

Recent Trends in Combating Sexual Harassment in Comparative Criminal Legislations

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Abstract

This study attempts to demonstrate the features of criminal policy in comparative law to combat sexual harassment in terms of criminalization and punishment. In terms of criminalization, we discuss the preconditions for this crime and its elements, materials, and morality. This study attempts to define the framework of this crime by distinguishing it from other crimes, especially those committed against decency and sexual integrity. Simultaneously, it identifies cases in which this crime occurs and cases in which its elements are absent. This study examines sexual harassment in comparative laws, specifically Egyptian, French, and American laws. It aims to identify the position of various legislation on this offense in terms of its conditions and the perceived seriousness of the crime. Utilizing a dogmatic, analytical, and comparative approach, the research emphasizes the importance of criminalizing harassment and scrutinizing its effects on criminal and labor laws. I also follow an analytical approach based on the interpretation of texts, presentation of judicial rulings, analysis and conclusions, and other analytical tools. Finally, I follow a comparative approach in which the research is not limited to a specific law; instead, it is based on a comparative study to consider the experiences of legislators in various countries. The research offers valuable insights into effective legislative strategies and enforcement mechanisms, potentially guiding policymakers in crafting more robust and nuanced laws. By comparing international approaches, the study highlights best practices and identifies gaps. Key messages include the need for comprehensive legal frameworks, consistent enforcement, and an emphasis on victim-centered approaches to enhance the efficacy of sexual harassment laws.

Keywords: Sexual Harassment - discrimination in work relations - legal responsibility - sexual abuse.

1. Introduction

Statistical studies regarding harassment in the United States in 1988 recorded that one million and four hundred thousand people were victims of harassment every year and that 8% of women were exposed to harassment at some point in their lives; for men, 2% of them were exposed to harassment. According to this questionnaire, most harassment occurs against women, as their percentage reaches 78% of the total number of people exposed to harassment annually, whereas

the percentage against men reaches 22%. Half of the victims reported this harassment. People were accused of harassment in 24% of the cases reported by women compared to 19% of the cases reported by male victims. In terms of the age of the victims, 50% were between the ages of 18 and 20 years. Regarding the perpetrators of harassment, a study showed that 87% were men (Gilligan, 1991). In terms of criminal prosecution, 13% of women reported female victims compared to 9% of male victims (Medical University of South Carolina and the National Victim Center, 1992).

Some comparative laws do not criminalize sexual harassment, nor do they criminalize assaulting a female in a manner that offends sexual morality. Hence, it was necessary to encourage these legislators to criminalize actions that violated women's dignity.:

Some legislation did not address the crime of sexual harassment. Other legislation has focused on combating this phenomenon, such as Egyptian, French, American, and English laws. Where there is a need for this criminalization, the legislature provides punishment for this act, especially when the behavior of harassment constitutes a societal nuisance from which members of society are harmed.

Background

Interest in criminalizing harassment comes within the trend of various legislation to protect women, even though the crime of harassment can occur against men. Most likely, this crime occurred against women in violation of their protection due to them. Women should not be discriminated against, whether in the work environment or in other places. This discrimination undoubtedly delays women's progress and deprives society of their contributions to its development.

As this is a comparative study, we examine the legislator's plan in several countries, which sometimes differs in some of its details from what the legislator chooses to do regarding other laws. This study raised the following questions: what interests does criminalization protect? How does the law distinguish harassment from similar acts? How do we distinguish among harassment, admiration, and compliments? Does harassment occur solely for sexual reasons?

The Origin of Criminalizing Harassment

The use of the term harassment in the United States dates to 1975, when a union for working women was established to protect women against the behavior of some employers at work. This behavior includes openly masturbating in front of women, touching them, displaying their genitals in front of them, and threatening and pressuring them to submit as a condition for obtaining a promotion (Shazwan, 2023).

California was the first state to criminalize harassment in 1990, followed by other states. Among them is the state of Florida law (FLA. STAT. § 784.048 (Supp. 1992)). The law in Florida differentiates between harassment by following and harassing and harassment, including threatening people. In the first case, the matter constitutes a misdemeanor; in the second case, it becomes a felony (Steinman, 1993).

Section I: Definition of Sexual Harassment and the Constitutionality of its Criminalization

What is Meant by Sexual Harassment?

Article 306 bis (b) of the Egyptian Law defines the following penalties for harassment: “It is considered sexual harassment if the crime stipulated in Article 306 bis (a) of this law is committed with the intention of the perpetrator obtaining from the victim a benefit of a sexual nature, and the perpetrator shall be punished with imprisonment for a period of not less than five years.” If the perpetrator was one of those stipulated in the second paragraph of Article 267 of this law had a job, family, or educational authority over the victim, or exerted any pressure on them that the circumstances allowed the perpetrator to exert on them or the crime was committed by two or more people, one of them was carrying a weapon, the penalty would be imprisonment for a period of not less than seven years (modified by la law N 141 of 2021).

Article 306 bis (a) stipulates that: “Anyone who assaults others in a public, private, or frequent place by making sexual or pornographic matters, gestures, or insinuations, whether by gesture, word, or deed, by any means, including wire, wireless, or electronic communications, or any other technical means, shall be punished by imprisonment for a period not less than two years and not exceeding four years.”

The penalty shall be imprisonment for a period of not less than three years and not exceeding five years and a fine of not less than two hundred thousand pounds and not more than three hundred thousand pounds; one of these two penalties should be imposed if the act is repeated by the perpetrator.

In the case of recidivism, the minimum and maximum penalties for imprisonment and fines should be doubled.

Types of Sexual Harassment

Some laws, such as the French Law, have outlined various forms of harassment. The French Labor Code specifies the forms of harassment in Article 1153-1, amended by Law No. 1018 of 2021 on Sexual Harassment. These forms were classified as follows:

Physical Sexual Harassment

This consists of repeated words or actions with a sexual or lustful connotation that infringes on the worker’s dignity due to their degrading or humiliating nature, or that would create a feeling of fear or humiliation.

A previous study also added other manifestations of sexual harassment when acts were committed by more than one person, sometimes with agreement, and other times without. This occurs in the following cases:

- 1- When a male or female worker is targeted by words or actions issued by more than one person in agreement or on the instigation of one of them, even if those actions are not repeated (Olanrewaju, 2024).
- 2- When words or actions are repeated and come from several people, even if they say those words or actions in absence of agreement between them.

Moral Sexual Harassment

This type of harassment takes the form of significant pressure, even if not repeated, exerted by the perpetrator on the victim for the real or apparent purpose of obtaining an act of a sexual nature for them or someone else.

Those who commit moral harassment should be punished, even if it only occurs once. The prescribed penalty is two years of imprisonment and 30,000 euros, and the penalty increases to three years if one of the aggravating circumstances stipulated by the law exists (Cass. crim. 15 Jun 2000).

Criminalizing Moral Harassment Related to Sexual Gain

Moral harassment refers to attempts to pressure the victim to submit to the harasser's requests to obtain sexual benefits. Repetition is not required under Egyptian law for a crime to be considered moral or psychological harassment. Moral harassment fulfills the elements specified in Articles 222-33-2 of the French Penal Code and Article 593 of the Code of Criminal Procedure. The court may not add new conditions, such as requiring that repeated acts be of a different nature. Rather, it is sufficient that the same act is repeated over time and that the nature of those acts, or their effect, is detrimental to the dignity or health of the victimized worker (Crim. 26 Jan. 2016).

