30th September 2019

The Law Against Work Related Suicide in France

Introduction

This Research paper sets out an overview of the legal protections against work related suicide in France. The French Labour Code includes a duty to prevent injuries of mental health linked to moral harassment, with the burden of proof on the employer to show that their actions did not constitute harassment. Penalties for breaking the law include individual fines and imprisonment, as well as corporate fines. This year has seen a landmark trial of corporate responsibility, with telecoms operator Orange - formerly France Télécom - accused of moral harassment leading to a wave of suicides in the 2000s. This is the first ever trial of a company for moral harassment. The verdict is expected in December 2019.

This document is intended to inform the CWU’s campaign to ensure that workplace suicide is recognised in UK legislation. Currently there is no requirement on UK employers to record cases of workplace suicide or to take any responsibility for addressing the problem of work related suicide. The French example could serve as a useful guide for pursuing similar protections in UK law. The campaign was agreed under Motion 1 carried at CWU Conference 2019, which is included below for reference.

CWU General Conference 2019

1 CATEGORY A: The NEC is instructed to work with the H & S Department, the TUC and any other interested party/group to formulate a strategy and campaign that seeks to ensure that workplace suicide is recognised in legislation. If any employee takes his or her own life in the workplace, or indicators exist to suggest it may be work related, it should be immediately investigated as a potential work-related suicide with the burden of proof being imposed on the employer to demonstrate that the suicide was not work-related.

The NEC is instructed accordingly.

Greater Mersey and South West Lancs

1CWU Conference, 2019, motion 1.
**European Framework Directive 89/391/EEC**

The European Framework Directive 89/391/EEC, which was introduced on the 12th June 1989, marked a pivotal milestone in improving health and safety at work. It guarantees minimum health and safety conditions throughout Europe, while permitting EU member states to maintain or introduce stricter measures and adequate steps to make work healthier and safer. The Framework Directive enacts a general duty on employers to ensure their employees’ safety and introduces the principle of occupational risk assessments that promotes prevention, with the aim of preventing occupational risks as early as possible. The objective is to promote a preventative culture. Despite the importance of the European Framework Directive 89/391/EEC no distinction is made between physical and mental health in terms of occupational risk prevention.²

**French Law: suicide**

When the Framework Directive was transferred into French law, it extended the safety obligation beyond its previous interpretation. The law reform specified that health and safety legislation was based on an employer’s general duty of prevention, risk assessment, and training for workers and employee representatives. In 2002 when the French Government introduced new legal provisions to tackle moral harassment at work, the safety obligation took a new direction under the social modernisation law 2002, which introduced the concept of physical and mental health in the French Labour Code.³

**Moral Harassment at work**

Moral harassment at work (known as workplace bullying in the UK) began to be considered in France in 1998 after psychiatrist Marie-France Hirigoyen published a book on this subject. She defined moral harassment as “any abusive conduct, in particular behaviour, words, actions, gestures, and writing capable of violating the personality, dignity, or physical or psychological integrity of a person, jeopardising their employment, or deteriorating the working atmosphere”.⁴

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The influence of Hirigoyen’s book triggered a new collective awareness of the phenomenon of moral harassment at work. Alliances for combatting moral harassment were formed and harassment at work became an issue for public debate. In 2002 following a governmental report by the French economic and social council, the social modernisation act was enacted marking a new awareness of physical and mental occupational risks which was extended into the French Labour Code, Criminal Code and Civil Service regulations.

According to Article L 1152-1 of the French Labour code, “no employee can be subjected to repeated acts of moral harassment, the aim or effect of which is a deterioration in the employee’s employment conditions such that (i) his or her rights and dignity might be undermined; (ii) his or her physical or mental health might be affected; or (iii) his or her professional future could be jeopardised”.

The legal test is based on three conditions. Firstly the litigious act must be repeated, and secondly the practices must be aimed at violating the victims’ rights. The third condition is divided into three distinct parts: the impairment to physical health or the impairment to mental health, or jeopardising the victim’s career. The last three conditions do not need to be combined, but one of them must be proven in combination with the first two factors to meet the definition of moral harassment.

An identical definition was inserted in article 222-33-2 of the French Criminal code. Although criminal application of the law was intended in broader terms to cover society as a whole, French court rulings have considered that this definition should be restricted to the workplace. French case law also shows that courts refuse to apply the text to behaviours that could be construed as a normal exercise of the employer’s management authority.

The maximum penalty for moral harassment in France is a €30,000 fine and/or imprisonment of a maximum of two (2) years. The company itself can be liable for a maximum fine of €150,000.
Legal provisions

Burden of Proof:

Several legal provisions in the French Labour code were modified to clarify and support the definition of moral harassment, one of them being the burden of proof. Under Article 1154-1 of the French labour code, when a dispute meets with the definition of moral harassment at work it is up to the employer (defendant) to prove that the actions that led to the complaint did not constitute harassment.

