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**New measures introduced by Law n°2018-703 relating to sexual and gender-based violence**

**Les apports de la loi n° 2018-703 relative aux violences sexuelles et sexistes**

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## **Summary**

The French Law of August 3, 2018 on sexual and gender-based violence was made urgent by increasing criticism of legal rulings relating to sexual offenses. The main advances comprise: tightening up action against rape, broadening the concept of penetration and redefining that of coercion, lengthening the statute of limitations for sexual offenses against minors, improving the definition of harassment, creating an offense of voyeurism and an offense of sexual insult, and defining the existing offense of non-disclosure of offenses against minors. By not enshrining a presumption of non-consent in minors, the Law did not meet all expectations, and also poses unresolved problems of legal interpretation.

## **Key words**

Law / sexual and gender-based violence / rape / sexual assault / statute of limitations / sexual insult / harassment / reform / criticism

## **Résumé**

La loi du 3 août 2018 relative aux violences sexuelles et sexistes était une nécessité dans un contexte où les critiques de décisions judiciaires relatives à des infractions sexuelles étaient de plus en plus nombreuses. L'amélioration de la répression du viol, l'élargissement de la notion de pénétration et la redéfinition de la contrainte, l'allongement de la prescription pour les infractions sexuelles sur mineurs, l'amélioration de la qualification juridique, la création d'un délit de voyeurisme et de l'infraction d'outrage sexiste et la détermination de la nature de l'infraction de non divulgation des atteintes sur mineurs en constitue les principales avancées. En ne consacrant pas la présomption de non-consentement chez le mineur cette loi n'a cependant pas répondu à toutes les attentes et elle pose également des problèmes d'interprétations juridiques non résolus.

## **Mots clés**

Loi / violences sexuelles et sexistes / viol / agression sexuelle / Délai de prescription / outrage sexuel / Harcèlement / Réforme / Critique

## **Introduction**

The French Law n° 2018-703 on sexual and gender-based violence [1] came in response to a mismatch between legal rulings and public opinion. Several cases, widely publicized in the media, raised serious doubts. The most recent involved an 11-year-old girl who had sexual relations with a 28-year-old man [2]. In the absence of violence, coercion, threat or surprise, the prosecution brought a charge of sexual assault on an under-15-year-old minor rather than rape. The Pontoise Criminal Court finally advised a re-trial, declaring itself to be incompetent, and the case was reformulated as one of rape [2]. Another case that also hit the headlines was that of a 30-year-old man who had had consensual sex with an 11-year-old girl who became pregnant. Initial acquittal fueled the debate on establishing a presumption of non-consent [3], and the perpetrator was ultimately sentenced on appeal to 7 years' imprisonment [4]. Following these rulings, lawyers, politicians and NGOs [5] suggested establishing a minimum age of sexual consent, as exists in other countries, such as Spain (12 years) [6], Switzerland (16 years) [7] and Belgium (14 years) [8]. The Secretary of State for Gender Equality, Ms. Schiappa, who had drafted the 2018 Law, also announced that she wanted to establish a presumption of non-consent [9]. This was based on observations by health professionals of a legal vacuum concerning the rape of very young children, unable to understand the sexual act imposed on them by the perpetrator: without coercion, violence, threat or surprise, which are the constituent elements, a charge of rape cannot be brought if the judge is to respect strict interpretation of criminal law. Statistical studies also showed that 38% of rapes of females and 59% of rapes of males were committed when the victims were under 15 years of age and, in more than a quarter of females and a third of males, under the age of 11 [10]. Law n ° 2018-703 relating to sexual and gender-based violence, resulting from a Bill of March 21, 2018, was promulgated on August 3, 2018 and published in the Official Journal on August 5, 2018. This text represents several advances: tightening up action against rape, lengthening the statute of limitations for sexual offenses against minors, improving the definition of harassment, creating an offense of voyeurism and an offense of sexual insult, and defining the existing offense of non-disclosure of offenses against minors.

## **Combatting rape more effectively**

The Law of August 3, 2018 aims to facilitate legal action against rape in minors. Article 2. III introduces a new article, article 351 of the Code of Criminal Procedure, providing for the obligation for the president of the Court of Assize to raise the subsidiary question of sexual assault on a minor under 15 years of age, if non-consent was disputed. This provision sounds morally satisfactory but is in fact not an advance at all: the court is already obliged to check whether a different charge could or should be brought.

