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## OPINION no. 2018-36

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### **SEXUAL HARASSMENT IN THE LABORATORY: SOME ETHICAL CONSIDERATIONS**

*Opinion no. 2018-36 approved at the COMETS plenary session of 5 March 2018*

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## **I. FORMAL INTERNAL REQUEST**

The growing freedom of speech about cases of sexual harassment has revealed its presence in all countries and all walks of life. This has encouraged COMETS to analyse this phenomenon in higher education and research, and to put forward recommendations. Taking into account the cases that have been reported—cases that are intolerable with respect to the basic ethical principles of any human activity—COMETS is facing the issue of whether the resources used today to counter sexual harassment in the research sector are sufficient. The committee is therefore investigating new ways of helping victims and hopes in doing so to attract people's attention to the seriousness of such facts in higher education and research, especially within the CNRS.

COMETS would like to specify that the analyses of this Opinion are not intended to introduce codified instructions on conduct between men and women, limiting the freedom of inter-personal relationships.

## II. ANALYSIS

Sexist, disparaging, discriminatory or paternalistic behaviour may be seen throughout society<sup>1</sup>. It results from stereotypes that are deeply rooted in mentalities, as shown by multiple gender studies<sup>2</sup>. Sexual harassment is an extreme case of such behaviour. It may be seen as a type of infringement of the principles of mutual respect that each person should uphold in public or in private. Whether in a public laboratory or a private company, it is sometimes associated with moral harassment, which is distinguished by a broader range of behaviour. This Opinion addresses sexual harassment in higher education and research that results above all from individual misconduct, even if the latter is founded on collective representations that extend beyond the scope of the research community.

### A. Sexual harassment: how is it defined? Who does it concern?

French criminal law defines sexual harassment as the repeated imposition upon somebody of remarks or behaviour of a sexual nature that either undermine personal dignity due to their degrading or humiliating character, or create an intimidating, hostile or offensive situation for the person involved. Sexual harassment is regarded by the legislature as misconduct corresponding to the use, even when not repeated, of any form of severe pressure in the real or apparent goal of obtaining acts of a sexual nature, whether for the perpetrator or for a third party<sup>3</sup>. This behaviour is subject to the same penalties as sexual harassment, though in this case, the harassment is not defined by its repeated nature but by its very purpose.

Since the Act of 2012, sexual harassment no longer necessarily involves a working relationship or a pre-established legal link. It is therefore recognised whether the relationship involves any hierarchical subordination or not<sup>4</sup>. Consequently, within the research community, sexual harassment may originate with a researcher and be directed towards one of his/her own students, the student of a colleague, or indeed his/her own colleagues or administrative or laboratory staff. Obviously, even though sexual harassment often involves a man pressuring a woman, it is not limited to this situation alone, and the law similarly punishes harassment of a man by a woman or even harassment of people of the same sex<sup>5</sup> (see the Annex for details on the legal treatment of harassment cases). In the French civil

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<sup>1</sup> See, for example, Annick Cojean's interview with Françoise Héritier for the *Matinale du Monde* on 7 November 2017

<sup>2</sup> See, for example, Geneviève Fraisse 'Les excès du genre. Concept, image, nudité', *Editions Ligne*, 2014

<sup>3</sup> See Act no. 2012-954 of 6 August 2012, art. 222-33, I and II

<sup>4</sup> For example, CA Douai, 23 May 2000, JurisData no. 2000-148863, concerning the victim of an internship adviser.

<sup>5</sup> CA Besançon, 27 June 2000, JurisData no. 2000-121868.

service, the 'Le Pors'<sup>6</sup> Act specifies the rights and duties of civil servants confronted with sexual harassment.

### **B. Cases of sexual harassment in the research sector are too rarely punished**

Sexual harassment is present in all countries and sectors<sup>7</sup>. This global issue has given rise to a growing awareness in France<sup>8</sup>. In the realm of higher education, belonging to a laboratory—which is a place of knowledge and culture—does not prevent sexism and its extreme form, sexual harassment, from occurring just like elsewhere. Laboratories require collaborative work, and are therefore characteristically both a place of exchange and a particularly confined arena in which staff members are subject to numerous pressures.

