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France Repeals Sexual Harassment Law for Being Too Vague

By Jeffrey Campolongo All Articles

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Jeffrey Campolongo

The children's lyrical rhyme "I see London, I see France ..." has taken on a whole new meaning. On May 4, in a remarkable, if not stunning, turn of events, the Republic of France became the only industrialized nation in the world where it is no longer illegal to engage in sexual harassment.

The French Constitutional Council repealed the country's sexual harassment law, on the basis that the definition of "harassment" within the law was too broad. Under French law, certain forms of sexual harassment were considered a crime. The ruling came after France's harassment law was contested for being too broad by a former deputy mayor in the southern Rhone region who was sentenced to three months in prison and a 5,000 euro (approximately \$6,600 USD) fine for allegedly sexually harassing three employees.

In its ruling, France's Constitutional Council wrote, "Article 222-33 of the penal code calls for the misdemeanor of sexual harassment to be punishable but the component elements of the infraction are not sufficiently defined." (See Decision No. 2012-240 of May 4, 2012 QPC, Constitutional Council of the French Republic.)

According to a press release issued by the Constitutional Council on May 4, the offense of sexual harassment was introduced in the French penal code in 1992 and then defined as "the harassment of another person by using orders, threats or coercion, in order to obtain sexual favors by a person abusing the authority conferred by his functions."

A revision to the law in 1998 added the term "serious pressure" to the list of acts through which harassment can be committed, according to the press release. In 2002, an amendment on social modernization altered this definition to expand the scope of the offense by removing all the particulars of the acts by which harassment can be established and the circumstance relating to the abuse of authority. The result of that amendment became Article 222-33 of the penal code and provided: "The harassment of another person in order to obtain sexual favors is punishable by a year of imprisonment and a 15,000 euro fine."

It is this vagueness in the definition of the offense that caused the French Council to write: "By punishing 'the harassment of another person in order to obtain sexual favors' without defining precisely the elements of this offense, the challenged provision infringes the principle of legality of offenses and penalties and the principles of clarity and precision of the law, legal predictability and legal certainty."

The decision of the council became effective immediately, a power given to the council by the French Constitution.

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The practical effect of the repeal of the French sexual harassment law is likely to result in the dismissal of any active sexual harassment cases in the courts. The French government will need to pass a new law with a clear definition of prohibited conduct.

The decision of the council is deemed final and cannot be appealed. The Constitutional Council, which is the nation's and get started. **Sign Out | My Account** be years. Members are Senate and National

Assembly). Former presidents of the republic are considered part of the Constitutional Council for life when they do not hold an office incompatible with membership of the council, in cases where they cannot sit. At the present time, the active members of council are seven men, two women and two additional members (ex-officio) who are also men.

New sexual harassment legislation is not likely to be proposed, let alone adopted, for several months, in light of the fact that there will be a new Parliament elected in June, on the heels of the nation's presidential election runoff. In the meantime, the absence of an active sexual harassment law has sparked anger by feminist groups. The European Association Against Violence Towards Women at Work, a French advocacy group, however, has argued to the Constitutional Council that the repealed law was ineffective, producing an "insignificant" total of 54 convictions in 2009, as reported by Reuters.

What is most interesting about the political situation regarding protection of women's rights in France, is that it comes in the aftermath of the Dominique Strauss-Kahn situation, where the once presidential-candidate was accused of pressuring women into sexual acts. Newly elected French President Francois Hollande portrayed himself in his election campaigns as a "feminist" and vowed to reinstate a ministry of women's rights, according to news reports. Following his election on May 6, Hollande made good on his promise and appointed Najat Vallaud-Belkacem, the first French minister for women's affairs since the 1980s. Despite uncertainty surrounding the new Parliament, Vallaud-Belkacem has been quoted by the British newspaper *Guardian* as saying that the "void" left after the law's repeal was unacceptable and text of the new legislation was already in preparation and likely to be passed before the summer.

In the meantime, French women (but not men, since they were not protected by the old law in the first place), will have to be wary of salacious supervisors and unsavory employers until a new law is in place. Stay tuned as this international ironic twist on the 17th century French term "harassment" plays out in the next few months. •

Jeffrey Campolongo concentrates his practice in the areas of employment discrimination, specializing in the Americans with Disabilities Act, the Family and Medical Leave Act and Title VII of the Civil Rights Act of 1964.

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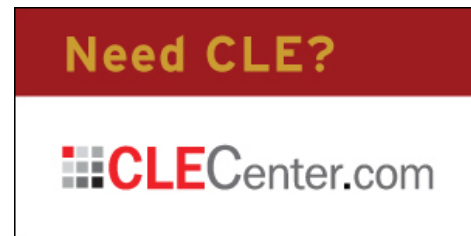
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