With the amendment to French law in 2002, harassment carried out as an abuse of power at work is no longer a condition of criminalization. Similarly, the victim of the offense may be a man or woman. In other words, a victim is a victim regardless of their gender.

Distinguishing Sexual Harassment from Other Similar Acts

Sexual and Moral Harassment of the Male/Female Worker that is not Related to a Sexual Benefit

Employers may harass workers in a way that makes the working environment inappropriate and degrading. This includes the employer resorting to imposing a penalty on the worker or threatening to do so because of what they consider poor performance; in one case, this led to the worker committing suicide. The court considered there to be a causal relationship between this suicide and the employer's behavior and awarded compensation to the worker's heirs.

Likewise, continuous insults from the employer have led to the worker's absence from work and subsequent dismissal from their job (Toulouse, 2000). On the contrary, if proven, this harassment allows the worker to request termination of the employment contract due to a mistake by the employer (C. Cass soc. 16 Juillet 1998).

To achieve its goal of protecting workers from moral or psychological harassment, Article 225-14 (French Penal Code) stipulates that anyone who is subject to undignified working or housing conditions that exploit his/her weakness or conditions of dependency shall be punished by two years of imprisonment and a fine of half a million francs.

Article 122-49 of the Labor Law enshrines the principle of prohibiting moral or psychological harassment by stipulating that "it is not permissible for a worker to be subjected to repeated behavior of moral harassment that aims or has the potential to degrade the work environment in

a way that leads to a violation of the worker's rights or dignity, harm his physical or mental health, or exposes his future to danger." (article L. 122-49 nouveau du code du travail).

The previous article imposed an obligation on employers to protect workers' physical and psychological health. If employers do not achieve these goals, they are held accountable (Article 122-51).

Harassment and Bullying

The Egyptian Penal Code punishes bullying and sexual harassment. In this regard, Article (309 bis/b of) Penal Code (added by Law No. 189 of 2020) stipulates that "any statement or display of power or control by the perpetrator, exploitation of the weakness of the victim, or a condition that the perpetrator believes is offensive to the victim, such as gender or race, religion, physical condition, health or mental condition, or social level, with the intention of intimidating him, putting him in the subject of ridicule, degrading him, or excluding him from his social environment, is considered bullying.

The bully shall be punished by imprisonment for a period of not less than six months and a fine of not less than ten thousand pounds and not exceeding thirty thousand pounds, or one of these two penalties.

The penalty shall be imprisonment for a period of not less than one year and a fine of not less than twenty thousand pounds, and not more than one hundred thousand pounds, or one of these two penalties, if the crime was committed by two or more persons, or if the perpetrator was an ascendant of the victim or one of those responsible for the victim's upbringing, or was committed by someone who had authority or guardianship over the victim, or the victim was entrusted to the perpetrator accordance with the law or a judicial ruling, or was a servant of the offender. However, if two circumstances are present, the minimum penalty doubles (Kaiser, 2024).

In the case of recidivism, the penalty should double at its minimum and maximum."

Differences Between Sexual Harassment and Bullying

The purpose of sexual harassment, as its name suggests, is to obtain sexual benefits from the victim. For this reason, bullying is not considered to have occurred.

While Sexual Harassment Often Occurs Against Women, is Bullying Linked to a Specific Gender?

Bullying involves an act or statement characterized by violence, while sexual harassment might occur with words that appear soft and calm but are directed toward obtaining sexual advantages.

The reason for sexual harassment is to obtain sexual advantages, whereas bullying occurs because of the victim's specific characteristics, such as gender, race, religion, physical condition, health, mental condition, and social level.

Sexual Harassment and Discrimination Against Women

Sexual harassment and discrimination against women are similar in that the victim is a woman, and the cause is the woman's feminine aspects.

Article (1) of Law No. 496 of 2008 in France regarding the compatibility of French law with European law in the field of combating discrimination stipulates that discrimination exists in all situations where treatment is due to belonging or non-belonging, apparent or assumed, to a particular race or gender, religion, beliefs, age, disability, sexual orientation, or gender if that treatment is less than that of other people.

The previous article also stipulated that indirect discrimination exists when the treatment is apparently neutral but would cause fewer benefits for one of the reasons mentioned above, unless the lack of benefits is due to objective reasons that justify it, whether in terms of the goal or the means used (Maryam et al., 2024).

The previous article stipulated that discrimination for an illegal reason includes the following:

1- Every act committed for one of the previous reasons and every behavior with a sexual connotation that affects a person's dignity or creates a hostile, humiliating, degrading, or abusive environment.

2- Every act that includes an order to others to conduct in violation of what is stipulated in Article Two.

However, the previous law was careful to stipulate that it does not apply before the criminal courts; therefore, this discrimination is not criminally punishable, but the provisions of this law apply when the concerned party tries to obtain their rights before the civil and labor courts.

However, the French Penal Code was amended on March 21, 2022, to punish discrimination; this discrimination became a criminal offense, and its effect is not limited to civil and labor courts. Article 225-16-2 provides penalties for discrimination, which include differential treatment due to origin; gender; family status; pregnancy status; the person's physical affiliations; or the presence of manifestations of weakness resulting from economic circumstances, apparent or known from the perpetrator; their name; their place of residence; their health condition; the loss of their independence; a disability from which they suffer; their genetic characteristics; their customs and traditions; their sexual orientation; gender identity; age; political opinions; trade union activity; or social, economic, or political activities.

It is worth noting that Anglo-American laws view sexual harassment from the perspective that it constitutes discrimination in treatment. French law considers sexual harassment a criminal offense, meaning that it is viewed more seriously than in Anglo-American law (Patrice Adam, 2016).

Article 225-2 of the French Penal Code stipulates a penalty of imprisonment for a period not exceeding three years and a fine not exceeding 45 thousand euros if any form of such discrimination is carried out that results in refraining from providing goods or services if the victim is dismissed from work because of that discrimination, if the discrimination disrupts the normal course of action of the economic activity or if it results in the person being refused admission to a training program.

In contrast, sexual harassment in the United States of America, as well as in Britain, is considered a form of discrimination based on gender. This is because the victim was tested for gender, even

though he was of the same gender as the perpetrator. European directives move in the same direction as the previous direct directives. (No. 2002/73, September 23) 2002, art. 2, § 3).

The International Committee to Combat Discrimination against Women also issued Recommendation No. 19 in 1992, emphasizing that violence against women is a type of discrimination that prevents them from obtaining their rights and freedoms.

This did not prevent French law from considering the acts of sexual harassment of a female worker by an employer as an abuse of power. These actions are described as sexual harassment and abuse of power in the field of work, whether private or public. This does not prevent the criminal consequences of harassment, which have been classified as a crime in the French Penal Code under Article 222-33 and Article 225-1-1.

Harassment and Threats

Other crimes consistent with harassment include threatening to cause harm, which may cause fear among victims. The act of threat is included as a material element of the crime of threat, not as harassment. The threat may be linked to the sexual benefit that the accused wants to obtain. Further, a multiplicity of crimes between the crime of threat and the crime of sexual harassment exists. The perpetrator is usually punished according to the crime with the most severe punishment.