## **Rape and sexual assault**

The concept of “sexual assault” presupposes that the perpetrator intentionally and knowingly commits the act without the victim's consent. In determining the nature of the offense, it is the constituent elements of rape that are crucial in deciding whether the act constitutes a crime. Rape is now defined as any act of sexual penetration, of whatever kind, committed on the person of others or on the person of the perpetrator, by violence, coercion, threat or surprise [11]. Penetration must have three characteristics. It must be committed on another person or on the person of the perpetrator, by or in the genitals, and on a living person. Regarding the penetrated person, before the 2018 Law, penetration was only recognized as being on the person of others. When it was a woman who imposed sexual intercourse, the question of whether this counted as rape was a matter of debate. For example, the Criminal Chamber of the Appeals Court, in a ruling of December 16, 1997, concerning fellatio carried out on minors by two leaders of a non-profit organization, the person penetrated being the perpetrator, the Assize Court considered that there had been a rape [12]. The Court of Appeals had ruled that "Any act of fellatio constitutes rape if it is imposed by violence, coercion, threat or surprise on the person who undergoes it or on the person who practices it" [12]. In a second ruling of October 21, 1998, the Appeals Court reversed and quashed a decision of the Assize Court that a young boy had been raped when his father and step-mother forced sexual relations on him, supposedly as part of his education [13]. In this case, the Appeals Court ruled that the boy had not been raped by the woman, in the absence of penetration suffered by the victim. As the person purportedly “raped” in this case was the perpetrator of the sexual act, the charge of rape was not accepted. [13]. Concretely, rape thus presupposes that it was the perpetrator who carried out the act of sexual penetration on the person of the victim. Under the Law of August 3, 2018, rape can now also be claimed when it is the perpetrator who is penetrated. “Penetration by or in the genitals” also raised the question of anal penetration by an object. In a 1987 ruling, the Appeals Court recognized rape when an object entered a non-genital organ, in this case the anus[14]. In a 1994 ruling, the High Court then focused on the sexual context of penetration to determine whether or not an act constituted rape [15]. And in a ruling of February 21, 2007, the Appeals Court returned to a more objective conception of rape, stating that penetration is sexual only when carried out in or by a sexual organ. In this case, a general practitioner had been referred to the Assize Court on the charge of rape for having introduced into the mouth of three of his female patients phallic object covered with a condom, with which he had made thrusting movements. The High Court adopted a strict interpretation of the law and refused to accept a charge of rape. Finally, penetration must be made on a living person; otherwise, the offense is that of “infringing the integrity of a corpse”. To be classified as rape, sexual contact must have been made by one of the means provided for in the Law: violence, threat, surprise or coercion. Violence may be physical or moral; it is assessed concretely by inquiry data and forensic findings. Threat is coercion, or moral violence: for example, death threats. According to case law, the threat must be serious in nature [16],

and can take various forms: pressure exerted on the victim by means of a weapon [17], verbal intimidation [18], or blackmail [19]. Surprise circumvents consent. A ruling by the Criminal Chamber of January 23, 2019 agreed that “surprise” could consist in using a ploy intended to conceal the true identity and appearance of the perpetrator[20]. Finally, duress is a question of physical or moral pressure exerted on the victim. This was redefined by the Law of August 3, 2018, and article 222-22-1 paragraph 2 and 3 of the Criminal Code now provides that "*When acts are committed on the person of a minor, moral duress or surprise may result from the age difference between victim and perpetrator, a relation of authority, either legal or factual, including significant age difference between the victim who is a minor and the perpetrator who is an adult*" (Paragraph 2) and "*When acts are committed on an under-15-year-old minor, moral duress or surprise may consist in abuse of the victim's vulnerability, lacking the discernment necessary for such acts*" (Paragraph 3) [21]. With regard to the definition of duress, the legislator chose to clarify the concept of duress rather than establishing a minimum age below which a charge of rape would have been automatic. The Bill on sexual and gender-based violence [22] provided that “Any act of sexual penetration, of whatever nature, committed on a minor less than 15 years of age by an adult constitutes rape when the perpetrator knew or could not be unaware of the victim's age". This formulation removed the means of rape (coercion, violence, threat, surprise) as criterion. This drafting instituted a distinction between rape of a person over or under the age of 15; thereby, any sexual relationship with a minor under the age of 15 would be classified as rape. The wording chosen for the new definition of constraint incurs difficulties of interpretation relating to the use of the term “able” for minors over the age of 15 and the verb “to be” for minors under the age of 15. Two interpretations could be made. A first interpretation would be that, if the minor is under the age of 15, moral duress or surprise apply automatically due to abuse of vulnerability, the victim not having the necessary discernment. This interpretation would amount to establishing a presumption of non-consent, going against the principle of presumption of innocence, since the defendant would de facto be presumed guilty, until proven otherwise. A second interpretation could suggest that, when the minor is aged 15 years old or less, any moral duress or surprise depends on abuse of the vulnerable state of the victim who does not have the necessary discernment for these sexual acts, which would entail proving both lack of sexual discernment and abuse of vulnerability, increasing the burden of proof to be given by the victim. Thus, either the rights of the alleged perpetrator are violated, by negating the presumption of innocence in favor of presumed guilt; or else the rights of the victim are diminished, with a heavier burden of proof, requiring two lines of evidence and making the a charge of rape more difficult to sustain.

