

FRANCE TELECOM CASE : FRENCH SUPREME COURT RECOGNIZES THE CONCEPT OF INSTITUTIONAL PSYCHOLOGICAL HARASSMENT

We have reached the final chapter in France Télécom case. The company's former directors are definitively convicted of "institutional psychological harassment". This new concept was recognized by the French Supreme Court on 21 January 2025, marking a turning point in the fight against abusive managerial practices (Cass. crim., 21 Jan. 2025, no. 22-87.145).

AT ISSUE: COMPANY POLICY ON WORKFORCE REDUCTION AND INCENTIVES TO LEAVE

Between 2004 and 2009, France Télécom (renamed Orange) adopted drastic restructuring plans aimed at cutting 22,000 jobs and relocating 10,000 employees. These measures, linked to the privatisation of the company, led to a brutal deterioration in working conditions, with around thirty suicides and attempted suicides recorded over said period. In 2009, a trade union filed a complaint against the company and its directors. Against this backdrop, the Criminal Court and the Paris Court of Appeal in turn sentenced the former CEO and director of France Télécom to a one-year suspended prison sentence and a €15,000 fine for institutional psychological harassment. Considering that the ruling was in breach of the principle of criminal legality¹, the defendants appealed the decision before the French Supreme Court, which upheld the Court of Appeal's ruling by confirming the new concept of institutional psychological harassment.

PSYCHOLOGICAL HARASSMENT INTERPRETED IN THE BROAD SENSE

Based on the drafting history of Article 222-33-2² of the Criminal Code, which defines psychological harassment, the French Supreme Court saw in the legislator's intention the desire to give a broad meaning to this concept. For the Supreme Court, this foreseeable interpretation of Article 222-33-2 does not violate the principle of criminal legality. Consequently, the mere implementation of a harmful policy (material element of the offence) with full knowledge of the facts (intentional element of the offence) that leads to a deterioration in working conditions is sufficient to characterise the institutional

Key issues

- For the first time, the French Supreme Court has recognized the concept of institutional psychological harassment
- This concept refers to a company policy, implemented with full knowledge of the facts, which has the purpose or effect of deteriorating the working conditions of all or some of its employees
- A company policy that exceeds the limits of the CEO's management and supervisory prerogatives is punishable under criminal law

¹ This is a fundamental principle of criminal law, which means that there can be no crimes, offences or contraventions without a prior definition of these offences, contained in a text of law setting out their constituent elements and the applicable penalty.

² "Harassing another person by repeated comments or behaviour with the purpose or effect of degrading working conditions likely to infringe their rights and dignity, alter their physical or mental health or compromise their professional future, is punishable by two years' imprisonment and a fine of €30,000".

psychological harassment, without the need to identify the victims.

In France Télécom case, the material element of the offence manifested in several ways such as multiple disorganised reorganisations, incentives to leave the company, forced geographical and/or functional mobility, excessive and intrusive control, lack of appropriate HR support, inadequate training, isolation of staff and intimidation.

The new interpretation of Article 222-33-2 is not at odds with European law, where the progressive clarification of offences by case law is permitted, provided that it is foreseeable.

In conclusion, what the defendants were accused of in this case was not the reorganisation of the company itself but the method used, which went far beyond the normal management and supervisory powers of the company's CEO.

The key takeaway of this case is that henceforth employers need to be vigilant regarding the implementation methods of their organizational strategies, particularly during periods of restructuring.

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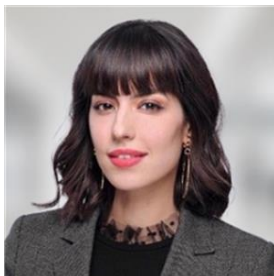
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