Harassment and Crimes of Indecent Assault

Sexual harassment and indecent assault are similar in that they both occur in women as they do in men (Besancon, 2000)

However, indecent assault is distinguished from sexual harassment in that it constitutes a violation of the victim's sexual parts (Mistretta, 2013). As for sexual harassment, it is sufficient to include a violation of the victim's dignity. Regarding the latter, it was ruled that the offense exists on the part of an employer who openly requests sexual relations from their employees in front of others (Crim. 17 mars 2004). It was also ruled that committing harassment of the accused, who, in response to the victim's refusal, uttered insults at her (Crim. 20 Nov. 2002).

This law does not specify sexual acts. Therefore, it was ruled that these acts are achieved when the victim's body is touched if the aim is to satisfy sexual desires (Paris, 18 Jan. 1996).

Among the behaviors determined to have sexual purposes were touching the thigh (crime. 17 Oct. 2012) and touching a woman's back (Crim. 10 May 2006), as well as passing the hand over the victim's abdomen or arm (Crim. 10 May 2006), suggesting that sexual encounters were accompanied by threats (Crim. 17 Feb. 2010), clinging to a woman's body (Crim. 6 février. 2002) and lifting the lower part of women's clothing (Crim. 11 May 2010).

However, if the purpose was not to have sexual intercourse, it was ruled that the offense did not occur. For example, if the accused sent a romantic letter to a woman (Versailles, 30 Jun 1993) or suggested that they meet (Crim. 19 janv. 2005), this was considered nothing more than flirtation.

It is not surprising that some people assert that the interest protected by law is the dignity of a person in terms of the person's right to sexual freedom (Mistretta, 2013).

Harassment Offending the Indecency

Article 306 bis - 1 of the Egyptian law provides penalties for assaulting a person in a way that offends their decency: "Anyone who assaults others in a public or private place or is involved in committing sexual suggestions, pornographic insinuations, whether by gesture, word, or deed, by any means, including wired, wireless, or electronic communications, or any other technical means shall be punished by imprisonment for a period of not less than two years and not exceeding four years."

The penalty shall be imprisonment for a period of not less than three years and not exceeding five years, and a fine of not less than two hundred thousand pounds and not more than three hundred thousand pounds, or one of these two penalties if the act is repeated by the perpetrator through the prosecution and tracking of the victim.

In the event of recidivism, the minimum and maximum penalties for imprisonment and fines, respectively, should double.

There are some similarities between the two crimes: Each occurs through words or deeds, the victim may be a man or woman, the perpetrator may be a man or woman, and the actions or words contain sexual content.

However, criminalizing sexual harassment provides a different benefit than criminalizing attacking someone in a way that offends their decency.

Harassment is characterized by the presence of a special intention on the part of the perpetrator, which is to obtain sexual benefits from their actions. The assault of a female is a type of act carried out for other purposes, including satisfying the accused's ego and their desire to have sex with girls in public places, for the sake of annoyance, or for undisclosed motivations. The perpetrator seeks to gain specific sexual benefits from the victims.

Harassment is a felony punishable by imprisonment for a period of not less than five years if the perpetrator is one of those stipulated in the second paragraph of Article 267 of this law; has a job, family, or educational authority over the victim; or exerts any pressure on them. If the crime was committed by two or more people, or at least one of them was carrying a weapon, the penalty shall be imprisonment for a period of no less than seven years (Article 306). As for assaulting a person, the penalty is imprisonment for a period of not less than two years and not exceeding four years. If the act is repeated by the perpetrator through prosecution and tracking of the victim, the penalty shall be imprisonment for a period of not less than three years and not exceeding five years and a fine of not less than two hundred thousand pounds and not more than three hundred thousand pounds, or one of these two penalties.

In the event of recidivism, the penalties of imprisonment and the fine shall be doubled to be within their minimum and maximum limits' (Article 306 bis (a)).

Harassment and Acts of Seduction

Judicial rulings tend not to consider expressions of admiration and flattery as sexual harassment (Versailles, 29 nov. 1996,). Consequently, it is not considered harassment if someone asks a woman for a romantic date (Crim. 19 janv. 2005). Criminalizing harassment occurs when actions involve denying the victim's sexual freedom through pressure on him/her (Mistretta, 2013).

Section II: Constitutionality of Sexual Harassment

The Constitutionality of Harassment Laws in California

The issue of the constitutionality of the anti-harassment law was raised concerning the law of the American state of California because it gives police officers the authority to arrest the accused based on the victim's report without a warrant or in flagrante delicto. The abovementioned law also sometimes used ambiguous expressions, which is contrary to the Constitution that provides for the principle of legality in criminal affairs (SENINEL, 1993).

The Florida legislature issued a law on April 13, 1992, making harassment a misdemeanor in one case and a felony in the other.

If harassment is not accompanied by the threat of an imminent act, when the act is limited to the follow-up and surveillance of the victim, then the offense is a misdemeanor. In contrast, harassment becomes a felony if it is accompanied by a threat (Steinman, 1993).

This law has been criticized as unconstitutional because of its general wording, which makes it inconsistent with the principles of criminal legality. Similarly, the law punishing harassment allows police officers to arrest those accused of this type of crime without warrants (Judge Overturns Stalking Law, 1993). Additionally, some words used by the law raise suspicion such as "annoy" and "credible threat."

However, Florida law defines some words necessary for the offense by stating:

Harass refers to committing several acts against a specific person that causes psychological pain without legal justification. A credible threat refers to an intentional threat to a specific person that makes him fear for his life or safety.

The same law also defined what is meant by the expression "Course of Conduct," which is a group of actions that occurred closely together, indicating the unity of the criminal enterprise.

There are those who criticize the expression "repeatedly" in this law, as the term "repeatedly" is ambiguous and requires further investigation.

As for what is meant by emotional distress, it means that the behavior must be "likely" to cause psychological pain, meaning that the average person expects that this behavior would cause psychological distress. Psychological pain may have occurred because of the behavior. In addition, there must be an intention to do so and even the presence of a special intention.

The Constitutionality of Article 222-33 French Penal Code

Article 222-33 of the French Penal Code criminalizes harassment: “Whoever engages in harassment of a person for the purpose of obtaining a response of a sexual nature shall be punished with a fine not exceeding 15 thousand euros.”

This article was challenged before the Constitutional Council made a decision. On May 4, 2012, this text was declared unconstitutional because it violated the principle of the legality of crimes and punishments, as this article did not define harassment. According to this principle “*Nullum crimen sine lege*.” Consequently, the wording of the penalty text must be precise and clear.

Article 222-33 of the French Penal Code, which punishes harassment, does not specify its meaning. The French Constitutional Council decided that this text was unconstitutional because it contradicted the principle of criminal legality. This is because the text conflicts with the constitutional requirements necessary to protect individual liberty (Conseil Constitution, 2012).

Accordingly, the previous article was amended pursuant to the law issued on August 6, 2012, as follows:

“It is considered harassment if one imposes on another person, in a repeated manner, words or actions with sexual content that would affect the dignity of the victim due to their degrading or contemptible nature or create fear or a feeling of hostility or humiliation.”

This means that the ruling convicting the accused of sexual harassment must describe the acts of harassment and not just state that the accused attempted to sexually harass the victim. Therefore, the French Court of Cassation overruled the flawed ruling and referred the case again to the Court of Appeal (M. Véron, note sous Crim. 10 Nov. 2004).

Before its amendment, Article 222-33 of the French Penal Code required the harasser to have authority over the victim, which they could use arbitrarily. However, a subsequent amendment eliminated this effect.