Cases are regularly reported by CLASCHEs<sup>9</sup>, a feminist association founded to collect the testimonies of victims of sexual harassment in higher education and offer them advice. However, few lead to the filing of a complaint and up to recent months, self-censorship and the code of silence have prevailed on such issues. Two very serious cases of sexual harassment were nonetheless revealed by the press in 2017, and led to exemplary disciplinary measures by the institutions concerned. One was at the University of Lille III, where a lecturer<sup>10</sup> was banned from teaching or supervising students for 18 months, with a subsequent halving of his salary. The other was in a research unit on infectious diseases in Marseille, where a CNRS senior researcher was removed following a recommendation by the *Commission Administrative Paritaire* (CAP)<sup>11</sup>. Note that in this case, sexual harassment was accompanied by a general atmosphere of moral harassment affecting all the laboratory staff<sup>12</sup>. Another case of the removal of a researcher was notified in the same Official Bulletin<sup>13</sup>.

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<sup>6</sup> Act of 13 July 1983 known as the 'Le Pors' Act, consolidated in 2016 (Act No. 2016-483, article 6 ter), relating to sexual harassment in the civil service. It specifies in particular that any denial of promotion, shunting into a siding or dismissal by an employer following a report, complaint or legal action, is considered discriminatory.

<sup>7</sup> See, for example, Joni Hersch - Sexual harassment in the workplace, IZA World of Labor, 2015

<sup>8</sup> See, for example, *Harcèlement sexuel au travail, prévenir, alerter, agir*, [Sexual harassment in the workplace, prevention, alerts and actions] on the 'Défenseur des droits' human rights website, and the instructive videos of young women that illustrate it.

<sup>9</sup> The motto of CLASCHEs (*Collectif de Lutte contre le Harcèlement Sexuel dans l'Enseignement Supérieur*) is 'defend, inform, testify and act'.

<sup>10</sup> A faculty member in the psychology department of the University of Lille III was subject to disciplinary measures in December 2017 after a five-month-long enquiry for sexually harassing at least four students. He was banned from teaching or supervising students for 18 months and his salary was halved.

<sup>11</sup> Official Bulletin, Decision no. DEC172858DRH, October 2017. The CAP is an administrative committee representing civil servants. It is consulted and makes recommendations on matters affecting individual careers.

<sup>12</sup> <http://www.ferc-cgt.org/communiquede-presse-sur-l-umr-urmite-13-novembre-2017-marseille>

<sup>13</sup> Removal of a research fellow with a prestigious European Research Council contract (Official Bulletin, Decision No. DEC172856DRH, October 2017)

At the CNRS, three or four cases are reported nationally every year, and since 2011, seven have been investigated. Of these, four have so far (in 2017) given rise to disciplinary measures<sup>14</sup>. The number of actual cases is unknown, but is no doubt higher, taking into consideration the difficulty in reporting facts (see below). Institutions such as universities or the CNRS, when the victim chooses to rely on them, have clear-cut procedures for handling reported cases of harassment<sup>15</sup>. By respect for those involved, the enquiries are carried out with the greatest discretion, and confidentiality is ensured until serious evidence is brought to light. Even beyond the enquiry, when at the last stage the CAP meets to propose disciplinary measures on the basis of the enquiry, it can also decide to keep everything anonymous, taking into account the difficulty that many victims have with their situation becoming common knowledge<sup>16</sup>. Indeed, it is often difficult for them to handle their return into their initial work place<sup>17</sup>. This partly explains why only quite a small proportion of sexual harassment cases in the laboratory come to light. Others are dealt with locally and do not go further than a report. Finally, there are numerous cases that are never even addressed.

### **C. Reporting cases of sexual harassment is a difficult step to take**

The victims of sexual harassment find it very difficult to formulate their complaints. Harassment can take different forms: it may be physical or verbal, repeated or one-off, in public or private. The statements of the victim and perpetrator are often contradictory. There is a risk of harassment claims being the fruit of autosuggestion or even slander: a thorough investigation should clear this matter up. In relationships between PhD students and their supervisors, cases are complicated by the fact that you need to consider the supervisors' intellectual authority over their students and the seductive aspects that may enter their relationship. Most of the time, a hierarchical relationship positions the victim as psychologically dominated by the perpetrator. Harassers commonly cast doubt over a victim's capacities, leading the victim to lose self-esteem on all fronts and finally all confidence in him- or herself. In the event of open conflict, there is a real danger of the PhD students losing the resources needed to finish their thesis. There is also a major risk to their future career if they join another team without a recommendation from their original laboratory. The situation of young PhD or post-doctoral students in a foreign country (whether foreigners in France or French students abroad) can be particularly critical. There are similar career risks for all laboratory staff, especially those with little job security<sup>18</sup>.