### **Sexual abuse of minors**

Two offenses are concerned: sexual offenses against minors aged under 15 and sexual offenses against minors over the age of 15. Concerning the first, prior to the Law of August 3, 2018, article 227-25 of the Penal Code stated that "*A sexual assault on the person of an under-15-year-old minor by an adult, without violence, coercion, threat, or surprise, is punished by 5 years' imprisonment and a fine of 75,000 euros*". Since the Law of August 3, 2018, the same article no longer refers to the absence of coercion, threat, surprise or violence, but the idea remains the same: the minor may not have been subjected to any constraint, threat, surprise or violence, and was able to consent to the act, but this consent is not a determining factor. In order for the offense to be established, there must be a prerequisite relating to the age of the parties: a minor 15 years of age or less and an adult, making the act illegal. Any act of a sexual nature will be condemned. On the other hand, in the absence of physical contact, the charge cannot be of sexual assault but only of sexual exhibition. Finally, as with rape, there must be an intention to commit the act. For this offense, the Law of August 3, 2018 increases the penalties: the prison sentence has now been increased from 5 to 7 years and the fine from 75,000 euros to 100,000 euros. Note that the Law does not include an aggravating circumstance of sexual penetration as proposed by the original Bill: The offense of sexual assault on a minor over 15 years of age was not modified by the Law of August 3, 2018. The scope of application is narrower than that for sexual assault on minors aged less than 15, since minors over the age of 15 have passed the age of consent and can consent to the act, except in two cases: firstly, when the sexual assault is committed by a family member of the older generation or any other person exercising de facto or de jure authority; and secondly, when the assault is committed by a person who abuses the authority conferred on them by their function or position. In these two cases, a minor even over the age of 15 cannot be said to consent to the sexual act and the charge is one of sexual assault. The charge is also less heavy, since the perpetrator faces 3 years' imprisonment and a fine of 45,000 euros.

### **Broadening the scope of harassment**

The Law of August 3, 2018 broadened conditions for harassment and instituted a new harassment offense: street harassment, also known as sexist insult.

### **Sexual harassment**

Two types of sexual harassment are distinguished: sexual harassment as such, and "sexual harassment (assimilated)".

Sexual harassment itself consists in "*subjecting a person, repeatedly, to words or behaviors with a sexual or sexist connotation, which either infringe their dignity because of their degrading or humiliating character or create an intimidating, hostile or offensive situation*" [23]. It was the 2018

Law that added the notion of sexist comments or behavior. The offense consists in imposing words or behaviors with sexual or sexist overtones in the broad sense, and repeatedly, thereby infringing the victim's dignity because of the degrading or humiliating nature of the act, or creating an intimidating, hostile or offensive situation. Since the Law of August 3, 2018, it is no longer necessary that there be a single perpetrator committing a repeated act: it may concern several perpetrators, acting in concertation or not, who are aware that they are participating in the harassment. Finally, this is an intentional offense, requiring an intention to commit harassment. It should be noted that article 11 of the Law of August 3, 2018 supplemented article 222-33 I of the Penal Code by inserting two new paragraphs: *“The offense also occurs: 1° when such comments or behavior are imposed on a given victim by several people, in a concerted manner or at the instigation of one of them, even though each of these people individually has not acted repeatedly; and 2° when such words or behaviors are imposed on a given victim successively, by several people who, even without concertation, know that the words or behaviors are in fact repeated”*. This new wording makes it possible to take account of multiple harassment by several people, whether acting in concert or not, even without repeated acts by individual perpetrators, each of whom may commit only one act. This will, for example, punish insults of a sexual nature in school bullying.