The amendment includes the following:

- The crime no longer belongs to the category of power abuse. Some Arab legislation, such as Moroccan law, still requires that harassment occur through the perpetrator’s abuse of authority, as French law did before 2002 (Ekram, 2015).
- Crime is no longer limited to private work relationships or public employment.
- The crime has become separate from blackmail, as there is no requirement of the threat of losing a benefit, promotion, allowance, or anything else if the victim does not comply.
- The means of committing harassment are no longer coercion or serious pressure

The French Labor Code addresses harassment in the field of work relations, especially moral harassment. The French Constitutional Council ruled in favor of the constitutionality of Article L. 122-49 à L. 122-53 of the Labor Code, which defines this type of harassment as repeated acts that carry content or a result in such a way that makes the working conditions hostile to the victim’s rights, dignity, or undermines their health, physically or psychologically, or endangers his future career. The Constitutional Council confirmed the constitutionality of the second

paragraph of the same article as well. This paragraph prohibits the worker from being penalized, dismissed from work, or subjected to procedures that include discrimination because they endured or refused to endure acts of moral harassment at work, as defined in the first paragraph of the same article, or because they testified about the aforementioned acts of harassment or reported them.”

Regarding the content of Article 122-52 of the Labor Code that created a legal presumption of validity for the worker’s claim based on the availability of certain facts indicating the existence of moral harassment against the accused, the Constitutional Council ruled that the matter relates to a simple legal presumption for the accused to prove the opposite. It is a simple presumption in favor of the worker when it is proven that relevant measures were taken against the victim because they refused to submit to sexual harassment. The court may infer the existence of moral harassment from workers subjected to discriminatory procedures.

This presumption does not conflict with the Constitution as it guarantees the right to defend, according to what was decided by the Constitutional Council, under two conditions:

- 1) The plaintiff worker must prove the actions to which they were previously exposed, which they consider to be the reason for being deprived of benefits or falling under persecution from the employer.
- 2) The judge does not lose their conviction regarding the evidence presented to them as the judge has the final say in ruling on the occurrence of acts of moral harassment.

It should be noted that the Constitutional Council did not fail to decide that this presumption applies to criminal matters and not to civil or labor matters. However, a fair trial in civil or other matters is guaranteed by the constitution when the right to defense is at stake (Décis. n° 2001-455 DC due 12 janv. 2002).

Also, the Constitutional Council in the previous case concluded that there was no violation of the principle of the legality of crimes and punishments, which requires a clear definition of the act, even though the plaintiffs considered that the word depriving the worker of their “rights” was not specific. This is because the Council estimated that workers’ rights are determined by law, which is sufficient to ensure the clarity of the text.

When a punitive text or a text related to criminal procedures is ruled to be unconstitutional, the Council has the right to delay the entry into force of the ruling of unconstitutionality before implementing the ruling of unconstitutionality after a certain date during which the authorities enact a new law to ensure deterrence considerations (Saloméja, 2022).

It is worth noting that, in the case of criminalization and punishment, this rule cannot be applied because it punishes a person based on an unconstitutional text. In fact, criminal lawsuits based on that article that was ruled unconstitutional must end and the accused must be acquitted (Décision n° 2012-240).

Section III: Sexual Harassment in the Field of Work

Definition of Sexual Harassment in French Labor Laws

The French Labor Code, in Article (L.1153-1), defines sexual harassment of a worker as a repeated act or statement that has a sexual connotation and affects the dignity of the worker, male or female, either because it includes degradation, humiliation, or because it constitutes a threat or hostile or insulting behavior.

The previous article also confirms that sexual harassment occurs with every form of serious pressure, even if it is infrequent, which is carried out with the apparent or real purpose of obtaining an act of sexual nature for the person exercising this pressure or for another person.

The criminalization of harassment is not limited to that which occurs in the hands of the employer at work. Instead, this is considered an aggravating circumstance in the latter case.

Article (1153-1) of the French Labor Code emphasizes the definition of sexual harassment by saying: "It is not permissible to subject the worker to acts - either words - that have a sexual or lustful content on a repeated basis, if they include an infringement on his dignity or have a degrading or humiliating nature, or they create a situation that frightens him or is hostile or offensive to him."

The previous article also stipulated that sexual harassment of a male or female worker also occurs in the case of "acts similar to sexual harassment, which consists of every act that includes serious pressure, even if it is not repeated, exercised by the perpetrator for the real or apparent purpose of obtaining an act of a sexual nature, whether for his own benefit or for the benefit of someone else."

The issue of the treatment of those accused of harassment crimes has developed within the scope of labor laws. For example, the U.S. Supreme Court ruled in a lawsuit filed by two female workers in a company complaining that the employer had made sexual requests from them, and when they refused, their employment contract was terminated. The court rejected the worker's lawsuit because the matter was related to the employer's personal behavior and not harassment (Bausch & Lomb, Inc.).

However, the Court changed its position in subsequent cases (Burlington Industries, Inc., v. Ellerth, 1998). In these cases, the court ruled that if the employer's harassing behavior resulted in terminating the worker's contract, demoting them or their job grade, or causing them serious harm, then the employer would be considered responsible for that.

The American courts decided that it would be the employer's responsibility if they exerted pressure on a job applicant to make the applicant's appointment conditional on them accepting a sexual relationship with the employer (Craig v. Y & Y Snacks, Inc., Cir. 1983).

If the supervisor's conduct at work was to pursue an employee subordinate by commenting on their chest, legs, or other parts of their body, then this does not include the possibility of punishing the employee for their refusal to be approached by the supervisor. Nevertheless, this behavior creates a hostile environment at work that may lead the victim to leave.

As for the employer's responsibility for the harassment coming from the employee's supervisor, the court - in the Burlington case - ruled that the employer has the right to invoke a defense that absolves the supervisor of responsibility for the harassment that occurs from the supervisor

towards the employee on two conditions: The first is that the employer takes the necessary steps to prevent the occurrence of harassment in the workplace, and the second is to prove the victim's negligence in not submitting a complaint to the employer and refraining from taking the necessary steps to notify them of the harassment in accordance with the mechanisms that have been established to prevent the recurrence of such harassment (*Burlington Industries v. Ellerth*, June 26, 1998).

The United States' Equal Employment Opportunity Commission defines sexual harassment as follows.

“An explicit or implicit sexual offer, whether verbal or actual, is unwelcome by the employer to those who work for him when:

- (1) Submission of this offer is a condition for assuming a position
- (2) Submitting to this offer is the basis for an employer's decision regarding the harassed person.
- (3) The purpose or result of this behavior is related to the performance of the work or creates a hostile or humiliating environment in which fear prevails among the targets of the harassment.”

French Labor Law is concerned with protecting male and female workers from employers who may engage in acts of sexual harassment against them, or if these actions are represented by pressure exerted by them to discriminate against those who refuse to submit to acts of harassment. This meaning was confirmed in Article L.1153-1 and the Labor Code, as amended by Law No. 954 of 2012 and Law No. 703 of 2018.

The following features are noted regarding the legal protection of the worker:

-The Labor Law pays special attention to protection from sexual harassment in these articles.

- The Labor Law has expanded the scope of legal protection, and this has been demonstrated through the following:

1- The law did not distinguish between female and male workers to extend legal protection to men (*Oncale v. Sundowner Offshore Services, Inc.*, U.S. (1998).