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<sup>14</sup> See the blog of the CNRS HR department of 12 October '[harcèlement, la parole se libère](#)'

<sup>15</sup> See the [circular](#) on the handling of sexual harassment cases within the CNRS

<sup>16</sup> The place and initials of the people concerned (perpetrator and victim) are usually mentioned in the Official Bulletin. If full anonymity is required, neither the place nor the initials are mentioned

<sup>17</sup> Note that a return to work after disciplinary measures can also be problematic for the perpetrator, who has to be reintegrated once the measures have been taken unless irrevocably excluded. The possibility of further infringements has to be taken into consideration

<sup>18</sup> See [the IFOP enquiry of 2014](#) on sexual harassment in the workplace. This investigation into different occupations revealed that 30% of harassment victims are in precarious job situations

Many factors combine to discourage complaints, including the fear that nobody would do anything anyway, or that speaking out would be worse than keeping quiet, as well as the actual humiliation of sexual harassment. However, the trauma suffered by victims is often very serious. It can paralyse them in their work, discourage them from continuing or even create mental blockages making it impossible to pursue research that could otherwise have been fruitful. The seriousness of sexual harassment should never be underestimated, even if there is no physical aggression. It is therefore necessary to do whatever is required to facilitate reporting and restore a climate of trust in the workplace. It is advisable for victims to seek testimonies from other victims to consolidate their own. Denouncing the perpetrator to the laboratory management or a departmental head is a logical first step, which should stop the harassment. However, this may not be enough, and may even be impossible<sup>19</sup>: the victim should then request the support of local management and/or trade unions. The victim should also be encouraged not to remain alone but to join, for example, a network such as *CLASCHEs*. Generally speaking, it is easier to talk outside the workplace. The creation of advice and support centres composed of professionals and offering the assurance of confidentiality should thus be supported and made more widespread.

#### **D. The complaint process is difficult to initiate and intimidating for the victim**

Once a case has been reported, other difficulties begin. The victim can choose legal action and go to court. In this case he/she must bring tangible and concrete proof of the allegations made against the perpetrator, which may be particularly difficult in the case of sexual harassment.

Whether legal proceedings are initiated or not, the reporting of a case of sexual harassment implies that it is brought to the notice of the research institution involved. Amicable, if not fully satisfactory, settlements may be reached: the perpetrator may have to change laboratory, for instance, or his/her contract be terminated. If the institution initiates disciplinary procedures, they may take a long time. An “isolated” case is where just one person is the victim of another person. This is a particularly difficult situation to handle because proof is hard to establish and may be complicated by the protagonists’ emotional involvement. The most frequent case, which may be described as “recurrent”, involves several victims of the same perpetrator. The convergence of testimonies thus makes it easier to establish deviant behaviour. The procedures, which should comply with the presumption of innocence of the accused, may end in disciplinary measures taken by the Chair of the institution in accordance with the recommendations put forward by the CAP (see above). The range of measures is huge, going from a temporary ban on supervisory duties to exclusion from the civil service. However, the details of disciplinary measures applicable

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<sup>19</sup> Impossible if the person in a position of authority is him- or herself the perpetrator or directly linked to the perpetrator. Insufficient if the person has no training on how to address the issue, or worse, if somebody tries to protect the institution’s reputation (see note 25 below)



to perpetrators are not well known among staff<sup>20</sup>. This information could nonetheless be valuable as a means of prevention.

The stages of the disciplinary procedure designed to punish the abuser are distressing for the victim. As a witness, the victim is generally disoriented, forced to repeat painful facts numerous times, and humiliated by having to convince people that he/she is telling the truth when interviewed by the CAP. The victim is also unsettled during confrontations with the perpetrator. Unlike the latter, the victim does not have the support of a lawyer<sup>21</sup>. It should be remembered that the law still does not consider the victim of sexual harassment as a victim, but merely a witness of unethical behaviour. This is why he or she cannot call upon a lawyer. It also explains why the victim has no legal or, more simply, psychological support from a person of his or her own choosing throughout the procedure<sup>22</sup>. The time taken before pronouncing disciplinary measures for proven cases of sexual harassment is often discouraging if not to say inadmissible<sup>23</sup>, even though this is partly justified by the time required by the procedures<sup>24</sup> to ensure an adequate quality. They may take longer in order to collect a number of concordant testimonies indicating the abuser's recurrent pattern of behaviour. Finally, we cannot hide the fact that the procedures are very often dragged out due to the lack of genuine commitment among team leaders or laboratory managers who hesitate to have their teams tainted by scandals, and who remain unaware of the seriousness of the psychosocial risks to staff harassed in this way<sup>25</sup>.

