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Electronic version

URL: <https://journals.openedition.org/rdctss/1808>

DOI: 10.4000/rdctss.1808

ISSN: 2262-9815

Publisher

Centre de droit comparé du travail et de la sécurité sociale

Printed version

Date of publication: 1 December 2018

Number of pages: 156-165

ISSN: 2117-4350

Electronic reference

Loïc Lerouge, "Workplace Psychological Harassment in French Case Law: Scope of the Issues and Debates Around Employer Liability", *Revue de droit comparé du travail et de la sécurité sociale* [Online], 4 | 2018, Online since 01 November 2021, connection on 15 November 2021. URL: <http://journals.openedition.org/rdctss/1808> ; DOI: <https://doi.org/10.4000/rdctss.1808>

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WORKPLACE PSYCHOLOGICAL HARASSMENT IN FRENCH CASE LAW: SCOPE OF THE ISSUES AND DEBATES AROUND EMPLOYER LIABILITY

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Workplace psychological harassment has existed as long as have labour relations. For instance, Professor Christophe Dejourns points out that psychological harassment was common on assembly lines in the 1970s, carried on by what were known as “little dictators.”¹ Nevertheless, the question was only really broached in public discourse with the publication of the book by Dr Marie-France Hirigoyen, “Le harcèlement moral. La violence perverse au quotidien,”² which marked a turning point. The term “psychological harassment”³ has been used to designate a form of workplace violence manifesting itself as repeated actions against a worker that produce a degradation of his or her working conditions. The term “bullying” can also be used, especially regarding the research from the International Association on Workplace Bullying and Harassment (IAWBH).⁴ We are going to use the term “Psychological Harassment” in this article.

Numerous anti-psychological harassment associations have been created at national and regional levels⁵, and two bills have been introduced (Georges Hage

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- 1 See interview with Christophe Dejourns, «Harcèlement et santé au travail» <https://www.youtube.com/watch?v=L0rycUEJgRM>, uploaded 20 October 2017.
 - 2 M.-F. Hirigoyen, *Le harcèlement moral. La violence perverse au quotidien*, Ed. La Découverte et Syros, Coll. Pocket, 1998, 252 p.
 - 3 “Harcèlement moral” in French.
 - 4 See the IAWBH website at <http://iawbh.org> and the 11th International Conference on Workplace Bullying and Harassment “Better Understanding of Workplace Bullying and Harassment in a Changing World” held in Bordeaux by the COMPTRASEC, 5-8 June 2018.
 - 5 Examples include Mots pour Mieux au travail, Association nationale des victimes de harcèlement psychologique au travail (ANVHPT), Harcèlement Moral Stop, Association contre le harcèlement professionnel, Harcèlement association de réflexion et de soutien, Association de défense contre le harcèlement moral, etc.

at the Senate in 1999 and Roland Muzeau at the National Assembly in 2000). In 2001, the Economic, Social and Environmental Council (EESC) published an opinion and a proposal for a definition, prepared by rapporteur Professor Michel Debout.⁶ These debates concerning workplace psychological harassment fed the work that culminated in a section being specifically devoted to the subject in the Social Modernization Law of 17 January 2002.

A specific feature of the French system is that it has transposed the same legal definition into its labour law, criminal law and civil service law systems.⁷ According to Article L. 1152-1 of the Labour Code [CT] (reproduced in Article 233-2 of the Criminal Code [CP] and in Article 6 *quin.* of 13 July 1983 on the rights and obligations of civil servants), "No employee [or official] shall be subjected to repeated acts of psychological harassment which have as their object or effect a deterioration of his or her working conditions tending to impact his or her rights and dignity, impair his or her physical or mental health, or jeopardize his or her professional prospects." Three cumulative criteria must be met for a case to qualify as psychological harassment: the acts in question must be "repeated" (an isolated act therefore cannot qualify); their object or effect must be to degrade the victim's working conditions; and they must be likely to harm the victim's physical or mental health or jeopardize their professional future. Article 233-2 of the Criminal Code punishes acts of criminal workplace harassment with two years' imprisonment and a fine of €30,000.