2- Protection is not limited to employers' actions. Acts of sexual harassment may occur from a company employee or colleague who has no power or influence in the field of work. This text is no longer limited to protecting the worker from the employer only; rather, in its general form, it extends to protecting the worker from coworkers (Crim. 7 Nov. 2000).

3- The French law did not only limit protection to action, but also extended it to words.

4- The law not only limited protection to acts of harassment but extended that protection to acts of pressure to obtain sexual benefits from male or female workers. Pressure refers to every serious act committed against a male or female worker to force them to engage in sexual acts.

5- The law expanded the concept of the act of harassment to encompass any act of a sexual nature, not limiting it to acts of sexual assault on victims.

6- The law considered a form of harassment to be the act of exerting serious pressure on a male or female worker to obtain sexual work from him or her.

7- The law did not distinguish between requesting sexual work for the same person or requesting it for another person.

8- The law extended the umbrella of protection to include male or female workers appointed, applicants for work, or candidates for work, as well as male and female workers in their period of probation and vocational training that occurs before they undertake actual work.

9- The law protects male and female workers and those who are in the period of training or vocational rehabilitation from dismissal, punishment, or any discrimination practiced against them and related to salary, rewards, promotion, transfer, assignment to a specific job, vocational rehabilitation, career advancement, job change, or contract renewal due to their submission to or refusal to submit to the acts of sexual harassment referred to in the previous two articles (L. 1153-2).

10- The law extends protection to male and female workers against any punishment or act that discriminates against them because of the testimony given by one of them related to acts of sexual harassment (1153-3).

11- The French law distinguished between serious acts, in which repetition was not required, and non-serious acts, in which repetition was required for harassment to occur when the acts of harassment affect the dignity of the male or female worker due to insult or humiliation, constitute a threat, or are hostile to them.

Discrimination in Treatment as Element in Moral Harassment

If the discrimination to which the male or female worker is subjected because they refused to submit to pressure to agree to give their employer sexual favors or refrain from testifying about the incident of harassment to which another male or female worker was subjected, then Article 225-1-1 of the French Penal Code considered this a form of harassment. In this case, the acts of harassment are not required to be repeated.

The Relationship Between Acts of Harassment and Work

For harassment to exist within the scope of work and to be considered a serious error that justifies the dismissal of the harasser, harassment does not need to occur within the workplace. Rather, it is sufficient to be related to work, even if it occurs outside the workplace (Arrêt du 19 October 2011). Therefore, it was ruled that a crime was considered to have been committed by a coworker, even if the harassment occurred outside of work hours. In this case, the harassment constitutes a serious mistake that justifies the right of the victimized worker not to remain in the job in which the crime occurred (Soc. 19 oct. 2011). It was also ruled that harassment had occurred by the employer at work, who tried more than once to hug the worker in the workplace when they refused; the employer renewed their invitation to have sexual relations and continued their phone calls, causing the employee psychological suffering (Soc. 24 sept. 2008).

Determining the Employer's Duties When Filing a Harassment Complaint

Various laws impose the duty of employers to protect employees from sexual harassment. Therefore, the American courts impose an obligation on employers to investigate harassment complaints and prevent them from recurring. In *Varner v. Nation Super Market* (1996), the court underlined the employer's duties when a harassment complaint was submitted by a female or male. In this regard, the US Federal Court of Appeal ruled that the manager made a mistake when addressed by the fiancé of one of the employees complaining about the employee's boss at work because he was dissing her and placing his hand on her chest, merely advised the fiancé to drop the issue and assured the fiancé that the employer at work would also drop their complaint. This error was represented by the manager's failure to fulfill their duty to investigate complaints of harassment. The court did not accept the manager's defense that the competent authority to receive complaints was human resources, stressing that the woman and her fiancé turned to the manager for help and guidance, but the manager did not provide either. Rather, the harasser continued their harassment and the matter ended with police intervention (Eighth Circuit, *Varner v. National Super Markets*, (8th Cir. 1996)).

However, the employer had a defense if he established a policy for addressing harassment by work managers and others, and if the victim did not follow the rules of that policy when claiming their rights in this case. The court accepted this defense (Bill C. Berger, 1998).

Chapter 12 (1) of the German law on "fair treatment" requires employers to take preventive measures to protect employees from sexual harassment. French law followed the same approach as Article 1153-5 of the Labor Code. This means that an employer's failure to protect employees from sexual harassment leads to civil liability towards the victim.

Impact of Criminalizing Harassment on Labor Laws

Labor laws in various legislations usually include provisions prohibiting employers from harassing female workers. The United States enacted the Civil Rights Act of 1964 (as amended by Article 42 of the United States Code), Section 2000-5, to prohibit an employer from refusing to hire or dismiss a worker or preventing their promotion or obtaining job benefits because of their gender, origin, religion, race, or country of origin. According to the ruling of the United States Supreme Court (*Connecticut v. Teal*, 1981), the employer is responsible for doing so, regardless of the motive behind the discrimination.

Discrimination is a form of persecution where the victim is targeted for being part of a specific minority group, such as being a woman. This makes the employer responsible, as determined by the American courts in the case of *Rogers v. Equal Employment Opportunity Commission* (454 F.2d 234 (5th Cir. 1971), cert. denied, 406 U.S. 957 (1972)).

This discrimination may take the form of sexual harassment of the worker, which some American court rulings tended to consider a matter of impropriety (come *v. Bausch & Lomb, Inc.*, 1975). However, this jurisprudence developed—in the case of *Williams v. Saxbe*—to determine the responsibility of the worker's supervisor who committed this harassment, as well as the manager responsible for this supervisor, from a civil and labor perspective (*Williams v. Saxbe*, 1976).

Discrimination in the field of work creates an abusive work environment for male and female victims of some hostile acts. Discrimination is different from sexual harassment, but it may be combined with it a fortiori, creating a discriminatory environment when the male or female worker is not appointed or does not benefit from allowances or promotions unless they accept the sexual advances expressed by their employer. Discriminatory treatment creates a right to monetary compensation. Likewise, American courts use the method of direct orders to employers to stop such treatment (injunction relief; *Phillips v. Smalley Maintenance Services, Inc.*, (11th Cir 1983)).

The Canadian judiciary supported this view as demonstrated by the Supreme Court of Canada when it ruled in the case of *Janzen v. Platy Enterprises Ltd.* that sexual harassment in the workplace may be considered discriminatory treatment in violation of the Canadian Declaration of Human Rights (*Janzen v. Platy Enterprises Ltd.* (Spring, 1987), confirming what the same court had previously ruled in *Bell v. Ladas* (Chotalia, 2005).

This trend has become prevalent regarding direct superiors accused of committing such behavior. For the company manager, the provisions of the American courts applied the principle of the principal's responsibility for the agent's actions from a civil perspective.

American courts do not apply strict liabilities to managers and adhere to the principles of personal liability (Miller, 600). Therefore, they required the existence of two elements to convict a person (civilly) of discriminatory treatment or sexual harassment.

The first element concerns the manager, who must be informed of discriminatory practices and harassment on the part of the worker or employee's employer. No measures have been taken to prevent the renewal of this type of treatment (*Tomkins v. Public Service Electric & Gas Co.*, 1977). Therefore, it was ruled that if the manager was not notified of the supervisor's action and the worker or employee preferred to resign, the court would reject the manager's claim (*Vinson v. Taylor*, 1980).