### **E. How can we combat sexual harassment in higher education and research?**

Frédérique Vidal, French minister of Higher Education, Research and Innovation, underlined in 2017 the importance she attaches to the issue of gender-based and sexual violence against women<sup>26</sup>. She firmly enjoined institutional leaders to refuse any tolerance or weakness in this respect within universities, schools and research institutions in general.

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<sup>20</sup> The CNRS circular mentioned in note 12 reviews possible disciplinary measures but for the moment gives no details. Since 2015, the cases of disciplinary measures for harassment within the CNRS have been published in the Official Bulletin, with either full or partial anonymity for the victims and perpetrators (the latter being designated by their initials)

<sup>21</sup> According to civil service rules, when appearing before the CAP, only the defendant has the right to assistance, such as a lawyer. The victim testifies without any such support

<sup>22</sup> This imbalanced situation has been denounced by research trade unions. See the [Open letter of the SNTRS-CGT of 31 October 2017](#) and the SNCS release of 10 November 2017

<sup>23</sup> Seven years passed between the first case of harassment observed in Marseille and the disciplinary measures taken; see note 12

<sup>24</sup> See the article by Alexis Zarca in the human rights review, 'Revue des Droits de l'Homme', December 2017, *La répression disciplinaire du harcèlement sexuel à l'université*

<sup>25</sup> See the analysis published by Nature for research agencies in the United States (Nature 530, p 138-139, 11 February 2016), "How should science funders deal with sexual harassers? US science agencies threaten harsh penalties but many have yet to take action"

<sup>26</sup> Talk by Frédérique Vidal during the [symposium of 4 December 2017 at the University of Paris-Diderot: Violences sexistes et sexuelles dans l'ESR ; de la prise de conscience à la prise en charge](#) [Gender-based and sexual violence in higher education and research: from awareness to management]

Reminding them of the *Le Pors*<sup>27</sup> Act, she emphasised the need to combat sexual harassment. The CNRS's "*Mission Pour la Place des Femmes*", an observatory designed to foster gender equality within the CNRS, dedicated a major symposium to these issues in 2014<sup>28</sup> and continues to train personnel. There is a very complete guide on sexual harassment in higher education and research jointly written by three associations<sup>29</sup>. The latest update was published in 2017. It may be used by CNRS or university personnel. More specifically for the CNRS, the guide contains pertinent advice on conduct in the event of sexual harassment<sup>30</sup>, for example on the website of the '*Mission Pour la Place des Femmes*'. However, the procedures mentioned prove insufficient in many circumstances.

The growing freedom of speech about sexual harassment has made it a societal phenomenon affecting most western countries. The combat against sexual harassment must also be recognised as a priority among French research and higher education establishments.

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<sup>27</sup> See note 6

<sup>28</sup> See online videos of the [National awareness day of sexual harassment in the workplace](#) at the CNRS on 26 November 2014

<sup>29</sup> Sexual harassment in higher education and research, [vade-mecum](#) for institutions, Issue of 2017, 127 pages, jointly written by three associations: CLASCHES, ANEF (*Association nationale des études féministes*) and the CPED (*Conférence Permanente des chargé(e)s de mission Egalité et Diversité* for higher education and research)

<sup>30</sup> See [the CNRS circular](#) of 2013 on the handling of cases of sexual harassment in the workplace: components, applicable sanctions and management within the CNRS.

### **III. RECOMMENDATIONS**

In compliance with the wishes of the French Ministry of Higher Education, Research and Innovation, COMETS herein puts forward recommendations for both institutions and victims of sexual harassment in the workplace.