In addition to establishing a legal definition, the French system has introduced legal provisions to combat psychological harassment in the workplace. The first of them invalid any termination of an employment contract that fails to properly consider the legal definition of psychological harassment (Art. L. 1152-3 CT). According to Article L. 1152-4 of the Labour Code, employers are required to take the necessary measures to prevent acts of psychological harassment and must prevent harm to physical and mental health in the workplace (Art. L. 4121-1 CT)⁸. They must also include provisions in their internal regulations that prohibit acts of psychological or sexual harassment (Art. L. 1321-2 CT). As for the employees, Article L. 1152-5 states that any employee that perpetrates such acts shall be subject to disciplinary sanctions. An employee, trainee, or intern who reports acts of psychological harassment, furthermore, is protected against discriminatory measures (in terms of remuneration, training, outplacement, assignment, qualification, classification, professional promotion, contract transfer or contract renewal; Art L. 1152-2 CT). And in an unprecedented move, a mediation procedure has now been introduced into the Labour Code for any person considering him or herself to be a victim of psychological harassment (L. 1152 -6 CT).

6 <http://www.lecese.fr/travaux-publies/le-harcèlement-moral-au-travail>

7 We note that the legal system governing workplace psychological harassment in France differs between the private sector and the civil service; see L. Lerouge L., «Les différences de traitement juridique du harcèlement moral dans le secteur privé et la fonction publique: des rapprochements possibles?» *Droit social*, 2012, p. 483-490.

8 As a measure against psychological harassment in the workplace, the law of 17 January 2002 also brought the notion of "physical and mental health" within the remit of the Committee for Health, Safety and Working Conditions [CHSCT] (since the labour law reform ordinances of 22 September 2017, CHSCT is now grouped together with the other staff representative institutions into the Labour and Economics Committee [CSE]), the occupational physician, and included it under protections for whistle-blower rights.

The legislator has also provided resources to staff and Union representatives. Thus, staff delegates have alert protections for reporting any violations they may observe of individual rights, harm to physical and mental health, or infringement of personal liberties resulting from acts of sexual or psychological harassment, or any discriminatory measure not justified by the nature of the task performed or proportionate to the objectives pursued (Art. L. 2313-2 CT). More collectively speaking, the Committee for Health, Safety and Working Conditions (CHSCT), based on Article L. 4612-3 of the Labour Code, may propose measures to prevent psychological harassment, sexual harassment and sexist conduct. Employers must provide justification for any refusal to apply such measures. Under the labour law reform ordinances of 22 September, however, these staff representative institutions are now to be consolidated into one body, known as the Labour and Economic Committee (ESC). Also, Trade union organizations in the company may, with the victim's approval, represent persons impacted by psychological harassment and take legal action on their behalf (substitution proceedings, Article L. 1154-2 CT).

In a situation of psychological harassment in the workplace, the employee is considered the weaker party to the employment contract. For this reason, as in cases of discrimination, and in order to facilitate substantiation, the law provides a change of the burden of proof. Thus, "when an employee or a candidate for a job, internship, or training program at a business provides a description of specific acts, a presumption of harassment is permissible. It is incumbent upon the defendant, in light of those elements, to prove that its conduct did not in fact constitute harassment, and that the decisions made were justified by objective factors unrelated to any harassment. The judge will make a decision after ordering any such investigative measures as he or she may consider appropriate" (Art. L. 1154-1 CT).

In litigation, the penalties corresponding to the harassment may vary based on its origins. The first of these penalties is more symbolic than judicial in nature, and consists in explicitly acknowledging the harassment and condemning the employer. When the harassment is rooted in an employer decision (for example, a disciplinary sanction), the victim may obtain an annulment of the decision, with all the attendant effects on their work situation. Employees who were harassed will need to be returned to the status they had prior to the disciplinary sanction. However, in order to obtain compensation, victims must provide proof of the prejudice caused to them by the psychological harassment situation. Here, the principle of the change of the burden of proof does not apply; the claimant must provide evidence. An evaluation of psychological harm is not a self-evident matter and various interpretations are possible. For instance, is the victim's depression a reaction to the harassment situation, or could other factors explain it? The victim must provide proof of the causal link between the damages and the psychological harassment suffered.

