

# COMPTRASEC

// Centre de droit comparé du travail et de la sécurité sociale //

UMR 5114 CNRS – University of Bordeaux – France

## Moral Harassment in the French Law

**2013 JILPT International Labour Forum on  
Workplace Bullying and Harassment**

Tokyo, February 28, 2013

**Loïc Lerouge**



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Tokyo – Japan – February 28, 2013

### Reminder

**Framework Directive dated 12 June 1989:** General Obligation of Prevention (Health and Safety Act of 31 December 1991)

ECJ 15 November 2001 Commission c/ Italy: "Every risk must be prevented"

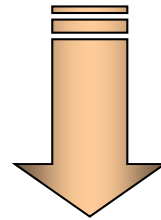
Question of the reach of the general obligation of prevention through the strict obligation to ensure health and safety

## Moral Harassment in the French Law

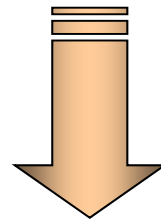
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# 1998



**Marie-France Hirigoyen**, *Le harcèlement moral au travail. La violence perverse au quotidien*, Éditions La Découverte et Syros, Coll. Pocket, 1998, 252 p.



This book triggered a **vast public debate in France**, by describing a **phenomenon** that workers were aware of but **unable to put into words**

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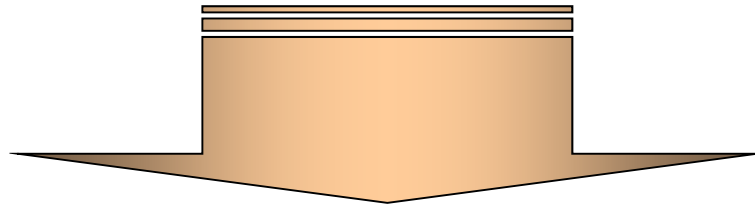
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- **Two draft laws** proposed by Georges Hage in 1999 (*Assemblée Nationale*) and Roland Muzeau in 2000 (*Sénat*)
- **CES (Michel Debout) report**
- One of the major issue was whether the **concept of "mental health"** should be introduced into the French Labour Code or not



**Social Modernization Act dated 17 January 2002**  
instituting a legal provision to combat moral harassment at work

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### **In 20 minutes: three PARTS**

- 1. Moral Harassment under the regime of the Social Modernisation Act**
- 2. Some Case Laws which precises the Moral Harassment**
- 3. Penalties**

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## 1. Moral Harassment under the regime of the Social Modernisation Act

### Definition of moral harassment in the Labour Code (+ Criminal Code and Public Service)

#### Art. L. 1152-1 Labour Code

"No employee shall suffer repeated actions which have for object or for effect a degradation of his working conditions likely to violate his rights and his dignity, to alter his physical and mental health or to compromise his professional future"

new progress relating to occupational risks, in particular through the consideration of the phenomenon of bullying and professional legal recognition

Compensation of the effects of Moral Harassment



Social Security Law

## Labour Law: beyond provisions relating moral harassment

Social Modernization Act: définition (art. L. 1152-1 CT)



- **Employer general obligation of prevention:** the employer has to take the necessary measures to ensure safety and **protect the physical and mental health of workers** (art. L. 4121-1 CT) + to take into account moral harassment in a coherent prevention plan (art. L. 4121-2 CT)
- **Moral harassment:** the employers have to take all necessary measures to prevent moral harassment (art. L. 1152-4 CT)

The employer has also to display the provisions relating to moral harassment and the penal sanctions (art. 1321-2 CT)

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- **Health and Safety Committee:** contribute to the protection of the physical and mental health of workers in the establishment, including those employed by outside firms (art. L. 4612-1 CT).
- **Occupational Physician:** may propose that the employer provide individual accommodation measures for workers whose mental health requires special care (art. L. 4624-1 CT)
- **Worker Representatives:** have a "right to act as whistleblowers". If they witness, or are informed by an employee, that, in the workplace, there is a violation of human rights, the right to physical or mental health, or individual freedoms that is not justified by the type of work, nor by the intended objective, they must immediately inform the employer (art. L. 2313-2 CT)



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- **Article L. 1222-1 of the Labour Code:** contracts must be performed in good faith
- In application of this principle, **employers must implement measures to protect workers' health, to ensure that their health is not altered by the acceptance of the contractual employment relationship**
- From the standpoint of moral harassment, it strengthens the mobilisation of the courts concerning the requirement that the employment contract has to be performed in good faith

## The question of the Burden of Proof

- The employee who complains about moral harassment has to establish the facts which support the presumption that harassment has occurred (art. L. 1154-1 CT)
- It is then up to the defendant to prove that the actions that led to the complaint did not constitute harassment and that the decision was justified by: "objective elements that had nothing to do with harassment" (art. L. 1154-1 CT)
- The judge then forms his own opinion and may order each step to investigate the situation in order to take a decision

**The immunity of employees  
who denounce moral harassment**

Art. L. 1152-2 CT

- Protecting workers and facilitating the report of moral harassment incidents
- Employees may not be penalised, dismissed, or subjected to discriminatory measures for being or refusing to be subjected to repeated instances of moral harassment, or for being witness of or reporting such actions (art. 1152-2 CT)
- The article L. 1152-3 CT cancels any termination of an employment contract due to a lack of knowledge of the definition of moral harassment at work or of the protective measures applicable to employees under these circumstances