- COMETS advises victims not to remain isolated, but instead to seek the testimony of similar cases of sexual harassment in their workplace with a view to confronting their abuser. Contacts with outside networks such as CLASCHEs are also suggested to help victims talk about their experience.
- COMETS recommends the setting up of advice and support centres separate from institutional channels and positioned at establishment level (university, engineering school, or regional delegation of the CNRS). These centres could even be shared by the various institutions. Their main goal would be to allow victims of sexual harassment to talk about it anonymously and in confidence outside their work circle.
- The support centre could also counsel the victim and, with his/her agreement, could help the victim to report the incident to the level required in the establishment so as to initiate a procedure and offer him/her psychological support at the time of confrontation with the perpetrator.
- For cases when issues cannot be solved locally, COMETS suggests that a monitoring and support centre on sexual harassment be set up at the CNRS. This centre should be easy to access, and its address should be clearly visible on the CNRS website. It should furthermore offer every guarantee that confidentiality will be respected.
- COMETS recommends that legislation concerning the civil service should be changed so that victims may be assisted by a person of their choice when confronting their abuser.
- COMETS emphasises the usefulness of a review of sexual harassment cases reported to the CNRS, whether or not these lead to disciplinary measures, while respecting the anonymity of both victims and perpetrators in compliance with the rules in force within the civil service, so as to have as accurate an initial estimation as possible of the scale of the problem.
- COMETS strongly recommends a clearer presentation of the disciplinary measures that may be taken in the event of sexual harassment and greater transparency on the measures actually taken as a means of dissuasion.
- COMETS emphasises the need to consolidate training on the prevention of sexual harassment among staff at all hierarchical levels, with a particular focus on research unit directors, who are often at a loss when faced with these issues, and young recruits (long-run regular and contract holders, including PhD students) who represent the most frequent targets of harassers.
- COMETS recommends updating the CNRS circular on sexual harassment in the workplace, particularly with respect to reporting cases. A general distribution of the 2017 guide (mentioned in note 30), or a shorter version of it, may be a useful tool for training and prevention.

#### IV. QUALIFIED PERSONS CONSULTED

Mathieu ARBOGAST, project manager, *'Mission Pour la Place des Femmes au CNRS'*

Ursula BASSLER, deputy director of the Institute of Nuclear and Particle Physics (IN2P3)

Harry BERNAS, physicist, CSNSM Laboratory (IN2P3)

Dominique CHANDESRIS, chair of the *'Femmes et Physique'* committee within the *'Société Française de Physique'* (French Physical Society)

Members of the CLASCHEs association

Pierre COURAL, CNRS Director of Human Relations

François GRANER, CNRS senior researcher, LMSC, University of Paris Diderot

Colette GUILLOPÉ, mathematician, former chair of the *'Femmes et Mathématiques'* association, honorary chair of the *'Femmes & Sciences'* association, honorary member of the CPED (*Conférence Permanente des chargé(e)s de mission Égalité Diversité*)

Claudine HERMANN, honorary chair of the *'Femmes & Sciences'* association, chair of the European Platform of Women Scientists (EPWS)

Elisabeth KOHLER, director of the *'Mission Pour la Place des Femmes au CNRS'*

Anne LEFEBVRE-SCHUHL, nuclear astrophysicist, member of the *'Femmes et Physique'* committee within the French Physical Society, of the *'Femmes & Sciences'* association and the SNCS-FSU's *'Femme et Travail'* committee

Rachida LEMMAGHTI, member of the CPED for education and research establishments, manager of the Equality mission at the University of Paris Diderot

Jean-Yves MARZIN, Director of the Institute for Engineering and Systems Sciences (INSIS) at the CNRS

## **V. ANNEX: SEXUAL HARASSMENT AND THE LAW**

French criminal law punishes sexual harassment by two years' imprisonment and a fine of €30,000 (art. 222-33, III, of the Penal Code). In the event of aggravating factors—particularly misuse of authority or exploitation of known vulnerability—the penalties may be extended to three years' imprisonment and a fine of €45,000. The victim has to lodge an official complaint. Since Act no. 2017-242 of 27 February 2017, the victim has six years after the end of the sexual harassment in which to act.

In the eyes of the law, it is important to specify that should the perpetrator of the deeds go beyond psychological pressure and make physical contact with the victim, theoretically the infraction is no longer considered sexual harassment but sexual assault<sup>31</sup>. If there is no sexual penetration (touching, fondling or kissing, etc.), in the absence of the victim's consent it is an offence punishable by five years' imprisonment and a fine of €75,000 (art. 222-27 of the Penal Code) or seven years' imprisonment and a fine of €100,000 in the case of misusing authority, for example (art. 222-28 of the Penal Code). If the sexual assault includes any "act of sexual penetration, whatever its nature, committed against another person by violence, constraint, threat or surprise" then it is considered rape, punished through art. 222-23 of the Penal Code by fifteen years' criminal imprisonment. This sentence may be extended to twenty years' criminal imprisonment, particularly in the case of misusing authority (art. 222-24 of the Penal Code). This crime is then referred to the Criminal Court.

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<sup>31</sup> Cass. crim., June 15 2000, n° 99-84.171, JurisData n° 2000-003128.