The legal definition of psychological harassment is quite general in scope. For this reason, and because judges alone are competent to qualify acts as psychological harassment in legal terms, the definition has been clarified in case law. French Labour Courts have made a considerable effort to clearly specify the definition and its scope. Administrative case law, on the other hand, has been more restrictive. The laws in that domain differ from those in the private sector, as do the approach and working culture. Considering its density, this article will seek to synthesize and analyse French jurisprudence on workplace psychological harassment in the private sector only.

The Court of Cassation has indeed played an important role in framing the definition of psychological harassment in French labour law, through the decisions it has handed down. Case law is extremely consistent on the issue of workplace psychological harassment, so

our aim here will be to discuss the emblematic decisions that have shaped the law on psychological harassment in France, in order to give a general overview. These decisions are to be found in large part in the field of labour litigation (I), as well as in social security and criminal litigation (II).

I - PSYCHOLOGICAL HARASSMENT AND JURISPRUDENCE IN LABOUR LAW

The definition given in Article L. 1152-1 of the Labour Code [CT] on the definition of workplace psychological harassment may be interpreted differently depending on the court hearing the case, particularly in terms of its general nature. A classification check is thus essential in order to ensure uniform interpretation by labour courts within France (A). The work done by the Court of Cassation⁹ has been highly significant in this domain and has built heavily upon the employer's obligation to ensure health and safety (B).

A - CONTROL BY JUDGES OF CLASSIFICATIONS OF WORKPLACE PSYCHOLOGICAL HARASSMENT

Classification control by judges consists in verifying, confirming or rejecting a particular assessment of the facts from the perspective of the law, in this case with regard to psychological harassment situations. For such situations, this control process involves a significant degree of casuistry, which is not necessarily a habitual part of the controls exercised by the Court of Cassation.¹⁰ The judge will be placed in a complex situation where he will have to distinguish between normal conditions and non-standard conditions that may be classified as psychological harassment.

Since the entry into force of systems to combat psychological harassment on 17 January 2002, litigation in this area has multiplied considerably. After two decisions rejecting a classification of psychological harassment,¹¹ the Employment Chamber of the Court of Cassation finally decided on 27 October 2004 to leave this classification up to the sovereign appraisal of trial judges.¹² As litigation concerning workplace harassment has changed over time, the lack of classification control by the Court of Cassation has led to various decisions that are not necessarily justified, or that contradict other decisions in trial court case law. Thus, the decisions pronounced by trial court judges have been burdened by the risks of arbitrary power, for example in classifying grounds for dismissal as real and serious, or in the heavy legal consequences faced by perpetrators based on whether or not a judge finds admissible a classification of their acts as psychological harassment.

In principle, the Court of Cassation does not have the authority to review the facts of a case; it simply checks whether trial court decisions conform to the law. Jean-Yves Frouin,

9 The Court de Cassation is the highest judicial body in France which is responsible for examining rights to appeal against rulings from Courts of Appeal and is in charge of unifying the jurisprudence.

10 See P. Adam, «Un contrôle, dans quel dessein?», *Semaine Sociale Lamy*, 29 September 2008, n° 1368, an interview by Françoise Champeaux, pg. 12

11 Cass. soc. March 9, 2004, n° 02-473,422, unpublished; Cass. soc. 02-41.795, unpublished, *Lexbase Legal Letter*, n° 141, p. 2, note Ch. Radé.

12 Cass. soc. 27 October 2004, *Semaine Sociale Lamy*, n° 1193, p. 11, *RJS*, 1/05, n° 4, *Droit Social*, January 2005, p. 100, note by C. Leroy-Loustaunau.

current President of the Employment Chamber of the Court of Cassation, has nevertheless pointed out that the judge of the Court of Cassation may verify the legal classification of the acts in question “whenever the law gives, or creates, a legal classification to which it attaches precise legal consequences.” In other words, the Court of Cassation ensures that trial court judges have given the correct legal classification, but without examining the material findings made by the trial court judges.¹³

On 24 September 2008, however, the Employment Chamber of the Court of Cassation reappropriated the faculty to verify the classification of psychological harassment, as the issues associated with the legal definition of psychological harassment established by the Social Modernization Law had made it necessary for legislative judges to interpret a still-new, complex notion rather than relying on the opinions of trial judges.¹⁴ The diversity of the interpretations made by the trial courts itself also justifies this “takeover” of classification control by the Court of Cassation, aiming to carve out a legal framework for workplace psychological harassment and establish the link with the employer’s obligation to ensure health and safety.