“Assimilated sexual harassment” is defined in article 222-33 II of the Penal Code, which provides that:

*“Equivalent to sexual harassment is using any form of serious pressure, even if not repeated, for the real or apparent purpose of procuring an act of a sexual nature, whether for the benefit of the perpetrator or of a third party”*. The Law of August 3, 2018 did not change this offense, except in respect of aggravating circumstances. This type of harassment is characterized by the combination of three elements. Firstly, article 222-33 II provides that a single act of serious pressure is sufficient, whatever the form; no repetition of the behavior is required. Secondly, regarding the purpose of harassment, there must be an intention on the part of the perpetrator to obtain an act of a sexual nature from the victim, either for the perpetrator's own benefit or for the benefit of a third party. Finally, this is an intentional offense, requiring the intention knowingly to commit an act of harassment. The Law of August 3, 2018 added an aggravating circumstance relating to the use of an online public communication service or of a digital or electronic medium, which now makes it possible to prosecute cyber harassment or Internet harassment.

### **Moral harassment**

The Law of August 3, 2018 made some changes to the offense of moral harassment. There are two types of harassment in French law: sexual harassment and moral harassment. These two forms are broken down into five criminal offenses: sexual harassment, sexist insult, moral harassment at work,

psychological harassment within the couple (“gaslighting”) and general moral harassment. It is to this last form of harassment that the Law of August 3, 2018 made changes. The Law broadened the scope of “general” moral harassment, so that it can apply to any type of situation. General moral harassment is defined in article 222-33-2-2 of the Penal Code as follows: *“Harassing a person by repeated remarks or behavior having for object or effect a deterioration of his or her living conditions resulting from impaired physical or mental health”*. The offense is divided into several elements. First of all, actual harassment must be demonstrable, involving any kind of action or speech. Then, as with most other forms of harassment, harassment must be repeated. However, since the Law of August 3, 2018, this repetition may come from a single perpetrator or a multiplicity, each acting once only. The Law of August 3, 2018 added two forms of harassment, in article 11 :

- a) One is *“When such words or behaviors are imposed on the same victim by several people, in a concerted manner or at the instigation of one of them, although each of these people has not acted repeatedly”* [24];
- b) The other is *“When such words or behaviors are imposed on the same victim, successively, by several people who, even without consultation, know that these words or behaviors characterize a repetition”* [25].

It is also necessary that these acts of harassment aim for or result in a deterioration in the living conditions of the victim, leading to a deterioration in mental or physical health, and that the perpetrators acted intentionally to commit harassment. The Law of August 3, 2018 introduced an aggravating circumstance, increasing the penalty from 1 to 2 years’ imprisonment, and from 15,000 to 30,000 euros fine, *“if they were committed by the use of a digital or electronic public communication service”*. It is possible to charge all those concerned with cyber harassment involving emails, tweets, Facebook posts or messages in groups or forums. Note that, in the context of harassment, occupational invalidity does not affect the penalty, which depends solely on the aggravating circumstances provided for in the texts.

### **Street harassment**

The Law of August 3, 2018 created a new criminal offense, introduced in Book VI of the Penal Code, article 621-1, *“sexist insult”*. This article defines the offense in its first paragraph as follows: *“Sexist insult consists, except in the cases provided for in articles 222-13, 222-32, 222-33 and 222-33-2-2, in subjecting a person to any speech or behavior with sexual or sexist connotation which either infringes their dignity because of its degrading or humiliating character, or induces an intimidating, hostile or offensive situation”*. Street harassment, or sexist insult, requires several concomitant elements.

