in full view of the public, or by any means of electronic communication to the public) have **directly incited**, in cases where such incitement was not followed by action, the commission of any of the following offences, including:

- Intentional attacks on life, intentional attacks on bodily integrity and **sexual assaults**, as defined in Book II of the Criminal Code (...)

Those who, by the same means, have **incited hatred or violence** against a person or a group of persons **on the grounds of their origin, sex, their sexual orientation or gender identity, or their disability**, or who have incited, against the same persons, the forms of **discrimination** provided for in Articles 225-2 and 432-7 of the Criminal Code (...)

Incitement to racial hatred seeks to instil in others a desire for violence likely to lead to action (discrimination, violence).

Racist and anti-Semitic remarks are also prosecuted when they take the form **of condoning war crimes or crimes against humanity, or when they deny the existence of such crimes** (the Gayssot Act of 13 July 1990). The perpetrator faces up to one year’s imprisonment and a fine of €45,000.

Hazing (Article 225-16-1 et seq. of the Criminal Code)

‘Any person who causes another, **whether against their will or not**, to undergo or commit humiliating or degrading acts, or to consume alcohol to excess, during events or gatherings linked to school, sporting or socio-educational circles, shall be liable **to six months’ imprisonment and a fine of €7,500**. The penalty may be increased to up to **one year’s imprisonment and a fine of €15,000** if this offence is committed against a person whose particular vulnerability, due to their age, illness, infirmity, physical or mental disability, or pregnancy, is apparent or known to the perpetrator.”

Sexual exhibitionism (Article 222-32 of the Criminal Code)

“Cases where indecent exposure is imposed upon the view of others in a place accessible to public view. Cases where, even in the absence of exposure of a naked part of the body, the explicit performance of a real or simulated sexual act is imposed upon the view of others in a place accessible to public view.

An offence punishable by **one year's imprisonment and a fine of €15,000**.

This may be increased to up to **two years' imprisonment and a fine of €30,000 if the offence is committed against a child under the age of 15**.

Voyeurism (Article 226-3-1 of the Criminal Code)

“Using any means to view a person's private parts which, due to their clothing or their presence in an enclosed space, are concealed from the view of third parties, where this is done without the person's knowledge or consent, is punishable **by one year's imprisonment and a fine of €15,000**. This may be increased to up to **two years' imprisonment and a fine of €30,000 depending on the nature of the offence and the circumstances**.”

Sexual harassment (Article L133-1 of the General Civil Service Code and Article 222-33 of the Criminal Code)

In criminal law: “the act **of repeatedly** subjecting a person to remarks or behaviour of a sexual nature which either infringe upon their dignity due to their degrading or humiliating nature, or create an intimidating, hostile or offensive environment for them.

The act, **even if not repeated**, of exerting any form of **serious pressure with the actual or apparent aim of obtaining an act of a sexual nature**, whether sought for the benefit of the perpetrator or for the benefit of a third party, is deemed to constitute sexual harassment.

This offence is punishable by up to **three years' imprisonment and a fine of €45,000**.”

In disciplinary terms: ‘No civil service employee shall be subjected to:

- sexual harassment, consisting of repeated remarks or behaviour of a sexual nature which either infringe upon their dignity due to their degrading or humiliating nature, or create an intimidating, hostile or offensive environment for them;
- or acts equivalent to sexual harassment, consisting of any form of serious pressure, even if not repeated, exerted with the actual or apparent aim of obtaining an act of a sexual nature, whether sought for the benefit of the perpetrator or for the benefit of a third party.”

Article L133-3 of the General Civil Service Code:

“No measure concerning, in particular, recruitment, permanent appointment, remuneration, education, assessment of professional performance, disciplinary action, promotion, posting or transfer may be taken against a civil service employee on the grounds that they:

- 1° **Has been subjected to, or refused to be subjected to, the acts of sexual harassment** referred to in Article L. 133-1, provided that the remarks or behaviour were not repeated, or the acts of psychological harassment referred to in Article L. 133-2;
- 2° Has lodged a **complaint** with a line manager or brought **legal proceedings** seeking to put an end to such acts or conduct;
- 3° Or because they **have testified** to such acts or behaviour or have reported them.

Any employee who has committed or instructed others to commit such acts or behaviour is liable to disciplinary action."

Psychological harassment at work (Article 6 L133-2 of the General Civil Service Code and Article 222-33-2 of the Criminal Code)

From a criminal law perspective: "repeated acts likely to lead to a deterioration in working conditions which may result in an infringement of rights and dignity, an impairment of physical or mental health, or a threat to career progression.

Such conduct is prohibited even in the absence of a hierarchical relationship with the perpetrator.

This offence is punishable by up **to two years' imprisonment and a fine of €30,000.**"

In disciplinary terms: "No civil service employee shall be subjected to repeated acts of psychological harassment which have the purpose or effect of deteriorating working conditions in a way that is likely to infringe upon their rights and dignity, impair their physical or mental health, or jeopardise their career prospects."