B - PSYCHOLOGICAL HARASSMENT AS INSEPARABLE FROM THE EMPLOYER’S OBLIGATION TO ENSURE HEALTH AND SAFETY

In the structure of the French Labour Code, the definition of workplace psychological harassment is to be found in Part I of the Labour Code concerning “individual labour relations,” Labour Code section 1152-1, and the obligation to ensure safety is located in Part IV on “health and safety at work,” Article L. 4121-1. There are links between the two sections in regard to workplace psychological harassment however, as the definition is found in part I and a number of systems intended as measures against psychological harassment are found in part IV. Thus, concerning employer obligations to ensure health and safety, the Social Modernization Law incorporated the notion of “physical and mental health” into Article L. 4121-1 of the Labour Code so as to include psychological harassment in this obligation, and point 7 of the general principles of prevention set forth in Article L. 4121-2 expressly addresses psychological harassment (as well as sexual harassment and sexist behaviour).

On 28 February 2002, the Employment Chamber of the Court of Cassation decided that the employer was in charge of a very strict obligation to ensure health and safety at work (as an “obligation of result”).¹⁵ However, it was not until 21 June 2006 that the link between the employer’s strict obligation concerning health and safety and psychological harassment in the workplace was explicitly recognized by the Court of Cassation, in an appeal based on Articles 1152-1 and 4121-1 of the Labour Code, interpreted in light of Directive n° 89/391 of 12 June 1989 on the implementation of measures to promote the

13 J.-Y. Frouin, «Sur le contrôle par la Cour de cassation de la qualification juridique de harcèlement moral», *RJS*, 10/05, p. 671.

14 Ph. Waquet, «Un contrôle naturel et nécessaire», *Semaine Sociale Lamy*, 29 September 2008, n° 1368, an interview by Françoise Champeaux, p. 11 ; L. Lerouge, «Le contrôle de qualification du harcèlement moral au travail. À propos des quatre arrêts rendus par la Chambre sociale de la Cour de cassation le 24 septembre 2008», *Petites Affiches*, n° 1 and 2, January 2009, p. 7-14.

15 Cass. soc. 28 February 2002, *Bull.*, V, n° 81, p. 84; M. Babin, N. Pichon, «Obligation de sécurité et faute inexcusable de l’employeur», *Droit social*, 2002, p. 828; A. Lyon-Caen, «Une révolution dans le droit des accidents du travail», *Droit social*, 2002, p. 445.

improvement of the safety and health of workers: “the employer is required to satisfy a strict obligation to ensure the safety and health of the workers at the company, in particular regarding psychological harassment, and the absence of specific negligence on their part does not suffice to absolve employers of this responsibility.”¹⁶

A significant body of case law has been developed in the area of workplace psychological harassment. Indeed, even if the employer had imposed sanctions on the perpetrator of psychological harassment, this cannot relieve the employer from liability for the harassment.¹⁷ However, an employee who has falsely denounced acts of psychological harassment may be subject to sanctions up to and including dismissal when he or she is proven to have acted in bad faith.¹⁸ Workplace psychological harassment case law reached its apogee on 10 November 2009 with two rulings from the Court of Cassation. Two cases recognized as psychological harassment actions with no malicious intent on the part of its perpetrator (“regardless of the perpetrator’s intentions”)¹⁹ and “management methods implemented by a line manager when applied to a specific employee.”

A new turning point began, however, with the 25 November 2015 decision of the Employment Chamber of the Court of Cassation,²⁰ which reoriented its approach to the employer’s obligation to ensure health and safety and ultimately had an impact on the jurisprudential approach to workplace harassment. The Court of Cassation here has implemented for the first time Article L 4121-2 on general principles of prevention aimed in particular at preventing workplace psychological harassment, and initiated a fall-back seemingly heralding an abandonment of references to the strict obligation to ensure health and safety in labour law. This development was confirmed in matters of psychological harassment by a 2016 decision handed down on June 1st, 2016,²¹ in which the Court of Cassation acknowledged that the employer had taken all the measures of prevention required under Articles L. 4121-1 and 4121-2 of the Labour Code, thus relieving him of liability. However, the absence of a recognition of psychological harassment by the judge in the case nevertheless would not relieve the employer from liability for hardship in the workplace.²²