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## The Médiation Procedure

art. L. 1152-6 CT

- Procedure initiated by any person in an enterprise who considers being victim of moral harassment or by the person accused of that action
- Aim at reconciling the parties when the circumstances related to moral harassment occurred in the workplace, "bringing together the parties"
- Procedure perceived as an innovation, but no much used

## Key role of the Courts

### Moral Harassment in the French Law

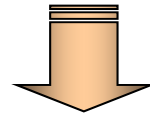
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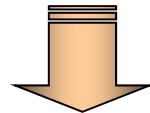
## 2. Some Case Laws which precises the Moral Harassment

### Strict Obligation to Ensure Health and Safety at Work

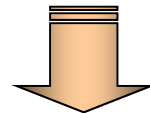
*Cass. soc. 28 feb. 2002; Cass. AP 24 June 2005*



The employer cannot be exonerated from his liability even if they have implemented measures to prevent harassment or applied penalties to offenders



Even if other factors than the fault of the employer contributed to the prejudice; i.e. fault of the employee;  
The Court of Cassation held the employer liable for the actions of his subordinate towards the victim



The Court of Cassation considers that these actions should not have come true

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## Moral Harassment and Strict Obligation to Ensure Health and Safety

"Propara" case on 21 June 2006

- Quite remarkable ruling
- The employer is in charge of an obligation to ensure safety regarding protection of the health and the safety of the workers in the company, in particular regarding moral harassment and the absence of fault of its part cannot exempt him from his liability

The employer's obligation of results in this matter, thus paving the way for integrating mental health as well as physical health in the employer's obligation of results to ensure the workers' safety

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- An employer who takes no action although he is aware that an employee is responsible for moral harassment of a subordinate may be ordered to pay damages for "disloyal non-performance of the employment contract" Cass. soc. 7 February 2007
- An employer may be liable for a breach of an employment contract if he has not taken the necessary steps to prevent moral harassment of one worker by another Cass. soc. 21 February 2007



## Moral Harassment in the French Law

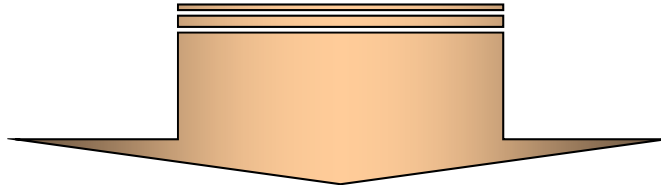
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### **Cass. soc. 10 november 2009**

#### **Two rulings:**

The court's interpretation went beyond moral harassment. The courts extended this legal instrument, intended to combat a phenomenon considered "perverse", to cover the employer's ability to organise and manage the workers



The Court of Cassation confirmed that **moral harassment could occur without malicious intent of the perpetrator**

The Court of Cassation considered that **some management methods used repetitively could constitute "moral harassment"**.

Is article L. 1152-1 of the French Labour Code, on the legal definition of moral harassment, the appropriate legal tool for stopping certain types of work organisation? **Moral harassment does not cover every situation**

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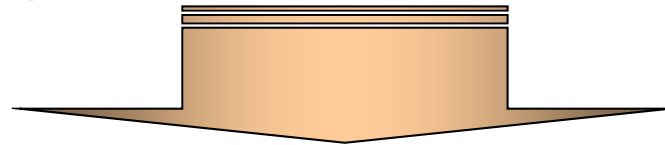
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## Cass. soc. 3 february 2010

### Two rulings:

Once again, the Court of Cassation based its ruling on the employers' general obligation of prevention (article L. 4121-1 of the French Labour Code)



The employer was liable when an employee was victim of physical or moral abuse in the workplace, including moral or sexual harassment, even if measures had been implemented to stop these actions

Thus, employers must implement measures to prevent or avoid any action likely to be a risk for the mental health

The objective is to encourage employers to implement effective policies to prevent psychosocial risks in their companies to avoid liability under this heading

### 3. Penalties

Cass. soc. 6 June 2012

- The employees victims of moral harassment can be indemnified twice
- The victim can accumulate a compensation for the undergone actions and a compensation for negligence of the employer in his obligation of prevention
- The victim must prove the two damages

- Besides labour law, the Social Modernisation Act instituted specific **criminal provisions** in the Criminal Code

- The same legal definition

- Since the reform of August 6, 2013, the article 222-33-2 punishes Moral Harassment by a penalty of:

Two years imprisonment + 30,000 Euro fines

## What about the indictment of the former president of France-Telecom?

- Didier Lombart was the **President of France Telecom** during the **series of suicides**

Not a "Collective Harassment"

Harassment deals with individual cases

### Reinforcing the criminal Way

Endangering the lives of others, incitement to commit suicide, involuntary homicide, submission to degrading working conditions

Better cooperation between Labor Inspection and prosecutor

- In December 2009, based on the Labour Inspector report, a trade-union (SUD-PTT) sued the head of France Telecom with a criminal **complaint about the establishment of an institutional moral harassment leading to "endangering the lives of others"** (art. 223-1 Criminal Code)

**THANK YOU FOR YOUR ATTENTION!**

**ALIGATO GOZAÏMASU!**

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