The specific legal wording under Article 1154-1 is as follows:

“When a dispute arises concerning the application of Articles L. 1152-1 to L. 1152-3 and L. 1153-1 to L. 1153-4, the candidate for a job, an intern or an employee presents factual elements suggesting the existence of harassment. In the light of these elements, it is incumbent on the defendant to prove that such conduct does not constitute such harassment and that its decision is justified by objective factors unrelated to any harassment. The judge forms his opinion after having ordered, if necessary, all the measures of instruction which he considers useful”.

Under Article 1154-1 of the French Labour Code, trade unions are also able to take legal action on behalf of their members, subject to obtaining written consent from the individual concerned. The victim can also stop the legal proceedings launched by the trade union at any time.

The Employer’s general obligation of prevention to physical and mental health

Another legal provision is the employer’s general obligation of prevention to physical and mental health. Under French labour code Article L 4121-1 the employer is obligated to take all necessary measures to ensure the safety and to protect the physical and mental health of workers. Since 2002, employers have a duty to prevent injuries of mental health risks linked to moral harassment. This goes beyond the provisions for preventing moral harassment and lays foundations for the recognition of mental health in labour law.

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Article L. 4121-2 of the French Labour Code specifies that employers must prepare a consistent prevention plan, integrating technical aspects, work organisation, working conditions, industrial relations, and the influence of ambient (surrounding) factors, particularly risks relating to moral harassment.11 This obligation is reinforced by article L. 1152-4 of the French Labour Code, which states “No employee shall be subjected to repeated acts of moral harassment that have as their object or effect a deterioration of his working conditions that may affect his/her rights and dignity, alter his/her physical or mental health or compromise his future career”.12

The code further instructs employers to take all necessary steps to prevent moral harassment by carrying out regular risk assessments concerning worker health and safety which includes moral harassment risks. This forms the basis of the employer’s liability for non-compliance. Opportunities are also awarded for workers, trade unions and management to hold meetings on occupational risks to discuss topics such as stress at work, fatigue, suffering and moral harassment. Any risks identified are then fed into the risk assessment process.13 This is also reinforced by Article L4612-1 of the Labour Code which permits Health and Safety Committees’ to contribute to the protection of physical and mental health of workers.14

**France Télécom(Orange): Case study**

This year has seen a landmark trial of corporate responsibility, with telecoms operator Orange - formerly France Télécom - accused of "moral harassment" leading to a wave of suicides in the 2000s. The trial took place over the course of two and a half months between May and July 2019. The prosecution has asked for the maximum sentences: a fine of €75,000 (£67,000) for France Télécom and a year's imprisonment for three top former executives. This is an unprecedented trial, the first ever of a company for "moral harassment". The prosecution says the top executives deliberately created conditions which they knew would push some employees over the edge. The defence says it is the kind

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of charge that is impossible to prove. The BBC reported that: “Each case is unquestionably a human drama - and no-one in court has for one instant claimed the suffering of France Télécom workers was not genuine. But establishing a chain of responsibility from suicide victim to senior manager would be a major step in jurisprudence.”\(^{15}\) The verdict is expected on 20\(^{th}\) December 2019.

France Télécom’s 102,254 employees are mainly educated, highly-skilled engineers, technicians and managers who draw on their academic and social skills to develop new communications technologies. The majority of employees work in the public sector and benefit from good terms and conditions and social benefits, stable jobs, generous pensions and wide ranging formal working rights.

In 2016, the chief executive of France Télécom, Didier Lombard, and six other company executives were placed under legal investigation in the case of 35 suicides by workers at France Télécom during the periods of 2008-2009. They have not been accused of targeting individual employees, but of practicing a management strategy across the whole company, based on moral harassment or psychological bullying.\(^{16}\)

The France Télécom suicides were the catastrophic outcome of management strategies, put in place following the company’s privatisation and restructuring program, which was meant to relaunch the business as a leading global telecoms provider and at the same time, implement massive job cuts. The legal investigation into the suicides has discovered that management’s strategies had intended to destabilise the working lives of the entire workforce and thereby push employees to leave the company on ‘voluntarily’ terms. According to the Paris prosecutor’s claim, approximately 4,000 executives were trained each year in techniques that would exert maximum pressure and “push their colleagues to their limits”.\(^{17}\)


\(^{16}\) The Irish Times, France Telecom accused of driving employees to suicide, 2016, Accessed at https://www.irishtimes.com/news/world/europe/france-t%C3%A9l%C3%A9com-accused-of-driving-employees-to-suicide-1.2713958