Regarding the behavior of the perpetrator, article 621-1 of the Penal Code defines sexist insult as subjecting a person to any speech or behavior of a sexual or sexist nature. Sexual insult is a form of sexual harassment provided for in article 222-33 I of the Criminal Code. The difference from classic sexual harassment lies in the fact that street harassment may comprise a single gesture or word, without repetition. Second, sexist insult implies an effect: it must in fact undermine the dignity of the victim, because of its degrading or humiliating character, or else create an intimidating, hostile, offensive situation. Finally, concerning the moral element, the offense of sexist insult being a simple offense, it is then necessary to refer to article 121-3 paragraph 4 of the Penal Code which provides: “*There is no infraction in case of force majeure*”. Consequently, the offense may be demonstrated by mere observation of the behavior, without any intentional element being imputed. This offense is superseded in case of associated moral or sexual harassment or violence. Sexual insult is a 4th class offense, punishable by a fixed fine of 90 euros in case of immediate payment or else up to 750 euros. The offense may be aggravated, becoming a 5th class offense, with a fine of up to 1,500 euros. The offense is aggravated if the sexist insult is committed by a person abusing their authority, if the victim is an under-15 year-old minor or a vulnerable person, if there are multiple perpetrators or accomplices, if the insult targets the victim’s sexual orientation, or if the offense is committed on public transport. Jurisprudence rules that “violence” need not involve physical contact with the victim: when a woman is prevented from moving freely in the street, this counts as “light violence”. Article R624-1 of the Criminal Code then makes it possible to act against minor violence which did not cause total occupational invalidity, with a 4th class fine of 750 euros. Insult, defined as “*any insulting expression, terms of contempt or invective*”, may constitute either a misdemeanor or an offense. When the insult is committed against a person or group of persons on the grounds of their gender (for example, against a woman qua woman), it is a 5th class offense [26], and if uttered loud enough to be heard by third parties, it is punishable by 1 year’s imprisonment and a fine of 45,000 euros [27]. The offense of sexist insult also raises concerns about future application, with problems of interpretation of the text, assessment of the infringement, and unintended side-effects. Firstly, street harassment raises questions about the determination of material elements: how to define an inappropriate look, an equivocal smile or a wolf-whistle, and how to differentiate seduction from insult. Furthermore, prosecuting this offense is very difficult because evidence is impossible or very difficult to provide. The 4th class fine, of 90 euros if paid immediately, may ultimately prove less dissuasive than the government had hoped.

### **Means deployed to facilitate legal action: statute of limitations and new offenses**

The Law of August 3, 2018 on sexual and gender-based violence modified the statute of limitations in two ways: it lengthened it in matters of sexual violence against minors, and it defined an offense of

non-disclosure of abuse of minors, refining the statute of limitations. In addition, the 2018 Law introduced new offenses to facilitate action against sexual violence.

### **Statute of limitations**

Considering the number of victims of sexual assault, the number of complaints is low [28], because of difficulty in reporting the facts (power of the aggressor over the victim, conflicting loyalties, feelings of guilt, fear of not being listened to...), and because of the time needed to become fully aware of the sexual violence undergone. In this context, the question of the statute of limitations for sexual crimes against minors was raised, by both victims and NGOs. Professionals were divided on a question involving almost irreconcilable realities: on the one hand, the suffering of the victims and their need to be recognized by the legal system and, on the other hand, the diminution of evidence over time and the perpetrator's right to oblivion. The Law of August 3, 2018 tried to find a consensus by extending the statute of limitations, beyond which charges cannot be brought. It has two main foundations: the right to oblivion, which amounts to considering that, given the time that has elapsed since the commission of the offense, there is no longer any need to prosecute the perpetrator because public opinion has forgotten the disturbance caused and no longer demands justice; and reprimanding the negligence of the plaintiff who, by failing to initiate proceedings within the time limit set by the law, loses the right to take action. These principles govern the statute of limitations. The first sets a time limit, while the second suggests that, if the plaintiff has, during this time, been diligent, then the limitation period is extended and legal action remains possible. Before Law n°2017 of February 27, 2017 reforming the statute of limitations in criminal matters, the limitation period was 10 years for crimes [29], 3 years for offenses [30] and 1 year for misdemeanors [31]. The Law of February 27, 2017 extended the statute of limitations for crimes from 10 to 20 years (art 7 CCP) and that for offenses to 6 years (art 6 CCP). Before this Law, there was a statute of limitations specific to criminal offenses of a sexual nature committed against minors, set at 20 years by the Law of March 9, 2004 known as the "Perben II Law". This exception was absorbed in the extension of the common law deadline by the 2017 law, and there was no longer a specific limitation for criminal sexual offenses committed against a minor. The Law of February 27, 2017 also postponed the starting point to the date of the victim's majority. To fill this void, article 1 of the Law of August 3, 2018 amended article 7 of the Code of Criminal Procedure by inserting a third paragraph to article 7 of the Code of Criminal Procedure: "*Legal action against the crimes referred to in article 706-47 of this Code, when committed against minors, is limited to 30 full years from the date of the victim's majority*". The choice to extend the statute of limitations by the Law of August 3, 2018 is justified in particular by improvements in techniques for collecting and storing evidence, the use of DNA evidence, the gravity of sexual crimes committed against minors,