16 Cass. soc. 21 June 2006, *D.*, 2006, n° 41, p. 2831, note by M. Miné; *RTD*, p. 245, note by P. Adam; L. Leblanc, “Harcèlement moral. Responsabilité personnelle du salarié et obligation de résultat de l’employeur”, *RJS*, 8-9/06, p.670-675; Ch. Radé, «harcèlement moral et responsabilités au sein de l’entreprise: l’obscur éclaircissement», *Droit Social*, n° 9/10, 2006, p. 825-833.

17 Cass. Soc. 3 February 2010 n° 08-40.144.

18 Cass. Soc. 10 June 2015 n° 14-13.318 and 13-25.554.

19 L. Lerouge, «La constitution du harcèlement moral au travail indépendamment de l’intention de son auteur», note in Cass. soc. 10 November 2009 n° 08-41.497, *Petites Affiches*, n° 28, 9 February 2010, p. 18-21; L. Lerouge, «Vers la qualification de méthodes de gestion de harcèlement moral?», note in Cass. soc. 10 November 2009 n° 07-45.321, *Petites Affiches*, n° 21, 29 January 2010, p. 9-12

20 Cass. Soc. 25 November 2015 D. 2015. 2507; *ibid.* 2016. 144, chron. P. Flores, S. Mariette, E. Wurtz and N. Sabotier; also see A. Dejan de la Bâtie, *Arrêt Air France: la chambre sociale rend un hommage appuyé à l’obligation de prévention*, *JSL* 7 Jan. 2016. 4; A. Gardin, *La redéfinition de l’obligation de sécurité de l’employeur*, *RJS* 2016. 99; M. Babin, *L’obligation de sécurité de résultat, nouvelle approche*, *JCP S* 2016. 1011; F. Champeaux, *L’infléchissement de la jurisprudence sur l’obligation de sécurité*, *Sem. soc. Lamy* 2015, n° 1700; *JSL* 2016, no. 401, p. 4, note by A. Dejean de la Bâtie.

21 Cass. soc. 1 June 2016, n° 14-19.702.

22 Cass. soc., 6 December 2017, n° 16-10.691.

Psychological harassment litigation has proliferated in labour law, which can be explained in particular by the shift in the burden of proof to the benefit of the individual claiming to be a victim of psychological harassment. On the other hand, there has been less such litigation in social security law and criminal law because of the absence of this principle, which makes it more difficult to obtain findings of psychological harassment and its effects, but it is nevertheless equally interesting.

II - WORKPLACE PSYCHOLOGICAL HARASSMENT AND JURISPRUDENCE IN CRIMINAL LAW AND SOCIAL SECURITY LAW

Social security and penal case law are distinguished from labour law jurisprudence with regard to the system in place regarding the burden of proof. In social security law, because of its various links to labour law in regard to the application of occupational legislation, proceedings have focused on whether or not to classify the effects of workplace psychological harassment as a occupational accident, with several levels of response relative to causality (A). In criminal law, however, the answer is more clearly established - the applicant must prove the harassment perpetrator's intentionality (B).

A - JURISPRUDENCE IN SOCIAL SECURITY LAW: THE CLASSIFICATION OF THE EFFECTS OF PSYCHOLOGICAL HARASSMENT AS OCCUPATIONAL ACCIDENT

In Social Security law, the proceedings reflected in the jurisprudence focus on recognizing the health effects of workplace psychological harassment as occupational accident, and not on psychological harassment itself, which essentially falls outside its remit. Given that mental health disorders are not recognized in the list of occupational disease, and obtaining recognition by using off-table illnesses would be complicated, judges have generally implemented the application of occupational legislation for workplace injuries, as it provides a more convenient legal framework in these cases.