Second, the manager did not establish a policy that prevents such discriminatory treatment from occurring, nor establish a complaint policy in the event of abuse on the part of the worker's supervisor or employee (*Craig v. Y & Y Snacks, Inc.* (3d Cir. 1983). Moreover, it is critical to know whether the manager established a policy that encourages this discriminatory treatment, such as requiring men and not women to be employed or excluding certain nationalities from hiring (*Rogers v. Equal Employment Opportunity Commission*, 5th Cir. 1971).

In these two cases, American court rulings established the responsibility of the manager in addition to the responsibility of the direct supervisor to whom a discriminatory or harassing act was attributed (Pfuurai, 2023).

Impact of Harassment on the Employment Contract

Some comparative laws have legal consequences regarding employment harassment. Therefore, the French Labor Code had an important impact on harassment in the field of labor relations, as stipulated in Law No. 2016-1088 of 8 August 2016. The penalty for harassment in case the worker is dismissed because of this act is as follows:

The Court Orders the Worker's Return, Cancelling the Dismissal Decision

The court awarded compensation not less than the worker's salary for the previous six months if it was impossible for the worker to return after their dismissal, or if they did not wish to return. In addition, legal compensation is awarded to workers for unfair dismissals (Unk. art. L. 1235-3-1 Nov).

Section IV: The Material and Moral Elements of the Crime of Harassment

The Material Element of the Crime of Harassment in Egyptian Law

Article (306) bis (b) of the Egyptian Penal Code states that the crime of harassment consists of material and moral elements. As for the material element, the previous article referred in its definition of harassment to the previous article (Article 306 bis (a)), stating: "It is considered sexual harassment if the crime stipulated in Article 306 bis (a) of this law is committed with the intention of the perpetrator to obtain from the victim a benefit of a sexual nature." The previous article (306 bis (a)) defined the crime of attacking others in a way that offends their decency by stating: "Anyone who approaches others in a public or private place or in public places by making sexual or pornographic offers, suggestions, or insinuations, whether by gesture, word, or deed, by any means, including wired, wireless, electronic, or other technical means of communication."

From the previous definition, it is obvious that the material element of the crime of sexual harassment includes the following:

- The perpetrator committed an act, gesture, or word, even if it was done by wired, wireless, or electronic means.
- This act should include sexual or pornographic suggestions or insinuations.

What distinguishes the crime of harassment from the crime of sexual approach is the presence of a special intent in the crime of harassment, which is the intent of the perpetrator to obtain from the victim the benefit of a sexual nature.

Nature of the Act of Harassment

The question arises as to whether the acts must have a sexual purpose, or whether they should be considered to have a criminal intent if they are directed towards achieving a sexual purpose. In any case, the acts must have a sexual nature; that is, they must include sexual or pornographic suggestions or insinuations. Hence, what constitutes a mere expression of love or presenting gifts or flowers falls outside the scope of criminalization if it does not go beyond that expression and does not constitute an assault on the feelings of the victim.

Before 2012, the law required the harasser's actions to be undertaken for the sake of obtaining sexual benefits or services. Therefore, this condition is necessary for a crime to occur. With the 2012 law entering into force, this condition no longer applies, except in the second case of harassment, when the perpetrator commits a serious act, even if it is not repeated.

Features of Acts of Harassment

Acts of harassment differ depending on whether they are physical or moral. In the case of physical harassment, the perpetrator commits a physical act that constitutes an attack on the victim's body or their own body. However, if it is a matter of moral harassment, the act is not characterized by the same seriousness. However, the law does not specify a specific form of harassment; it includes every act that explicitly or implicitly includes sexual innuendos or insinuations.

- Pursuing the victim, where the accused pursues the victim, on foot or by car, wherever they go.
- Surveillance of victims. The latter is monitored on an ongoing basis.
- Constant communication by phone, WhatsApp, email, or other social media.

All this is done without any right or legitimate interest.

One manifestation of moral harassment is intimidation. This occurs through sexual requests without a victim's consent.

The accused intimidates the victim so that they will lose a certain benefit or will not enjoy a certain opportunity if they do not abide by pressure.

Verbal harassment involves making comments with sexual content, making sounds of a sexual nature, inquiring about the sexual choices of the other party, making sexual statements, and making sexual mistakes. This also includes the accused following a victim for a long distance while repeating words such as "Don't you come with me?"

Nonverbal harassment consists of showing sexual pictures, posters, or films to the victim or sending electronic messages with sexual content.

Moral harassment often occurs when a victim does not submit to sexual pressure from their employer at work and the employer continues to harass the employee at work. There are many forms of moral harassment, including pressure from the perpetrator on the victim to submit requests containing sexual content (Soc. 15 févr. 2012,).

Harassment is an Offense of Result or Activity

The question arises as to whether the offense of harassment is an offense of result or activity. Is it necessary for a state of fear to occur for the offense to occur? Is a causal relationship required? In other words, if fear occurs for another reason, would the causal relationship dissolve? Is it necessary to repeat an act of harassment?

Legislation differs in its approach to this concept. Some of them do not require repetition of the act, some do not conceive of harassment without repetition, and some adopt an intermediary concept, requiring repetition in some cases and not in others.

The First Trend: Legislations in Which Individual Acts Suffice for the Occurrence of Sexual Harassment

Under a legislation, such as Egyptian law, a single act suffices for an offense to occur. Article (306 bis b) of the Egyptian Penal Code does not require acts of harassment to be repeated. Therefore, individual acts are sufficient to qualify as harassment if they are accompanied by words or behaviors that have sexual content (For example, the defendant placed their hand on the victim's buttocks or called them on the phone to talk to them about their sexual preferences, asked for a sexual relationship, or placed sexual pictures in their belongings).

There is no doubt that individual acts that harm the victim's body are described as acts contrary to the victim's dignity, which is also prohibited by Article 1153 of the French Labor Code.

The European Commission stipulates that harassment can occur in a single act, and that multiple acts are not required. (Re comm. no 92/131/CEE due, 27 Nov. 1991; CA Québec, 16 Sep. 1999).

Among the legislations that do not require repetition of acts of harassment for this crime to occur is the German law (in Article 184i) of the Penal Code under the title "Sexual Harassment".

Regarding acts of harassment in German Law, the following characteristics appear in this criminalization:

- 1- It is sexual harassment, and therefore harassment does not apply to purposes other than sexual purposes.
- 2- It does not occur simply by mere words but must be accompanied by touching the victim's body.
- 3- The prescribed penalty can only be a fine, and the court may order imprisonment for a period not exceeding two years.
- 4- The German law stipulates that an aggravating circumstance is when an act is perpetrated by a criminal association. The penalty is imprisonment, not a fine. The period of imprisonment in this case ranges from three months to five years.

Chapter Three (4) of the Alleghenies Gleichbehandlungsgesetz law in Germany defines harassment as "unwanted behavior of a sexual nature, including unwanted sexual requests to perform sexual acts or physical contact of a sexual nature, as well as acts of unwanted sexual nudity. This includes displaying pornographic images for the purpose of harming the dignity of the person concerned, especially if they would create an intimidating, hostile, degrading, humiliating, or hostile environment."

The Saudi system for combating sexual harassment issued in 1439 AH is a legislation that does not require multiple acts of punishment. Article 1 defines it by saying, "For the purpose of applying the provisions of this law, the crime of harassment means every statement, action, or gesture with a sexual connotation issued by a person toward any other person that touches his body or honor or offends his decency by any means, including modern technological means."