and the phenomenon of traumatic amnesia. However, the necessity of this measure could be queried, with regard to the existing procedural arrangement: article 9-3 of the Code of Criminal Procedure, resulting from the Law of February 27, 2017, provides that: "*Any legal obstacle, provided by law, or any insurmountable obstacle of fact assimilable to force majeure, which makes it impossible to set in motion or exercise public action, suspends the statute of limitations*". Traumatic amnesia may be one such insurmountable obstacle, suspending the statute of limitations [32]. However, the Criminal Division of the Appeals Court considered that "*the traumatic amnesia from which a victim of rape may have suffered as a child does not constitute an insurmountable obstacle suspending the statute of limitations*" [33].

### **Defining the offense of non-disclosure of ill-treatment**

The Law of August 3, 2018 clarified the statute of limitations for the offense of non-disclosure of sexual assaults and attacks committed against minors. The starting point of the statute of limitations depends on whether the offense was momentary or continuous.

An momentary offense consists in a single unlawful act occurring in a very short uninterrupted period of time. A continuous offense is an act or behavior carried out continuously over time, without interruption. "Continuous offense" should not be confused with "continued offense", which consists in repeated commission of an momentary offense. The statute of limitations for an momentary offense runs from the day of commission, while that for a continuous offense runs from the day the offense ceased, both in its constituent elements and in its effects. Until the reform brought about by the Law of August 3, 2018, the nature of the crime of non-disclosure of assaults and sexual abuse was uncertain: continuous or momentary. Articles 1 and 5 of the Law of August 3, 2018 modified the provisions of article 434-3 of the Criminal Code as follows: "*Anyone who has knowledge of deprivation, ill-treatment or assault or sexual abuse inflicted a minor or a person who is unable to protect themselves because of their age, illness, infirmity, physical or mental impairment or state of pregnancy, and does not inform the judicial or administrative authorities or continues to not inform these authorities whereas these offenses have not ceased is punishable by 3 years' imprisonment and a fine of 45,000 euros. When the non-information concerns an offense referred to in the first paragraph committed against a minor less than 15 years of age, the penalties are increased to 5 years' imprisonment and a fine of 75,000 euros. Except where the law provides otherwise, the above provisions do not apply to persons bound to secrecy under the conditions provided for in article 226-13*". The nature of the offense of non-disclosure of sexual assault and attack is now clearly defined: it is a continuous offense, with statute of limitations coming into effect only when the victim has reported the offenses to the administrative or judicial authorities. This text is intended as an incentive for those concerned to

report acts of sexual violence against minors, which incur prison terms of 3 years and a 45,000 euro fine, or 5 years in prison and 75,000 euros when the minor is 15 years of age or younger. It does not, however, make any changes to the duties of doctors.

### **Creation of new offenses: voyeurism and the administration of substances likely to impair discernment**

The Law of August 3, 2018 created two new offenses, facilitating the fight against sexual and gender-based violence. Firstly, it created an offense of administration of substances likely to impair the victim's discernment or control and, secondly, it created an offense of voyeurism. The offense of administration of substances likely to impair the victim's discernment or control was created by the Law of March 23, 2018 and included in the Penal Code among "*other sexual offenses*". The aim was to specifically punish those who drug a victim in order to commit any sexual offense against them. The new article 222-30-1 of the Penal Code thus provides: "*Administering to a person, without their knowledge, a substance likely to alter their discernment or control in order to commit rape or sexual assault is punishable by 5 years' imprisonment and a €75,000 fine. When the acts are committed on a minor under 15 or a particularly vulnerable person, the penalties are increased to 7 years' imprisonment and a fine of €100,000*". This offense comprises a material and a moral element. Under the material element, two components must be combined: the behavior of the victim must be attributed to administration of the substance, and the perpetrator must cause the victim to unwittingly ingest a substance liable to impair discernment or control. Under the moral element, this offense contains both a general misrepresentation (deliberate action), and a special misrepresentation (a specific motivation on the part of the perpetrator). This specific motivation is described by article 222-30-1 of the Criminal Code: the defendant must have pursued a particular goal, of committing rape or sexual assault against the victim. The administration of substances likely to impair the victim's discernment or control is punishable by 5 years' imprisonment and a fine of €75,000 [34]. The Criminal Code provides for an aggravating circumstance: when the acts are committed on a minor under the age of 15 or a particularly vulnerable person, the penalties are increased to 7 years' imprisonment and a fine of €100,000. This new offense is an "obstacle" offense: i.e., the legal definition does not penalize the result of a harmful act or infringement, but rather the accomplishment of preparatory acts. To be punished for this offense, the perpetrator who administered the substances for a sexual purpose does not have to have been successful. Indeed, the Law of August 3, 2018 at the same time added an aggravating circumstance of administration of substances with the aim of impairing discernment or control in the offenses of rape and sexual assault [35]. Consequently, if, after the administration of such substances, the rape or the assault is carried out, the offense referred to in article 222-30-1