The presumption of imputability refers to the notion that any injury occurring in the workplace during work constitutes an injury imputable to the workplace.²³ It was created in jurisprudence so as to spare injury victims from having to prove the occupational origin of their injuries. However, the nature of this presumption is a simple presumption, and can be rebutted by evidence to the contrary, demonstrating that the origin of the injury was entirely external to the workplace.²⁴ On 2 April 2003, however, the Court of Cassation held that occupational accident may be defined as "an event or a series of events, occurring on specific dates, caused by the job or occurring during work, and resulting in physical injury, regardless of its date of onset."²⁵ The definition of occupational injury upheld in 2003, then, is based on two decisive criteria: its sudden nature and the bodily injury resulting from accidents caused by the job or occurring during work. The use by judges of the term "a

23 Cass. soc. 2 February 1983, *Bull. V*, n° 71.

24 M. Badel, *Droit de la Sécurité sociale*, Ellipses, Coll. Mise au point, 2006, p. 90; Cass., combined session, 7 April 1921, *S.*, 1922, 1, 81.

25 Cass. soc. 2 April 2003, *RJS*, 6/03, n° 801; *D.*, 2003, p. 1724, note by K. Gaba; *Dr. soc.*, 2003, p. 673, note by L. Milet.

series of events” leaves room for the possibility of a certain lapse in time, which the Court of Cassation has upheld in vaccination-related cases. It is thus possible for some delay to occur between a causative event and the resulting appearance of health problems.²⁶ The Court of Cassation has continued to evolve, setting aside the criterion of “bodily injury” in two cases relating to post-traumatic psychological trauma²⁷ and acknowledging the subsequent development of psychological sequelae associated with the incident.

In case of occupational accident, case law is still centred on the strict health and safety obligation that in 2002 was used in the rulings in asbestos cases to redefine employer’s inexcusable negligence, entitling victims to supplementary compensation under Article L. 452-1 of the Social Security Code when workplace injuries are recognized. This position was confirmed by a judgment rendered by the plenary assembly of the Court of Cassation on 24 June 2005 according to which “under the employment contract binding him to his employee, the employer is bound by a strict obligation to ensure his safety, particularly with regard to workplace injuries; a breach of this obligation constitutes inexcusable negligence.”²⁸

This jurisprudence was at its clearest in a case heard on 22 February 2007. In that case, one month after going on sick leave due to an anxiety-depressive syndrome caused by his work, an employee attempted to commit suicide at his home. The Court of Cassation confirmed the trial court’s ruling declaring the Social Security Fund’s decision enforceable against the employer, considering that an injury occurring while an employee is no longer under the employer’s authority can still constitute an occupational accident if the employee can prove that it occurred as a result of work. The burden of proof is on the claimant to show that it was related to work, but a psychological harassment situation makes it possible to reject the classification of wilful misconduct. This assertion of causality is most often supported by medical certificates attesting that the employee’s state of health is the result of poor working conditions. On the employer’s side, where the argument is often that disorders such as depression are primarily multi-factorial and it is thus impossible to say with certainty that they originate from work, arguments centre on demands for medical professionals to provide clearer proof of this causality. Indeed, some employers have sought to have doctors called before the disciplinary chambers of the professional boards

26 Employees forced to vaccinate at the request of the employer where serious side effects occurred several days after vaccination - Editor’s note; Cass. Civ. 2nd, 25 June 2004, *RJS*, 8-9/04, n° 966. 2nd, 22 March 2005, *RJS*, 6/05, n° 667; *D.*, 2005, p. 2053, note by Y. Saint-Jours.

27 In regard to depression occurring subsequent to a performance review: Cass. civ., 2nd, 1 July 2003, *RJS*, 10/03, n° 1222; *D.*, 2004, p. 906, note M. Huyette; in regard to depression occurring after violence in the workplace (armed robbery of a bank): Cass. civ., 2nd, 15 June 2004, *RJS*, 8-9/04, n° 965.