A crime occurs through any act that constitutes an insult to a victim's modesty. In the Kingdom, it was ruled that the crime was committed by the accused who waited in front of the girls' schools and was taking his penis out in front of them. The court ruled to impose a four-

month prison sentence on him and 50 lashes in addition to deportation, because he was a foreigner (Decision No 33481271, dated 28/12/ 1333 AH).

It was also ruled that harassment had occurred by a guard at a girls' school who kissed the student when she was leaving the car and touched her anus (De. No 34192316, in 20/4/1434 AH).

The act can occur by sending text messages (Mohamed, 2019). Therefore, it was ruled in the Saudi Kingdom that the crime occurred through text messages when the accused was pursuing a woman with sexual messages via her phone. He was sentenced to imprisonment and flogging (De. N 34303460, in 23/8/1434 A H).

The Second Trend: Legislations Requiring Multiple Acts

Some comparative legislation requires the perpetrator to repeat acts of harassment to qualify as an offense. According to American federal law, which stipulates that harassment occurs through repeated behavior and creates fear of an attack on life or physical safety in the victim, it takes one of the following two forms:

The first involves harassment through repeated, intentional harassment or following a specific person without a legitimate cause. The second form involves harassment through repeated behaviors and causes psychological depression in the victim (Daniela, 2017).

The penalty prescribed for the first federal offense is a fine or imprisonment for a period not exceeding one year, and for the second offense, a fine or imprisonment for a period not exceeding 3 years.

Among the legislations that require the condition of repeating the act is also the law of Romania, where Article (208/1) of this law defines harassment as "the act of someone who pursues a person repeatedly without a legitimate right or interest, or pursues him on the place, residence, work, or place he moves to. This constitutes harassment, which causes the victim to be in a state of fear. Engaging in wired or non-wired communications, or by any remote means that, given their repetition or content, would cause a state of fear in the victim is also considered harassment." (Daniela, 2017).

This process must be repeated for all material elements. If the accused performs an act only once, the crime does not occur. Hence, it is considered a crime of habit that depends on repeated behavior. Therefore, the crime is not complete unless repeated acts are committed by the accused.

The Third Trend: Intermediary Legislations

French law adopted a conciliatory approach; it stipulated repetition for the occurrence of a crime in some cases, but not in others. It distinguishes between physical and moral harassment. French law requires the repetition of the act in the case of non-serious physical harassment; it was sufficient for acts without repetition in the case of serious harassment, as well as in the case of moral harassment, to repeat acts with the presence of specific intent, as will be explained below.

French law criminalizes individual acts that could undoubtedly be subject to the qualifications contained in Article 1 of Law No. 2008-496 issued on May 27, 2008, in the case of physical

harassment. Moral harassment has a different meaning and involves depriving the victim of privileges to pressure him or her to submit requests to the perpetrator.

According to French law, the material element of a crime consists of multiple acts, meaning that it is a crime of habit in cases of nonserious harassment. For metaphorical harassment to exist, the French Labor Code requires that it be accompanied by severe pressure on the worker to obtain benefits or services with sexual content for the perpetrator or for another person (Article 1153-2). In this case, it is not necessary to repeat the actions for the harassment to exist and for it to have an effect (crime. 10 Nov. 2004).

It was determined that a psychiatrist repeatedly approached one of their workers, asking them to go out together and have lunch, requesting the worker's phone number, and threatening to hit them on the backside. Additionally, the psychiatrist asked the worker to bend in front of them so they could hit them (Crim. 4 janv. 2011). It was also found that moral harassment occurred in the workplace when the boss asked the worker to kiss them, touched their knee, and invited the worker to sit next to them (Crim. 22 oct. 2013).

This offense can be committed using electronic messages sent via email to the victim (crime. 17 oct. 2012).

Effect of Consent of the Victim

No crime occurs if the victim consents to the actions or words. The victim's dissatisfaction can be deduced from the explicit or implicit rejection or denial of the request, or from the attitude of colleagues or the boss at work. Pressure on the perpetrator indicates dissatisfaction. This pressure can be direct or indirect. For example, if the employer promises the worker that they will be promoted, their salary will increase if they agree with their sexual request, or they will not be promoted, and their salary will not increase if they refuse.

Sexual harassment may not exist, as if the criminal court acquitted the employment at work for sexual harassment, but the worker can claim before the labor courts that there was discrimination and that this discrimination was based on gender (Riom, 28 avr. 2015). The difference between sexual harassment and discrimination in treatment emerges here (Patrice, 2016).

Since the 2012 amendment, French law has criminalized verbal and physical harassment (CAA Versailles, March 15, 2011). This is consistent with the European Directive (Dir. no. 2006/54/CE) which considers this a form of discrimination against women (crime. 18 nov. 2015).

Expressing Admiration That Does Not Have a Physical Element

A distinction must be made between harassment and the mere admiration or romanticism shown by the employer at work towards the working person, even if this is done repeatedly or inappropriately (CAA Versailles, March 15, 2011).

For example, it was ruled that no harassment existed when the Chairman of the Board of Directors deliberately tried to touch the secretary's hand, moved his foot from under the table until it touched her foot, and was saying that he loved her, casting loving looks at her, offering gifts, trying to kiss her on the mouth, and telling her that he missed her. The court based its ruling on the fact that these expressions were merely expressions of social courtesy issued by the

accused on separate occasions that allowed them to believe they were sincere (Douai, 10 Sep. 1997). Likewise, it was ruled that the mere sending of love letters by the manager to the secretary expressing his admiration for her does not constitute harassment within the meaning of Article 122-46 of the Labor Code (which became Article 1153-1). It was also ruled that the employer sending such a kind of speech expressing his admiration for the employee and his respect for her, which did not include pressure or threats on his part to obtain sexual services from her, does not constitute the offense of harassment.

Similarly, it was ruled that there was no harassment from the general manager who intended to leave a poem for the employee in which he expressed the agony of love without including expressions with connotations that were indecent or contemptuous to the dignity of the victim.

Sexual Harassment as a Crime of Special intent

The moral element of the crime of harassment is the presence of criminal intent because this crime is intentional. Crimes do not occur if criminal intent is absent. If the accused's intention was to place his hand on the woman's waist to avoid crowding, then harassment would not exist (Colmar, 15 déc. 2005.).

Accordingly, general criminal intent exists with knowledge and will in addition to specific criminal intent, which is the perpetrator's intention to obtain sexual advantages from the victim or another person (Valérie, 2002; actualization: avr. 2017).

Therefore, the French Court of Cassation ruled that the act of a teacher kissing his student, who was only 14 years old, did not necessarily constitute a crime of harassment. Rather, it is necessary for trial judges to base their ruling on proving that the conditions for this harassment are met in accordance with Article 222-33 of the Penal Code, which requires that the act occurs to obtain sexual benefits from the victim.

Section V: Liability for Harassment and Procedural Process

This section deals with the procedures for a harassment lawsuit and its ruling (in the first subsection) and then addresses the liability for harassment (in the second subsection).

Procedural Aspects of a Sexual Harassment Lawsuit

Complaint of the Victim as a Prerequisite for the Lawsuit

In some legislation, such as Romanian law, a criminal case is contingent on a complaint from a victim within a certain period. This law set a period of three months from the time the crime ended—that is, from the time the habitual state ended—so that the accused would stop repeating the acts of harassment.