Article L133-3 of the General Civil Service Code:

"No measure concerning, in particular, recruitment, permanent appointment, remuneration, education, assessment of professional merit, disciplinary action, promotion, posting or transfer may be taken against a civil service employee on the grounds that they:

- 1° Has been subjected to, or refused to be subjected to, the acts of sexual harassment referred to in Article L. 133-1, including, in the case referred to in paragraph 1 of that Article, where the remarks or behaviour were not repeated, or the acts of **psychological harassment** referred to in Article L. 133-2;
- 2° Has lodged a complaint with a line manager or brought **legal proceedings** seeking to put an end to such acts or conduct;
- 3° Or because they have witnessed such acts or behaviour or have reported them.

Any employee who has carried out or instructed others to carry out such acts or conduct is liable to disciplinary action."

Cyberbullying (Article 222-33-2-2 of the Criminal Code)

"The act of harassing a person through repeated remarks or behaviour intended to, or having the effect of, impairing their quality of life, resulting in damage to their physical or mental health, committed through the use of a public online communication service or via a digital or electronic medium.

The remarks in question may take the form of messages, comments, videos, photo montages, etc.”

Cyberbullying is punishable regardless of whether the comments are **public or private**.

It constitutes an **aggravating circumstance** in the offence of harassment.

This offence is punishable by a **prison** sentence of **two years and a fine of €30,000**.

Invasion of privacy of a sexual nature or sexual cyberbullying (Article 226-1 of the Criminal Code)

“The act of capturing, recording or transmitting, without their consent, the image of a person in a private place [...] words spoken in private or in confidence [...] or the location of that person.”

Focus on ‘**revenge porn**’ (Article 226-2-1 of the Criminal Code): the act of disseminating, without the person’s consent, images of a sexual nature, even if they were captured and recorded with the person’s consent.

This offence is punishable by a **prison** sentence of **two years and a fine of €60,000**.

Sexual assault (Article 222-22 of the Criminal Code), which introduces the definition of **consent**.

‘Sexual assault constitutes any non-consensual sexual act committed on another person or on the perpetrator themselves or, in the cases provided for by law, committed on a minor by an adult.

For the purposes of this section, consent must be freely given and informed, specific, prior and revocable. It is assessed in the light of the circumstances. It cannot be inferred solely from the victim’s silence or lack of reaction.

There is no consent if the sexual act is committed with violence, coercion, threats or by surprise, whatever their nature.

Coercion [...] may be physical or psychological.

It also constitutes sexual assault to force a person, through violence, coercion, threats or surprise, to undergo a sexual offence at the hands of a third party or to carry out such an offence on themselves.”

This implies the requirement of physical contact with the victim. Certain parts of the body are traditionally regarded as intimate: the buttocks, mouth, breasts, thighs and genitals. However, the definition of sexual assault is not limited to these parts: the sexual nature of a caress may be inferred not only from the part of the body concerned but also from the manner in which it is carried out and the context in which the events took place (Court of Cassation, Criminal Division, 3 March 2021, No. 20-82.399)

An offence punishable by a sentence of **5 years’ imprisonment and a fine of €75,000** (excluding any aggravating circumstances specified in the law).

‘Rape and other sexual assaults are deemed to have been committed when they have been imposed on the victim under the conditions set out in this section, regardless of the nature

of the relationship between the perpetrator and their victim, including where they are married.'

"Rape and sexual assaults are classified as incestuous when committed by:

1° An ascendant;

2° A brother, sister, uncle, aunt, great-uncle, great-aunt, nephew or niece.

3° The spouse, cohabiting partner of one of the persons referred to in 1° and 2°, or the partner bound by a civil partnership to one of the persons referred to in the same 1° and 2°, if they exercise legal or de facto authority over the victim.

"Administering to a person, without their knowledge, a substance capable of impairing their judgement or control over their actions, with the intention of committing rape or sexual assault against them, is punishable by five years' imprisonment and a fine of €75,000. Where the offence is committed against a minor under the age of fifteen or a particularly vulnerable person, the penalties are increased to seven years' imprisonment and a fine of €100,000."

Rape (Article 222-23 of the Criminal Code)

"Any act of sexual penetration, of whatever nature, or any oral-genital or oral-anal act committed on another person or on the perpetrator themselves through violence, coercion, threat or surprise constitutes rape."

This offence is punishable by **15 years' imprisonment** (excluding aggravating circumstances specified in the law).

Aggravated penalties (Articles 132-76 and 132-77 of the Criminal Code)

'Where a crime or offence is preceded, accompanied or followed by remarks, writings, images, objects or acts of any kind that undermine the honour or reputation of the victim or of a group of people to which the victim belongs on the grounds

- their **actual or supposed membership or non-membership of a particular race, ethnicity, nation or religion,**
- **their gender, sexual orientation or gender identity, whether real or supposed,**

or which establish that the acts were committed against the victim for one of these reasons."