paragraph 1 is absorbed by the aggravating circumstances of the principal offense of rape or sexual assault.

The Law of August 3, 2018, in article 16, created a new offense of voyeurism intended to strengthen the fight against all types of sexual and gender-based violence. The new article 226-3-1 of the Penal Code therefore provides: "*Using any means in order to perceive the private parts of a person which that person, by their clothing or their presence in a closed place, has hidden from view by third parties, when committed without the knowledge or consent of the person, is punishable by 1 year's imprisonment and a fine of 15,000 euros*". This now outlaws voyeurism and "upskirting". Circular n° 2018-00014 of September 3, 2018, article 4.2, describes the offense of voyeurism: "*This offense, provided for by the new article 226-3-1 of the Criminal Code, fills a gap in criminal law which has been pointed by many practitioners, by making it possible to prosecute people who, in particular in public transport, use a mirror or their mobile phone or small cameras, in order to watch or film the crotch of women seated or standing wearing a dress or skirt. It also makes it possible to prosecute secretly looking at another in a fitting room, or public bathrooms or toilets*" [36]. The material element assumes the combination of two components. Firstly, the behavior of the perpetrator must comprise an action the aim of which is to perceive the private parts of the victim, by any means. The offense consists very simply in seeing, watching and behaving like a voyeur. The means do not matter: climbing above a toilet partition, using a mirror ... No device is necessarily required. Secondly, the victim must have dressed so as to hide their private parts (watching or filming under the skirts of women in public places), or be in an enclosed place hidden from the view of third parties, such as a changing room or toilets. The offense is punishable by 1 year in prison and a fine of 15,000 euros, increased to 2 years' imprisonment and a fine of 30,000 euros when the acts are committed by a person abusing their authority, against a minor or a vulnerable person, by several people, on a bus, train or tram or in a station, or when the images have been fixed, recorded or transmitted. Before the addition of this article, courts tried to act on accusations of voluntary violence, sexual assault, sexual attack or even invasion privacy, but this tended to run counter to the principle of strict interpretation of criminal law and many defendants were in fact acquitted. The Montpellier Court of Appeal stated: "*Although the acts infringe morals and show a real lack of dignity, the law does not punish the simple infringement of the delicacy of a person*" [37].

## **Conclusion**

What are the implications for biological forensic medicine of Act n°2018-703 concerning sexual and sexist violence? The purpose of the forensic case is to help determine the reality of the complaint and to assess the impact on the victim's personal life. The offenses of street harassment, sexual insult and voyeurism do not in themselves extend the reach of the law. However, in some cases forensic

assessment of the psychological consequences may be required. On the other hand, forensic departments are seldom called upon to examine the victims of gaslighting and sexual harassment, notably within the couple. The new legislation does not change the way this is handled. It remains often difficult to assess the impact of psychiatric symptoms on the victim's personal life (Total Incapacity to Work), and a psychiatric opinion may be necessary [38]. However, The Law of August 3, 2018 provides major advances in the fight against sexual and gender-based violence. It facilitates the punishment of these offenses by widening the scope of rape and redefining the contours of duress to include vulnerability due to young age, and it creates a new offense of street harassment, thereby filling a gap in the law. However, this new law does not meet all expectations: it does not introduce any age criterion for sexual consent, and there is the question of the effectiveness and the need for these new provisions

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