\(^{17}\) Le Monde, France Telecom, la mecanique de la chaise vide, 19\(^{th}\) August 2019, Accessed at https://www.lemonde.fr/societe/article/2014/12/12/france-telecom-la-mecanique-de-la-chaise-vide_4539636_3224.html
A survey carried out by trade unions in 2007 revealed that two out of three employees were experiencing work-related stress.\textsuperscript{18} Another study focusing on working conditions at France Télécom described the poor treatment practised by management, where employees were exposed to such intense pressures that they chose to take their own lives. Twelve France Télécom employees took their own lives in 2008; 19 in 2009; 27 in 2010; and 11 in 2011. Despite trade unions negotiating a new agreement on workplace conditions, there was a resurgence of suicides with 11 cases in 2013 and 10 suicides in 2014.\textsuperscript{19}

The French telecommunications sector has a long history in public ownership based on values of fairness and equality. In 1997 France Télécom was privatised bringing with it the erosion of public service tradition and a rise in finance-based ideology, driven by objectives to increase shareholder value. Management’s strategy aimed to increase profits through the sale of shares, engaging in a series of mergers and acquisitions (including UK mobile phone provider Orange) and developing cutting edge technologies, particularly in the profitable Internet sector. However, due to the poor management leadership and over investment in overseas companies, France Télécom accrued huge debts and had to be bailed out by public funds. By 2001, France Télécom was the most indebted company in the world. When Didier Lombard took over as chief executive in 2005, he had an overriding priority: to reduce the company’s debts through massive staff cuts. The NExT\textsuperscript{20} restructuring plan cut 22,000 jobs in the space of three years and drove another 14,000 employees to change job positions.\textsuperscript{21}

Until recently, the company employed a stable and long-term workforce; 61% of employees were over 45 years of age and had worked at the company for two to three decades. As part of a 2003 agreement with trade unions (who represented 70% of its workforce) employees were allowed to keep their public service status, which included job security, pension benefits and social protection. Yet in the wake of privatisation this was increasingly seen by management as a significant obstacle to the company’s ambitions.

\textsuperscript{20} NExT referred in English to “New Experience in Telecom Services”
One of the key policies put in place under the NExT plan was forced redeployment, whereby employees were pushed to change jobs on an almost continuous basis or move to new branches in distant cities at short notice. Relocations were often chaotic and unplanned, with workers being forced to move to a new branch only to have that branch close down, requiring them to move elsewhere. In many cases, staff were transferred from highly skilled roles as engineers or technicians to low-skilled commercial positions in shops or call centers. Some were given impossible targets or allocated an unmanageable workload. Others were humiliated in front of colleagues or sent a barrage of e-mails by their line manager.

Suicides were highest amongst male engineers or technicians in their fifties who had worked for the company for over 30 years but had been pushed to join the ‘front line’ of the company in one of its call-centres, as part of a policy of forced redeployment. They went from a position of considerable autonomy and professional status to a situation in which they had to read a script from a headset, sell products over a phone and ask permission to use the toilet.22

Many suicidal individuals at France Télécom left letters, subsequently published in the French press that explained the causes of their suicide and pointed the finger at bosses. These letters bear witness to conditions of unbearable stress linked to chaotic restructuring, work intensification, management bullying and demotion.

In one well-publicised case, a 53-year-old technician, who had been redeployed into a call-centre from his existing role monitoring satellite communications when the centre where he worked had been shut down, threw himself under a train on 2 July 2008. Prior to his suicide, he sent a letter to his trade union representative that emphasized his frustration with his new role for which he had no professional experience or training: “You know, I could no longer bear to be in this hell, spending hours in front of a screen like a mechanical puppet faced with the determination of some people to let us die like dogs”. He criticises management tactics and asks the trade union to let others know what is going on: “If you could speak about this or escalate it, so that others know and realise what this reckless lot is prepared to do to get people to leave”.

In another case, a 57-year-old management controller and father of four set fire to himself upon arriving in the car park outside the France Télécom office building where he worked near Bordeaux on the

morning of 26 April 2011. Following his suicide, an open letter that he had written to company bosses in September 2009 was published in the French press in which he criticises a “management by terror” that pressurises employees and makes them feel guilty for resisting organisational change. He identifies himself amongst the group of workers over 50 years of age who were being forcibly redeployed into new posts: “I am part of this segment. I am surplus to requirements (...) Suicide has become a solution”.

The destabilising effects of restructuring in the workplace are reaffirmed in another letter published in the press by a colleague of a France Télécom employee who killed himself on 17 May 2008, in which he states: “We live in a situation of permanent stress, pressure, restructuring and doubts about our future” (Decèze 2008, 30-31).

The France Télécom suicides can be seen to manifest new forms of suffering that characterise knowledge work in the information and communications sector and that are linked to intense psychological pressures. Those who completed suicide benefitted from excellent terms and conditions, and had job security and social protection. Yet these highly-skilled employees, few of whom had any prior history of mental illness or depression, were placed under such intense pressure by managers in pursuit of economic gain that some resorted to suicide.23

The case of France Télécom is still awaiting a verdict, which is expected on 20th December 2019.24

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CWU Research