28 Cass. Ass. Plen. 24 June 2005, n° 30-30.038; F.-j. Pansier, «Obligation de sécurité de résultat de l’employeur en matière de sécurité», *CSBP*, September 2005, p. 376; A. Dejean de La Bâtie, «Jurisprudence amiante: la consécration», *SSL*, 2005, p. 1225; F. Kessler, «Faute inexcusable: l’Assemblée plénière de la Cour de cassation met fin aux rébellions des juges du fond», *Droit Ouvrier*, Nov. 2005, p. 473 ; X. Prétot, note in *AP*, 24 June 2005, *Droit social*, 2005, p. 1067 ; O. Pujolar, «Faute inexcusable de l’employeur et faute inexcusable de la victime d’un accident de travail : des confirmations de jurisprudence», *Lexbase Hebdo - Edition Sociale*, 14 Jul. 2005, n° 176 ; P.-Y. Verkindt, note in *AP* 24 June 2005, *RDSS*, 5/2005, p. 875.

overseeing medical ethics specifically for providing written statements affirming links between health and working conditions.²⁹

The point common to both social security law (inexcusable negligence) and criminal law is that the association with work needs to be proven. On the other hand, in regard to evidence, the notion of intentionality distances social security law from criminal law.

B - CRIMINAL JURISPRUDENCE: PROVING THE INTENTIONALITY OF THE ALLEGED HARASSER

In accordance with the law of criminal procedure, claimants bringing criminal suits for workplace psychological harassment must not only prove its existence but must prove the intentionality of the alleged harasser as well. Criminal rulings in workplace psychological harassment cases are not common. Most often, they are the result of a personal initiative taken by a labour inspector and public prosecutor with a particular awareness of the damage caused by the harassment.³⁰ Some of these rulings have exposed a complete disregard for the human individual as a result of management decisions made without any discernment.³¹

A reading of the case law of the Criminal Chamber of the Court of Cassation shows that it has classed as criminal acts of mockery, status changes, acts of humiliation and public denigration, discriminatory psychological harassment based on the exercise of a trade union mandate, and degrading working conditions (denial of breaks, excessively overextended working hours, denial of rest periods to which the employee is entitled, excessive monitoring of tasks without justification, etc.). "Side-lining" or "freezing out" an employee, i.e., denying the employee relationships with colleagues and tasks to perform, has also been classed as an offense by criminal court judges. Thus, on 17 June 2014, the Court of Cassation reiterated that "it is an obligation incumbent upon the employer to provide the employee with the work for which he is paid his wage, and it is an infringement of the employee's dignity for the employer to circumvent this obligation."³²

It may also happen that tensions arise when a complaint is filed by a dismissed employee and classified in criminal terms as a case of workplace psychological harassment, while the judge in labour matters decides not to qualify the dismissal as lacking real and serious grounds. The Employment Chamber of the Court of Cassation, however, held once again on 3 February 2017 that when a dismissed employee has been subjected to psychological harassment by his superior, who has in turn been found criminally liable for such acts, the dismissal is void. The court has no need to consider the other arguments put forward by the employer in support of such dismissal³³ because of the primacy of *res judicata* in criminal law over civil law. The judges of the Court of Cassation also rejected the decision of the Court of Appeal to grant a claim seeking damages for psychological harassment,

29 See *Le Monde Économie*, «Les médecins veulent pouvoir attester librement les conséquences du travail sur la santé», 19 September 2017.

30 Presentation by R. Saada, «Politiques pénales en matière de harcèlement moral au travail: quel suivi en droit français?» 11th International Conference on Workplace Bullying and Harassment, Bordeaux, 6-8 June 2018.

31 CA Paris, 22 November 2011 n° 10/ 07194.

32 Cass. Crim 17 June 2014 n° 12-85,869.

33 Cass. Soc. 3 February 20017 [sic], n° 15-23.499.

on grounds that the victim had already been compensated by the Criminal Court. The Employment Chamber here distinguished the criminal court's criminal conviction from the prejudice suffered by the victim and the damages awarded by the labour courts for the psychological harassment caused by the employer's negligence.

Finally, among the landmark decisions outstanding in this rapid overview of criminal case law we find certain cases in which the courts have found perpetrators of psychological harassment criminally liable for involuntary manslaughter. Such was the case for instance of a suicide resulting from working conditions that had caused the worker such severe hardship that the management methods to which he had been subjected were found to constitute psychological harassment.³⁴ Thus, when a case brought by a claimant or heirs has been built on hard evidence, it may indeed lead to a finding of manslaughter - but this may come at quite a heavy cost for the victims and their families. Indeed, a criminal suit presents another hardship for them, and a long and very demanding one. The challenge we therefore face is how to devise means of prevention, by which we may be able to avoid the need for such wasteful situations.

34 CA Paris, 4 December 2017 n° 16/06348.