Right of Associations and Unions to File Civil Claims of Harassment

Union representatives have the right to intervene when there is a conflict between workers/employees to prevent harm to workers (L. 122-49). Employers are obliged to investigate this issue. They also have the right to resort to the judiciary, and the court may order measures to prevent the moral harassment of workers (Article L. 236-2 amended). The court appoints a

mediator to solve the problem, and anyone who obstructs their work is punished by imprisonment or a fine.

Article 2-2 of the French Procedure allows associations registered five years before to file a civil claim if their purpose is to combat sexual violence. French law gives trade unions the required capacity to represent the victim of harassment with the latter's consent (Article L. 1154-2 of the Labor Code).

However, the matter differed regarding the professional union to which the victim belonged. It was ruled not to accept the civil claim from that union, which, according to its status, aimed to defend the profession and not sexual violence or women (Cass. crim. 23 Jun. 2002).

Methods of Proving Harassment

Harassment can be proven from SMS messages sent to the phone.

Victorian colleagues at work may testify to what they saw. A worker who testifies in a harassment case should not be referred to the discipline council because of his/her testimony in accordance with the text of article (art. L. 1155-2).

Punishment and Compensation for Sexual Harassment

Punishment in Egyptian Law

Article (306 (b)) of Egyptian Law punishes sexual harassment with imprisonment for a period of no less than five years, and the penalty for a fine is not stipulated for that crime. Therefore, the crime is a felony, and the Criminal Court has the jurisdiction to try the accused. It is obvious that the legislator is strict with the perpetrator, setting a minimum of five years of imprisonment. The court may not have ruled for less than five years.

The previous article also increased the penalty for harassment in case of aggravating circumstances: if the perpetrator was one of those stipulated in the second paragraph of Article 267 of this law, had job, family, or educational authority over the victim, or exerted any pressure on them that the circumstances allowed for them to exert over the victim, or if the crime was committed by two or more people while at least one of them was carrying a weapon, then the penalty becomes imprisonment for at least seven years.

In French law, in a ruling issued on June 29, 2021, the 17th Circuit of the Criminal Court in Paris punished the accused on charges of electronic harassment with a fine of 5,000 and a suspended sentence, in addition to 5,000 euros in compensation for the victim and 3,000 euros under Article 475-1 of the French Code of Criminal Procedure. In the ruling, the court explained the causal relationship between the flood of messages received from the perpetrator and the deterioration of the victim's mental health.

Article 222-32-2 of the French Penal Code punishes the harassment of a person through repeated remarks or behaviors whose purpose or effect is to deteriorate their living conditions, leading to the deterioration of their physical or mental health. The prescribed penalty is a fine of 15,000 euros and imprisonment for one year if these actions cause a total inability to work for a period of less than eight days.

The aforementioned article stipulates that the penalty will be doubled when these acts are committed using a public means of communication via the Internet or through digital or electronic support.

For example, a woman living with a man receives messages on her Instagram account from an unknown account telling her that she has been betrayed by her partner. Simultaneously, this information was shared publicly along with screenshots of messages exchanged between her partner and another woman. She also received anonymous messages containing the same content via email. Shortly thereafter, she received messages from an unknown person with the same content as before. She filed a complaint to find the sender of the message, who was arrested. The accused admitted to sending multiple email messages. It was found that he was in a relationship with a woman who was also in a relationship with the victim's partner. He did this because he was going through a crisis caused by his partner's separation from him.

The plaintiff said that she would visit a psychiatrist. The victim proved that she had been suffering from depression for six months because of these messages.

However, since the French law was issued on August 6, 2012, harassment has been decriminalized in the Labor Code, and the text in the Penal Code, Article 222-33, is sufficient. However, the prohibition of discrimination based on harassment remains in the Labor Code (Articles L. 1153-2 et L. 1153-3).

Awarding Compensation if the Investigation is Classified

The classification of an investigation by prosecution has its authority before the criminal courts regarding criminal cases. On the contrary, it has no authority over civil courts if it ends up precluding the investigation into harassment. This does not prevent the labor court from being exposed to the employer's error in handling the situation.

Ruling on the Liability of a Legal Person

It is conceivable that the liability of a legal entity in case of sexual harassment will increase if the company or institution develops a discrimination strategy based on an element that constitutes discrimination during treatment. Thus, the French Court of Cassation ruled that the employer, even if it was a legal entity, must take measures to ensure the protection of the worker subject to harassment. If the worker is still exposed to harassment, this constitutes a mistake on the employer's part, which leads to the impossibility of continuing the employment contract (Crim. 1er déc. 2015).

It was also ruled that an employer who does not punish the harassing worker commits a mistake that justifies the victimized worker to terminate the employment contract. The worker is entitled to receive compensation for terminating the employment contract without real or serious reasons (Valér, 2002; actualization: avr. 2017). In fact, their employers are committed to creating a suitable work environment, which is a commitment to achieving a result.

Ruling on Double Compensation for the Victim of Harassment

French courts allow a worker who is a victim of harassment to receive two compensations from the harasser. The first type of compensation is the breach of a contractual

obligation to achieve a result. The employer breaches their obligation when they do not provide the worker with the appropriate environment. Compensation for harassment as a criminal offense is based on tort liability.

American law defines punitive damages as those that may be combined with compensation. In this regard, American courts add punitive damages to the usual compensation in the case of sexual harassment, whether this harassment is from the employer at work or from a colleague (Cour de Cassation, 10 novembre 2004). This type of compensation is based on faults and not just damage, which is justified in cases of sexual harassment.

2. Conclusion

Some legislation, such as Qatari law, did not address the crime of sexual harassment. Other legislation has focused on combating this phenomenon, such as Egyptian, French, American, and English laws. Where there is a need for this criminalization, the legislature provides punishment for this act, especially when the behavior of harassment constitutes a societal nuisance from which members of society are harmed.

The main findings of this study are as follows:

- Criminalizing harassment protects women and men.

- When criminalizing harassment, some legislation restricts harassment to the existence of a sexual harassment motive, such as Egyptian law and French law, while other laws expand harassment to any deliberate and repeated harassment of the victim without being restricted by the sexual motive.

- Some legislations require the repetition of acts in various forms of harassment. Thus, it constitutes a crime of habit in these laws, such as in French and American laws, while other laws do not stipulate this condition, such as in Egyptian law.

- Various crimes often occur between sexual harassment and other crimes, such as indecent assault and aborting a person in a way that offends their decency. The judge then applied a more severe penalty rule depending on the case.

Such discrimination may have taken the form of sexual harassment. Thus, workers enjoy double protection against harassment and discrimination.

Recommendations

We recommend that all legislation adopt this criminalization because it serves the public interest and protects the dignity of individuals, particularly women. We recommend that a misdemeanor punishment, not a felony, be decided for this crime.

It is necessary for labor laws to stipulate that harassment is considered a serious mistake and to give rise to legal effects on it in terms of work relations, whether committed by the employer or a co-worker.

It is appropriate for the law to stipulate that this is considered an offense against honor and dignity and to arrange the legal consequences accordingly.

We recommend that all legislation adopt this criminalization because it serves the public interest and protects the dignity of individuals, particularly women. We recommend that a misdemeanor punishment, not a felony, be decided for this crime.

The findings suggest that a single act of harassment is sufficient for the offense to be recognized, without the necessity for multiple acts.

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